HOUSE OF ASSEMBLY

Tuesday 23 November 2004

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

PAPERS TABLED

The following papers were laid on the table:

By the Treasurer (Hon. K.O. Foley)—

Regulations under the following Acts—
Superannuation—Contracts without Tenure

By the Minister for Infrastructure (Hon. P.F. Conlon)—

Infrastructure Corporation (InfraCorp), South Australian—Report 2003-04
Land Management Corporation Charter

By the Attorney-General (Hon. M.J. Atkinson)—

Legal Practitioners Conduct Board—Report 2003-04
Legal Practitioners Disciplinary Tribunal—Report 2003-04

By the Minister for Health (Hon. L. Stevens)—

Booleroo Centre District Hospital and Health Services Inc—Report 2003-04
Bordertown Memorial Hospital Inc—Report 2003-04
Chiropractors Board of South Australia—Report 2003-04
Commissioners of Charitable Funds—Report 2003-04
Crystal Brook District Hospital Inc—Report 2003-04
Kingston Soldiers' Memorial Hospital Inc—Report 2003-04
Lower Eyre Health Services—Report 2003-04
Mallee Health Service Inc—Report 2003-04
Naracoorte Health Service Inc—Report 2003-04
Occupational Therapists Registration Board of South Australia—Report 2003-04
Orroroo and District Health Service Inc—Report 2003-04
Repatriation General Hospital Inc—Report 2003-04
Riverland Health Authority Inc—Report 2003-04
Rocky River Health Service Incorporated—Report 2003-04
South Australian Psychological Board—Report 2003-04
Strathalbyn and District Health Service—Report 2003-04
Tailem Bend District Hospital—Report 2003-04
Mannum District Hospital—Incorporating Mannum Domiciliary Care Service—Report 2003-04
Regulations under the following Act—
Optometrists—Fees

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

Coast Protection Board—Report 2003-04
Dog Fence Board—South Australia—Report 2003-04

By the Minister for Administrative Services (Hon. M.J. Wright)—

State Supply Board—Report 2003-04

By the Minister for Industrial Relations (Hon. M.J. Wright)—

Regulations under the following Act—
Workers Rehabilitation and Compensation—
Occupational Therapy

By the Minister for State/Local Government Relations (Hon. R.J. McEwen)—

Outback Areas Community Development Trust—Report 2003-04

By the Minister for Consumer Affairs (Hon. K.A. Maywald)—

Regulations under the following Act—
Liquor Licensing—
Long Term Dry Areas—Renmark & Paringa
Short Term Dry Areas—Victor Harbor.

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: Yesterday, in answer to a question from the member for MacKillop, I responded to a suggestion that cabinet had approved the Home Service Direct matter in 2003 by saying 'Yes.' Having reflected on the matter, I advise the house that my recollection yesterday was incorrect, and I advise that cabinet was informed in 2002 of a proposal for an arrangement between SA Water and Home Service Direct.

SOCIAL DEVELOPMENT COMMITTEE

Mr SNELLING (Playford): I bring up the 20th report of the committee entitled Postnatal Depression Inquiry.

Report received and ordered to be published.

QUESTION TIME

HOME SERVICE DIRECT

Mr WILLIAMS (MacKillop): My question is for the Minister for Administrative Services. Will the minister seek the resignation of whoever it was that misled cabinet by advising that SA Water's assistance to Home Service Direct would not breach the privacy principles, be it the SA Water Board or the CEO of SA Water? Yesterday, in his ministerial statement, the minister said that privacy principles had been breached when personal details were released by SA Water. Today, the minister stated on radio that:

> We were advised that SA Water would be complying with privacy principles.

The minister's comments this morning show that somebody has misled cabinet.

The SPEAKER: To my mind, the question was clear enough without an explanation. The last sentence of the explanation was clearly debate, even if it is debatable that the other material may not have been. The honourable the minister.

The Hon. M.J. WRIGHT (Minister for Administrative Services): I thank the member for his question. Yesterday, I made a ministerial statement on these matters and, yes, I did make it clear that the government takes this matter very, very seriously. Certainly, as the responsible minister I do take this matter seriously. What I have been putting on the public record, both yesterday in my ministerial statement and in the lead up to ministerial statement, was that Crown Law advice had been sought on a range of issues. Obviously, the one that is the most sensitive at this stage is the privacy issue, because that has been breached and that should not have been breached. Quite clearly, that is the case which I have highlighted and discussed with the Chair of SA Water, as I said in my ministerial statement.

I brought to his attention the seriousness with which the government treats this, and the consequences of what action I want to be taken in regard to this. The mistake made by SA Water should not have occurred. Let us be in no doubt about that. All of us in this chamber have the right to expect that our bureaucrats will undertake their responsibilities correctly and carefully, and that has not occurred on this occasion. SA

Water has not fulfilled its responsibilities as it should. That is a very serious issue and they have to remedy that situation.

SPINAL CORD INJURIES, SOUTH-EAST

Mr CAICA (Colton): My question is for the Minister for Disability. Can the minister inform the house about the planned expansion of services for people with spinal cord injuries living in the state's South-East?

The Hon. J.W. WEATHERILL (Minister for Disability): I thank the honourable member for his question. I am pleased to inform the house that services for people with spinal cord injuries in the South-East of the state are being expanded. A trial clinic was held in September at the South-East Community Health Service, and was such a success that there will be another two outreach clinics next year in February and June. Seventeen people with spinal cord injuries attended the first clinic, which was held over three days in September and which included two home visits. The clinics provide people with spinal cord injuries with specialist care and advice and information on the latest in equipment. A spinal injuries specialist and a occupational therapist are available for consultation during the clinics. Without this worthwhile initiative, patients would be forced to travel to Adelaide for treatment or they would have to rely upon video-conferencing facilities with specialist providers. They are unable to use services locally without the expense or stress or, indeed, pain of a long trip. It is something I am sure the member for Mount Gambier would be very pleased about.

Another spin-off from the first outreach clinic was the chance for seven local occupational therapists from the community health services to receive additional training; and they will be involved again next year. This type of training increases local knowledge of spinal cord injuries and equips local professionals with the opportunity for career development while helping people in their own communities. The clinics have come about through a wide collaboration of people and organisations. The outreach clinics are an initiative of the South-East Regional Service Development Project, which includes representatives from the Paraplegic and Quadriplegic Association, the South-East ParaQuad Association, Julia Farr Services, the Multiple Sclerosis Society, South-East Community Health, and the Disability Services Office. This project is another small step in the long task of rebuilding our disability services.

HOME SERVICE DIRECT

Mr WILLIAMS (MacKillop): My question is again to the Minister for Administrative Services. Did cabinet approve an arrangement which involved the signing of a contract between a government agency and a private company without any minister reading that contract?

The Hon. M.J. WRIGHT (Minister for Administrative Services): The member would know full well that ministers do not trawl through contracts. That is not the responsibility of a minister, neither is it the responsibility of a board. The government was told that SA Water would offer Home Service Direct to SA Water customers.

Members interjecting:

The Hon. DEAN BROWN: Mr Speaker, I cannot hear what the minister is saying because of interjections from the other side of the house. I therefore take a point of order.

The SPEAKER: Order! I uphold the point of order. Even with a hearing aid and my speakers turned up flat out, I cannot hear clearly what is being said. So, if the cacophony along the government benches between the minister and the chair could be reduced to a hubbub, it would be useful. The honourable minister.

The Hon. M.J. WRIGHT: Cabinet did not sign off on the contract. As I said in my ministerial statement, cabinet was informed about a proposal, but not the final details such as the contract.

Mr WILLIAMS: I ask a supplementary question: will the minister table the contract so that somebody in South Australia can read it?

The Hon. M.J. WRIGHT: It is not my intention to table the contract. Obviously, the contract has been read by appropriate people in SA Water.

CHRISTMAS PAGEANT

Ms CICCARELLO (Norwood): My question is to the Minister for Multicultural Affairs. Will the minister inform the house what the government has done to help the Christmas Pageant to better reflect South Australia's multicultural diversity?

The Hon. M.J. ATKINSON (Minister for Multicultural Affairs): I am pleased to get a question from someone who will be a fairy in this Saturday's Norwood Christmas Pageant and who, indeed, was a fairy last year also. The Christmas Pageant is arguably the largest parade of its kind in the Southern Hemisphere—one of South Australia's great customs. When the pageant began in 1933—

Ms Chapman interjecting:

The Hon. M.J. ATKINSON: No, Vickie, you weren't there, but I think you will agree that cultural diversity was not a major feature of our state at that time. Many members of this place—albeit not the member for Stuart—would argue that, today, multiculturalism is one of our great successes. Through the South Australian Multicultural and Ethnic Affairs Commission and Multicultural SA, the state government encourages various customs and celebrations of our many cultural and religious groups. That is why I was pleased that this year the 71st Christmas Pageant featured a multicultural float. We had South Australians from all over the world anticipating the feast of the Nativity of Christ and spreading the message of peace and goodwill towards man.

Mr Brindal: What was on it?

The Hon. M.J. ATKINSON: I am coming to that, for the information of the member for Unley. The set for the multicultural float was the largest in the pageant, exceeding 70 metres in length. It was led by lion dancers from the Vietnamese and Chinese communities. On the float were 'Love, tolerance and peace', written in Chinese, Arabic, Greek, Spanish, Kaurna and English.

Mr Brindal: Didn't you see that Kaurna wasn't a written language, so it was very—

The Hon. M.J. ATKINSON: It became a written language with the help of Lutheran missionaries.

The Hon. M.D. Rann: And, indeed, you can find dictionaries of it in South African libraries.

The SPEAKER: Order!

The Hon. M.J. ATKINSON: The Premier makes a good point in response to the member for Unley. The group Aire Flamenco played music inspired by its cultural roots—the rich, rhythmic qualities of flamenco and Latin music. Around

the float there were representatives from ethnic cultural groups, who were drawn from the Vietnamese, Greek, Italian, Spanish, Polish, Ethiopian, Sudanese, Scottish and Pacific Islands communities. Each group was dressed in its traditional ethnic costume and carried a placard that bore a Christmas greeting in its language. I am told that SAMEAC intends that the participating groups will rotate from year to year to give as many communities as possible an opportunity to be part of this great South Australian custom.

The multicultural float was seen by more than 300 000 people who lined the streets of Adelaide (including my now nine-year-old son Christopher), in addition to the huge television audience across South Australia. The float was the result of joint efforts by the South Australian Multicultural and Ethnic Affairs Commission, Multicultural SA and the pageant organisers. I think it is good for the public to get a sample of the diversity of Christmas traditions celebrated by so many of our communities. It was a colourful and welcome addition to a most joyous event.

HOME SERVICE DIRECT

Mr WILLIAMS (MacKillop): My question is again to the Minister for Administrative Services. Did the government obtain a crown law opinion on the privacy implications of the contract between SA Water and Home Service Direct before the contract was signed and, if not, why not?

The Hon. M.J. WRIGHT (Minister for Administrative Services): It is a funny range of questions that are being asked by the member for MacKillop. To the best of my recollection (because certainly, as I recall, it predated my coming into the chamber), it was the former government that commercialised SA Water and put in place an independent board, and now it does not want it to undertake its responsibilities.

TAMMAR WALLABIES

Ms BREUER (Giles): Can the Minister for Environment and Conservation update the house on progress to reintroduce tammar wallabies to Innes National Park on the Yorke Peninsula?

The Hon. J.D. HILL (Minister for Environment and Conservation): I thank the member for Giles for this question. I acknowledge her great interest in cuddly, furry, indigenous animals, and I also acknowledge the great interest of our Premier in this achievement of bringing back to South Australia a species that had become extinct over time. Sir, as you would know, on 4 November, 10 tammar wallabies, descendants of the original South Australian mainland wallaby, returned to their South Australian home and were released in Innes National Park on Yorke Peninsula.

The Hon. M.D. Rann: They were from New Zealand.

The Hon. J.D. HILL: They were from New Zealand, as the Premier reminds me. The wallabies are being monitored closely by a very dedicated recovery team, including experts from Monarto and Adelaide zoos and the University of Adelaide researchers. These vulnerable creatures will have a battle just to survive in their new environment, with the biggest risk being the fox—a bit like the member for Bright. An intensive baiting program has been completed in the park, but the risk still exists. For example, at Monarto recently nine wallabies escaped from their holding pen into the park and six of them were killed by foxes in only a few days. However, I can inform the house that the 10 we have released into the wild are safe, after their first couple of weeks in the national park.

An honourable member interjecting:

The Hon. J.D. HILL: Yes, indeed. Because all the wallabies were fitted with radio collars, we know that these creatures have kept close together. They have all survived, and have kept close—within a one-kilometre radius of their release site. It is proposed that in total 60 tammars will be reintroduced into the park. A local farmer has raised some concerns about the possibility of the tammars breeding out of control. I am advised that there will be sufficient control mechanisms (including the fox) to ensure that this does not happen. Given that almost 60 native species of animals, plants and birds have been lost to South Australia since European settlement, the reintroduction of the tammar is an historic occasion.

HOME SERVICE DIRECT

Mr WILLIAMS (MacKillop): My question is again to the Minister for Administrative Services. Has the present minister, or any minister of the government, read or taken advice on the detail of the contract between SA Water and Home Service Direct?

The Hon. M.J. WRIGHT (Minister for Administrative Services): I am not able to comment on behalf of other ministers, but I can certainly comment on my behalf. As I have already said, the previous government commercialised SA Water. I have now been advised by one of my colleagues that the SA Water Corporation Act was passed in 1994. In setting up SA Water as a commercialised identity, it also established an independent board, which has a charter—

Mr WILLIAMS: I rise on a point of order, sir, namely, relevance. The answer with which the minister is trying to cloud this issue has nothing to do with the question, which sought to see whether any minister has taken responsibility for this mess.

The SPEAKER: Order! The pejorative language used by the member for MacKillop may well suit the understanding he wishes others to take, but it is not appropriate to include it as part of the remarks he makes in explaining a point of order. Notwithstanding that, the point he makes about whether or not the answer is relevant is well made. I am listening carefully to the minister's response. Has the minister concluded his answer?

The Hon. M.J. WRIGHT: I am happy to conclude my answer by saying that, clearly, I have taken responsibility, and that is why I undertook to do a number of things, which I brought to the attention of the house a couple of weeks ago, namely, obtain crown law advice. I have now received that advice, as a result of which I have actioned a number of things which I have brought to the attention of the house. As I have said, I am far from pleased; in fact, I am very angry that—

Members interjecting:

The Hon. M.J. WRIGHT: Listen to the people interrupting in the cheap seats! Of course, this is the mob who commercialised SA Water and now wants to cry foul.

Members interjecting:

The SPEAKER: Order! The member for Reynell.

NURSES, SCHOLARSHIPS

Ms THOMPSON (Reynell): Thank you, sir.

Members interjecting:

The SPEAKER: Order, the Deputy Premier, the member for MacKillop and the Attorney-General!

Ms THOMPSON: My question is to the Minister for Health. How many metropolitan public sector postgraduate clinical nursing and midwifery scholarships have been awarded this year as part of the strategic plan to retain public sector nurses and midwives? What is the value of the scholarships?

The Hon. L. STEVENS (Minister for Health): The South Australian metropolitan public sector postgraduate clinical nursing and midwifery scholarships are part of the annual $2.7 million strategy to support the recruitment and retention of nurses and midwives in the public sector. To help maintain a strong and vibrant nursing and midwifery work force, scholarships totalling $83 000 have been awarded this year to 41 public sector nurses and midwives. The scholarships are worth up to $3 000 per recipient, and since they began in 2002 a total of 132 scholarships have been awarded.

The scholarships recognise and support nurses and midwives in their commitment to developing knowledge and maintaining best practice in their fields and have a direct impact on the safe delivery of high quality health services. Everyone receiving a scholarship is undertaking postgraduate studies in specialist areas such as nurse practitioner, midwifery, critical care, mental health, palliative care, high dependency, and community and aged care nursing. As new knowledge and technologies emerge, education is the key to maintaining and improving competence in nursing and midwifery and for promoting and effecting appropriate change in health care delivery.

Nursing students living in regional areas can access support through the South Australian Rural Education Scholarship Scheme, which provides $5 000 per year up to three years. As well, existing public sector rural and remote nurses can access the South Australian Rural Postgraduate Scholarship Scheme, which awards recipients with $4 000 towards postgraduate studies. This scholarship program is just one of the strategies identified in the nursing and midwifery strategic plan 2002-05 to help recruit and retain public sector nurses and midwives.

HOME SERVICE DIRECT

Mr WILLIAMS (MacKillop): My question again is to the Minister for Administrative Services. Given that SA Water has been instructed by the minister to renegotiate its contract with Home Service Direct to comply with the government's privacy principles, can the minister assure South Australian taxpayers that they have not been financially exposed?

The Hon. M.J. WRIGHT (Minister for Administrative Services): That is the advice that I have received.

ADULT LEARNING AUSTRALIA 2004 AWARDS

Mr SNELLING (Playford): My question is to the Minister for Employment, Training and Further Education. What success did South Australian education providers have at the National Adult Learning Australia 2004 Awards?

The Hon. S.W. KEY (Minister for Employment, Training and Further Education): I would like to thank the member for Playford for his question and report to the house that, last week, TAFE SA achieved some outstanding results at the National Training Awards in Melbourne—I think I covered this yesterday. But on the weekend that success continued at the 44th Adult Learning Australia (ALA) national conference held at Glenelg. Adult Learning Australia is the national peak body comprising organisations and individuals in the adult learning field in all states and territories. It includes universities, TAFEs, community education providers, as well as tutors and trainers.

A highlight of the conference was the 2004 ALA awards, where Workplace Education at the Adelaide Institute of TAFE was announced as the winner of the Australian adult education provider of the year. Workplace Education has been a pioneer in the field of adult education for more than 13 years, specialising in delivering language, literacy and numeracy skills in workplaces. In the past 13 years, Workplace Education worked with more than 140 enterprises and community groups to provide outstanding vocational skills training. For example, it has been working with women from diverse cultural and linguistic backgrounds to complete advanced learning training programs. These programs are especially designed to develop learning skills so that these women can play a leadership role in their communities and at the same time gain qualifications in front-line management.

Other programs carried out with industry contribute significantly to improving performance, quality and safety in the workplace, while at the same time the learner develops the specific skills required by business and industry, which improves their career progression and employment opportunities. It is the responsiveness to the needs of industry and community organisations that is recognised through winning this award. It is very pleasing to see our major training provider receiving national acknowledgment for the activity it is undertaking in numerous workplaces across the state. I am sure everybody in the chamber is just as proud as I am of the effort and the recognition that TAFE is receiving.

HOME SERVICE DIRECT

The Hon. R.G. KERIN (Leader of the Opposition): My question is to the Minister for Administrative Services. Given that the minister told the house yesterday that Home Service Direct was authorised to use SA Water's name, logo and trademark in connection with the promotion of its emergency plumbing service, will the minister now assure the house that the offer made was an offer from Home Service Direct to the customer and not an offer from SA Water?

The Hon. M.J. WRIGHT (Minister for Administrative Services): I made an extensive ministerial statement yesterday and I stand by that ministerial statement. That addressed a range of issues and—

Members interjecting:

The Hon. M.J. WRIGHT: I think it did. It talked about all the issues that have been raised with Crown Law, the most sensitive of which is in regard to privacy. As I said, with regard to the breach of privacy a mistake was made that should not have occurred, and I have taken the appropriate action. I have spoken to the Chair of SA Water—

The Hon. DEAN BROWN: On a point of order: under Standing Order 98, it was a very specific question as to whom the offer was from to the customer, and we have not had an answer to that point.

The SPEAKER: The honourable minister has the call. What he says in reply, of course, is the measure by which the relevance of his remarks is measured by the house and anyone else.

The Hon. M.J. WRIGHT: I had virtually finished my answer. The matters that have been raised have already been

addressed in my ministerial statement. I made an extensive ministerial statement that covered all those issues and I refer the leader to that.

The Hon. R.G. KERIN: As a supplementary question, given that the statement yesterday and other public statements that have been made make clear that the offer is from Home Service Direct to the customers, why is it that the letter of offer has not only gone out on SA Water letterhead but is actually signed by Neil White, General Manager, Retail, who works for SA Water?

The Hon. M.J. WRIGHT: Those issues have already been canvassed. I am not sure what the leader is trying to draw here.

TOURISM AWARDS

Mr O'BRIEN (Napier): My question is to the Minister for Tourism. How successful were this year's South Australian Tourism Awards?

The Hon. J.D. LOMAX-SMITH (Minister for Tourism): This year's tourism awards were increasingly attractive to applicants from South Australia in that there was an increase of 19 per cent in the number of submissions over the 2003 entries. It shows that there is increasing optimism and confidence in the tourism sector and that more of the industry leaders were prepared to be involved in the time and energy required in making the original applications. This year there were submissions in 28 different categories, including accommodation, transport operators, festivals/events, attractions, and new tourism developments.

As before, the effort involved in putting together an application pack was supported by the TAFE Adelaide Institute's Centre for Tourism and International Languages, which provided its Advanced Diploma in Tourism students with an opportunity to work in the industry and help compile the applications, giving them very valuable experience of the industry. I am pleased to say that 10 students took part in this strategy. In addition to those entrants in the routine categories, four leading tourism operators have been inducted into the state's Tourism Hall of Fame. Those people have won awards in their category for three years in a row, and they were Kangaroo Island, Murraylands Tourism Marketing, Rawnsley Park Station and Adelaide Hills Country Cottages.

The other winners of this year's tourism awards included some from the Department for Environment and Heritage. I particularly congratulate Naracoorte Caves National Park, in the portfolio of the Minister for Environment and Conservation. The major event winner was Jacob's Creek Tour Down Under and the winner of New Tourism Development was the Oasis Apartments in Port Augusta. In the ecotourism category the winner was Birds Australia Gluepot Reserve, and the luxury accommodation award went to Radisson Playford Hotel and Suites.

There were two special awards. First, the Harry Dowling Award, given by the Deputy Premier (the Treasurer) for excellence in regional tourism, went this year to Maureen White. Maureen is well known in the local tourism industry, having worked tirelessly to promote Burra as an iconic heritage township, both as a tourism operator and as someone who was instrumental in developing the highly innovative and much-appreciated Burra Passport Trail, which makes many of those iconic destinations available without full-time staffing.

The second award was for the Most Outstanding Contribution by an Individual, and that went to Ian Conolly. He has shown commitment to the state, national and international tourism sectors, with his Colony group being instrumental in the formation of Country Clubs Australia. Ian owns and operates many successful tourism properties across South Australia, including the Port Pirie Motor Inn, Glendambo Outback Resort, Chaff Mill Apartments, and those two great country clubs Clare and McCracken. The winners of the major categories will go on to represent South Australia at the Australian Tourism Awards to be held in Alice Springs in February 2005. I hope that, once again, South Australia does well in these awards because traditionally we punch above our weight, often getting 20 per cent of the national awards as opposed to the percentage we should normally get. I also acknowledge the presence of the representative from the opposition, the member for Morialta, who supported the awards night and again supported the industry.

HOPE VALLEY RESERVOIR

Mr BRINDAL (Unley): My question is to the Minister for Administrative Services. Will the minister provide details of the project to replace the tunnel and aqueducts supplying water to the Hope Valley Reservoir from the Gorge weir, and will he also—

Members interjecting:

Mr BRINDAL: If I became Independent I am sure I could have that. Will the minister also explain what consultation has taken place regarding this project and whether the project has gone before the Public Works Committee? SA Water's web site includes details of a major project to replace the ageing tunnel and aqueduct infrastructure in the summer of 2004-05 to provide greater security of supply and more water to satisfy growing demand. The project is said to cost millions of dollars. Under section 16A of the Parliamentary Committees Act 1991 any taxpayer funded project that costs over $4 million must be referred to the Public Works Committee.

The Hon. M.J. WRIGHT (Minister for Administrative Services): I thank the member for Unley for his question. I will get some information for the member. I will check the status of the project he is referring to and I also undertake to organise a briefing for the member.

ASBESTOS INDUSTRY

Ms BEDFORD (Florey): My question is to the Minister for Industrial Relations. What steps has the government taken to assist the asbestos industry to understand and comply with new regulatory requirements?

The Hon. M.J. WRIGHT (Minister for Industrial Relations): I thank the member for Florey for her question and for her ongoing interest in this area. Workplace Services recently held an asbestos industry forum with invitations being sent out to all licensed asbestos removalists, members of the government's asbestos advisory committee, key union, employer and industry stakeholder groups and government agencies with a particular interest in this issue. Approximately 80 people attended the afternoon forum, including representatives from a wide range of the organisations mentioned. The aim of the forum was to educate the participants about the key changes to the regulations; in particular, details were provided about the requirement for written safety plans to be submitted with requests to Workplace Services for

approval to undertake asbestos removal—a condition of the new licensing provisions for asbestos removal.

Workplace Services had previously identified that there were a number of licence holders who had asked for clarification about what needed to be included in a written safety plan. The forum covered the minimum criteria for safety plans, and participants were offered the opportunity to openly discuss the topic. Other topics covered in the afternoon reflected the recent legislative changes, focusing on the requirements for training and supervision and, specifically, statements about work methods to ensure safe practices are adopted for each work site.

A representative from the asbestos removal industry and two trainers from the industry training centres led a discussion about how to undertake work method statements. I understand that this was seen as a very valuable part of the session. These three representatives presented examples of how a work method statement should be developed and specifically what areas to cover when carrying out a risk statement.

Workplace Services also provided participants with information about the department's position regarding clearance certificates. These certificates are designed to provide independent verification that asbestos removal has been correctly carried out. The clearance certificates will formalise the current informal system and provide assurance to building owners that the asbestos removal work has been carried out correctly.

Workplace Services also advised participants at the forum that the Mineral Fibres Unit would be forming a tripartite working party including both employee and employer representatives who will look at such things as the minimum training requirements for supervisors. Feedback received to date about the forum has been very positive and participants have indicated that they found the information very useful. It has been recommended that Workplace Services hold these types of forums every six months. I understand that the Mineral Fibres Unit has already held approximately 35 community information and education activities during the last financial year.

The government will continue to proactively educate the community about the risks of asbestos and will be holding a range of forums like this one throughout the coming year as part of its ongoing Community Asbestos Awareness program. This is obviously a very sensitive issue, and I know that all members take it very seriously. In particular, I would like to thank the member for Florey, who is often in attendance at a range of functions associated with this particular issue that I am also fortunate enough to attend.

HOPE VALLEY RESERVOIR

Mr BRINDAL (Unley): My question is again to the Minister for Administrative Services. In the light of the minister's last answer, will he also explain what is planned for the reserve through which the Gorge Weir and the Hope Valley Reservoir aqueduct run, and will he guarantee to this house that that reserve will be preserved? The tunnel and aqueduct run through a very large area of forest and bush, as you, sir, would know, because I believe you grew up in that vicinity.

The Hon. M.J. WRIGHT (Minister for Administrative Services): As I have already said, sir, I will check the status of this report, and I will undertake a briefing for the member. I will commit to his first question. In regard to whether I will guarantee that the reserve be preserved, obviously I would want to check the status of the project and take some advice on that. I do not think realistically that the member would be wanting me to give a guarantee of that sort right here and now.

MARION AQUATIC CENTRE

The Hon. W.A. MATTHEW (Bright): My question is to the Minister for Recreation, Sport and Racing. When will the government announce the fate of the state aquatic centre project adjacent to the Marion shopping centre, and does he believe that an up-front state government contribution of as much as $25 million is necessary to make this facility a reality? The former government announced the new state aquatic centre would be built adjacent to Westfield Shopping Centre on land provided by the city of Marion. This new facility was to be put through a process of public tender with an expectation that government would be making a significant contribution. On 20 February 2004, the current government called for expressions of interest from the private sector for a public/private partnership procurement of this facility. Concerned constituents have contacted my office and have advised that after two and half years of delays they fear that the facility may now be scrapped.

The Hon. M.J. WRIGHT (Minister for Recreation, Sport and Racing): I thank the member for Bright for his question. He is in part correct that the former government announced this but, of course, they did not put any money in the budget to commit to building a swimming pool. So, there is a large gulf in the statement that the member for Bright makes. This government, however, is looking at this particular project very seriously. A range of work is being explored, and when the government is in a position to make an announcement about this project we obviously look forward to doing so. That work needs to be undertaken; it needs to be extensive; and we need to ensure that a range of issues are addressed.

BEDFORD PARK LAND

The Hon. W.A. MATTHEW (Bright): My question is for the Minister for Infrastructure. Will he advise the house whether a decision has been made in relation to government owned land located at the corner of Sturt and South roads at Bedford Park? On Thursday 17 June of this year during budget estimates, when asked about the future use of this land, the minister advised the committee that it would 'be made within a month or so.' Concerned constituents have contacted me expressing the view that, if this land is sold, it will jeopardise the opportunity for a transport interchange at the end of the Southern Expressway and adjacent to the Tonsley Park Railway Station. The people who have contacted me support the proposal for an O-Bahn interchange at this location, with the O-Bahn running along the Southern Expressway onto the railway corridor, and into the city.

The Hon. P.F. CONLON (Minister for Infrastructure): I was listening to the question, but I got to the point of disbelief when I heard that we are going to have another O-Bahn. There are not many of them in the world. I cannot speak for the Minister for Transport, but I would suggest that, with the Treasurer alongside me, I do not see an O-Bahn in our future plans anywhere, given that they are one of the most expensive forms of public transport that anyone has ever invented. It is why, at the end of the latter years, when they

were running a ruse down there that they might build one, they knew they never would. The only reason they mention it at all is because it was as a result of that very unhappy little interregnum when they made government by accident in 1979, and were probably kicked out again in 1982, when people realised what had gone wrong. In regard to the land in question—

The Hon. Dean Brown interjecting:

The Hon. P.F. CONLON: Sorry; I forgot! Dean was in charge at the time. He wasn't in charge; he was minister for IR, or something like that. Dean, of course, is defending it because he was one of the members of that government in 1979 to 1982, which is probably a good reason why the member for Mawson wants him to retire—so that the member for Mawson can pick up Finniss. At least that is what we are hearing.

Mr BROKENSHIRE: I rise on a point of order. We are seeking relevance; we want an answer as to what they are going to do with the transport terminal at the Laffer's Triangle, not the tripe he is going on about. The land was the question. How about the minister's answer a question for once?

The Hon. P.F. CONLON: I apologise and withdraw; but he is a bit sensitive about that subject, and so should Dean be. As I understand it, the piece of land in question is held by the Department of Transport. Is that right?

The Hon. W.A. Matthew interjecting:

The Hon. P.F. CONLON: If it is disposed of, it may well be handled by the LMC. The issue is that the decision that needs to be taken about the future of that land does not involve the strategy of the LMC; it involves the strategy of the government agencies, and in this case transport may wish to use it. I will get a report for the opposition spokesperson from the head of transport or the minister if she recovers—and we all wish her very well—and come back and let him know the future of that piece of land. However, I will say that it is unlikely to be an extension of the O-Bahn. It is something that not even they would do at the height of their foolishness.

CHIEF MAGISTRATE

The Hon. R.G. KERIN (Leader of the Opposition): My question is to the Attorney-General. Does he have full confidence in the Chief Magistrate and all actions of the Chief Magistrate of which he has been made aware?

The Hon. M.J. ATKINSON (Attorney-General): As reported in *The Advertiser*, there is a police investigation, and I am simply not going to comment until it is finished.

TEACHERS, SEXUAL MISCONDUCT

Mr BRINDAL (Unley): My question is to the Minister for Employment, Training and Further Education. Has the minister yet provided files about teachers accused of sexual misconduct with students to the Paedophile Task Force and, if not, why not? A number of members have been made aware of a number of instances in which teachers accused of various forms of sexual misconduct—in a fashion almost identical to those described in the Anglican Church's report on abuse—were simply transferred to another school. As I have reported to the house before and as the minister knows, I have received a telephone call regarding a specific incident at a school in the Mid North where an allegation of sexual misconduct resulted in no other action being taken than a teacher transfer. In the light of the Premier's calls to make the evidence of the Anglican Church available to the police, will the minister do the same with the records of her department, or is it one rule for the church and another for the government?

The Hon. K.O. FOLEY (Minister for Police): I will answer this question in my capacity as Minister for Police. These very serious matters raised by the member for Unley appropriately are referred directly to the police. The member for Unley previously in this place and within other fora—with all good intentions; I am not suggesting otherwise—has made statements regarding activities related to paedophilia.

Mr Brindal: And referred them to the police.

The Hon. K.O. FOLEY: And referred them to the police. I do not know whether the member for Unley has received a response from the police.

Mr Brindal: Yes, I have.

The Hon. K.O. FOLEY: I understand that he has, but I am not aware of any further ongoing investigations pursuing from that information.

Mr Brindal interjecting:

The Hon. K.O. FOLEY: The member for Unley has, I understand, already provided information to the police and he confirms that he has received a response. I understand that there are no further matters relating to that requiring investigation. I am happy for the member for Unley to correct me.

Mr Brindal: There are no additional—

The Hon. K.O. FOLEY: No additional matters. The member for Unley is in receipt of more information than I on this matter. That is fine. The point I make is that, as the member for Unley has referred previous material to the police, if he is again in receipt of information, he should immediately provide that information to the police for diligent follow-up. The police have access to everything they need from government agencies. Equally, my understanding from discussions with the Police Commissioner on this matter is that the level of cooperation, understanding and communication, particularly between the education department and the police, is very good—as one would expect.

This is a very sensitive and delicate issue. I think we need to tread very carefully when, particularly in this chamber, we make allegations which would be better provided directly to the police. I know I am speaking for all members of this house when I say that the Paedophile Task Force, led by Grant Stevens, is doing outstanding police work and, as a result, a number of matters are now before the courts. The Paedophile Task Force is undertaking very sensitive, outstanding work and diligent investigation, and we are seeing a number of people charged. That is a good thing, and I expect that we will see more people charged in the months ahead.

BOURNE, Mr T.

Ms CHAPMAN (Bragg): My question is to the Attorney-General. Is Mr Tim Bourne, whom the government has appointed Deputy Chair of the Parole Board, the same Tim Bourne whom the Attorney-General has revealed was his solicitor in legal proceedings? The *Government Gazette* of 18 November announced the appointment of Mr Tim Bourne as Deputy Chair of the Parole Board. In his declaration under the Members of Parliament (Register of Interests) Act, the Attorney-General disclosed that Chris Kourakis QC and solicitor Tim Bourne provided him with legal services for which the Attorney has made no monetary payment.

The Hon. J.D. HILL (Minister for Environment and Conservation): This is a question for my colleague in another place the Hon. Terry Roberts, who is the minister responsible for correctional services and the Parole Board. He in fact appointed this person. As I recall it, the Attorney-General absented himself from cabinet when the matter was discussed.

Ms CHAPMAN: Sir, I have a supplementary question. Will the minister advise the house what qualifications and experience Mr Bourne had in the field of correctional services?

The Hon. J.D. HILL: I will make sure that I obtain for the member for Bragg a complete curriculum vitae for Mr Bourne, who I understand is a well established solicitor in Adelaide.

TELECOMMUNICATIONS TOWER, CAMPBELLTOWN

Mr SCALZI (Hartley): My question is to the Minister for Infrastructure. Has the government's development arm, the Land Management Corporation, appealed the decision of the Campbelltown City Council to approve the erection of a telecommunications tower at Lot 8 FP 16484 James Street, Campbelltown, adjacent to Lochiel Park? On 11 September the minister, by letter, advised that the government's development arm, the Land Management Corporation, had made representations to the council regarding the erection of the tower. Advice has now been received, dated 9 November, that the Campbelltown City Council has approved the erection of the telecommunications tower and that an appeal had to be lodged within 15 days.

The Hon. P.F. CONLON (Minister for Infrastructure): I have to confess that I do not know the answer to that question off the top of my head. However, I will say this. I will obtain an answer for the member for Hartley, who now so much wants to protect the beauty and amenity of Lochiel Park, when he, of course, was a member of the previous government which wanted to subdivide it all and turn it into housing. I will obtain the answer, but let us be clear about who has protected the open space of Lochiel Park. It was us. And whom did we protect it from? It was from them.

Mr SCALZI: Sir, I have a supplementary question. The approval was on the 8th; today is the 23rd. It is 15 days after an appeal could be lodged. This is a serious question, and the environmental groups in Campbelltown, who have—

The SPEAKER: Order! This is question time, not grievance debate.

TRANSLATION SERVICES, ITALIAN COMMUNITY

Mrs HALL (Morialta): My question is to the Minister for Multicultural Affairs. Given that the Italian community has a large percentage of people with inadequate English proficiency, will the minister ensure that specific multilingual or translation services are made available to those in the Italian community who require treatment for diabetes? Diabetes is the world's fastest growing disease and Australia's sixth largest cause of death. However, the annual report of the Coordinating Italian Committee (CIC) states that the incidence of diabetes in the Italian community is much higher than any in other multicultural community.

The Hon. M.J. ATKINSON (Minister for Multicultural Affairs): Yesterday evening I spoke at a gathering of interpreters and translators here in Adelaide at the Adelaide TAFE. The Interpreting and Translating Centre is the most important part of Multicultural SA, and the big customers of interpreting and translating services are, of course, the courts and hospitals. I will take the member's question on notice and give her a full answer, but I notice that her question does not contain any evidence that Italian-Australians are being deprived of interpreting services in our hospitals.

MURRAY RIVER, SOUTHERN TITANIUM

Mr WILLIAMS (MacKillop): My question is to the Minister for the River Murray. What action has the government taken to ensure that the River Murray will not suffer environmental impacts as a result of the proposed Southern Titanium sandmining operation? Southern Titanium proposes to use a dry mining technique and a 30-metre deep pit within 10 to 12 kilometres of the River Murray in the Riverland. The project requires de-watering of the lower 10 metres of the 30-metre pit and disposal of highly saline water. However, the company has not been required to produce an environmental impact statement on any of its proposed activities throughout the Murray Mallee.

The Hon. K.A. MAYWALD (Minister for the River Murray): The Southern Titanium project in the Mallee has broad support from local government and the communities in the region. I am sure that it will give significant return to the state if it comes to fruition. It is well advanced, and I understand that the company is complying with all the requirements necessary to undertake the exploration and subsequent establishment of the mine. I will obtain the information the member requires and bring back a considered answer to the house.

GAWLER HEALTH SERVICE HELIPAD

The Hon. M.R. BUCKBY (Light): Will the Minister for Health advise the house whether the consultation being undertaken by the local council has been finalised following the tender for the redevelopment of the Gawler Health Service helipad to be released? If not, what is causing the delay? On 17 July 2004, the minister advised me that the tender for the redevelopment of the Gawler Health Service had not been released due to the local council's undertaking consultation about height restrictions on council owned land which borders the helipad flight path. The minister further advised that this will need to be resolved prior to work commencing.

The Hon. L. STEVENS (Minister for Health): I recall providing that information to the member for Light. I will seek further information and bring back an answer.

LOWER MURRAY IRRIGATION PROJECT

The Hon. R.G. KERIN (Leader of the Opposition): My question is to the Minister for the River Murray. Will the Lower Murray irrigation rehabilitation scheme still commence in the new year, as the minister told the house yesterday? If so, when will the Public Works Committee receive a reference to inspect the project?

The Hon. K.A. MAYWALD (Minister for the River Murray): The Lower Murray irrigation project is a significant project for the Lower Murray irrigators, and they are

very anxious that it commence at the earliest possible opportunity: it will do so. We expect it to commence in the new year.

The Hon. R.G. KERIN: I have a supplementary question. That being the case, when will the reference go to the Public Works Committee?

The Hon. K.A. MAYWALD: We will comply with the obligations under the act in respect of this project. We will move to ensure that the project commences at the earliest possible opportunity, as is the need of the community. I am sure that the opposition would like to see the project progress as soon as possible.

CHILD AND ADOLESCENT MENTAL HEALTH SERVICE

Mr SCALZI (Hartley): Will the Minister for Health advise the house of the waiting list and availability for CAMHS support and counselling services for youth, particularly for secondary students with behavioural issues? In my electorate, a year 10 student now faces a seven-week suspension for behavioural issues. The student has experienced a number of problems from the beginning of the year. The family sought counselling and support through the CAMHS eastern regional service in March but was unable to obtain an earlier counselling session than September. In the meantime, there have been ongoing problems and incidents, and the student has now been placed on a prolonged suspension—almost simultaneously with receiving his first counselling session for anger management issues.

The Hon. L. STEVENS (Minister for Health): I will certainly obtain the information that the honourable member seeks. Obviously, it is important to try to support students in schools in those situations as soon as we possibly can. I will certainly obtain that information. I would also like to point out that, through the work my colleague the Minister for Education is doing in relation to improved numbers of school counsellors in schools and the school retention initiatives, some of those issues are being addressed.

UNITED KINGDOM PAROLEE

The Hon. J.D. HILL (Minister for Environment and Conservation): I table a report made by my colleague the Hon. Terry Roberts in another place in relation to transfer of United Kingdom parolee.

MEMBER'S REMARKS

The Hon. L. STEVENS (Minister for Health): I seek leave to make a personal explanation.

Leave granted.

The Hon. L. STEVENS: Yesterday as part of the grievance debate, the member for Flinders said the following:

> Why, if there is nothing to hide, is the Minister for Health conspiring to protect possible corruption, intimidation and unprofessional conduct?

In saying those things, the member has clearly reflected on me and has accused me of something that should be raised only by way of substantive motion. I ask her to withdraw and apologise.

The SPEAKER: The honourable member for Flinders, if it is the word 'conspiring' of which the minister complains, then that is a legitimate concern of hers. No allegation is made that the minister herself is corrupt. However, the member for Flinders cannot canvass matters in that fashion, without doing it through a substantive motion.

Mrs PENFOLD (Flinders): Thank you, Mr Speaker. In the press release and speech regarding the Wudinna Hospital this week, perhaps I should have used the words 'allowing a cover-up' rather than 'conspiring', which obviously has a stronger connotation than I attributed to it. I therefore withdraw and apologise for using the word 'conspiring' in relation to the Minister for Health's handling of the matters relating to the Wudinna Hospital.

The Hon. K.O. Foley interjecting:

The SPEAKER: Order! The Deputy Premier will not inflame the situation.

MINISTER'S REMARKS

Mr BRINDAL (Unley): I seek leave to make a personal explanation.

Leave granted.

Mr BRINDAL: In answer to a question today, the Deputy Premier quite rightly alluded to the fact that he had invited me to present material to the paedophile task force. The Deputy Premier also acknowledged that I had done so. I want to make it quite clear to the house that in my acknowledgment from the paedophile task force the police were quite clear, and I rang the Deputy Commissioner, I think it was, to check. The import of what they said, sir—

The SPEAKER: Order! What is it that the member for Unley—

Mr BRINDAL: I want to make it quite clear to the house, and I think I am entitled to under the standing orders, what was in that letter that was sent back. I do not want it to be thought by this house that there was nothing in the allegations that I put before the police. I will leave it at that because I have just put that on the record.

The SPEAKER: The honourable member, when making a personal explanation, must state where he has been misrepresented, not assume that someone might imply that he has been misrepresented or misunderstood.

Mr BRINDAL: I was getting to that when you interrupted me, sir.

The SPEAKER: The honourable member trails his coat a bit too much. There has to be a clear misrepresentation of a member's position before it becomes necessary for a member to explain that position, stating where they have been misrepresented and putting the facts on the record without debate. The member for Unley perhaps better understands now what that is about.

GRIEVANCE DEBATE

HOME SERVICE DIRECT

Mr WILLIAMS (MacKillop): Today I want to take the opportunity to highlight a government that will not accept, and indeed walks away from, its responsibility to the people of South Australia. I want to highlight the fact that we have a government which at the very best is taking a hands-off approach or at the worst is totally incompetent. I am talking about this grubby deal that has been made between SA Water

and Home Service Direct. Might I say that Home Service Direct is probably the innocent party in this deal. The guilty party is the government, and the cabinet that approved this to go through without looking at the detail, without asking any questions about how this deal was going to be implemented and what implications there might be for clients of SA Water. Let me go back a month or two when this first came to light. I raised some questions about the matter because I had some concerns about it. The Plumbing Industry Association raised concerns about the matter, as did a number of media outlets in Adelaide. The minister had no concerns about the matter at all.

I feel somewhat sorry for the current minister, because he was not the minister who was in charge when the cabinet approved this and would not have been the minister who took the submission before the Rann cabinet, but he is left holding this at the moment. He had no concerns about it. In fact he said on radio in Adelaide on 4 November, in answer to some questions about the deal, 'The scheme sounds good to me.' This is a scheme where the SA Water name, logo and trademark have, through a contract of which we are yet to find out the finer details, basically been given to a private company to use as it wishes. Not only that, but we had a letter go out purportedly introducing this company but signed by a senior manager in SA Water, under the SA Water logo, name and trademark. And the minister said, 'This seems like a good deal to me.' When questioned about the privacy principles he said:

> The advice they [SA Water] give me is that the government's privacy principles are fully adhered to.

I take my hat off to the minister: two years after the cabinet approved this, the minister decided under a bit of pressure from me, from a few other members and from the media in this town that he would take some legal advice. The minister came into the house yesterday and read out a three-page ministerial statement that posed more questions than it gave answers. The advice that the minister got from the Crown Solicitor's Office was that the deal has indeed breached the privacy principles: those very principles on which this government spent a lot of taxpayers' money a year or two back, to try to reinforce that it was doing great things to protect the personal privacy of the citizens of South Australia.

The government might explain why it wasted taxpayers' money doing up brochures and posters and sending them all round the state. I know they were sent to every member to put in his and her electorate office. The government might explain how many taxpayers' dollars were spent on that little exercise. Yet, in the meantime, when a very important issue comes before the cabinet, nobody bothers to ask the question. They do not even worry about it. Nobody bothers to look at the contract. The submission that went to cabinet in the first place was by the member for Cheltenham. In his former life he was a lawyer, but he took a submission to the cabinet about a contract between a government statutory authority and a private company and did not even look at the contract. Nobody has looked at the contract .

The Attorney-General has not looked at the contract. The government benches are full of lawyers but none has any understanding of how you go about running a business. The minister in his statement said that any future breaches will not be tolerated, but what is he doing about this breach? He told the people of South Australia on Adelaide radio this morning that cabinet was misled. He said on ABC radio this morning that they were advised that SA Water would be complying with the privacy principles. Then he said:

> They certainly didn't do what the government was expecting them to do. What cabinet was told was that SA Water would comply with the privacy principles.

But when I asked him today whether cabinet had been misled he would not answer the question. So, someone is misleading someone—I am not quite sure who it is. The minister was saying on ABC radio that cabinet was misled but he would not say in the house today who was misled, and that question is left hanging.

The Hon. M.J. ATKINSON: On a point of order, sir, is this outstanding analysis being timed?

The SPEAKER: The honourable the Attorney-General's microphone didn't come on; I didn't hear the point of order. Will the honourable the Attorney repeat the point?

The Hon. M.J. ATKINSON: Is this outstanding analysis being timed?

The SPEAKER: I cannot understand the point the honourable the Attorney is making. The honourable the member for MacKillop has the call.

Mr WILLIAMS: Not only that, in his ministerial statement yesterday the minister told the house that he has instructed SA Water to go back and renegotiate the contract. This is the contract that none of them bothered reading. They have gone out and signed it, and allowed SA Water to sign off on it, and now he has ordered them to renegotiate it. Renegotiate what? The minister does not even know what is in the contract. I ask him: what financial liability will flow to the taxpayers of South Australia because he is too incompetent to read the contract? He still has not read it yet he has directed SA Water to go back and renegotiate it.

I would suggest the people at Home Service Direct are smiling today. The government is definitely between a rock and a hard place because of their own incompetence, yet SA Water has been directed to renegotiate the contract. I would love to be negotiating on behalf of Home Service Direct, because I would be driving a damn hard deal with this government. And the taxpayers of South Australia are going to be the losers through this incompetence. But the question still remains: was the cabinet misled by the board or the CEO of SA Water? If it has been I think some heads should roll, but the minister would not go there today. If cabinet has not been misled, and the minister has not been game to say it in the house, certainly the people of South Australia were misled on Adelaide radio this morning. This goes to the heart of the probity of this government. They have no understanding of what their own privacy principles are all about, yet they spent tens of thousands of dollars of South Australian taxpayers' money putting out the spin that it was an important issue to them. But as soon as the opportunity comes to do something about it they walk away.

Time expired.

SCHOOLS, KELLER ROAD PRIMARY

Ms RANKINE (Wright): I want to take a few minutes to talk about a small, quiet achiever in my electorate and about some young people who are achieving great results. I am talking about Keller Road Primary School at Salisbury East. Last Friday, I had the absolute pleasure of going out there to present certificates for the Premier's Reading Challenge to 57 per cent of the student population. It was a magnificent take up rate, and I know the Premier was delighted to hear that. I know he is delighted generally at the

enthusiasm with which schools have embraced his challenge to get our kids reading, setting a target of half our schools by 2006 and well and truly smashing that target in the first year of the challenge. I understand over 49 000 students across our state have read over half a million books to date. The children of Keller Road Primary School were delighted with their achievement and delighted to have their effort recognised, and it was clear from their enthusiasm that they are keen to be involved again next year and try for their bronze medal.

Last Friday I also presented some academic achievement certificates to something like 12 of the students out there who were involved in the University of New South Wales competitions. In the Australian Schools Computer Skills competition Simon Berry, Emily Pengilly, Sonia Hendriks and Lauren Fuge receiving participation certificates, Ryan Walker and Brendan Berry received credits, and Alex Lefik received a distinction. In the Australian Schools Science Competition Matt North had a participation certificate and Alex Lefik received a high distinction. In the Australian Schools English Competition Melissa Fuge and Boris Nguyen had participation certifications, while Lauren Fuge and Alex Lefik received credits.

In the Australian Schools Mathematics Competition, Matthew North and Sonia Hendriks had participation certificates, with Boris Nguyen and Stanley Tran receiving a credit, and Alex Lefik again a distinction. In the Australian Schools Writing Competition, Lauren Fuge received a credit certificate. In the Westpac Maths Competitions, Sonia Hendriks, Matt North, Melissa Fuge and Alannah Malcolm had participation certificates, with Lauren Fuge, Alex Lefik and Stanley Tran obtaining a credit, and Joshua Zechner a distinction. I am sure that those students and their parents and teachers were absolutely delighted with their achievements. This is a very small school that has focused on the best possible learning outcomes for our children as well as helping to build very well rounded, happy young people.

Anyone visiting the school will pick up quickly the very warm, supportive, happy atmosphere of this school. The school is very innovative and creative in the way that it has moulded its teaching programs, and the enthusiasm and commitment of all of the staff, the principal teachers and SSOs is very evident and is clearly impacting on the learning experiences of these young children. This school, although tiny, is a vital part of this community. It has a very good relationship with the local kindergarten, for example, involving the kindy kids, teachers and parents in special assemblies, and in sharing facilities and activities, and this ensures the best possible transition from kindy to school not only for the students, which is incredibly important, but also for the parents as well.

This is a school that is achieving results. It has a culturally diverse student population. They care very much for their students and they involve the local community. This school teaches the values that I would want my children taught. So I would like to congratulate all of those teachers and the parents that are involved in the school. It has a very strong parent base and we know that schools out there could not be the great places that they are without the considerable involvement of local parents, and certainly we also know that parental involvement very much impacts on the learning outcomes of our children. Keller Road is a fantastic primary school and I know that it is much valued by its local community.

LAGISETI PROPERTY, ROAD ACCESS

Ms CHAPMAN (Bragg): One day when I retire I am going to write a children's story book and it is going to be called 'Mr Lagiseti and the Helicopter'. Why? Because Mr Lagiseti is a person who lives in my electorate, who is facing the prospect that the only way of getting to a public road from his house is via a helicopter. Why you might ask have the three ministers of the Labor government failed to deal with and assist Mr Lagiseti to have this issue resolved? Let me give you some examples as to what has happened in this matter. SA Water is the owner of the adjoining property to Mr Lagiseti and for the some four years that he has been living in his house he has used the roadway between the main road and his property, which also has access to, and in fact is on the land owned by SA Water, a large reserve tank on that facility. That seems fairly simple. What has happened in the meantime? Let me explain.

When Mr Lagiseti had built his house and his family had moved in, and he had use of the roadway that I have referred to, he then proceeded to attempt to build a roadway over his own property to the main road. The engineering reports made it quite clear that they would not, and that it would be a major safety issue if they were to enter into the property in that way. So what did the government of the day do? The government of the day was a Liberal government and they proceeded to negotiate to provide access to this facility to Mr Lagiseti, at an appropriate fee, to which he agreed to enter into discussions to make the arrangement for the payment of. The term of the government ended in February 2002, with the election and a change of government.

In May 2002, as the new member for Bragg, I wrote to the first minister, minister Conlon, to whom I outlined the history of the matter. After some months of negotiating the matter, minister Conlon advised on 14 October that he considered the land to be valued—that is, the access right to the road—at $125 000. Different values were put, suggesting that it was some $10 000. Then, of course, minister Weatherill is appointed as the new minister responsible for SA Water, come 2 January 2003. Again, we proceed through his administration which did something between zero and not much more than zero, and in that time we had correspondence go back and forth.

By mid-2003, after minister Weatherill had done little to deal with the matter, and after two threats at that stage by the minister to refuse to allow Mr Lagiseti and his family to use the road and, indeed, that they would padlock the gate, we then had advice by further correspondence that the matter would be dealt with by the Premier's office. The Premier intervenes to the extent of a representative from his office coming in to attempt to deal with this matter. Of course, in the meantime, by 11 June 2003—that is well over a year ago now—a further proposal is put to minister Weatherill.

There was a change of minister again, and we are now on to minister Wright, who is obviously the most recent, and, since his taking up the post, over the past nine months or so, apart from an acknowledgment, this is what we have had since the beginning of the year. On 3 February 2004, minister Wright's office says, after advising that there is a new minister: 'The matter is being progressed.' On 16 July this year we had, 'It is very close to getting a rational response to the matter.' By 10 August, having pointed out to the ridiculous time frame, and asking for a response—by that stage, for well over a year—we then had, by 1 September, 'It will be

there as soon as possible.' Well, of course, we still have no answer.

We have a situation where this family's plight is very serious. We have three ministers who have sat on their hands on this issue. Minister Wright, in particular, having had the conduct of this matter for over a year, has been in a situation where they are stringing along the Lagiseti family, since March specifically, claiming it to be a close. I want this matter resolved and so does the Lagiseti family.

VOCATIONAL SKILLS TRAINING

Mr O'BRIEN (Napier): I would like to address the twin issues of skill shortages in South Australia and the Federal government's plan to establish two Australian technical colleges in this state. The federal government has rolled out one of the major promises that it made during the recent federal election, that is, the establishment of 24 Australian technical colleges around the nation. These are intended to provide tuition in academic and vocational education in years 11 and 12. The federal government claims that the establishment of these colleges will revolutionise vocational training and the training system. It is also claiming that it will promote excellence in the acquisition of trade skills.

The plan that is being put to the Australian public will provide tuition for up to 7 200 students, and that equates to 600 students in South Australia. These students will undertake academic, information/technology and business skills. Each college will be based on regional industry needs, local infrastructure and current and future economic needs. It is intended that the first of the colleges will open in 2006, which is a mere 12 months away. The government is currently seeking tenders from a consortia of existing educational institutions, including schools, TAFEs and universities, and it has stated that the colleges may be on new or shared campuses.

Each college will specialise in a particular trade, but will offer at least four trades. These are listed as: engineering, automotive, construction, electrical, and commercial cookery. At the moment, tenders are being sought in two regions of this state: Adelaide and Whyalla-Port Augusta. Further details are yet to be supplied, but expressions of interest are being sought by 18 February 2005, a mere two months away.

Whether or not we consider this an intrusion by the federal government into an area of state responsibility, these colleges will be established. Our task as a state is to ensure that they are not disruptive of the existing high school system, because there is the potential for them to strip at least 300 high-performing students from a small number of high schools. This is of particular concern in the Whyalla-Port Augusta area, where I received my high school education. In Whyalla there are only three high schools. To strip several hundred students from those three schools I think would impose severe limitations on their ongoing viability. Similarly, if a college is established in the Elizabeth area, if it strips students from the high schools in my electorate, we would have to look at the ongoing viability of the three schools in that area.

Will this address school shortages? While base level skills are in short supply, higher level skills require access to expensive technology. These skills are required by the advanced manufacturing and ICT sectors. In my electorate, this includes the defence, automotive and electronics industries. This cannot be done on the cheap. My concern is that the amount of money that has been allowed by the federal government will go nowhere near to equipping a new greenfield site with the amount of equipment and technology needed to train young people at high school level. We are looking at addressing very base skills. Will the program be sustainable? It has been funded for three years only. This is another problem. Is the state government or the consortia (if a private consortia goes into this) going to be left holding the baby after three years?

We have problems with awards. From discussions with industry and my own knowledge of awards that I have had to deal with over the years, they make no allowance or provision for school-based apprenticeships. How will we deal with that problem? We will also have the difficulty of employers being reluctant to take on school-based apprentices for one or two days a week. Various consortia around Adelaide are looking at group employer structures.

Time expired.

COUNCIL AMALGAMATIONS

Mrs REDMOND (Heysen): I rise today to place on the record an apology and to clarify some comments that were made by me on 14 October in relation to a motion of, I think, the member for Fisher regarding council amalgamations. On that occasion, talking about whether the amalgamation of councils had been a good exercise, whether it had worked, I stated that one ratepayer said there would be a 12 per cent reduction in rates consequential upon all the benefits that would flow from being able to share the resources and the amalgamation and that my rates had trebled since the amalgamation. I note that you, Mr Speaker, on 9 November found that I had not misled the house. You said that in response to a letter from the Mayor of the Adelaide Hills Council to you. That letter was clearly from the Mayor and not from the councillors as a whole.

I say at the outset that I hold the councillors of the Adelaide Hills Council in very high regard; I count a number of them as friends, and I think they do a terrific job. The only point I am trying to make in relation to amalgamations, and that amalgamation in particular, is that, in my view, it sought to amalgamate too many councils and it has not worked because the area is simply too big to make it a workable exercise.

Notwithstanding your remarks, sir, on the date in November (to which I have alluded), I wish to clarify that, indeed, my rates had not trebled. I went looking for, but did not hold, all my rate notices since that time. Both my husband and I had thought that our property rates had gone from about $700 a year to about $2 000 a year. It turns out that, in the 1996-97 year, my rates were $862.90 and that, indeed, they have not trebled; they have simply increased by a little more than double to $1 872.35.

The council provided me with that information, and I thank it for doing so. The council, in writing to me, pointed out that my property valuation had increased significantly in the year 1996-97 through to the year 1997-98 as a result of some renovations that I carried out on my home at that time. That is, indeed, the case. My valuation went from $188 000 to $260 000 in that year. So, there was a significant jump in the valuation in that year, and the rates increased accordingly. However, I also note that, according to the figures the council has supplied to me, the valuation of my property has now increased by a further $300 000 in the years since.

It is certainly the case that my rates have increased significantly, and I apologise if I caused the council and, in particular, the Mayor, who made the complaint to you, sir,

any distress over this issue. It was certainly not my intention to do so. All I sought to do was make a point about the lack of benefits that have accrued to the community from the amalgamation of the Adelaide Hills Council. Indeed, it surprises me somewhat that the Mayor decided to take up that particular issue in my comments on that day because I note that, immediately prior to those comments, I had referred to a ratepayer who had contacted me complaining that he had been promised a 12 per cent reduction in rates. However, the Mayor did not respond to any of that or, indeed, to the substance of the matters that I raised, and that disappoints me.

I am not trying to look for a fight with this council. I am merely trying to point out to it that, in the discussions about amalgamations, it was asserted that a number of things would flow. It appears to me to be the case that a large number of things—rate reductions amongst them—have not flowed from the amalgamation of councils. I am still waiting for a response from the council to an inquiry that I made as to the costs of wages and salaries—and I do not mean to suggest in making that comment that I am in any way being disparaging of a delay on the part of the council: I think it is getting that information together for me as quickly as it can. However, I am trying to ascertain the level of costs of the staff of councils.

CLASSIC ADELAIDE RALLY

The Hon. R.B. SUCH (Fisher): I would like to speak briefly about the Classic Adelaide Rally. In so doing, I point out that these concerns have been raised by my constituents and also, since I have mentioned the issue, by other people wider afield than my electorate. I am a great supporter of motor events and anything that helps the economy, and people having fun. I think it is great. However, I have two particular concerns. One is the impact of the road closures on some of my constituents, which amounted to 10 hours. Last Friday, it was five hours in the morning, and on the Sunday it was five hours in the afternoon. The other aspect is the speed that is promoted by the organisers of Classic Adelaide. Their material in the two categories is called *Thoroughbred Sport* and *Thoroughbred Touring*. In *Thoroughbred Sport* it states:

> Vehicles are limited to 1981 because of the restriction of an average speed of 132 km/h on the special stages.

In *Thoroughbred Touring* it states:

> Crew members only require a helmet and wrist to neck to ankle clothing to enjoy unescorted speeds up to a maximum of 130 km/h on the many tight Classic Adelaide driving stages. As the posted speed limits in the tighter stages will vary from 60-80 km/h, this is far from a sedate Sunday drive!

I note that this event is not supervised or authorised by CAMS, which is the leading body in motor sport in Australia, and members may have seen some information to that effect from a senior motor racing official this weekend in *The Advertiser*. I think it is great that people get together and enjoy themselves, but we have already had one death as a result of Classic Adelaide and, last Friday, a co-driver, John Gebhardt, was seriously injured and is now in a managed coma with a broken pelvis, collarbone and arm and deflated lungs. I wish him a speedy recovery.

The point I make is that the roads through Coromandel Valley, and other areas impacting on my electorate, are not designed for speeds of 130 km/h. There are no proper safety barriers. In addition, sadly there will come a time when someone is not aware of the closure provision, and a tragedy involving other than drivers will occur.

I will read some examples of correspondence and contacts I have received. I will not be able to go into all the detail, so I will abbreviate them. Mr L. lives near Cherry Gardens, and last Friday his child had a year 12 exam. He wrote:

> Would like to leave home at 8 am; road will be closed at 7:30 am; why can't it be closed at 8:30 a.m.?

He has rung the number on the notice of the road closure for the last two years but with no response. I contacted the Minister for Tourism (Hon. Jane Lomax-Smith) who, to her credit, resolved that matter so that the child could attend the exam. I received a very detailed letter from Mr and Mrs L., who live at the top of Chandlers Hill Road, which states:

> We, like any other normal household, from time-to-time wish to arrange and celebrate important and personal occasions. Due to this Rally being held every year we must keep in mind not to arrange anything at/or from home during the months of October and November as each year the dates for the Rally are different. Last year we had no written notification of the event, this year we were advised only one month prior.

They then talk about the impact the rally has on their business and related matters. We must bear in mind that the roads are closed for five hours at a time, with no entry or departure from properties.

Another resident of Chandlers Hill Road contacted me, saying that notices were put up that the road would be closed and protesting that this is very inconvenient. Today, I was contacted by someone telling me that drivers taking part had urinated on their front garden. This person was a police officer, and he was most annoyed that, by the time he got outside, the drivers had left. That matter has been drawn to the attention of the organisers. I have also been informed that emergency workers could not get out from a property to the road and that parents taking children to sporting events were also inconvenienced.

Let us have the event, but let us reformat it and take out the speed element and the time trials through the Hills, because those roads are not suited to 130 km/h speeds. Let us look at the closure so that we do not inconvenience people for 10 hours over one weekend, because I think that is unreasonable and unfair, and I challenge people who say otherwise.

PARTNERSHIP (VENTURE CAPITAL FUNDS) AMENDMENT BILL

The Hon. M.J. ATKINSON (Attorney-General) obtained leave and introduced a bill for an act to amend the Partnership Act 1891; and to make a related amendment to the Business Names Act 1996. Read a first time.

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

> That this bill be now read a second time.

The Partnership (Venture Capital Funds) Amendment Bill 2004 amends the Partnerships Act 1891 to provide for the registration and administration of a new form of corporate entity, the incorporated limited partnership. These reforms introduce into South Australia's partnership regime the business structure preferred by international venture capital investors and will allow South Australian based venture capital funds to access a new commonwealth taxation regime.

The bill provides that a limited partnership that is registered, or intends to be registered, as a venture capital limited partnership or Australian fund of funds under the Commonwealth Venture Capital Act 2002, or is or intends to operate as a venture capital management partnership within the meaning of the Income Tax Assessment Act 1936, may apply to be registered as an incorporated limited partnership.

Once registered, an incorporated limited partnership is to have a legal existence separate from that of its partners; is to have the legal capacity of an individual both in and outside the state (including the power to acquire, hold and dispose of real and personal property or a beneficial interest in such property, and acquire rights, and be subject to either liabilities in its own name); and may sue and be sued.

Registration as a separate legal entity will protect the limited partners from liability for the debts of the partnership provided that, subject to allowable safe-harbour activities, they do not engage directly in the day-to-day management of the partnership's business.

Other key amendments contained in the bill establish a registration regime to be administered by the Corporate Affairs Commission, provide certainty as to the relationship between the general and limited-liability partners, expand the safe-harbour provisions to allow for more involvement by limited partners in the management of partnerships, and provide for the mutual recognition of incorporated limited partnerships registered under the legislation of other jurisdictions.

These amendments mirror changes to partnership legislation in Victoria, New South Wales, Queensland and the Australian Capital Territory. Other states and the Northern Territory are expected to follow.

These reforms build upon measures already carried out by the government as part of its push to support the development of an active and sustainable private equity sector in South Australia, such as the establishment of the Venture Capital Board to help achieve this objective, thereby improving the access to equity funding for local entrepreneurs to establish and build their businesses.

I seek leave to have the remainder of the second reading report, which explains the background to these changes and the amendments contained in the bill in more detail, inserted in *Hansard* without my reading it.

Leave granted.

Background

Part 3 of the *Partnership Act* already provides for the registration of limited partnerships. Limited partnerships are partnerships that, in addition to the general partners (who run the business of the partnership and are jointly and severally liable for all debts of the partnership), have limited-liability partners. These limited-liability partners contribute equity to the partnership but take no active role in the day-to-day management of the partnership's business. In return, their liability is limited to a fixed amount, usually the extent of their subscribed capital.

The limited-liability structure allows for a degree of separation between the ownership and the control (in terms of the day-to-day business activities) of the partnership.

Limited partnerships gained popularity in the early 1990s as a relatively simple and inexpensive commercial vehicle for attracting risk or venture capital.

Venture capital is equity funding provided by professional investors to new and growing enterprises that have the potential for big returns on investment. Venture capital is high risk, in that there is a higher risk of loss of investment, owing to failure or inadequate performance of investee companies, than with other investments, such as the share market.

Venture capital is an important source of funds for start-up companies, expanding businesses and companies in an acquisition/buy-out stage. It is one of the main sources of funding for the biotechnology, information technology and communications sectors. Venture capital is often the sole or primary source of capital to fund the commercialisation of risky concepts and innovations. In most cases, venture capital investors work with the management of the company or entity in which they have invested. As well as contributing funds, venture capitalists contribute expertise.

Limited partnerships had advantages over the traditional company structure in terms of attracting venture capital investors: not being companies, they were treated differently for taxation purposes, and were not subject to much of the regulation under the *Corporations Law* (now *Corporations Act 2001*).

However, in 1992, the Federal Government began taxing limited partnerships as companies. This reduced the attraction of limited partnerships for venture capital purposes. In their place, Australian venture capital funds have generally been structured as either unit trusts or companies. This posed a problem in that, internationally, the preferred vehicle for venture capital investment was the limited partnership.

In 2002, the Commonwealth enacted legislation aimed at attracting venture capital funds into Australia.

The *Taxation Laws Amendment (Venture Capital) Act 2002* amended the taxation laws to change the tax treatment of three types of limited partnerships used to invest in Australian venture capital companies:

- Venture Capital Limited Partnerships;
- Australian Fund of Funds, a limited partnership that pools investment for the purposes of investing in other Venture Capital Limited Partnerships; and
- Venture Capital Management Partnerships, a limited partnership that is the general partner of a Venture Capital Limited Partnership or Australian Fund of Funds.

These changes mean that eligible limited partnerships will be taxed according to internationally-recognised standards. Most importantly, they will be taxed as flow-through entities.

The *Venture Capital Act 2002* established a registration and reporting process for Venture Capital Limited Partnerships and Australian Fund of Funds.

The aim of the Commonwealth's legislation is to encourage additional foreign investment into the Australian venture capital market and to assist the venture capital industry by encouraging leading international venture capital managers to locate in Australia.

For limited partnerships to come within the new taxation regime, they must be limited partnerships established under Australian law or, if foreign limited partnerships, the law in force in their respective jurisdictions.

It is this requirement that makes the amendments contained in this Bill essential if we are to encourage venture capital investment firms to locate in South Australia and firms located in other jurisdictions to invest here.

Summary of the main provisions of the Bill

Clause 5 inserts new section 1C into the Act. This new provisions states that the general law of partnership does not apply to incorporated limited partnerships, except as provided by the Act. An incorporated limited partnership will be a separate legal entity and for the purposes of the *Corporations Act 2001*, a body corporate. Therefore, in most cases, the firm will be subject to those provisions of the *Corporations Act* that deal with bodies corporate, such as directors' duties, the prohibition on disqualified persons being involved in management and the regulation of fundraising.

Proposed section 51D provides for the registration of three types of partnerships as incorporated limited partnerships:

- a partnership that is registered, or that is proposed to be registered, under Part 2 of the *Venture Capital Act 2002 (Cth)* as a Venture Capital Limited Partnership or Australian Fund Of Funds within the meaning of that Part; or
- a partnership that is, or that is proposed to be, a Venture Capital Management Partnership within the meaning of section 94D(3) of the *Income Tax Assessment Act 1936*.

Proposed section 49 provides that, in order to be registered as an incorporated limited partnership, a Venture Capital Limited Partnership or Australian Fund Of Funds or Venture Capital Management Partnership must have at least one, but no more than 20, general partners, and at least one limited partner. A body corporate may be a partner.

Under proposed section 52, application for registration as an incorporated limited partnership must be made to the Corporate

Affairs Commission (C.A.C.) and must be made in accordance with prescribed procedures.

Proposed section 53 provides that, once registered, the C.A.C. must issue the incorporated limited partnership with a certificate of registration, which is conclusive evidence that the partnership was formed on the date of registration, and enter the partnership (and details about its partners and business activities) on a separate division of the register of limited partnerships. The partnership is obliged to update the C.A.C. about any changes to the required particulars.

An incorporated limited partnership is formed when registered with the C.A.C. In addition, an incorporated limited partnership wishing to qualify as either a Venture Capital Limited Partnership or an Australian Fund of Funds will need to register with the Commonwealth's Pooled Development Fund Board. This board ensures that the firm meets the Commonwealth's requirements for these two forms of venture capital fund.

The general partners are responsible for the management of the partnership, while limited partners are investors. Rights and duties between the partners must be set out in a partnership agreement in accordance with proposed section 51B. This agreement has effect as a contract between the incorporated limited partnership and the partners. Proposed section 51C clarifies the relationships between partners in an incorporated limited partnership. Specifically:

- a general partner, the partnership or an officer, employee, agent or representative of a general partner or the limited partnership is not the agent of, nor can he bind, a limited partner in the absence of express agreement;
- a limited partner is not the agent of, nor can he bind, a general partner, the limited partnership or another limited partner in the absence of express agreement (subject to the prohibition on a limited partner taking part in the management of the business);
- subject to where a limited partner breaches the safe-harbour provisions, the limited partnership and the general partners, not the limited partners, are the proper parties to any action by or against the limited partnership.

Under proposed section 64A, a limited partner in an incorporated limited partnership has a limitation on his liability. Under this section, a limited partner has no liability for the liabilities of the incorporated limited partnership or of the general partners. This does not affect a limited partner's obligation to contribute capital or property to the firm.

Under section 12 general partners are liable only for the debts of the limited partnership that are unable to be satisfied by the limited partnership.

Proposed section 64C allows South Australian-registered incorporated limited partnerships to operate in other jurisdictions while maintaining their incorporation and limited liability status, and proposed section 64D extends the limited-liability status to limited partnerships enacted under similar legislation in another jurisdiction. Where a statute in another jurisdiction is not similar to this Bill, it can, for the avoidance of doubt, be prescribed by regulation to ensure recognition of those partnerships in South Australia.

A limited partner's limitation on liability is balanced by a prohibition on their taking part in the management of the incorporated limited partnership. However, certain safe-harbour provisions are prescribed in section 65A within which a limited partner is able to participate in the management of the incorporated limited partnership. These provisions essentially allow a limited partner to oversee their investment, assist the growth of the enterprise and ensure that the incorporated limited partnership is being managed effectively. A limited partner who breaches this provision and engages in wrongful conduct will be personally liable for loss or injury caused directly to a third party as a result of that conduct, where that third party reasonably believed that the limited partner was a general partner.

Proposed section 65A ensures that the safe-harbour provisions provide for conduct by a person acting on behalf of the limited partner. This extends to conduct not only directly in respect of an incorporated limited partnership and its general partner, but also in respect of associated-entities functions.

Proposed section 71A provides for the making of regulations dealing with the winding-up of an incorporated limited partnership. Although the regulations are yet to be finalised, they will provide for the winding-up of incorporated limited partnerships in three circumstances:

- voluntary winding-up, by special resolution of the limited partners or in accordance with the partnership agreement;
- winding-up upon a certificate issued by the Corporate Affairs Commission where the partnership has ceased to carry on business, where none of the partners is a limited partner, where incorporation of the partnership has been obtained by mistake or fraud, where the partnership exists for an illegal purpose or where the partnership ceases to be (or, within a prescribed period, fails to be) registered as a Venture Capital Limited Partnership or Australian Fund Of Funds or a venture capital management partnership, within the meaning of section 94D(3) of the *Income Tax Assessment Act 1936.*
- winding up in insolvency or in the public interest (to be governed by Part 5.7 of the *Corporations Act 2001).*

I commend the Bill to members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Partnership Act 1891*

General remarks—

Currently, the *Partnership Act 1891* (the ***principal Act***) provides for 2 forms of partnerships—common law partnerships and limited partnerships. The object of the Bill is to amend the principal Act to provide for a new form of partnership—an incorporated limited partnership. Unlike common law partnerships and limited partnerships, an incorporated limited partnership is a separate legal entity from its partners. Like a limited partnership, it has general partners who manage the business of the partnership and limited partners who contribute investment capital to, but do not manage, the business. The liability of the limited partners for the debts and obligations and other liabilities of the partnership is accordingly limited. Partnerships with this structure are typically used for international venture capital investment. The Bill will enable individuals, corporations and partnerships that are engaged in certain venture capital projects in Australia to form such an incorporated limited partnership by being registered under the principal Act. The Bill also amends the principal Act to clarify and expand on provisions relating to limited partnerships and the liabilities of partners in them.

4—Amendment of section 1B—Interpretation

The proposed amendments to section 1B provide for the necessary definitions relating to incorporated limited partnerships. The amendments emphasise the different nature of this new form of partnership by making it clear that references in the principal Act to a partnership or firm that is an incorporated limited partnership are references to the separate legal entity that is distinct from the persons or partnerships that constitute it. As such, it has rights and liabilities that are distinct from those of the partners in it, whether limited or general. Accordingly, must of the existing law of partnership has no application to incorporated limited partnerships, the partners in incorporated limited partnership or to the relationship between an incorporated limited partnership and its partners.

One of the definitions proposed to be inserted is ***liability***. References elsewhere in the principal Act to debts or obligations are replaced with references to the more widely defined liabilities.

5—Insertion of section 1C

1C—Application of laws to partnerships and incorporated limited partnerships

New section 1C provides that except so far as they are inconsistent with the express provisions of the principal Act, the rules of equity and common law relating to partnership will continue in force. However, except as provided, the law relating to partnership does not apply to or in respect of an incorporated limited partnership, the partners in an incorporated limited partnership or to the relationship between an incorporated limited partnership and its partners.

6—Amendment of section 1—Definition of partnership

This proposed amendment is consequential on the introduction of incorporated limited partnerships into the law.

7—Amendment of section 2—Rules for determining existence of partnership

This proposed amendment provides that section 2 (which sets out the rules for determining the existence of a partnership) does not apply in the determination of the existence of an incorporated limited partnership. Similar amendments are made to sections 22 to 31 and by inserting new sections 20A and 31A.

8—Amendment of section 4—Meaning of "firm

The proposed amendment has the effect of excluding incorporated limited partnerships from the operation of section 4. Section 4 of the principal Act provides that persons who have entered into partnership with one another are, for the purposes of the principal Act, called collectively a firm, and the name under which their business is carried on is called the firm-name. The proposed amendment to section 1B inserts the meanings of ***firm*** and ***firm-name*** in relation to an incorporated limited partnership (see clause 4 of the Bill).

9 to 22—Amendment of sections 5 to 18 of the principal Act

The amendments proposed to sections 5 to 18 of the principal Act describe the liability of the general partners in an incorporated limited partnership. They include amendments to ensure that the persons authorised to do an act or execute an instrument for an incorporated limited partnership do not generally include a limited partner and that the general partners are jointly liable with the incorporated limited partnership for its liabilities; but that such liability is limited to that which the incorporated limited partnership cannot satisfy or as otherwise provided by the partnership agreement.

23—Amendment of section 20—Partnership property of firms other than incorporated limited partnerships

The proposed amendment provides that section 20 does not apply to an incorporated limited partnership.

24—Insertion of section 20A

20A—Partnership property of incorporated limited partnership

New section 20A provides that all property, and rights and interests in property, acquired, whether by purchase or otherwise, on account of an incorporated limited partnership, or for the purposes and in the course of the business of the partnership, are called, in the principal Act, ***partnership property***, and must be applied by the partnership exclusively for the purposes of the partnership. No partner in an incorporated limited partnership, by virtue only of being a partner in the partnership, has any legal or beneficial interest in its partnership property.

25 to 29—Amendment of sections 22 to 27

The proposed amendments to sections 22 to 27 provide that those sections do not apply to or in respect of incorporated limited partnerships.

30—Amendment of section 28—Duties of partners to render accounts etc

The proposed amendment to section 28 extends the operation of that section to incorporated limited partnerships.

31 to 33—Amendment of sections 29 to 33

The proposed amendments to these sections provide that those sections do not apply to incorporated limited partnerships.

34—Insertion of section 31A

31A This new section provides that Division 4 of Part 2 (Dissolution of partnership) does not apply to incorporated limited partnerships.

35—Repeal of Part 2 Division 5

Division 5 provides for the savings of the rules of equity and common law applicable to partnerships. This Division is to be repealed. That savings provision is now to be found in new section 1C(1).

36—Substitution of heading to Part 3

The new heading proposed is "Limited partnerships and incorporated limited partnerships".

37—Substitution of Part 3 Division 1

Current Division 1 consists of sections 47 and 48. The definitions contained in current section 47 have been relocated in section 1B. Current section 48 provides for the application of Parts 1 and 2 to limited partnerships. The application provision will now be provided for in new Division 1 (the substituted section 47).

38—Substitution of heading to Part 3 Division 2

The substituted heading includes incorporated limited partnerships.

39—Substitution of section 49

48—Limited partnership or incorporated limited partnership is formed on registration

New section 48 provides that a limited partnership or incorporated limited partnership is formed by and on registration of the partnership under this Part as a limited partnership or incorporated limited partnership (as the case may be).

49—Composition of limited partnership or incorporated limited partnership

New section 49 provides that a limited partnership or incorporated limited partnership must have—

(a) at least one general partner; and

(b) at least one limited partner.

A corporation may be a general partner or a limited partner in a limited partnership or incorporated limited partnership.

A partnership (including an external partnership) may be a general partner or a limited partner in a limited partnership or incorporated limited partnership.

40—Amendment of section 50—Size of a limited partnership or incorporated limited partnership

The proposed amendment to section 50 limits the number of general partners that a limited partnership or incorporated limited partnership may have.

41—Substitution of section 51

Current section 51 has now been substantially re-enacted in new section 48. New section 51 provides for the separate legal entity of an incorporated limited partnership. New section 51A provides for the powers of an incorporated limited partnership and new section 51B makes provision for what must be contained in a partnership agreement (which must be in writing) for an incorporated limited partnership. New section 51B(3) further provides that a partnership agreement also has effect as a contract between the incorporated limited partnership and each partner, under which the partnership and each partner agree to observe and perform the agreement so far as it applies to them. New section 51C describes the relationship of partners in incorporated limited partnerships to others and between themselves.

42—Substitution of heading to Part 3 Division 3

The new heading is consequential.

43—Insertion of section 51D

New section 51D describes who may make application for registration of a limited partnership or incorporated limited partnership.

44—Amendment of section 52—Application for registration

The proposed amendment to section 52 details what must be contained in an application for registration as a limited partnership or incorporated limited partnership.

45—Substitution of section 53

53—Registration of limited partnership or incorporated limited partnership

New section 53 provides that if an application for registration of a limited partnership or incorporated limited partnership has been duly made, the Commission must register the limited partnership or incorporated limited partnership. There are a couple of exceptions to this rule that are listed. Registration is effected by recording in the Register the particulars in the statement lodged with the Commission.

53A—Acts preparatory to registration do not constitute partnership

New section 53A provides that any act done in connection with the making of an application for registration by or on behalf of persons or partnerships (including external partnerships) proposing to be the partners in a proposed

partnership does not of itself create a partnership between those persons or partnerships.

46—Amendment of section 54—Register of Limited Partnerships and Incorporated Limited Partnerships

The proposed amendment to section 54 provides that the Commission is required to keep, in such form as it considers appropriate, a register of limited partnerships and incorporated limited partnerships registered under this Part (to be called the ***Register of Limited Partnerships and Incorporated Limited Partnerships***).

47 and 48—Amendment of section 55 and substitution of section 56

These proposed amendments are consequential.

49—Substitution of heading to Part 3 Division 4

This amendment is consequential.

50—Amendment of section 58—Liability of limited partner limited to amount shown in Register

This amendment proposes to insert a new subsection (2) which provides that if a partnership (the ***investing partnership***) is a limited partner in a limited partnership (the ***principal partnership***), a partner in the investing partnership has no separate liability to contribute to the liabilities of the principal partnership, but nothing in this subsection affects any liability of the investing partnership as a limited partner to contribute to those liabilities.

51 to 53—Amendment of sections 59, 60 and 61

These amendments are consequential on the insertion of a definition for ***liability***.

54—Amendment of section 62—Liability for limited partnerships formed under corresponding laws

One proposed amendment to section 62 will enable the law of a jurisdiction other than another State, Territory or country to be declared to be a corresponding law for the purposes of that section (which relates to recognition of laws concerning limitation of liability of limited partners in limited partnerships similar to proposed section 64D). New section 62(4) provides that section 62 is additional to, and does not derogate from, any rule of law under which recognition is or may be given to a limitation of liability of a partner in a partnership (including an external partnership).

55—Insertion of section 62A

This new section is an equivalent provision for limited partnerships to proposed section 64E.

62A—Effect of sections 61 and 62

New section 62A provides that no implication is to be taken as arising from section 61 or 62 that a limited partner has any liability (or but for that section would have any liability) in connection with the conduct of a partnership's business outside the State that the limited partner would not have in connection with the conduct of a partnership's business within the State.

56—Amendment of section 63—Contribution towards discharge of liabilities

This amendment is consequential.

57—Insertion of Division 4A

This new Division comprises new sections 64A to 64E. New section 64A provides that a limited partner has no liability for the liabilities of the incorporated limited partnership or of a general partner but not so as to prevent the satisfaction of such liabilities by the contributions of capital or property by limited partners, or by the enforcement of the obligation to so contribute. The limitation on liability is qualified by proposed section 65A which provides that a limited partner must not take part in the management of the incorporated limited partnership. A limited partner who does take part in the management may be liable for acts taken by the partner that cause loss or injury to a third party if the third party reasonably believed the limited partner was a general partner. However, the limited partner's liability is limited to that incurred as a direct result of such acts and to liability that would be3 incurred if the partner were in fact a general partner.

Proposed section 64C makes it clear that it is intended that the limitation on the liability of a limited partner in an incorporated limited partnership conferred by or under the principal Act extends to liability incurred outside the State.

Proposed section 64D provides for the recognition of the limitation of liability of partners in incorporated limited partnerships formed under the law of another jurisdiction for liabilities incurred in the State, provided that the low substantially corresponds to the provisions of the principal Act relating to incorporated limited partnerships or is declared to be a corresponding law.

Proposed section 64E provides that sections 64C and 64D cannot be taken to imply that a limited partner in an incorporated limited partnership can have liability for conduct or acts omissions outside the State that would not attract liability if done within the State.

58—Amendment of section 65—Limited partner not to take part in management of limited partnership

Proposed subsection (6) emphasises that the list in new section 65A is not an exhaustive list of actions that may be taken that do not amount to taking part in the management of a business.

59—Insertion of sections 65A and 65B

Proposed section 65A provides that a limited partner is not to be regarded as taking part in the management of the business of the incorporated limited partnership merely because the partner engages in specified acts. The acts specified include those that a limited partner in a limited partnership may currently do under section 65 of the principal Act without being considered to be taking part in the management of the business of the limited partnership. However, these are expanded and enhanced to recognise the active role that limited partners in incorporated limited partnerships may play in overseeing the investments of the partnership and in advising and assisting the investees. For example, proposed section 65A(3)(g) will enable a limited partner to give advice to, consult or act as an officer or director of an associate (as defined in new section 65B) of the incorporated limited partnership with whom the incorporated limited partnership invests and to participate in committees dealing with requests from general partners for consent to do various things.

60 to 63—Amendment of sections 66, 67 and 68 and substitution of heading to Part 3 Division 6

These amendments are consequential.

64—Insertion of section 71A

71A—Winding up of incorporated limited partnerships

New section 71A provides regulations may make provision for the winding up of incorporated limited partnerships, including by applying, with or without modification, specified provisions of the *Corporations Act 2001* of the Commonwealth.

The limit on the penalties that may be fixed for offences against the regulations under this Act does not apply in relation to any regulation that makes provision for the winding up of incorporated limited partnerships.

65—Insertion of sections 71B to 71E

New sections 71B to 71E are to be inserted at the beginning of Part 3 Division 7.

71B—Execution of documents

New section 71B provides for the execution of documents by an incorporated limited partnership, with or without using a common seal.

71C—Entitlement to make assumptions

New section 71C entitles a person who deals with an incorporated limited partnership or with a person who has acquired property from the partnership to make the assumptions set out in new section 71D, unless the person knew or suspected that the relevant assumption was incorrect, and for the inability of the partnership to assert that any of the assumptions are incorrect.

71D—Assumptions that may be made under section 71C

New section 71D sets out various assumptions that may be made, including providing that a person may assume compliance with the partnership agreement of an incorporated limited partnership and that a person who appears to be a general partner or agent of the partnership is such a person, has the customary powers and duties of such a person and properly performs those duties.

71E—Lodgment of certain documents with Commission

New section 71E requires an incorporated limited partnership to lodge certain documents with the Commission.

66 to 69—Amendment of sections 75 to 78

The proposed amendments to these sections provide, respectively, for the identification of incorporated limited partnerships by inclusion of the words "An Incorporated Limited Partnership" (or "L.P." of "LP" as an abbreviation) after the firm-name, to enable limited partnerships to use such appropriate abbreviations, to require an incorporated limited partnership to keep a registered office in SA, to describe methods of serving documents on limited partnerships and incorporated limited partnerships and to provide that an entry in the Register in relation to an incorporated limited partnership constitutes notice of certain matters.

70—Insertion of sections 79A to 79C

79A—Offences by partnerships

New section 79A provides that where the principal Act provides that a general partner (being a partnership and including an external partnership) in a limited partnership or incorporated limited partnership is guilty of an offence, the reference to the general partner is to be read as a reference—

(a) to each partner in the partnership (or external partnership); or

(b) if the partnership (or external partnership) is one in which any partner has under the law of the place where it is formed limited liability for the liabilities of the partnership, each partner in the partnership whose liability is not so limited.

It is a defence for the partner to prove that the partner took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

79B—Duty to furnish information

This new section provides for a duty for an incorporated limited partnership to provide the Commission with such information as the Commission requires in order for the Commission to be able to monitor the partnership's compliance with the legislation. It is an offence if the partnership fails to comply with such a request within the time required.

79C—Confidentiality

The Commission or a person employed or engaged in the administration of the principal Act must not, except to the extent necessary to carry out their functions, give to another person, whether directly or indirectly, any information acquired by the Commission or that person in carrying out those functions.

71—Amendment of section 83—Regulations

The proposed amendment will expand the power to make regulations relating to matters such as the keeping of records by limited partnerships and incorporated limited partnerships and to enable the regulations to exempt persons or classes of persons or other matters or things form provisions of the Act.

72—Insertion of section 84 and Schedule 1

84—Relationship with Corporations legislation

New section 84 will enable the regulations to declare that a matter dealt with by the principal Act or the regulations is an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth. the regulations may also declare a matter dealt with under the principal Act to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Corporations legislation.

Schedule 1—Savings, transitional and other provisions

New Schedule 1 contains provisions of a savings or transitional nature, including a provision to enable the regulations to make provision for matters of a savings or transitional nature consequent on the amendment of the principal Act.

Schedule 1—Related amendment of *Business Names Act 1996*

1—Amendment of section 28A—Limited liability partnerships and incorporated limited liability partnerships

These amendments provide that a limited partner of a limited liability partnership or incorporated limited liability partnership is not to be regarded as carrying on the business of the partnership and is not a proprietor of a business name registered in relation to the partnership for the purposes of the *Business Names Act 1996*.

The Hon. I.F. EVANS secured the adjournment of the debate.

STATUTES AMENDMENT (RELATIONSHIPS) BILL

Adjourned debate on second reading.

(Continued from 28 October 2004. Page 695.)

The Hon. M.J. ATKINSON (Attorney-General): I move:

That this order of the day be discharged.

The SPEAKER: Is that motion seconded?

Honourable members: Yes, sir.

The Hon. G.M. GUNN: Mr Speaker—

The Hon. M.J. ATKINSON: It is by agreement with the Hon. Robert Lawson.

The Hon. G.M. GUNN: The Attorney-General has given no explanation.

The Hon. M.J. ATKINSON: The government has introduced this same sex relationships bill in another place and the shadow Attorney-General has requested that it be discharged in this place so that it may be dealt with in the other place, and I have complied with the Liberal Party's request.

The Hon. G.M. GUNN (Stuart): This is an interesting set of circumstances. I have never seen the Attorney-General so compliant. He wants to agree with the Liberal Party! I put to you, Mr Speaker, that this is more about the embarrassment that the Labor Party has got itself into for not giving its members a conscience vote on this issue. That is what it is all about. We know the Attorney-General, the member for Playford and others wanted a conscience vote, and they are embarrassed. What the government has now done is concoct a scheme to bring the bill to the upper house, hoping that it is defeated up there, because it is bad legislation.

It is not necessary. It is contrary to the best interests of the people of South Australia, and this is a political stunt. The Attorney-General has been outvoted in cabinet and in the caucus. We know that all those trendy lefties, the Girls Brigade and others here have the numbers.

Mr KOUTSANTONIS: On a point of order, can I ask in what respect is the member for Stuart speaking? Is he speaking to the bill—

The Hon. G.M. Gunn interjecting:

The SPEAKER: Order! The member for Stuart will not interject while the member for West Torrens takes a point of order. What is the member for West Torrens' point of order?

Mr KOUTSANTONIS: I do not know in what respect the member is speaking. Is he debating the issue, speaking on it or just making a point of order? What is it?

The SPEAKER: No, the honourable member is within his rights to debate whether or not the house should discharge this matter.

Mr Koutsantonis: It hasn't been seconded yet, sir.

The SPEAKER: It has been seconded. I called for a seconder and I heard two or three.

The Hon. G.M. GUNN: I am delighted that I have now attracted the attention of the member for West Torrens,

because he is one of those who is embarrassed by this issue, and he has ably demonstrated to this house that he wants to get it off the agenda. The point I want to make is that the government has used its numbers to force this public debate about an issue that is contrary to the best interests of the people of this state, and contrary to the best interests of families, to the sanctity of marriage and the bringing up of children. It has now realised the public dissent on this matter and shifted it to the upper house because the lefties and all the trendies and all those others, including the Government Whip, who is one of the left-wing trendies who wants to have this sort of social engineering imposed on the long-suffering people—

The SPEAKER: Order! The honourable member will restrict his remarks to the proposition that the matter be discharged, not go to the merits or otherwise.

The Hon. G.M. GUNN: I want to make this point. In discussing why the matter is to be discharged, I want to point out to the people of this state and to the house why we are now debating this issue. It is because the government has got itself into an embarrassing situation. It is trying to get out of it and the people should be aware of the real circumstances. The real circumstances are that they do not really have conscience votes in the Labor Party. They have cracked the whip. The Girls Brigade, the trendies and all the others have control of the show. They have outvoted the Attorney-General and the Shop Distributive and Allied Employees' Union.

Mr HANNA (Mitchell): The government has suddenly brought on discussion of the Statutes Amendment (Relationships) Bill, more commonly known as gay law reform. In particular, it gives homosexual couples equal civil rights to de facto couples in South Australia in respect of a wide range of bills to do with property rights, intestacy rights, and so on. The government comes out with a list of legislation with which it intends to proceed each day and, on the list of legislation for today, this debate is not referred to. I just register the discourtesy of no-one in the government informing me that this debate would take place today. At the very least, one would think—

The SPEAKER: The member for Mitchell may be under a misapprehension. The debate on foot at the moment is not on the merits of Order of the Day No. 12 on today's *Notice Paper*. It is on the merits or otherwise of the discharge of that item.

Mr HANNA: I understand that perfectly, sir, and thank you for your clarification. The point is that I had no notice whatsoever that the government would seek to deal with this item in any way at all, either by way of proceeding or by way of withdrawing the bill—because the motion to discharge is, essentially, to withdraw the bill from our consideration.

It is Labor Party policy, of course, to proceed with this legislation, and many within the Labor Party gave the Attorney-General credit when he brought this bill into the place after years of campaigning within the Labor Party and the community for this reform to proceed. There has been a backlash from a number of constituencies out in the broader South Australian electorate, but I have to say that from the correspondence I have received via letter and email—which, I note, is identical to that received by most members in this place—the objections seem to be founded upon misconceptions about what the bill actually does. There is the notion that this legislation somehow tampers with the concept or the—

The SPEAKER: Order! The honourable member must come back to the proposition, which is not to debate the merits of the legislation but the merits of whether or not it ought to be discharged.

Mr HANNA: Yes, sir. And because it is worthy of debate in this place I say it should not be discharged—that is the argument I am putting to you and to other members. As I said, the objection within some specific groups in the community which has prompted the motion to discharge has itself been founded upon misconception—that the bill would, in some way, tamper with the concept or the practice of marriage. Of course, the bill has nothing whatsoever to do with marriage. The scare campaign waged by members of the community against the government in relation to this bill has proven effective, but it is based on false premises, and it is extremely sad to see the lack of leadership in this debate when the misconceptions will not be pointed out by anyone on the government benches.

As I say, the prime objection in the lobbying has been that it somehow tampers with the concept of marriage. It does no such thing and, therefore, the reason for discharging this bill is based on a false premise. It is only done so that House of Assembly members can escape flak from a very small minority in the community who are founding their objections upon misconceptions.

There is no need for this bill to go to the Social Development Committee because the issues have been canvassed in the media for years and in this place for some time. We all know the import of the bill, and if we do not we can seek advice as to what it portends. There is no reason to discharge the bill and I will be voting against that proposition. The fact is that the bill is here to be dealt with, we are ready for the debate after hearing the erudite and broad-ranging second reading speech of the Attorney-General, and a considerable number of members want to bring on the debate. It is a moment for courage and to face the issues, whether the bill is ultimately successful or not. If it is referred to the Social Development Committee we can expect there to be no reform in this area prior to the next state election, because there is a government view that because there has been so much flak—albeit based on misconception—it would be better to delay and defer until after the next election. That is a real lack of courage on the part of the government.

Mr HAMILTON-SMITH (Waite): I must say that I am intrigued by the fact that we are here debating the discharge of this bill.

The Hon. M.J. Atkinson: Talk to Lawson!

Mr HAMILTON-SMITH: The Attorney says, 'Talk to Lawson.' It was the government's initiative to introduce the matter into the upper house, I understand, in parallel with its consideration in this house. The normal course would be for the matter to be dealt with in this house, then for it to proceed to the upper house, and then for other procedures to be followed for it to come into law. Instead, the government has adopted the interesting tactic of trying to have it debated in the upper house. Thus, we are here now seeking to discharge it from this house because it is inappropriate for it to be open in both houses at the same time.

We are here because the government has decided it does not want to debate the matter in the House of Assembly. And why is that? It is because, as foreshadowed in the second reading addresses, the Attorney does not want to sit here while my colleagues and I go through the bill with him clause by clause in the committee stage asking him to defend each

clause because, Madam Speaker, or rather Mr Speaker, he is—

The SPEAKER: This is not about my gender or proclivity.

Mr HAMILTON-SMITH: I beg your pardon, sir, it was a slip of the tongue. The Attorney, of course, is the champion of the bill. It is his bill. I am a person who believes that members of parliament should be judged by their actions and not by their words. The Attorney, the member for West Torrens, the member for Playford, and other members, will be voting to support this bill in its entirety. That will be their action. I do not know what they will be saying out in their electorates but I suspect that I do. I suspect that I know what a number of members opposite will be saying out in their electorates to church groups and to their constituencies.

I will tell the Attorney something: I have had dozens and dozens of letters in my office asking that this matter be considered in the House of Assembly and that it not be discharged, and expressing concern that it has been moved to the upper house. I have said to them in writing—and I bring this to the Attorney's attention—you should write to the champion of the bill, the Attorney-General, and I have said that you should also write to two other members who will be voting for the bill, the member for West Torrens and the member for Playford—and I hope that they are getting a few letters—because those members will be voting for the bill and, in effect, are champions of the bill.

I know the Labor Party's line on this is, 'We stick together.' Well, the character of the member is how he votes on the floor of the house. That is the character of a member. You can say one thing, but it is what you do, not what you say, which ultimately matters. I say to all members if they had courage and if they had conviction they would vote in accordance with their conscience on this issue. That is a matter for every individual member to reconcile, but I will continue to write my letters to people who contact me on this matter and refer them to the Attorney, the member for Playford and the member for West Torrens, and certain other members who I know support this bill and will be voting for it with enthusiasm when it is called before this house. It should not be discharged from this house.

We should be going through this in committee stage, clause by clause, so that all the members opposite here can get up and tell the house why they agree with the bill. We know the government's tactic—spin it up to the upper house, have it dealt with there and, if it fails there, the Attorney, the member for Playford and the member for West Torrens will be spared the torture of having to explain to the people of South Australia why they support the bill and, of course, that is why we are here now debating the discharge of the bill.

There is no point in resisting it because clearly the government will simply let this lounge on the *Notice Paper*, should it remain in this house, and not be dealt with in the other place. Clearly, the government is determined for it to be dealt with in the other place and therefore we are left with little choice but to agree with its discharge from this house. Hence the opposition will support the discharge given that the government is using its numbers to force this outcome. So, the government has decided that this is to be dealt with in the other place. They have got the numbers. All of their members enthusiastically support the bill and it being dealt with in the other place. We have no choice but for it to be discharged. It is a shame. I simply say to the people who are following this bill, of whom there are many, to remember who is voting for it, because we will be reminding them again and again, and I hope that all members have the courage to come in here and express their view, and indicate why they will be acting as they will when the matter comes to account.

The Hon. R.B. SUCH (Fisher): I was not notified that this matter would come up and if, as reported, it is the result of a threat by people in another place, I find that absolutely offensive and a slight on our house: that elsewhere people would seek to threaten legitimate debate in this house by threatening not to deal with the matter as is required under their oath and duty in another place. I think that it is absolutely unfortunate that we cannot debate this matter in a sensible, rational way. Like others, I have had a lot of people write to me and I have responded to every one, except I have just had to ring the office to say, 'Hold back on today's replies,' to make sure that the answer today takes account of this possibility of a discharge in our house. I think it is very unfortunate, and I suspect that there are some games being played here by people who are trying to muddy the waters. This bill is not about marriage. It has nothing to do with it. Only the Commonwealth government can make law relating to marriage.

I have explained that to the people who have written to me. I have had very few in my own electorate, but I have replied to every one, whether they are in my electorate or not, pointing out that this bill, that we are apparently going to discharge, is not about marriage. People come into this place, I would hope, to debate matters on their merit and not play games and not be subject to threats from people in another place, or people whose political clout is far more by way of reputation than reality. We saw that in the last federal election where the people who claimed to speak on behalf of God did not have the actual numbers when it came to the ballot box that they had claimed. Let us get to the truth behind this and find out who issued the threat, and if it is, as has been intimated, from a particular person in the upper house and/or the Liberal Party then I think they should be condemned for outrageous behaviour, which is totally illiberal behaviour and a disgrace in any sense of the term.

Mr RAU (Enfield): I was not going to participate in this but it is developing a momentum of its own and I feel that I cannot let that roll by without at least adding a modest little push to it. I think that the member for Waite really fired me up. The member for Waite spoke about courage. He seemed to be drawing on some visceral sense of courage and conviction when he spoke to us about what we should all be focusing on when we come to this piece of legislation. In his remarks he referred to all of the letters, and I recall having a look at the avalanche of letters I have received, most of them photocopied I might say. No doubt some of them are written laboriously to 47 members of this chamber and 22 members of another place. Some of them even have different text. Some of the ones I received had some original text. They all seem to have certain core elements of the text which was absolutely identical from letter to letter to letter. These letters have been coming to me from places as diverse as Coomandook, the Barossa Valley and goodness knows where else.

Why these people are suddenly interested in writing a similar letter to the ones that several other people in different parts of the state have decided to write to me, I do not know. I can say that other people whose views were quite different and who were in support of the bill have also, to be fair, been writing remarkably similar letters to me. It is almost as

though there has been this mass consciousness turned on among a bipolar section of our community, where one half is completely in favour of this, and the other half is completely against it.

Either way, to make anything great from these contrived items of correspondence, I think, is to elevate this debate far beyond where it should be. Let us be a little bit realistic about this. What are we talking about here? The Attorney-General has put up a piece of legislation. In case nobody here has noticed, we have spent the past couple of weeks debating the Industrial Law Reform (Fair Work) Bill, and I think we got into clause 20 something yesterday; and, from memory, there are 49 clauses in that bill. I understand it to be a fairly important piece of legislation; at least it is to me.

I also understand that the fair work bill cannot go to the other place until it has been through this place, and we are halfway through that bill. What is wrong with saying to the other place, 'Look, whilst we laboriously chew our way through the fair work bill here, you folk get on and do something useful with this'? Quite frankly, I honestly do not see what the fuss is all about.

The member for Waite is saying that the member for West Torrens, the member for Playford and the Attorney-General will be grossly embarrassed about this. I am sorry; he is in for a dreadful disappointment. He should put on the rear vision mirror and have a look at the member for Unley sitting up there next to the pylon, because that is where he is going to see the look of embarrassment when this comes up. There are other places as well, but I am not going to blow their cover just yet; we will wait for later.

The point is that we should be practical about this. Let us get the thing dealt with; let us give it to the other place. Let them get on with it; and let us grind through the very significant amount of material that we have to deal with in this place, including the fair work bill.

The Hon. W.A. MATTHEW (Bright): I am surprised by the notion that the Attorney-General has moved today. I am surprised that, the Attorney, after championing this bill of which he has been the architect for so long, and after indicating to this house, through ministerial statement, that he wishes to see the passage of this bill to change the law, he would withdraw it at this stage. It is becoming obvious why the Attorney feels uncomfortable about this bill; he would have received a barrage of letters, as would have his colleagues, the member for West Torrens and the member for Playford. Indeed, as the member for Enfield has indicated, he too has received letters from people who have written, in surprise because they would not have expected that the Attorney, the member for West Torrens, the member for Playford, or the member for Enfield, and some of their other colleagues, would be supportive of this legislation in the first place.

Many of the letters that have been sent to me, unlike the ones that appear to have been sent to the member for Enfield, have very much been individually written. A number pose a similar question but, for the benefit of the member for Enfield, were using different words. Essentially, they are asking how it could be that the Labor Party would allow a conscience vote on the poker machine debate, but it will not allow a conscience vote on the Statutes Amendment (Relationships) Bill when, normally, bills of that nature have been allowed a conscience vote on both sides of the house.

It seems to me that the writers of those letters make a very good point. Here we have been laboriously, day after day, debating the poker machines bill, and for that bill members of the Labor Party had the absolute freedom to vote as their conscience might dictate. Why is it that the Labor Party will not permit its members to have a conscience vote on this bill?

Ms Bedford: It is not about conscience.

The Hon. W.A. MATTHEW: Oh! It is not about conscience, comes the interjection from the member for Florey. I am not surprised that the member for Florey does not want a conscience vote exercised on this, because she knows that, if a conscience vote on the Statute Amendment (Relationships) Bill is allowed by the Labor Party, in all probability it would be lost, and members such as the member for West Torrens, the member for Playford and, perhaps, the member for Enfield may not be inclined to support it, even though the Attorney, of course, is the architect of this bill and the one who introduced it to this house.

If the member for Florey is confident that the bill will pass with a conscience vote allowed by the Labor Party, perhaps she should advocate that. Perhaps she should advocate to her caucus room that they should be consistent with Labor Party decisions of the past, and allow a conscience vote.

In his address to this motion, the member for Enfield mentioned the member for Unley. The member Unley has made it perfectly clear how he wants to vote in relation to this bill. He is supportive of the bill, and that is the right of the member for Unley. Through the normal process, he has been given a conscience vote on that bill, as has every other member of the Liberal Party. The member for Unley is probably not the only member of the Liberal Party who has indicated support for this bill, and I am sure that others will do so in due course. It may be that there are members of the Liberal Party in the upper house who support it. I am not sure; I have not canvassed the bill with them, but it may be that that is the case. Of course, only time will tell.

At the end of the day, the fundamental reason for this motion being before us is not, I suggest, as the member for Enfield would have us believe. He may have been fed this particular line of spin to put into the house so that this can be the latest Labor Party line of spin. The suggestion that the debate on the fair work bill has been so extensive that it has necessitated moving the Statutes Amendment (Relationships) Bill to the upper house to allow it to be debated is arrant nonsense. We all know this is arrant nonsense.

Why does the Labor Party not have the guts to admit that it has got a little bit too hot for them, a little bit too uncomfortable in the caucus room for them to debate this bill? They would not allow a conscience vote for their members, so now they want to handball it to the other place so that they can hold the heat off for a bit longer while they work out their problems behind the scenes. That is what this is about; it is not about the amount of time that is available to debate the bill in this house. There are a number of bills on the *Notice Paper* this week. I suggest there is no reason why the Statutes Amendment (Relationships) Bill could not be debated. Indeed, the debate on this motion could have been the debate on the bill itself. So, it makes a nonsense of the claim of members opposite.

If members of the Labor Party are embarrassed, so they should be. I ask members on the other side of the house to put the facts on the record and to own up to the fact that they have been uncomfortable. I ask those who do not agree with the bill to put that on the record and the fact that they have been nobbled by the caucus and not allowed a conscience vote. Do the right thing and have the bill debated expediently in this house where it was introduced. If it passes, so be it; if

it is rejected, so be it; if it gets referred to a committee for further consideration, so be it.

I take this opportunity to congratulate those members of the public who have stated their case. There is no finer example than the parliament, the theatre of democracy, working, but when pressure from the public comes to bear, the government has a knee-jerk reaction. That is what we have seen. The public placed pressure on the government, on influential members of the backbench and ministers, and they have reacted by handballing this to the upper house. So, I take this opportunity to congratulate those who have raised concerns about the bill for putting pressure on the government, because they will know that, as from today, that pressure has had an effect and the government has had a knee-jerk reaction. Only time will tell just how much effect that pressure will have on this debate.

The DEPUTY SPEAKER: The member for Hartley.

Mr SCALZI (Hartley): Thank you, Mr Deputy Speaker.

Mr Koutsantonis: The Lion of Hartley! Great supporter; lazy MP.

Members interjecting:

The DEPUTY SPEAKER: Order! The member for Hartley has the call.

Mr SCALZI: As the Lion of Hartley I will not respond to noises made by mice. I rise to make a short contribution to this motion to discharge the bill. I have listened to the eloquence of the member for Enfield. I suppose his remarks can be related to the fair work bill, because he is so concerned about the work overload of members of this place, especially members of the caucus. I do not know what has been going on in the caucus that has caused it to become so overwhelmed with work that it must send this bill to the other place.

I am fortunate that I have spoken to this bill and given notice that I would like to have it referred to the Social Development Committee after the second reading debate. I note that you, Mr Deputy Speaker, and the Attorney-General have also spoken to the bill, but I am concerned that this house (where government is formed) has not had the opportunity to fully debate the bill. The member for Mitchell would like to have spoken to this bill, as would my colleagues. There has been a lot of correspondence for and against this bill, but in my 11 years in here I have never seen a bill so hastily sent to the other place.

The Hon. M.J. Atkinson: It isn't disappearing; it's still in parliament.

Mr SCALZI: Yes, but the fact is that there are 47 members in this place and only 22 in the other place.

The Hon. M.J. Atkinson: And your point is?

Mr SCALZI: My point is that it would have got broader discussion in this place. As I said, I am fortunate to have had the opportunity to speak to this bill. I do not wish to reflect on the members of the other place because they are all honourable members and the other place is a house of review. However, I am concerned that in this chamber the windows have been closed. We have heard no views on this bill from members opposite apart from the Attorney-General.

An honourable member interjecting:

Mr SCALZI: It's a little bit like the middle ages; they just put a champion on a horse and hope he will get across to the other side. In this case they have sent the bill to the other place.

Mr Koutsantonis: Why are you voting for the discharge motion then?

Mr SCALZI: The member for West Torrens would know that politics is about numbers. The government in its wisdom wants to send the bill to the other place. Maybe there is some truth in what the member for Enfield said: that the workload has got too much for them. Who knows? Maybe the Premier has censored them and said that they cannot debate bills about sex.

The DEPUTY SPEAKER: Order! The question before the house is whether this matter be discharged.

Mr SCALZI: I trust that members of the other place will have the opportunity to debate the bill in its entirety. I trust that the members of the government in another place will be able to exercise their conscience, and that the house of review will look at what has happened and, given that the House of Assembly has not really debated this bill, consider that it requires further investigation at least by the Social Development Committee, where there is an equal number of members from both sides. Given our workload, I will stop at this point, because I do not want to overburden the house.

Ms BREUER (Giles): It is some time, I think, since I have seen so much glee on the other side about the action that is being taken today and this bill's being discharged. I think that is probably because it gives the homophobes some more time to breathe on this issue and not have to stand up and be accountable for what they believe and how they feel. We have had this rubbish coming from the other side, 'Why shouldn't this be a vote of conscience?' Conscience has nothing at all to do with this bill. It is something that is overdue: it should have happened a long time ago. If this legislation is passed, it will bring us into line with other progressive legislators. The sort of stuff that is coming across from the other side here today is just absolute rubbish.

I was not too happy when I came into this chamber and heard what the Attorney-General was proposing. However, I have now read the letter from the shadow attorney-general, and I realise that there is absolutely nothing else we can do in this instance. We have to give it to the other place to look at, otherwise it will disappear and we will not see it again for years. Certainly, the other side does not want to talk about it; they do not want to have any of this come out. They talk about our having conscience votes. It is just absolute rubbish. Why do they not face up to the facts? They are homophobic. Give them a fair go and let the bill go through.

Mr SCALZI: Sir, I rise on a point of order. I ask the member for Giles to withdraw her remark that members on this side of the house are homophobic. Indeed, it was some Liberals who introduced legislation not to discriminate against—

The DEPUTY SPEAKER: Order! The chair took it that the member for Giles was making a general point, and not nominating anyone in particular.

The Hon. I.F. EVANS (Davenport): I just want to make the point that the member for Enfield's argument, I think, is thin at best. The member for Enfield's argument is that we are so bogged down with the fair work bill that this piece of legislation has to go upstairs because they have more time to deal with it. Of course, it will run straight into the poker machine debate, which is a conscience vote for both sides of the house. The Hon. Nick Xenophon has 28 pages of amendments—

The Hon. M.J. Atkinson: When he's ready.

The Hon. I.F. EVANS: When he is ready. If the member for Enfield thinks that this bill will be rushed through the

upper house, or debated at all in the other place, I think he is kidding the chamber and himself. What will happen is that this bill will go to the upper house and there will be a polite speech by probably two or three members of about 10 minutes' duration—tops. They will flick it to the Social Development Committee, and the government will bury it there until March 2006. I suspect that is what the government will do. If the Attorney-General can convince me otherwise in his response to the motion, so be it. But I suspect that is what the government will do with it.

Mr Hanna: It is a great victory for the minority.

The DEPUTY SPEAKER: Order! The member for Mitchell is out of order.

The Hon. M.J. ATKINSON (Attorney-General): The same sex relationships bill was introduced in this place on 15 September this year. It has my support on the merits. So far as I am aware, no member of the parliamentary Labor Party has asked for a free vote on this matter.

Members interjecting:

The DEPUTY SPEAKER: Order, the member for Kavel and the member for Bright!

The Hon. M.J. ATKINSON: In that case, the free vote provisions do not apply. It became clear from the agenda in this place that this bill could make no progress this year; indeed, it would have difficulty making progress early next year. In Orders of the Day Government Business one will see the fair work bill, which has gone for many days already, and we have many days ahead of us. The child pornography bill is before us. The criminal neglect bill, which is about the suspicious deaths of babies and other vulnerable people, is before us, as is the Criminal Assets Confiscation Bill, among 27 government orders of the day. If this bill was to make any progress, it needed to go to another place.

The bill was introduced in another place on 9 November. If it were dealt with at all stages in this place, it would have to go to the other place, anyway, before it became law. If it makes progress in the other place and passes its third reading, it will have to come to this place and be savaged by the Lion of Hartley—and we are prepared for that.

I received a copy of a letter today from the shadow attorney-general (Hon. R.D. Lawson) to the Leader of the Government in the Upper House (Hon. Paul Holloway). The letter reads as follows:

> The above bill [he refers to the Statutes Amendment (Relationships) Bill] was introduced by the government in the House of Assembly on 15 September 2004. A bill in identical terms was introduced by the government in the Legislative Council on 9 November—

I interpolate, for the reasons I have already given—

> while the second reading of the bill in the House of Assembly was still being debated. We have been informally advised that the government intends to proceed with the Bill in the Council and withdraw the Bill in the Assembly. In our view—

that is, the Liberal Party's view—

> it is highly undesirable to have the same Bill progressing through both Houses at the one time.
>
> Accordingly, whilst we are prepared for the Bill to proceed in the Legislative Council, we will not agree to this course of action while the same Bill is on the Notice Paper in the Assembly.
>
> I would be pleased if you would advise me in writing of the government's intention in relation to this Bill.
>
> Yours sincerely,
> Robert Lawson

I received the letter about an hour ago. I made a note on it for my staff to arrange for me to discharge the bill in the House of Assembly. I have now done so for perfectly sensible reasons and, despite all this debate over almost the last hour, the Liberal Party will support the discharge.

Mr Brindal interjecting:

The Hon. M.J. ATKINSON: Hark! The member for Unley will not support the discharge, but the Liberal Party speakers in this debate have said that they will vote with the government.

Members interjecting:

The DEPUTY SPEAKER: Order! The Attorney closed the debate, member for Unley, and was the final speaker.

Mr Brindal: Which notice of motion was it, sir, and why are members denied the right to speak in the debate?

The Hon. M.J. Atkinson: You should sit in the house and follow its proceedings.

Mr Brindal: Grow up! You do not have to sit in the house and listen to everything.

The DEPUTY SPEAKER: Order! I cannot recall whether I said clearly that the Attorney would close the debate, but I think members would have understood that, if he spoke twice, he closed the debate.

Members interjecting:

The DEPUTY SPEAKER: Order! Members have an obligation to follow what is happening in the house.

The house divided on the motion:

AYES (23)

Atkinson, M. J. (teller)	Bedford, F. E.
Breuer, L. R.	Caica, P.
Ciccarello, V.	Conlon, P. F.
Foley, K. O.	Geraghty, R. K.
Hill, J. D.	Key, S. W.
Koutsantonis, T.	Lomax-Smith, J. D.
Maywald, K. A.	McEwen, R. J.
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.	

NOES (21)

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

PAIR

White, P. L.	Goldsworthy, R. M.

Majority of 2 for the ayes.

Motion thus carried.

INDUSTRIAL LAW REFORM (FAIR WORK) BILL

In committee.

(Continued from 22 November 2004. Page 974.)

Clause 25.

The Hon. I.F. EVANS: My last point on clause 25 is that there is no criteria in the act to give the Industrial Relations Commission any guidance as to how the minimum standard would be set, and that is of great concern to the business

community. There is simply no guidance at all. The legislation certainly covers what the minimum standard may include but does not give any guidance as to how the minimum standard may be set. The business community is quite rightly concerned about that.

Amendment carried; clause as amended passed.

Clause 26.

The Hon. I.F. EVANS: On behalf of the wine industry I would like to raise their concerns about the introduction of carer's leave to the wine industry. We should note that the enterprise agreement with the wine industry employers already provide it. The introduction then will impact mostly on small and medium sized employers. Given that the entitlement is taken out of sick leave, most people would expect it to be of minimal extra cost. Nevertheless it will represent an additional cost to employers in that employees can be absent because someone else is ill in line with what is, as I have discussed previously, a very broad definition of 'family' contained in the bill. I raise those concerns on behalf of the wine industry.

Clause passed.

Clauses 27 to 29 passed.

Clause 30.

The CHAIRMAN: I just point out a clerical error in clause 30 on page 14, line 15 where it reads 'peak body'. That should read 'peak entity' so it is consistent with the rest of the bill. If the committee is agreeable, the chair is having that changed as a clerical error, to replace 'body' with the word 'entity'.

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

Page 14, lines 15 to 17—Delete subsection (1).

This amendment seeks to delete subsection (1) of proposed section 72A (72A being titled 'Minimum standards—additional matters'). This provision as it stands gives the full commission, on application by a peak entity, the power to establish any other standard that is to apply as a minimum standard to all employers and employees. Essentially, that means that the commission can make up a minimum standard on anything it wishes on the basis that a peak entity makes application. The peak entity will either be a business association, as recognised under the bill or the regulations, or a union, as recognised under the bill or the regulations. That will mean that those who are so motivated—more than likely the union movement—will continually apply for the commission to set a whole range of minimum standards on matters that the minister has not felt important enough to put in the bill. We have just dealt with a number of clauses about the power to set minimum standards in relation to parental leave, bereavement leave, carers' leave and annual leave, to name a few, but this provision, section 72A(1), gives the commission the power to set 'any other standard that. . . is to apply as a minimum standard to all employers and employees.'

What this means is that the range of matters that may be covered by the standard is simply not defined in the bill or, indeed, in the regulations. It is capable, therefore, of being as broad-ranging as the mind can conceive and will apply to all employers and employees. There is simply no real rationale for providing a minimum standard that can override a preceding award to the extent that the former is more favourable, which is what the provision allows. Under this provision, a contract of employment will be construed as if it incorporated any minimum standard unless the contract is more favourable to the employee or the contract provisions accord with an award or enterprise agreement. It is unclear to the business community how these provisions are intended to work alongside the provision for a minimum standard to override a preceding award.

The minister might want to address that point when he responds to this contribution. The business community certainly has major concerns in relation to this whole provision. Our amendment seeks to restrict the commission's capacity to make minimum standards on those matters that we have just voted on from clauses 25 to 29 in the bill. We see clause 30 as giving an extraordinarily broad-ranging power to the commission. We do not think the government has made out a case as to why the commission would need such a broad-ranging power, given that it already has the capacity to make minimum standards in relation to those leave provisions that I have already noted.

The amendment seeks to restrict the capacity of the commission so that it cannot make a minimum standard that would be any other standard that the commission may wish to apply after an application of a peak entity.

The Hon. M.J. WRIGHT: We do not support the amendment. This is about minimum standards, and I will come to the shadow minister's question at the end. The amendment proposes to delete the clause in the bill that provides the commission with the capacity to set new minimum standards on application by peak bodies. Currently, there is no provision for additional minimum standards to be created by the commission. As such, new minimum standards that operate across the state jurisdiction may only be established by the parliament. This means that the industrial parties, together with the commission, are unable to work within the system to ensure that it keeps up to date with developments in industrial standards.

The shadow minister asks: 'What do you have in mind?' I do not have anything specific in mind: these things evolve in time. Certainly, those that are in the bill and those that the shadow minister acknowledges are key areas. As to how it works with preceding awards, the full commission can determine that a minimum standard would override awards already in place. What we are setting out in clause 30 through the various elements is that the full commission may, on application by the peak entity, establish any other standard that, subject to this section, is to apply as a minimum standard to all employers and employees. Then it sets out a range of those conditions through the rest of the proposed subsection.

There are safeguards included in the subsections, of which members would be aware, and we think it is an important element. We had a good discussion last night about minimum standards and the role they play and the significance that we see for them. We are talking about those people who are not covered by awards or enterprise agreements. We are talking about those people who, in the main, may be the most vulnerable in the community. We are talking about a safety net, and if and when, through changing circumstances, it may be the case that a further minimum standard be added, this provides the capacity to do so. We would want to provide that provision with the safeguards in place rather than have to come back to the parliament on a regular basis, and I think this is a sensible approach.

The Hon. I.F. EVANS: The minister raises the exact point of why we think our amendment should succeed. This house today has accepted the argument that a certain minimum standard should apply in relation to some leaves. They are now entrenched in the bill as we speak and, if they go through the other place, they will be in the act. What this

provision allows is for that power to be taken out of the parliament's hands, for new minimum standards, whatever is included in them, will not be a matter for the parliament to decide. We are now going to handball that power from the floor of the parliament into the commission.

The political process has virtually no input into the commission as to what we want to see as a minimum standard. If we remove this particular provision it will mean that if the commission wishes to broaden what is considered for minimum standards there will need to be a proper public debate within this chamber; we can all be lobbied by the various interest groups and the parliament can decide whether it wants to expand the matters that are going to be set as minimum standards.

The second point is that the minister talks about its being a safety net. I am not sure whether I am reading this correctly, but the minimum standard under subclause 72(1) will apply to all employers and employees. I am not sure whether the minister's qualification about employees not covered by awards or enterprise bargaining agreements still holds for subparagraph 72(1)(a), because it does not have that qualification following the words 'employers and employees'. It provides, 'all employers and employees'. So, our main concern is the fact that parliament lacks scrutiny over the process about what becomes a minimum standard in the future.

The other concern is that it is very broad in its nature in that it gives the commission absolute discretion to make up any minimum standards it wants without any input from either of the houses of parliament. We do have some concerns in that regard, and that is why we suggest that our amendment should be supported.

The Hon. M.J. WRIGHT: We do not share the same concern that has been expressed by the shadow minister. We are talking about very basic matters, and I imagine that this would happen infrequently—it would not be a regular occurrence.

The Hon. I.F. Evans interjecting:

The Hon. M.J. WRIGHT: Well, that is my view: the shadow minister has a different view, and he is entitled to that. Of course, irrespective of how often these matters are raised let us not forget that we are talking about very basic matters here, and I do not think that these would be being brought forward on a regular basis. When it is brought forward it has to go into the commission, which would hear evidence—obviously, that would be an important part of it. In regard to the question raised by the shadow minister, I refer him to clause 30(7).

The CHAIRMAN: I point out a clerical change to the committee: the word 'body' has been changed to 'peak entity'. That is deemed to be a clerical error.

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: There being 22 ayes and 22 noes, the chair has the casting vote. This particular part of clause 30 applies equally to employer bodies and trade union peak bodies so, in my view, does not discriminate in favour of either; either can apply to have a minimum standard set. I therefore give my casting vote to the noes.

Amendment thus negatived.

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

Page 15, after line 37—

Insert:

(5a) An application may be made under subsection (5) if (and only if)—

(a)—

(i) the relevant employee or employees have been given notice of a pending redundancy or redundancies; or

(ii) the employment of the relevant employee or employees has been terminated for redundancy; and

(b) the application is made within 21 days after the notice is given or the employment is terminated.

What we are trying to do here is tighten up the severance pay provisions in clause 30, which deals with proposed new section 72B. Proposed new section 72A deals with minimum standards, whereas section 72B deals with special provisions relating to severance pay. Firstly, I will speak to the clause generally, and then I will speak to my amendment, and do them both at once—that might save us some time. Generally, the clause provides for a minimum standard for severance payments that will apply in redundancy circumstances that will be set by the full commission.

This provision sets out processes similar to the other minimum standard provisions that the committee have just dealt with. It provides a mechanism that allows a minimum standard to apply only by application under new section 72B(5), and the commission may apply the minimum standard as the commissioner thinks fit. That means that section 72B(6) allows the commission, not necessarily the full commission, to set the minimum standards but allows the commission, however it is constituted, to vary the minimum standard. That means that ultimately the full commission sets the minimum standard for severance pay, and then under 72B(6)(a) it need not be a variation of the minimum standard for severance payment. It does not have to made by the full commission: it can be made by a single commissioner.

So, one must ask the question: if the full commission sets the minimum standard for severance pay, on what basis can a single commissioner come in and change it? It certainly provides uncertainty for business in that respect, and we will get inconsistency from commissioner to commissioner. So, this is a very unusual provision in the way that it is structured. They really do make a mockery of setting the minimum

standard. Ultimately, the business community assumes that with provisions such as these the minimum standard will rarely be the norm. In other words, the full commission will set the minimum standard and then there will be a series of applications before various single commissioners, and the minimum standards will therefore change and vary over time, adding more complexity than needs be the case. That ultimately means not only that the employers will lack certainty as to their responsibility to make payments in the case of redundancy but also that it will add to the potential for disruption in the workplace. The business community believes that it is an unwarranted process that provides for the possibility of a review of all redundancy or severance matters. Our amendment seeks to narrow the setting of severance minimum standards, if you like.

The Hon. J.W. Weatherill interjecting:

The Hon. I.F. EVANS: To save the house time, the government has indicated across the chamber that it will accept this particular amendment which seeks to narrow matters in relation to redundancy agreements. If the government is going to accept it, I will not hold the house longer, and we can proceed to a further clause.

Amendment carried; clause as amended passed.

New clause 30A

Mr HANNA: I move:

Page 16, after line 4—Insert:

30A—Insertion of new Division

Before Chapter 3 Part 2 insert:

Division 3—Special provision relating to casual employment

72C—Special provision relating to casual employment

(1) An employee—

(a) who has been engaged on a casual basis by an employer on a regular and systematic basis extending over a period of at least 12 months (including on the basis of 2 or more periods of employment); and

(b) whose employment is consistent with full-time or part-time work with an employer in the industry in which the employee is employed,

is entitled to apply to have his or her employment converted to full-time or part-time employment.

(2) An application under subsection (1) must be made to the employer in accordance with any requirements prescribed by the regulations.

(3) An employer must not unreasonably refuse to grant an application under subsection (1) and must, in granting the application, offer the employee terms and conditions of employment that are reasonable in the circumstances.

(4) An employer must respond to an application under subsection (1) within 4 weeks after the application is made.

(5) If an employer fails to comply with subsection (3) or (4), the Commission may, on application by the employee, order that the employee be employed by the employer on a full-time basis (as determined by the Commission) on terms and conditions determined by the Commission.

(6) If an application under subsection (5) proceeds to hearing and the Commission is satisfied that a party to the proceedings clearly acted unreasonably in failing to discontinue or to settle the matter before the hearing concluded, the Commission may, on the application of the other party to the proceedings, make an order for costs (including—if relevant—the costs of representation) against the party.

This relates to those people who are in casual employment. It is well known that the growing proportion of people in casual employment have less protection than others in relation to their work rights. Members who have listened to people in that position would have heard countless stories of minor disagreements with the employer or the shift supervisor leading to no shifts being offered next week. Therefore, there is an arbitrariness and a precariousness about casual employment, and my amendment seeks to do something about that. Again, I refer to the Labor Party platform, which was adopted at a conference in the year 2000, I think it was. In that document, under the heading 'Precarious Employment', the question of casual work is specifically dealt with. It begins:

> Labor believes governments must address the dramatic increase over the past decade in precarious employment which includes forms of employment such as casual and labour hire. The excessive use of precarious employment has negative implications for many workers including workers losing access to many service-related entitlements; they are also disadvantaged in their ability to attain long-term financial stability; they have less access to training and skills enhancement. Artificial arrangements denying permanency for workers are not acceptable and measures must be taken to protect a worker's security of employment. Legislation will provide a framework for the regulation of precarious employment including: requiring the Commission to consider precarious employment with a view to creating fairer and more secure forms of engagement; preventing the abuse of precarious employment; ensuring that casual employees have access to unfair dismissal remedies.

I could not have put it better than the Labor Party platform, to which every member on my left, ironically, is bound to adhere. The amendment I bring in specifically picks up the point about casual employees having access to unfair dismissal remedies, and more secure forms of engagement. It does this in a very moderate way, members will be pleased to know. I say that when casual employees have been with the employer on a regular and systematic basis, extending over a period of at least 12 months, and the employment is consistent with full-time or part-time work in that industry, the workers should be able to apply to the boss to have his or her employment converted to full-time or part-time employment.

There are a couple of points to note about that. First, I am suggesting that we are only talking about those situations where there is regular and systematic employment. There is plenty of case law on that, so it is quite easy to determine what that means in practice if you take a particular case. For example, for somebody who works every Friday night and every Saturday in a department store, a supermarket or a fast food outlet, after 12 months they would be able to apply to the employer for permanent status after that 12 months. According to this amendment, the employer would be able to refuse that, if there were good reasons, but would not be able to unreasonably refuse.

So there is another escape hatch, if you like, another moderation of the principle, by allowing the employer to reject the conversion to permanent status, but there has to be a good reason. If there is a dispute about it, then, as you would expect, the appropriate adjudication would take place in the commission. The matter would then be adjudicated with a similar process to unfair dismissal proceedings. It is nothing like unfair dismissal proceedings in the substance of it, but a similar process would apply in that an application would be made to the commission and, if it could not be worked out between the parties in the course of the process before the commission, the commission would then have to make an order and, if need be, make an order for costs. It is a very reasonable proposition.

I just want to stress those main points. First, it is Labor Party policy—it is in the platform: Labor Party members are bound to vote for it. Secondly, it only applies to people who

have been working for an employer on a regular and systematic basis for at least a year. Thirdly, it gives the right to an employee to apply for permanent status with the additional protections that permanency entails, and the employer can refuse, but the employer cannot refuse unreasonably. If there is a dispute, it goes to the commission. What could be fairer than that? There is nothing forcing anyone to do anything that is unreasonable or unfair. It provides an opportunity for casual workers, who are for most practical purposes employed on a permanent basis, to have legal protection provided under law if, for example, they are arbitrarily dismissed. I have set out the meaning of my amendment, and as I have indicated it is clearly within the Labor Party platform. I urge all fair-minded members to vote for it.

The Hon. M.J. WRIGHT: The government does not intend to support the amendment of the member for Mitchell. Having said that, this is a relevant issue, and in the objects of the act the government recognises it, in part. The member for Mitchell highlights an issue of genuine concern in the community; however, I am not convinced that his proposal would successfully deal with the issue. The other point I make is that, although the government did not accept all the recommendations in the Stevens report, a decision was made to adopt the recommendation not to legislate for casual conversion provisions in both the draft bill and the final bill presented to the parliament. This was not included in the draft bill which went out for consultation because we were persuaded by the argument in the Stevens report in respect of that.

The member would probably be aware that there are industry media reports indicating that the existing casual conversion provisions have not been overly successful. It may well be that this is so because casual employees are unwilling to identify themselves as wanting to be made permanent, for whatever reason. As I have said, we have determined to amend the objects of the act to address community concerns about employment security, and those objects provide a guide to the commission. I acknowledge that this is an important issue raised by the member for Mitchell and it deserves to be acknowledged. However, having said that, in the process that we went through we had a good look at this and ultimately decided not to put it in our draft bill.

The member for Mitchell has also referred on a number of occasions to the Labor Party platform. I do not have that before me, but I am not sure that the arguments or the points that he puts forward in regard to this particular issue are necessarily correct. It has just been drawn to my attention that it is not in the section that says 'Labor will do'. Certainly, there is reference—

Mr Hanna: All care and no responsibility!

The Hon. M.J. WRIGHT: No, not at all. I acknowledge that this is a very important issue, but I also acknowledge that it is not something on which we have said we would legislate. As I said, we have recognised in the objects of the act the importance of this. For the reasons I have outlined, I do not support the member for Mitchell's amendment.

Mr HAMILTON-SMITH: I understand where the member is coming from in moving this amendment, but I do not agree with it for the reasons I am about to outline, although I expect that it would be welcomed by the union movement. This has been a long held object of the union movement. In fact, I recall having to intervene in a matter before the Industrial Commission about eight or nine years ago. I think Mark Butler was representing the Miscellaneous Workers Union, and I had to intervene on behalf of the childcare industry to prevent this very provision from being inserted in the award. Interestingly, in that particular case, a deal had been done between the union and Business SA (the chamber of commerce, as it was known then). It was a done deal, but the association, the national body of which I was secretary, had to intervene in the proceedings to stop it from occurring. The commission graciously agreed with our argument and the matter did not proceed.

It relates to the point that we debated last night about the fact that peak bodies need to include associations other than Business SA, because there are other associations which from time to time have an interest. This is a longstanding issue. There are several reasons why I do not think this provision will work. Employers could find a way to get around the construction that the member is putting to us by way of an amendment if they really want to. For example, before the 12-month period expires, the employer could not continue with that casual member's employment and put on a new employee, or in some way or another the employer could obfuscate the goal of the employee to be declared permanent. Employers can find ways to obstruct this proposed amendment. The government has virtually acknowledged that. There is an element of unworkability in trying to compel an employer to accept a casual as permanent if the employer does not want to do so.

However, there are other more practical reasons. A lot of businesses need the flexibility of casuals in order to survive. A classic example is the restaurant industry. A restaurant may have 50 tables, but it may not know whether it will have 15 or 50 tables filled on a particular evening. The restaurant might have bookings for 20 or 25, and they really just do not know how busy they will be. The problem is that, if they have rostered people on permanent part-time or on permanent to wait on tables or to cook and suddenly the numbers are well below what they expected, they simply cannot roster. These people are there and there is nothing for them to do, but the proprietor cannot send them home, because there are all sorts of constraints on permanent employees in terms of the degree of notice required before they can be sent home and brought in, and so on. There is another side to this, and that is where the restaurant suddenly gets a rush and needs to call more people in. The benefit of having a casual is that they can often ring up that person at very short notice and ask how soon they can come in.

In a lot of awards there are constraints in regard to rostering for permanent part-time people that limit one's flexibility. That same argument about a restaurant can be applied to a childcare centre, where they do not know quite how many children they will have in or out on any particular day, and a whole range of businesses, particularly in the services sector, where they need the flexibility that only casuals can offer. By having to put people on permanent part-time, a small business can quickly tie itself up in knots.

Another important point is that casuals are paid considerably more than a permanent part-time employee expressly for the flexibility that they often employ. They are better remunerated. Employees often want that better remuneration and, indeed, they often enjoy being casual. They enjoy being able to have a day off when they want to and not having to be subjected to a rigid rostering process. They enjoy having the extra money in their pocket and the extra flexibility that being a casual affords them. If a casual employee is a star and stellar employee, quite often an employer will put them on permanent part-time. Obviously, if you have a real champion, you will want to keep that man or woman on one's staff team

and will find ways to induce them to stay. If that means offering them permanent employment, you will. But often you will find a very good employee who says, 'No, I do not want to be permanent,' believe it or not. I know that may seem remarkable, but when I was an employer I had a string of employees who said, 'I would really like to keep my hours up, but I want the flexibility of being casual, and I particularly enjoy having the money in my pocket.' The reality is that different employees see it in different ways. A lot want permanency, and a lot want the extra money in their pocket and the flexibility. The fact is that one cannot just make one size fits all rules.

For a range of reasons, I think this amendment will not work in practical terms, but it also probably will not suit a lot of employers and employees. However, I am particularly interested in the government's reaction to the proposition, because I would have thought that it would support the amendment. I commend the government for not supporting the amendment, because I think it is a pragmatic and sensible decision. But I do note the member for Mitchell's argument that it does seem to sit well within the Labor Party's platform and within the principles that the Labor Party purports to uphold. From that point of view, I am a little surprised that the Labor Party is not supporting the member for Mitchell. In that respect, I think the member for Mitchell might be in better touch with the union movement than the Labor Party on this matter. Nevertheless, I am pleased that the government has decided not to support the amendment, because I think it is unworkable.

The Hon. I.F. EVANS: The opposition will not be supporting the amendment for this very simple reason: if the government does not have the courage to support its own policy, why should the opposition? It is clear that it is the government's policy. I do not doubt for a minute the member for Mitchell's word that he has quoted from the document that was passed at the conference and taken to the election. We had the rather comical situation where the ministerial adviser was advising the minister what was the party policy. After 2½ years of negotiation on industrial relations we get the debate on the floor, and the minister needs to be reminded by either the member for Mitchell or his adviser what was in the party policy. Then we had the 'get out' clause: do not worry minister, it was not in the section that said Labor will do it; it was just in the rest of the policy. The opposition will not be supporting the member for Mitchell's amendment, at least on the basis that, if the government will not support its own election policy, why should the opposition?

Mr HANNA: I am not expecting the opposition to do the Labor Party's work for it, but I am expecting the government to do the Labor Party's work for it. Some spurious claims were made by the member for Waite. This amendment contains nothing that would deter the use of casuals. Obviously, it is a very useful device in many industries, whether it be child care, hospitality or retail—and the list goes on. This amendment has nothing to do with the situations that the member for Waite gave as examples, where an employer suddenly realises there is extra demand for the service or the product and calls in some casuals. The amendment only deals with the situation where there is regular and systematic employment with an employer for at least 12 months.

However, the member for Waite was correct on one point: he said that the union movement supported this concept. Indeed, I would like to quote the United Trades and Labor Council leader, Janet Giles, in response to the original government draft bill. She said as follows:

> The UTLC is particularly concerned that casual employees are almost completely ignored in the bill, despite making up more than 30 per cent of the work force. The UTLC wants to see, amongst other measures, provisions to enable conversion of casuals to permanents where appropriate.

I have not brought this proposal directly as a result of conversations with those at the UTLC. It has been a much broader consultation with workers, particularly young workers in casual employment. I also point out to the minister (even though his heart seems set in stone in relation to this provision) that it is not exactly novel in South Australia. The Australian Services Union pioneered a breakthrough in the SA Clerks Award in allowing casual clerks, who were employed on a regular and systematic basis, to elect to convert to permanent employment after 12 months. Just as with my amendment, there was a stipulation that employers could not unreasonably refuse a request for conversion. That initiative began in 2000.

Deputy President Stevens (as he then was) handed down a decision, and the South Australian Full Commission made a final determination in 2002. I refer to the Clerks (SA) Award Casual Provisions appeal case, 3 June 2002. My point is that this is not unworkable. It has been part of our law for a couple of years for those workers fortunate enough to have a union advocating strongly on their behalf and succeeding in the commission. So, it is not a novel proposition. I am not dreaming this up: it actually works in practice in South Australia and brings justice for casual workers here. So, if the government will not support it on the basis that it is Labor Party policy, let us do it just on the basis that it is here in South Australia; that it works; and that it is a rational step forward to bringing greater justice for casual workers.

If the government says that it will not do this and that it is content with putting something about it in the objects provision of the act, I really would like to know what else it will do to support the rights of casual workers at law.

The Hon. G.M. GUNN: I listened with great interest to the member for Mitchell, and I am aware that he holds very passionate views. However, this parliament must be very careful that it does not put in place, or continue to put in place, impediments to people obtaining casual work, whether it be on a regular or part-time basis. One of the difficulties is that the more barriers and conditions that are placed before a small employer the less likely they are to employ someone, and they will go to all sorts of lengths to make alternative arrangements.

Most small businesses, whether they be rural or otherwise, normally have one or two principals whose workload is substantial. They do much of their administrative work after hours, and the last thing they want is to be confronted with more red tape or compliance forms. In some cases, they believe that it is better to run the business down a bit than to put extra people on, because it is all too hard.

I also make the point that the minister has probably been reading today's *Australian*, which has the headlines 'ALP's search for lost souls' and 'Labor pains over change of heartland'. I say to the member for Mitchell: read the front page of today's *Australian*. The article states:

> Plumber Darren Hayes is a member of the new middle class Mark Latham has to win back if he is to stand any chance of rescuing the Labor Party from permanent opposition.
>
> Once a solid Labor voter, Mr Hayes has joined the army of self-employed contractors, consultants, franchisees and entrepreneurs outnumbering paid-up union members who have shifted allegiance to the Coalition. Labor's difficulty is that many of the workers rights

the party championed for the best part of a century are the very things Mr Hayes now finds are an impediment to his business.

That is the very point my colleague made. Obviously, the minister has read this article. This is absolutely what is causing the problems—chapter and verse. I suggest that the member for Mitchell should go to the library and read this article for his edification; he will then be better informed. It also states that Latham has a 27 per cent approval rating. I draw this to your notice, Mr Chairman, in relation to the matters to which you have been giving your attention during the course of this debate, because these are significant matters which this parliament cannot overlook if it has at heart the interests of employing South Australians and married women who want to work only part-time and ensuring that young people get jobs, even if they are part-time or casual.

If you want to see a section of the industry that employs a huge number of casuals, go to the accommodation industry, which is a very significant employer in my constituency, where there are a lot of motels. These people do not want to work full-time. They want flexibility, and the employers want flexibility, and that suits everyone.

I understand where the member is coming from. I am sure elements out there will support him and reward him at the right time for his actions—at the expense of their traditional friends. We need to dispense with these impediments and not put more hurdles on the road of employment.

The committee divided on the new clause:

AYES (3)

Hanna, K. (teller)	Lewis, I. P.
McFetridge, D.	

NOES (40)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Brindal, M. K.
Brokenshire, R. L.	Buckby, M. R.
Caica, P.	Chapman, V. A.
Ciccarello, V.	Conlon, P. F.
Evans, I. F.	Foley, K. O.
Geraghty, R. K.	Goldsworthy, R. M.
Gunn, G. M.	Hall, J. L.
Hamilton-Smith, M. L. J.	Hill, J. D.
Kerin, R. G.	Key, S. W.
Kotz, D. C.	Koutsantonis, T.
Lomax-Smith, J. D.	Matthew, W. A.
Maywald, K. A.	McEwen, R. J.
Meier, E. J.	O'Brien, M. F.
Penfold, E. M.	Rankine, J. M.
Rann, M. D.	Rau, J. R.
Redmond, I. M.	Scalzi, G.
Snelling, J. J.	Stevens, L.
Thompson, M. G.	Venning, I. H.
Weatherill, J. W.	Wright, M. J. (teller)

Majority of 37 for the noes.

New clause thus negatived.

Clause 31.

The Hon. I.F. EVANS: My proposed amendment deals with multi-employer agreements. I have already lost that principle on an earlier division so I have no need to proceed with amendment No. 23 standing in my name.

Clause passed.

Clause 32.

The Hon. I.F. EVANS: I just want to check something. One of the business associations has raised with us the fact that emphasis is placed on the 'registered association of employees' involved in the negotiation of enterprise agreements, indicating that non-registered associations have no rights in this particular area. That principle then is only one step away from the registration applying also to employer groups, which alarms some of the business community, because at the present time many employer groups are not registered in the state. I wonder whether their understanding of that provision is accurate and why the minister has decided to limit it to registered associations of employees and not deal with non-registered associations of employees.

The Hon. M.J. WRIGHT: The act does provide for registration of associations, whether they be employee or employer. If you want to participate in the system, you need to be registered.

The Hon. I.F. EVANS: But why have you narrowed it that way? What does it matter as long as they are an employee or employer association? That is the point the business association raises. What does it matter whether or not they are registered? If they are a recognised business association or recognised employee association, why should registration matter at all, is the point the business association raises. The other point it raises is that under object (ka) of the act—my favourite object—which is to encourage membership of representative associations of employees and employers, the object does not say 'to encourage membership of registered representative employer or employee bodies.' It talks about both.

This particular provision unduly emphasises, on the employee side of the argument, at least, the registration component, and I am just wondering why you have done that. I understand your previous answer, but it really does not answer the question of why you have done that. What does it matter?

The Hon. M.J. WRIGHT: We think it a worthwhile thing to have in the act that to participate in the system you need to be registered. The shadow minister has made argument in other parts—in fairness, not related to this particular area—about uncertainty. The point that I would make in regard to this is that it will provide greater certainty, which I think is an important feature to have.

Mr HAMILTON-SMITH: I am particularly interested in this part, having been involved in an instance where, as president of an association that was not registered, I was trying to intervene in a matter in the commission and was denied the right to do so and had to intervene in a separate capacity on behalf of a national body that was registered in the national court. What is the cost of registering and what is the red tape involved in registering? If an association of employers suddenly finds that it wants to intervene in a matter and it is not registered, can it quickly get through the red tape of registering and what cost will be involved so that at short notice it can actually be authorised to participate?

The Hon. M.J. WRIGHT: I suspect that the member for Waite is raising a similar point to those that have been raised by the shadow minister. We are of course talking here about negotiating enterprise bargaining agreements and we simply make the point that, if parties are not registered, that can create greater uncertainty.

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

The Hon. I.F. EVANS: Just before the dinner adjournment my colleague, the member for Waite, asked the minister a question about the cost to register an association. If the minister could address that we could then move on to the next clause.

The Hon. M.J. WRIGHT: That is correct, and thank you for reminding me. The advice I have received is that there is no fee.

Clause passed.

Clause 33.

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

Page 17, after line 25—insert:

(3a) An employer cannot be required, as part of any negotiations under this Part, to produce any financial records relating to any business or undertaking of the employer.

Clause 33 deals with what the government calls best endeavours bargaining and what we on this side call 'best of luck' bargaining. I will speak generally about best endeavour bargaining, or best of luck bargaining first and then I will come to my amendment; that will save the committee some time.

The government seeks to introduce a best endeavours bargaining process not dissimilar to their federal counterparts who have, I think, a different name for it—it might be good faith bargaining, from memory. Through best endeavours bargaining, they seek to get the parties who are negotiating an enterprise bargaining agreement to use their best endeavours to negotiate an agreement, whatever that means.

I want to walk through some of the business associations' concerns in regard to the best endeavours bargaining provision. The wine industry makes a very good submission in relation to this point and these are their comments:

We make comments that with the brief introduction of good faith bargaining in the federal sphere this provided a period of increased litigation as the parties (unions) sought the Commission's assistance to determine the boundaries of such a provision and develop case law in the area. We have no reason to doubt that the inclusion of the term 'best endeavours bargaining' within the bill will also lead to a substantial testing of the term within the Industrial Relations Commission leading to challenges, disputes, disruptions and delays within the workplace prior to the making of an agreement.

What evidence is there to suggest that the current system of enterprise agreement making requires this provision? We consider that no case has been made out to justify such a provision. Current enterprise agreement wine industry employers are extremely concerned with the possibility of its introduction, and small and medium sized employers (or their representatives) will not be encouraged into enterprise agreement making with a requirement such as this.

s76A(1)—SAWIA [South Australian Wine Industry Association] is concerned with one reading of the bill that there is no opting out provision [in this particular clause]. In other words, if one party wants to 'resolve questions in issue' then the parties are duty-bound to the best endeavours bargaining provision. Providing a greater role for the Industrial Relations Commission as specified in s76A(3)—(7) is in our view an unjustifiable intrusion into the enterprise agreement process that simply provides for and legitimises a role for third-party intervention to be used.

Recent wine industry experience indicates that this type of provision will provide outcomes that are not in the interests of the business but the view of the Commission to resolve an impasse in the negotiation process. This provision provides a legitimacy for the Commission to conciliate and/or arbitrate an outcome, effectively imposing a third-party outcome on the business. The process of enterprise agreement making will no longer resemble its former self. Embarking on the process of endeavouring to negotiate an enterprise agreement will no longer have as an outcome 'failing to reach agreement'. The Commission will determine it for you. Once on the enterprise agreement merry-go-round you can't get off!

The whole concept of enterprise agreements, as we have come to know them in South Australia, changes for the worse, not the better, with these provisions. The wine industry indicates that the South Australian system effectively proposes an arbitration system at both the award level and enterprise agreement level. Award regulation is governed by a set of wage fixing principles, and enterprise agreement determination by the Commission is not so regulated, **any outcome** is potentially possible (see s102(2) Industrial Relations & Employee Relations Act 1994). The new IR system becomes a lower rates system (award) and a higher rates system (enterprise agreements).

The wine industry employers do not support the introduction of best endeavours bargaining or intervention by a third party to determine (impose) outcomes as part of an agreement because it strongly promotes division within the workplace leading to the promotion of adversarial relationships, lost time, increases costs in defending actions within the Industrial Relations Commission and leads to unknown costs arising out of entering into agreement making or renewing an agreement. This is unacceptable to wine industry employer interests within South Australia.

That gives a pretty good summary of the industry concerns in relation to best endeavours bargaining. Now I want to walk through the clause itself, and some of the concerns of the wording of the clause itself. The clause states:

The parties to the negotiations. . .

There is nothing in here that indicates when you become a party to a negotiation. So, as the business community has put to us, the union official may be at your workplace or in your office with the manager to talk about an issue, and on the way out they say, 'I want to catch up with you later about that enterprise bargaining agreement.' Are you at that point a party to negotiations? Have the negotiations started? No-one is sure. When do you become a party to the negotiation? There is no formal notification process so the employer does not know when he or she is suddenly a party to this negotiation. The clause goes on:

The parties to the negotiations must use their best endeavours. . .

Well, what are you best endeavours, and who is going to judge your best endeavours? No-one knows that. That is very much open to interpretation. It is a bit like saying, 'Footballers must try for the whole match.' Who is to judge that? No-one really knows. Then it goes on:

. . . use your best endeavours to resolve questions in issue.

How would you know at the start of negotiations what the questions in issue are? So, even in the first clause, there are at least three issues there that will be open to dispute and interpretation by the commission. The clause goes on:

In particular, the parties to the negotiations—

whomever they happen to be—

or their duly authorised representatives must meet at reasonable times. . .

There is a clause for a dispute. What is a reasonable time? It continues:

. . . and at a reasonable place for the purpose of commencing and furthering the negotiations.

This is interesting. It says:

In particular, the parties to the negotiations. . . must meet. . . for the purpose of commencing. . . negotiations.

So, the employer has no choice. Once the union decides that they wish to enter a best endeavours bargaining process (or, as we in the opposition call it, 'best of luck bargaining process') the employer has no choice, because new clause 76(2)(a) says that they must meet at reasonable times and at reasonable places for the purposes of commencing the negotiations. So, you are locked in. You are on the train to a best endeavours bargaining result, whatever that may deliver. Then the next clause says:

. . . must state and explain their position on the questions at issue to the other parties to the negotiations.

Paragraph (c) says:

. . . must disclose relevant and necessary information.

It is that clause, in particular, that concerns the opposition because we believe that that is broad enough to allow the union movement to go to a business and say, 'Now we are starting this best endeavours bargaining process with enterprise bargaining agreements we want to see your financial records, because you, Mr Employer, are saying that you cannot afford a 4 per cent wage rise, or whatever the new claim happens to be. Under the bill you must use your best endeavours to resolve the questions. We do not believe you that you cannot afford a 4 per cent wage rise so we want to see the trading accounts of the business and under clause 2(c) you must disclose the relevant and necessary information.'

So, our amendment seeks to narrow that to some degree so that the employer does not have to hand over financial information. They do not have to produce any financial record relating to any business or undertaking of the employer. We are of the view that it is the employer's business what their financial position is, and not necessarily the union's to know. They must apparently act openly and honestly. I am not sure how you actually judge that, whether someone is acting openly. The clause continues:

> They must not alter or shift the grounds of negotiation by capriciously adding matters for consideration or excluding matters for consideration.

So, again, all of these subjective terms in this particular provision are making manna for heaven for industrial relations lawyers to go to the commission and argue about the meaning of these particular terms. So, the opposition has major concerns about the whole best endeavours bargaining process. If you follow down the clause to clause 76A(6), then essentially it says that the commission may take on application:

> . . . and make any determination in relation to any matter that the parties have failed to resolve during their negotiation.

That means that at the end of the day the union knows that the worse case scenario is that they will get an arbitrated decision by the commission. The union can simply sit there and play the game and ultimately they will get an arbitrated decision out of the commission. The employer has no choice but to go into the negotiations because the start of the provision says that they must enter the negotiation. Then, at the end of the day, if the negotiation does not go the union's way, ultimately they can sit there, still going through due process, but sit there knowing that the absolute worst case scenario is that they are going to get an arbitrated decision, which means the business will get an enterprise bargaining agreement that it never wanted to enter, and then never wanted imposed on the business in the first place.

Mrs Geraghty interjecting:

The Hon. I.F. EVANS: The member for Torrens says that that is an invalid argument. Well, I am not quite sure why a business should have to enter an enterprise bargaining agreement negotiation against its wishes. That is surely up to the manager of the business to decide whether they want to enter an enterprise bargaining agreement or not. They should at least have a choice, and then once they do not have a choice under your legislation, member for Torrens, they go through a process, and when they get to the end of the process and they say, 'Mr Commissioner, I actually do not want this agreement to apply to my business. After all, it is my business. I do not want the arbitrated agreement. I do not want it.' The commission can then impose it on them. There is no opt-out clause.

Why would any employer enter an enterprise bargaining agreement negotiation process where there is no opt-out provision? They are forced to go in it against their wishes, and they are going to get an arbitrated result on any matter at all that is not resolved. On this side of the chamber, we say that this provision, which is called best endeavours bargaining, actually undermines business confidence in the enterprise bargaining agreement process. That is why we on this side of the house call it 'best of luck bargaining', because any business which is forced to go through this process, well, good luck to them, best of luck to that business, because they will get done over. It is a clause that is very much undermining the enterprise bargaining process. It is certainly anti business.

Mrs Geraghty interjecting:

The Hon. I.F. EVANS: I am arguing on behalf of all the industry. If the employer voluntarily enters into the enterprise bargaining agreement process, then I think the argument is different, but they should still have an opt-out provision. I still do not see any reason why there should not be an opt-out provision. Therefore, we are totally opposed to this clause. We think this is one of the worst clauses in what is a pretty ordinary bill. We are seeking to amend it to at least protect—

Mrs Geraghty: Vote against it.

The Hon. I.F. EVANS: We will be voting against this, which may come as a surprise to the minister, and we will be seeking the house's support to protect the financial information of small business which we think has no role to play in this particular process.

The Hon. M.J. WRIGHT: It does not come as a surprise. We believe that this is a sensible proposal. It offers guidance to the parties in negotiations. It is a hard test to pass for there to be arbitration. It is not going to be simply a matter of somebody putting up their hand. The shadow minister has referred to a number of different issues, and I will try to cover some of those. I may not be able to cover all of them because, obviously, he traversed through a range of areas. Section 76 actually sets out when the negotiations start. That is one of the issues that was raised by the shadow minister.

There is a formal notification process, and that is well set out in section 76 of the act. He also spoke about best endeavours—they are indicated by subsection (2). We think this a sensible approach and deserves to be supported. Another one of the issues that was raised by the shadow minister was in respect to relevant and necessary information. Under the existing law of discovery, the commission may gain access to and potentially require the exchange of some financial information about businesses involved in enterprise bargaining negotiations. Also, the federal commission has the power to gain access to and potentially require the exchange of some financial information about businesses under section 111S of the Workplace Relations Act.

So we do not share the concerns that have been expressed by the shadow minister. The proposal in the bill is not open-ended. Subsection (2)(c) of the proposed best endeavours bargaining provisions requires the disclosure of relevant and necessary information. A significant aspect of this proposal is simply setting out in legislation what is good practice. Surely, if one party to negotiations is trying to convince the other about an issue, bringing forward factual information to assist the other party's understanding of that is a positive thing. It is one thing to say no; it is another thing to provide evidence as to why you are coming forward, whether it be a no or a yes.

The shadow minister also referred to concerns about not being able to opt out—that is not correct. If people have reasonably decided that they do not want to pursue an agreement that is something that would be a very significant factor if an application for arbitration is made. It is highly unlikely that that factor would, all things being equal, mean that an arbitration would occur. So it is not simply going to be an automatic thing that arbitration would occur. I would not expect that this would be a regular occurrence.

With most negotiations there is an attempt to reach a point of agreement. But, what do we do if there is no attempt to do that? We have a system of enterprise bargaining and we simply cannot tolerate a situation of the law of the jungle. That is not a system that is going to bring success. We do not believe that the law of the jungle should apply in industrial relations, and that outcomes should simply be determined by might is right. If you have had a fair crack at negotiation, the commission would take account of that. It is set up not to just sit back and wait—you must genuinely try to resolve it. If you ask for arbitration you must come to that position with clean hands, and if you do not you probably would not be granted arbitration by the commission.

Mr WILLIAMS: Can the minister point out which is the opt-out clause? Where can an employer choose to opt out?

The Hon. M.J. WRIGHT: As I said, it would be a significant factor if an application for arbitration was made.

The Hon. I.F. EVANS: You are saying that there is no guaranteed opt-out provision. Just because an employer seeks to opt out it does not mean the commission will let them.

The Hon. M.J. WRIGHT: I have said that if people behave reasonably and decide that they do not want to pursue an agreement, that is something that would be a very significant factor that is taken into account by the commission. That is the way the commission operates, whether it be in regard to this particular area that we are looking at in the bill, or other areas.

The Hon. I.F. EVANS: This is the point, minister, isn't it? You are saying that, if an employer acts reasonably in the negotiation about an enterprise bargaining agreement, the best the employer is going to get is a consideration by the commission as to whether the employer can withdraw. I put it to you that surely the case should be that, when you are entering an enterprise bargaining agreement, if the employer in his or her own mind gets to the point that they believe they have acted reasonably and they wish to withdraw at that point, they should be able to withdraw without the risk of the commission arbitrating an agreement over the top of them that they do not agree with.

That is the difference between the two positions. The minister's position is: 'Don't worry, Mr Employer, you just act reasonably and the commission will take that into consideration, but you might still get an arbitrated agreement against your decision that imposes costs or complexities on your business that you simply do not want.' Our position is that, once the employer seeks to withdraw, they should be able to withdraw. After all, it is their business. There is a distinct difference in those positions. There is no opt-out provision in this clause—it is as simple as that.

The Hon. M.J. WRIGHT: That may well be. I do not think anyone is arguing that we have a different philosophical position from yours. I argue that if they act reasonably they will probably reach an enterprise agreement, anyway. I also argue that if they act reasonably that will be taken into account by the commission. I will cite some examples of how this has worked in other states, because this has been painted as some great tragedy.

The advice I have received is that in New South Wales about 345 state agreements were registered in 2003, and in the last three years there have been five arbitrations about bargaining (three in the public sector and one in local government). In Western Australia, I am advised that about 300 state agreements are registered each year with only one arbitrated outcome arising. In Queensland, the advice is that 982 state agreements were registered in 2003-04 and there were 37 applications for arbitration about bargaining. This is not a common occurrence, but if you are going to avoid the law of the jungle this is an important feature.

The Hon. I.F. EVANS: I am not particularly interested in what happens in industrial relations systems in the other states. If businesses want to try their luck in the other states' industrial relations systems, I wish them well. It would be sad for the state to lose them, but I do not think too many businesses are rushing to the Eastern States to get involved in industrial relations systems in Queensland, New South Wales or Victoria which have all been amended with these types of provisions by Labor governments over the years. We are tail-end Charlie in regard to debating these provisions, because your Labor government was the last one to be elected in the timing of the electoral cycles. Yours is the last Labor government to seek to introduce these provisions. So, just because they are in other states does not mean that the business community supports them.

The point the minister does not raise is how many businesses have caved in to the pressure of costs in relation to negotiations. So, rather than continue trying to arbitrate or negotiate an agreement, they decided to cave in to the negotiations to get it off their plate so that they can get back to work and generate a dollar through the business and not be tied up in the commission arguing some point about the best endeavours bargaining process. The interstate figures do not mean a lot to me, because I know the parties to the negotiations will use the pressure of cost and complexity on businesses as a tool in the negotiating process. 'We can keep the negotiations going for a while; it is more costly for the business; it will eventually cave in rather than continue with the process.'

We see this as one of the worst clauses in the bill. We do not think a business should have to disclose its financial records. You can imagine a business going to an employee and saying, 'The unions say that the employees need another 4 per cent wage rise to run their households,' and the employer says, 'We don't believe that. Why don't they just disclose their financial position to the employer and prove their case that the employees cannot afford their current standard of living and need a 4 per cent wage rise?' I am not arguing that that should happen at all. An employee's financial information is theirs and theirs alone in my view, but on the other hand neither should the employer have to cough up their financial information to the union, because it would be manna from heaven for the union movement to be able to get better access to employers' wage and financial records so that they could use that for other negotiating issues and purposes down the track. So, the opposition is totally opposed to this. We seek the support of the committee to protect businesses from having to disclose their financial records.

The Hon. M.J. WRIGHT: As I said when I cited the examples in the other states, it certainly highlights that no great mischief has been caused by this measure and that this

is not a regular occurrence, as has been suggested. We are talking about situations where either the negotiations have become intractable or a party has unreasonably failed to do what they said they would; and there are compelling reasons to arbitrate, taking into account how the parties have behaved; and how genuinely they have participated in the bargaining process, that is, how genuinely they have engaged with the other parties and acted in accordance with the requirements of subsection (2) of the provision. In making such an assessment, particular emphasis is placed on the conduct of the party seeking the arbitration. They must come seeking arbitration with clean hands. All of the foregoing must be proved to the commission.

We have a system of enterprise bargaining. This measure has worked in other states. I have cited examples which show that it is not a regular occurrence. No great mischief has been caused as a result of this measure being in other states' legislation. I guess it is a simple matter of: if you support the law of the jungle you continue with the system that you have currently or, if you believe that is not the best way under the system of enterprise bargaining, best endeavours bargaining is an important feature.

The Hon. I.F. EVANS: The minister says that under section 76 of the current act there is a notification process for the commencement of negotiations for an enterprise bargaining agreement. The way I read section 76 of the act, the formal notification procedure applies to the employer only. The clauses say that 'an employer must before beginning the negotiations', 'if an employer is aware', and an 'employer who negotiates'. Section 76(6) finally addresses what happens if the union wants to start negotiations. It simply says:

> This section does not prevent employees or an association of employees [we would call them unions] from initiating negotiations on a proposed enterprise agreement, but in that case the employer must, before entering into the negotiations, give the notice. . .

If the employee association—the union—commences negotiations, it does not have to do anything. So, the employee association does not have to issue a formal notice to the employer. All the employee association has to do is raise with the employer in a very casual way, even at another meeting, that it wants to talk about an enterprise bargaining agreement and, as far as the union—the employee association—is concerned, the negotiations have begun. Whether or not the employer understands that is a totally different matter.

My argument, I believe, stands: under section 76 of the current act there is no formal requirement from the employee association to notify the employer; there is one, however, for the employer to notify. Therefore, they will get roped into the new section 76A. They will be, basically, mandated into a best endeavours bargaining process, and the opposition is totally opposed to it.

The committee divided on the amendment:

AYES (21)

Brindal, M. K.	Brokenshire, R. L.
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.	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

Brown, D. C.	White, P. L.

Majority of 1 for the noes.

The CHAIRMAN: The chair is in a situation where the chair does not have to give a casting vote, because one member is absent. The minister has given me an assurance that between the houses he will look at some aspects relating to best endeavours bargaining, including issues such as when it starts and how one defines it and, in terms of businesses disclosing information, to look at some of the provisions dealt with federally that relate to not being oppressive, and not involving an invasion of private rights and related matters. Even though the vote is 21 ayes to 22 noes, I still hold the minister to his commitment.

Amendment thus negatived.

The Hon. I.F. EVANS: I indicated previously that the next amendment standing in my name was consequential; it is not. I move:

> Page 17, lines 28 to 39, page 18, lines 1 to 16—Delete subsections (5), (6) and (7).

This amendment seeks to delete clause 33, which deals with new section 76A(5), (6) and (7). I have already debated this point in the previous amendment. This is in regard to the commission's being able to arbitrate to force a business to have an enterprise bargaining agreement against its wishes. We seek to remove that principle from the act. The amendment we have just voted on related to the business disclosing financial details. This amendment seeks to remove the clauses relating to the commission's having the power to arbitrate. I do not need to elaborate on it any further.

The committee divided on the amendment:

AYES (21)

Brindal, M. K.	Brokenshire, R. L.
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.	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.

NOES (cont.)

Rau, J. R.	Snelling, J. J.
Stevens, L.	Thompson, M. G.
Weatherill, J. W.	Wright, M. J. (teller)

PAIR(S)

Brown, D. C.	White, P. L.

Majority of 1 for the noes.

Amendment thus negatived; clause passed.

Clause 34.

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

Page 18, lines 28 to 30—Delete all words in these lines after 'employee' in line 28 and substitute:
with a disability, the Commission must have regard to the Supported Wage System of the Commonwealth (or any system that replaces it), and any other relevant national disability standard identified by or under the regulations.

The proposal in clause 34 of the bill, as amended by this government amendment, provides guidance to the commission in making its decision under section 7(1)(e)(i) of the act about whether a proposed enterprise agreement is in the best interests of the employees covered by the agreement when disabled workers are involved. There was consultation with the disability sector in the course of drafting the bill. However, following the tabling of the bill, I received further representation from the disability sector.

The thrust of that representation was to change the reference to 'intellectual disability' to make it more general, which the amendment proposes to do, and to recognise that there are systems or standards that may change over time in relation to the assessment of disabled workers. Whilst a different wording was proposed by the disability sector in terms of the second issue, I am advised that the wording proposed in the bill will address the issues that have been raised by the disability sector. The government comes forward with this amendment as a result of the representation made by the disability sector. We think they made a fair argument regarding the reference to 'intellectual disability' and we are proposing to amend it in that way.

Amendment carried.

The Hon. I.F. EVANS: I can advise the committee that we do not need to deal with amendment No. 26 because I lost the argument about bargaining agents' fees many hours ago in this debate. So I do not intend to proceed with amendment No. 26.

Clause as amended passed.

Clause 35.

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

Page 19, line 40—After 'duties by employees' insert:
or that relate to the remuneration of employees

Clause 35 attempts to bring into the act transmission of business provisions. The principle behind this provision is that it deals with the circumstance where a business is sold from one owner to another and there is an enterprise bargaining agreement in place. This clause of the bill deals with what happens to the enterprise bargaining agreement during the transmission of sale of the business, hence the term 'transmission of business provisions'.

Essentially the government's bill attempts to lock the new owner into the existing enterprise bargaining agreement that is in place at the time of sale, except for very limited circumstances where the new owner can seek to change the enterprise bargaining agreement that is in place. They can apply to the commission for an order to vary or rescind the enterprise bargaining agreement, but there is a limitation on that under proposed section 81(7) which provides:

The Commission may make an order on application. . . [if]

It goes on to say:

(c) the Commission is satisfied—
(i) that the order will not disadvantage employees in relation to their terms and conditions of employment. . .

The way the business community and our legal advice have interpreted that provision, that means that essentially the new owner is locked into the enterprise bargaining agreement. They can go to the commission and seek for the agreement to be changed but not seek a change that is going to disadvantage employees in relation to their terms or conditions of employment. As the member for MacKillop noted, there are businesses in his electorate that if this provision had been in place simply would not have survived, because the business was in trouble and they had to sell to it try to save the business. Of course, the new owner, if the business is in trouble, will seek to redo the enterprise bargaining agreement. Cost is obviously an issue in relation to a business that is struggling. Addressing your costs as well as addressing your income is an issue that any new owner will want to undertake.

The commission has to satisfy itself that the order to change the enterprise bargaining agreement will not disadvantage employees in relation to their terms and conditions of employment. Therefore, under subsection (7)(a) they are essentially restricted to the duties of the employees, where the commission may make an order on application and the order may relate to provisions that regulate the performance of duties by employees. We seek to amend that provision by inserting after the words 'duties by employees' the words 'or that relate to the remuneration of employees.' We think it is commonsense. If a business is being onsold, if the business is struggling, why would you attempt to lock the new employer into the same enterprise bargaining agreement?

Clearly, that will make the business far harder to sell because the new owner will not want to take on the same cost structure. If the current business with a cost structure is struggling and you cannot change the cost structure, the new business owner is going to struggle as the old business owner also struggled. To me, this provision does not achieve anything at all in regard to helping the employee or the business. Ultimately, if you cannot change the enterprise bargaining agreement other than by the duties, then the business will go broke and the employee will be out of a job, and I do not see how that advantages anyone.

Our amendment seeks to allow the commission at least to change an enterprise bargaining agreement in relation to duties by employees, which is already in the bill, and then add to it in relation to the remuneration of employees. We think that is commonsense. We see no reason why a new business owner should be locked into the same cost structure. In order that the minister knows it is not just us who hold this view, the wine industry states:

The bill sets out that, where an enterprise agreement is in place, new owners of the business accede to the rights and obligations of the employer under the enterprise agreement. The bill provides a number of mechanisms for the outgoing employers and incoming employers to vary or rescind an agreement. However, it makes provisions in section 81(7)(b) that exceptional circumstances exist justifying the making of the order and in section 81(7)(c) that the order will not disadvantage employees in relation to the terms and conditions, which is clarified in section 81(8) as disadvantage, if on balance it would result in a reduction in the overall terms and conditions of the employment of that employee or employees.

The wine industry goes on to say:

It seems remarkable that, in the scenario set out, exceptional circumstances may go to the continuing viability of the business but

will be limited to only allow a variation of the contents of an enterprise agreement that results in no disadvantage. In effect, this will mean limited or no change will result to the enterprise agreement from the use of this clause. In addition, section 81(5)(d) provides for rescinding the enterprise agreement. This is linked to the no-disadvantage concept. The wine industry cannot think of any instance when rescinding an agreement can result in satisfying the no-disadvantage test proposed.

Does this mean that section 81(5(d) will have limited application or, indeed, is it a nonsense? This provision creates a role for the commission to the point where the commission decides the appropriate provisions to apply for the new business owners. In effect, the result of such an application may mean that the business is less attractive after the commissioner has reviewed the agreement contents. This is further illustrative of the commission third party intervention in matters better left to the parties to an agreement. This type of provision will add to the workload of the Industrial Relations Commission which, in turn, will impact on required staffing levels of the commission.

That is not a bad summary from an industry perspective as to why this provision simply will not work. It will not achieve the outcomes the minister seeks to achieve because it is too prescriptive in nature and it ties the new business owner to the same cost structure as the old business owner.

The Hon. M.J. WRIGHT: In this situation, if you go to the employees and tell them what the problems are, they can agree to change arrangements. If workers are going to lose their jobs, they will soon make those changes. Workers are not silly when it comes to these discussions. Subsection (7)(a), which the shadow minister seeks to amend, deals with situations where businesses are amalgamated. We think that in those circumstances provisions about the performance of duties are probably the most significant concern; things like rostering, shift times and so on.

If there were different shift arrangements in an amalgamated business, we recognise that that could cause a real concern. That is why our proposal allows for those matters to be changed even if the employees do not agree. We do not think that remuneration as proposed in the shadow minister's amendment is of the same concern. As I said, with the transmission of business you can change enterprise agreements—you simply need to get the employees' agreement to do so. That has occurred and will occur in the future. Where the employer has a case to make based on economic circumstances or whatever, as I said, workers are not silly about these matters—they do not want to lose their jobs and they would listen to reason in those circumstances.

Mr HAMILTON-SMITH: I must say that this clause has caused me a little bit of grief because, to be perfectly frank, I can see the government's argument quite clearly, yet I fully agree with the points made by my friend the member for Davenport.

The government's argument seems to be that as a business would, at sale and purchase, inherit contracts that it may have entered into (perhaps sales or supplier contracts) it should adhere to and abide by the contracts it has entered into with its employees; that it has an obligation not only to adhere to those contracts that are beneficial to the business but also to those that it may perceive to be a liability. I take the government's point and there is a valid case: a business should not be able to be sold, the owner run off with their money (so to speak), and leave the employees flat-footed in the hands of a new owner who then seeks to break their enterprise agreement and restructure the business to the detriment of employees. I take that point. However, I think clause 35 is a little too rigid and, as my friend has mentioned already, it fails to accept the flexibility needed at sale and purchase of a business.

I think I have been through the exercise of purchasing and selling a business about seven or eight times and it is quite a difficult process, let me tell you. It is easier to be the purchaser than it is to be the seller: there are a lot of balls in the air and the due process that must be gone through for both the purchaser and the seller are quite exhaustive. This clause will add yet another layer of red tape on top of that whole process. A purchaser will be faced with this clause that says, 'No matter what happens when you take over this business you cannot change the employee enterprise agreements.' In many cases, particularly in service related businesses, labour cost factors of production are extraordinarily high. They are a pretty important part of the business—they either make or break it—and you really do have to have your labour costs under control. Indeed, the business may well be up for sale because those labour costs have got out of control, and those enterprise agreements are in poor shape.

As I understand it, all the amendment proposed by my friend suggests is that the commission should also have the ability to consider remuneration of employees when it reviews the enterprise agreements. It is as simple as that. It really seeks to say, 'Let's throw that into the bargain,' so there is still an ability to negotiate that part of the enterprise agreement. I take the point the minister has raised that employees do not want to lose their jobs: they will want to be cooperative. However, if you do not agree to this amendment then there is really no provision for the commission to include remuneration as one of the considerations when they act under this particular clause—I think it is section 81(7)—to make an order. So, we are really closing off what is a very important way out not only for the seller and the purchaser of the business but also for the employees, because they may very well want to renegotiate their enterprise agreement if it means keeping their jobs and having surety about the future.

The minister has answered my friend's position by saying that the employees will be very reasonable. However, I pin him down to the actual amendment that my friend has proposed: that is, can we not include it in that guidance we are giving in part 7 to the commissioner to make an order so that he can deal with that issue? Obviously he will talk to the employees and to the business proprietor. Why is the government resisting that proposition? Why not include that device as a means of helping not only the business proprietors but also the employees?

The Hon. M.J. WRIGHT: The answer is the same as the one I gave to the member's friend, the shadow minister. I went through why we have what we have in the bill, and why we do not support the shadow minister's amendment. We do not put equal concern as we do the other elements I have referred to. As I said earlier, you can change the remuneration—you do it with agreement. That is the way to go about it.

I hope I have not mistakenly picked up the point that the member has made, but earlier he made reference to 'You can't change.' Well, you can change, and the way you change is by having that agreement with regard to remuneration. I think we both generally agree on the point in regard to employees being alive to this issue in difficult economic circumstances; I think we probably generally concur there.

Amendment negatived; clause passed.

Clause 36.

The Hon. I.F. EVANS: Clause 36 provides for the inclusion of a new section 82(3) which provides the power to the commission to settle a dispute over the application of an enterprise agreement. This, in effect, means that the

commission can impose its own means to settle a dispute. The provision is unwarranted in the wine industry's view, and is an intrusion into the enterprise agreement operation. They believe that this will create uncertainty as to costs and conditions during the life of an agreement for an employer and, as such, is strongly opposed. All enterprise agreements have no further claims provisions and the wine industry asks the question, 'What value remains in these provisions when a dispute can result in an outcome that effectively challenges this provision?'

The whole system of the enterprise bargaining agreement as proposed by the bill is fundamentally changing, and benefits for entering into agreement making will not be the same as set out in the current act if the proposals within the bill are adopted. The wine industry opposes provisions that are likely to expose employers to an increased level of disputation, potentially used by unions as weapons to create campaigns of uncertainty during the life of an agreement, both as to wage costs and employment conditions. The industry, therefore, opposes wider dispute resolution powers for the commission within the system of enterprise agreements.

Clause passed.

Clause 37.

The Hon. I.F. EVANS: Clause 37 provides for three year enterprise bargaining agreements. If that provision was put into the existing act on its own we probably would not have an argument with it, but, to put it in amongst all the other provisions of the bill, the other provisions of the bill undermine whatever benefit a three year agreement is going to provide. So, we do not have a problem philosophically with a three year agreement; it is all the other add-ons, all bells and whistles in the bill, that ultimately will undermine any good that will come from the three year agreements.

Clause passed.

Clause 38.

The Hon. I.F. EVANS: Clause 38 deals with the power of the commission to vary or rescind enterprise bargaining agreements. The industry has asked us to raise some concerns that they have in regards to the provisions of this particular clause. First of all, the commission will have a discretion to rescind, based on whether the recision of the agreement will not unfairly advance the bargaining position of the particular person or group in the circumstances of the particular case. It is unusual in the industry's view to provide the commission with that discretion.

Business argues that whether the agreement remains in force or is rescinded it is inevitable that the bargaining position of the parties will be impacted on. Fairness is too capable of being influenced by subjective considerations. So, the industry has concerns with this particular issue. The wine industry raises issues saying that there were certain issues raised by the industry under the consultation bill which no longer appear in the proposals and, therefore, they at least are welcoming some of the changes that the minister has made in relation to the bill. So, the industry has asked me to put those matters on the record and I have done so on their behalf.

Clause passed.

Clauses 39 to 41 passed.

Clause 42.

The Hon. I.F. EVANS: My amendment No. 28, to clause 42 of the bill, deals with the transmission of business issues. We have already lost that, so I do not need to proceed with that particular amendment standing in my name.

Clause passed.

Clause 43.

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

Page 22—
Line 9—Delete 'Register' and substitute:
Registrar
Line 12—Delete 'Register' and substitute:
Registrar

These both address spelling errors.

Amendments carried; clause as amended passed.

Clause 44.

The Hon. I.F. EVANS: I do not have any amendments to this particular clause, but I just want to raise some concerns on behalf of the wine industry. The wine industry has put in a submission, where they are now alerted and concerned with the provisions of this particular clause in the bill which deals with new section 98A(1), where the commission may, by award, determine that children should not be employed in particular categories of work or in an industry; or a sector of an industry may impose limitations on hours of employment; provide for special rest periods; supervision; or any other provision it thinks fit. While the wine industry can consider that this provision is meant for other industries, the wording of the proposal means that it is a possibility. Any such award will be a restriction on the employment of youth in a market that already boasts significant pockets of youth unemployment.

The wine industry is most concerned with the potential for the restrictive activity to be awarded. While it was sold on the basis of young people selling lollies door-to-door, the potential is for it to have wider implications than the problem referred to. The wine industry makes the point that, when this went out for consultation, the original document gave the example of children selling lollies door-to-door, and there were some issues a couple of years ago about that particular provision. They now have broadened the scope of the provision so that it will apply to far broader activity than was originally proposed in the discussion document.

I am wondering whether the minister has specifically consulted the various industries that employ juniors and children (which is anyone under 18), and whether they would inadvertently get caught up in these provisions, which were, I think, intended to be fairly restrictive in nature but now appear to be very broad in their application. So I am just wondering exactly what consultation the minister undertook with people like those in the building industry, where apprentices start at a very young age, or in the hospitality industry, for example Hungry Jacks. I am wondering exactly what consultation was undertaken because, if the consultation was done on the basis of door-to-door selling, a lot of the industries would not have been worried about picking up the point. They now find that, as the wine industry has raised with us, these particular provisions are now far broader and they may be inadvertently caught. I am interested in the consultation process on this clause in particular.

Mr VENNING: I want to support the shadow minister in what he has just said, particularly in relation to the operation of minors, that is, under 18 year olds. I am involved with this particular part of the industry and, as we know, a lot of young people are involved in the vineyard, particularly at picking time. More directly, we now see in the Barossa, in my electorate, that we have two schools offering excellent wine education courses. The Nuriootpa High School began the courses and did all the pioneering work in this area of wine education for young people, and now, of course, we also have

the Faith Lutheran Secondary School, both offering these courses. In both these schools, their 16 year olds, or younger students, not only work in their own school vineyards but also go out and work for the larger wine companies to supplement their holiday pocket money, and to further their knowledge in the wine industry.

Many of our famous wine makers started their very illustrious careers in this manner. They started in the vineyard and finished in the wine making laboratory as premium winemakers, earning salaries three, four or five times what we earn in this place. Therefore, I think it is quite strange and silly that we put a restriction on the business like this, because being out picking grapes is certainly a great way for young people to enter a fantastic industry. I have here a report that I just picked up that was done for me by a university intern which says exactly this, that the industry is brilliant because it keeps on bringing new blood into the industry, and we start it by bringing in these young people.

I also want to say that I think the wine industry has given us a very good submission, and I congratulate the member for Davenport on picking up their points very well. I only hope that this bill, for the sake of all industries, and in particular the wine industry, is either defeated or very heavily modified. I certainly hope that the minister will listen to these concerns.

The Hon. M.J. WRIGHT: All these concerns have certainly been listened to. The shadow minister asked about the consultation specific to this clause—well, there has been very wide consultation on the whole bill. There has been ample opportunity—

Mr Venning: You don't take any notice.

The Hon. M.J. WRIGHT: That is not true; that is not fair. There has been ample opportunity—and I have taken that opportunity—for the stakeholders to make arguments on a whole range of issues, including this particular issue. This is an appropriate matter for the commission to deal with on a case-by-case basis. Should it go before the commission, if and when good arguments are made obviously the commission will take account of that. This allows the commission to hear evidence and deal with the particular circumstances. I do not think it will have the impact that the member for Schubert is concerned about in his particular area which, I appreciate, he needs to raise. In regard to an earlier matter, the advice that I have received is that the MBA supported these proposals through the consultation stages that we worked through.

The Hon. I.F. EVANS: I am interested in the MBA specifically supporting this provision. I have noted the minister's answer in regard to that. The wine industry says that this provision appeared in the December 2003 consultation bill, and the wine industry did not provide any comment in its March 2004 submission. It did not consider that there were any issues at that point because of the lack of a definition of 'child'. This has changed because in the current bill there is now a definition of 'child'. In the bill 'child' means 'a person who has not attained the age of 18'.

Under proposed new section 98A the commission will be able (by award) to make special provisions relating to child labour. It will be able to determine that a 17 year old should not be employed in particular categories of work or industry or a sector of industry specified by the award. It could impose special limitations on hours of employment of a 17 year old. It could provide for special rest periods for 17 year olds and provide for the supervision of 17 year olds who work. That is at the extreme end, because obviously this will relate to children aged 12, 13 and 14 as well.

I think this provision has over-complicated the matter. If there is already an award in place dealing with that industry, you could have dealt with this matter in a different way and have it applied to those who are not already covered. There are concerns from the rural sector. We remember the very bad press that the Victorian government had about farmers not being able to employ their children, their neighbours' children or their friends' children on their farms. I realise there are exemptions in the regulations in relation to one's own family, but not necessarily in relation to other people's children whom you might wish to involved in farm work as a normal practice. So, there is concern from the rural community that this will be a backdoor method to further regulate the involvement of children in farming activities.

I remember as a 15 and 16 year old going to Mundulla carting hay. All of that could be covered under this section. I am not sure whether it is the intention to intervene to that level, but the potential is there. The other question is: does the word 'employed' in proposed new section 98A(1)(a) mean 'remunerated'?

The Hon. M.J. WRIGHT: This is all about employment, not just being paid.

The Hon. I.F. EVANS: I understand that. What I am trying to establish is whether the word 'employed' in subsection (1)(a) means that the child has to be remunerated, or is it possible that a child who is actively undertaking an activity on the farm but not getting remunerated is employed?

The Hon. M.J. WRIGHT: As the member would be aware, under the common law, being paid is a key part of being employed.

The Hon. I.F. EVANS: The way I understand that is that under subsection (1)(a) they have to be being remunerated to be employed. That is the way I understand the minister's answer.

The Hon. M.J. WRIGHT: Yes, that is essentially correct.

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

Page 23, after line 3—Insert:

Division 1B—Special provision relating to trial work

98B

(1) The commission may, by award—

(a) determine that a person who undertakes a specified category of work (in any specified circumstances) on a trial basis in an industry, or a sector of an industry, specified by the award with a view to obtaining employment with the person from whom the work is performed is entitled to be paid for that work in accordance with the terms of the award;

(b) impose limitations of the performance of work on a trial basis in an industry, or a section of an industry, specified in the award;

(c) make any other provision relating to work on a trial basis as the commission thinks fit,

if the commission is of the opinion that action under this section is justified in order to prevent the abuse of the performance of work on a trial basis in the relevant circumstances.

(2) Subsection (1) does not limit the powers of the commission to make any award under the other provisions of this act.

(3) Subsection (1) applies even though the persons to whom an award will relate will not be employees for the purposes of this act.

(4) A person who is entitled to be paid under an award under this section is entitled to recover the amount that should be paid as if the person where an employee of the person for whom the work was performed.

This issue has come to my attention over several years. As I have said on many occasions, the overwhelming majority of employers do the right thing. However, in some industries more than others—the beauty industry (using a generic term), the hospitality industry and other industries on a more infrequent basis—young people, in particular, are taken on

and a carrot is dangled in front of them. They say, 'You work for us and there will be something for you down the track.' Quite often there is not.

I cite some real world examples. A nephew of mine at the age of 18 did 10 weeks of unpaid work on the basis of a carrot being dangled: you will get an apprenticeship, something will happen. A niece who worked in a hospitality area was told: 'You need to come in tomorrow'; 'The boss isn't able to see you today'; 'Come in the next day'—and so it goes on. We have a system in relation to school, TAFE and university where there are proper work experience programs, and those people are not paid, cannot be paid, and we do not expect them to be paid. Then we have proper employment where people are paid. This provision would enable in a proper sense to have what is called trial work. The commission would have the authority, if it chose, to determine parameters and aspects relating to that trial work. I think that most, if not all, members would accept that it is not fair or reasonable to dangle a carrot and do other things to entice someone—usually someone in their late teens who has left school—on the pretence that they will get something, when it is just a back door way of getting them to do work without payment.

One of my sons is a fully qualified chef (as I think I have previously mentioned to the house). Someone was seeking chefs for a hospitality venue in Adelaide and, basically, used the young people, who were qualified chefs, to do menial tasks without payment. At that stage, my son was old enough to realise what was happening. But for those who are a little younger—say, 18, or even younger—this practice of what is, in effect, exploitation should not be allowed to continue. That is the reason for this amendment, which I think is reasonable. As I said, 99 per cent of employers do not engage in carrot dangling or holding out the promise of an apprenticeship or some other opportunity, knowing full well that they will never offer it. I think this is a fair and reasonable amendment, and I commend it to the committee.

The Hon. M.J. WRIGHT: The government supports the member for Fisher's amendment. He has talked about a genuine issue of concern in the community. It is commonly known as a trial period—free work that is performed in the hope of being employed—and this proposal is a sensible approach to try to deal with the concerns that exist. I think the amendment that has been moved by the member for Fisher sets that out appropriately, and the government is pleased to support it.

The Hon. I.F. EVANS: The opposition was working off a different set of amendments from those of the member for Fisher in relation to this issue, which was looking at inserting a provision in proposed new section 229A, which was titled, 'Protection of persons undertaking child employment'. We now note that these are being inserted under new section 98B, which relates to special provisions relating to trial work.

I understand what the member for Fisher is trying to do, but the opposition does not support these provisions. Like the member for Fisher's son, two of my children have been involved in trial work, and the eldest one worked out pretty quickly whether or not he was being done in the eye by an employer. But, to his credit, he went out and obtained work using the trial work method and gained very good employment as a result.

There is a whole range of difficulties with respect to this issue. For example, in the media industry a number of juniors are involved in football and cricket commentary. They work behind the scenes, and they spend a whole footy season—not 10 weeks—at Football Park working on a trial basis in the hope that they will be able to get into the media, in whatever position, and work their way through that field. In fact, an offer was made by one of the stations to my eldest son to work the suicide shift between midnight and dawn for a couple of nights, because he was interested in radio and spoke to the station manager about a career in radio.

This amendment is trying to solve a problem that affects 1 or 2 per cent of the people involved in doing trial work, but it will ultimately penalise the 98 per cent who are happy to do it and who make their own judgment about whether they will work one day or one week in relation to trial work. So, there are issues with respect to this. We understand the principle that the member is trying to deal with. But what is wrong with an employer saying, 'Look, I don't have anything at the moment. Here is two days' work. If you want to have a look at how the office, or the factory, operates, or if you want to come out and see what a bricklayer or a carpenter does, I can give you two days, you can have a look at it, and good luck to you if you can get some work.'?

I understand that there would be the odd employer who would say, 'Son, come and work for me for two days—wink wink, nudge nudge—you'll get a job.' I understand there would be some who would do that. However, in my view, they would very much be in the minority. There would be very few people in this place who had not gone out at some stage when they were younger and done trial work or sample jobs to try to further themselves. In my own electorate office I have made available equipment, in particular, to women who are seeking to re-enter the work force so that they can retrain themselves. Obviously, they do some work in my office in a voluntary capacity; they improve their typing skills and IT skills, and so on.

This provision will complicate that relationship. I am not necessarily convinced that this will deliver the great benefit that the member for Fisher proposes. I hope the member for Fisher accepts the point that, with respect to the bad employer about whom he spoke (the one who had his son there for 10 weeks), if he had him there for 10 weeks and did not pay him, he would not give him any trial work under the award. So, the member for Fisher's son would not get the experience. The employer would just say, 'I'm sorry. If I've got to do it under the award, I'm not interested. So, you don't get the experience at all, not even one hour. Forget it. I'm not interested.' In effect, it is crushing the opportunity for people who decide that they wish to take on trial work.

I accept 100 per cent the member's point that the occasional bad employer will do the wrong thing. I understand that, but I think that they are in the very small minority and that most employers will give a kid one or two days to look at whatever industry they are in, particularly those industries with skill shortages. I do not think that this provision will do anything, other than complicate it for young kids and, indeed, make it more difficult than it is already for them to get work experience or trial employment. While I sympathise with the motives behind the amendment, the opposition does not agree with it on this occasion.

The Hon. R.B. SUCH: I do not believe that this amendment prevents what the member for Davenport suggests it would. It gives a lot of scope to provide appropriate arrangements. I am mindful of his point that you want some flexibility, but you have only to listen to talkback radio to know that this is a significant issue in the community. One matter that has been raised in a committee in which I am involved is that hospitals, for example, would like trainee nurses working in

them, rather than their working in, say, McDonalds, but at the moment they are hindered from doing so. I believe that this sort of provision would allow that.

As I said earlier, we have a situation where people who are at university, TAFE or school can do work experience, but I am informed that at the moment it is very difficult to engage nurses who are in their second or third year and who are quite capable of doing general hospital duties in meaningful, paid employment which constitutes a kind of trial. That might be on the fringe of these cases, but I think it is still relevant. I do not believe that this provision would negate the opportunity for people to experience a work situation.

Another issue that was also raised in one of the committees, and one we have not addressed, is that of the protection of someone who is engaged or involved in a workplace in terms of WorkCover and so on—for example, someone who is injured during their work experience prior to having formal or proper employment. If you are in a school situation and doing work experience, you are protected under those special provisions, and the same applies to university and TAFE students.

I believe that there is sufficient evidence and justification for the commission, with a considerable amount of discretion, to deal with the issues to which I have alluded. I have mentioned just a few examples, but I could go through my electorate office records and dig out plenty more of employment under any other name. It should be regularised in some way with protection. As I see the totality of this bill (and I think my amendment is in concert with that), we are trying to protect the most vulnerable in the community (and that includes young people in the hospitality area, the beauty industry and other industries) who are exploited day after day, and I have plenty of examples of that. I think this is a fair and reasonable provision.

It has been drawn to my attention time and again that something needs to happen. If the member for Davenport has a better proposal, I would certainly be willing to hear it, but I do not think this amendment detracts from what he wants and what I want, namely, reasonableness in terms of work practices.

The Hon. I.F. EVANS: I have a question for the mover of the amendment. The amendment provides:

> (1) The Commission may, by award—
> (a) determine that a person who undertakes a specified category of work. . . on a trial basis in an industry, or a sector of an industry, specified by the award—

and these words interest me—

> with a view to obtaining employment with the person from whom the work is performed. . .

The way I read those words is that, as long as the person doing the trial work is of the view that they wish to obtain employment, the award applies, even though the employer has made it absolutely crystal clear that there is no prospect of employment with that company. It is in the mind of the person who is doing the trial to form the view that they wish to obtain employment with the business for which they are doing work. It does not provide 'specified by the award with a view to the business offering employment': it states 'with a view to obtaining employment', so it is clearly in the mind of the person undertaking the trial.

I could say to a young student, 'Look, Fred, I've got two or three days' work in my office. I'm happy for you to come in and have a look at how the office operates, the pressures and what the job entails, but I want to make it really clear to you that there is absolutely no chance of a job, because I have no positions to offer.' Fred goes away and thinks, 'Yes, he says that, but I am of the view that, if I do a really good job, there will be a chance for me to obtain employment.' So, I think there is a flaw in the drafting in that it puts the decision of who forms a view about obtaining employment only in the mind of the person who seeks the trial employment. It leaves the employer open to the position where the employer says that there is no employment available, but the person undertaking the trial says, 'My view was that I was trying to obtain employment.'

The Hon. R.B. SUCH: I do not believe it does say that. It says that the commission may—important qualification—by award determine that a person who undertakes a special category, etc.; it does not say that the view has to be held only by that particular person. The commission is not silly. There would be indicators suggesting that employment is being offered. It could well be an advertisement. It could also be verbal with indications such as, 'We are looking for someone in this hairdressing salon. We are looking for someone to come in and you are likely to get an apprenticeship down the track.'

It does not simply rely on the potential employee saying, 'I understood that I was going to get a job. They didn't give me one. Therefore, I have to take action against the employer.' The commission is not going to be that silly in terms of the grounds on which they would need to develop the criteria and the operating aspects of their determination. It would not be simply that a young person said, 'I walked into the hotel and I formed a view that I was going to end up being a chef there.' There would have to be more substance to it than simply a wish on the part of the particular individual.

Mr HAMILTON-SMITH: I want to take up some of the points in the debate and put a couple of issues to the member for Fisher. In particular, when is work experience work, and when is work experience training for a potential worker? Is it within his mind to consider, for instance, a young person who has expressed an interest in a career in carpentry and who might say to a carpenter, 'I would like to learn more about carpentry. Could I come and work for you on a voluntary basis for a week and learn about carpentry and see if I like it? Or maybe you could teach me some things that might help me get a job in a related field'?

There was a time (a long time ago) when apprentices were actually indentured to tradesmen and when the community view was one where you paid for the training that you would receive from a craftsman. An amount of money went with that apprenticeship with a view to encouraging the tradesman to take someone on. There are a range of federal financial incentives and industry incentives now in place to encourage employers to take on trainees for that very reason: to make it easy for tradesmen and others to give people a go.

From my experience as an employer, for the initial few days, particularly for a young person, it can actually cost you money supervising someone, helping them out, guiding them, showing them, training them. They are not actually working in some cases—not in all cases, I admit—or not actually adding to the value of the workplace in a productivity sense. They are potentially a liability in that someone may need to keep an eye on them, particularly if dangerous machinery is involved or close supervision is required in order to teach them how to do things.

I have a concern that the member for Fisher's amendment would have the effect of creating a massive disincentive to tradesmen and employers, particularly small businesses, from taking on people on a trial basis either to train them or to give

them an opportunity to have a look at that workplace as a potential career option. The outcome might simply be that businesses say, 'I am not going anywhere near trial work or work experience, because that person could decide after they have been there a week to go off to the commission and demand payment.'

I also raise with the member the general issue of one's freedom to volunteer. I take the point raised by my friend the member for Davenport that there will always be an employer out there who is going to abuse the system. I put it to the member for Fisher that there will always be an employee out there, too, who will rip off the system if they can. I am one who believes that the majority of both employers and employees are people of good will who are trying to do the right thing. We have to make sure that we do not punish the majority by trying to protect the minority.

If someone wants to volunteer, if someone is so keen to get a job that they say to someone, 'Can I come in and do trial work for a couple of days, show you what I am made of and come what may after that?' they should have a right to do that. The employer should have a right to say, 'Yes, okay, come in for a couple of days. No obligation either way. Have a go and see if you like it, see if we like you.' The member for Fisher's amendment will create a level of red tape that might act as a massive disincentive to people's willingness to interact in that positive way.

I note the example the member gave of someone getting into a position of volunteering for weeks on end and working quite hard during that period. Obviously, he has a view that they were abused in that process. There will be cases like that. Perhaps what we need is some sort of amendment that deals with those sorts of abuses only.

We do not want to get in the way of people's freedoms to make these arrangements. We do not want to get in the way of confusing what is training and what is work experience with what is actually productive work, making money for the employer, because quite often that is not the outcome. I join with the member for Davenport in opposing the amendment.

The Hon. R.B. SUCH: Just in response, the categories of work experience are quite clearly laid out. There is absolutely no payment for school, TAFE or university work experience. They are provided for in a special way. It is not legally work at all because there is no payment, so by definition it cannot be work or employment. Trainees and apprentices likewise: there is a legal arrangement and they are paid for what they do, and there is an element of training within it.

I think probably what the member for Davenport and the member for Waite are alluding to is someone who wants to be an observer and says to an employer, 'I would like to look at see what you do and see whether I am interested in becoming something that your company or business does.' I think it is probably better to call that person an observer, because when you talk about employment and work you are talking about payment for a contribution. This is not about 'Come in today and have a look around to see if you like being a hairdresser. If you do, you can stay on.' And when we say a small percentage, it still adds up to a lot of people. There is more than an indication; there is an expectation created that what they are doing will result in their getting an apprenticeship or permanent employment, and what often happens is that it carries on and on and, in effect, it is just unpaid work. It is employment without being paid for it. It is not about someone coming in to have a gentle look around. It is getting cheap labour or no-cost labour in your business and it is a scam, and it happens too often.

This seeks to deal with it. It will not stop work experience and people coming in to observe, because that is specifically designed and cannot be paid for because it is not work. But these people are brought in, used to do work, and the intention is not to pay them but to use them as unpaid labour by dishonestly dangling in front of them the prospect of a job or an apprenticeship, with the employer knowing full well that they are not going to do that. It is a dishonest portrayal of what is available or could be available in that business. I do not think there is any confusion at all in respect of those various characters. Work experience is clearly defined; trainees and apprenticeships are legally and otherwise defined.

However, if you are talking about volunteers, this has nothing to do with volunteers or people who want to observe and see whether they like the look of what you do in a hairdressing salon. This is using people to do work with the employer, having no intention of paying them for that work.

The Hon. I.F. EVANS: With due respect to the member for Fisher, I think his argument is wrong. The member for Fisher says that it has nothing to do with volunteers. The member for Fisher is aware of the Blackwood RSL, which got into financial trouble a few years ago and used a combination of paid employees and volunteers to run the bar. Under the honourable member's scheme, those volunteers are all paid.

The Hon. R.B. Such: No.

The Hon. I.F. EVANS: Yes, because they are not work experience students under TAFE or through a school. They are people going in to volunteer who might seek to gain employment when it is back on its feet.

The Hon. R.B. Such: Without volunteers there is no expectation by the RSL—

The Hon. I.F. EVANS: No, you are not listening to the argument. They go in to volunteer on the basis that, when the enterprise is back on its feet financially, they hope to gain employment because they have experience with the clientele, with the layout of the club and with the board that runs it. So, they could get caught. The member for Napier will understand this. No employer is going to go through the process of registering for WorkCover and all the other things for which they have to register, the whole range of oncosts, for the employment of someone for five or 10 hours. Why would you bother? Some kid comes in and says 'I want to get some experience to see what being a bricklayer's like.'

In my own son's case, he replied to the advertisement by T and R meatworks at Murray Bridge and went to Murray Bridge. They wanted him to work for half a day to see if he could handle the work. When he went in to the boning room and the stomach of the guy next door to him could not handle it, he understood the reason why they were having a trial. Out of the group that went through, only two survived the experience in the boning room and the offal room. It was not the most pleasant experience those kids have actually dealt with, but it was to their benefit to find out that that type of work was not going to suit them.

As it turns out, my son did the trial employment and went on and worked for seven or eight months for T and R at Murray Bridge. But you are asking an employer to do all that administrative work for the sake of what, five hours, one off? If a kid works for 10 weeks, you would have to ask yourself the question, with due respect to the kid who has worked for 10 weeks, what decision was he making in working 10 weeks? Why not exit at one week or two weeks? Call the employer's bluff. That is ultimately their decision. But those

circumstances are very much in the minority. This amendment will stifle trial employment. It will absolutely knock it off, because employers are not going to go through the hassle of doing all the paperwork they have to do for the sake of 10 hours, two days' employment. They are simply not going to do it.

Mr SNELLING: I support the member for Fisher's amendment. Some years ago I was an official of the SDA, the shop assistants' union, and it was quite common for me to have people come to the union complaining because they had entered into what they thought was unpaid trial employment on the understanding that there was employment at the end of it, worked basically for nothing for a number of weeks and then at the conclusion of the period were told by the employer that there was no job in it for them at all.

This is a matter of justice. People have a right to be paid when they enter a workplace on the understanding that there is a job in it for them. The member for Davenport can try to scaremonger all he wants about the effect this might have on volunteers and work experience students. It is quite clear from the amendment that, in cases where you enter into a workplace on a mutual understanding with the employer that you are doing this voluntarily, and not with a view to gaining employment at the end of it, what the member for Fisher proposes does not apply. All this amendment does is seek some justice for those—particularly young people—who go into a workplace on the understanding that there is a job for them, and that these people are not exploited.

This is not a rare problem, and it is not something that only happens every now and then: this is something that is relatively common. That is not to say that a majority of employers would be so unscrupulous as to do this, but it is nonetheless a significant problem. I welcome the member for Fisher's amendment and I will certainly be supporting it.

Mr HAMILTON-SMITH: I will just make a final comment on this amendment, which I understand the government is going to support. The other way to look at this is that it is a bit of nanny state legislation, in a sense. The member for Fisher has given us an example of someone who worked for 10 weeks on a voluntary basis. Someone else might have worked for 10 days or 10 minutes, or someone might have worked for 10 months. You cannot provide a law for every eventuality—

The Hon. K.O. Foley: Can you believe a bloke would want to buy Andrew Garrett's bankrupt estate! You talk about a nanny state: you are a socialist, Martin.

Mr HAMILTON-SMITH: Obviously, the Treasurer wants to contribute to the debate so I will hand over to him.

Members interjecting:

The ACTING CHAIRMAN (Ms Thompson): Order! There is plenty of room outside for discussion.

The Hon. R.B. SUCH: If I could just clarify the example I gave. I do not want to name the company but it is a medium sized plumbing business in Adelaide. What was put to this young lad at 18 was, 'Look, we have an apprenticeship coming up very soon; let's have a look at you,' and he then ends up working in the factory and doing outdoor stuff—doing normal work. It is all right for people to say that at that age they should wise up and not be fooled, but this is a respectable company and the boss says, 'I am definitely taking on an apprentice and you are in the front line to get the apprenticeship,' but just drags it out and drags it out. This lad ended up doing 10 weeks and did not get a cracker; he did not even get petrol money—he got nothing.

And that is just one example. It is fine to say that people should know and be awake up, but in most cases relating to this amendment we are talking about young people. They are not experienced in the ways of the world and they often do not have the confidence to say to the boss, 'You are using me.' If they are doing work they should be being paid for it. In my view there is no such thing as unpaid work: you are either paid for it or it is not work. You can be a volunteer, but that is a different category; it can be work experience but that is not, and never should be, paid employment.

I cannot understand why the opposition would want to deny justice to young people, in particular, who have been exploited—especially in the beauty and hospitality industries and some other areas. Those who disbelieve me, ask around in your electorate or listen to talkback radio. You will find that there are plenty of examples.

The Hon. I.F. EVANS: I move the following amendment to the Hon. R.B. Such's amendment:

After 'specified by the award' delete 'with a view', and insert—under a mutual understanding (expressed in writing) between the relevant parties that it is in fact a genuine trial with respect'

This amendment seeks for there to be an understanding that there is actually a commitment to consider the person for employment and that it be in writing between the employer and the person giving the trial work. That would make it clear that, when the trial worker comes to the employer and the employer agrees that they are doing trial work with a view to employment, that fact is in writing and is not in dispute. Therefore, the payment that the member for Fisher seeks (if the award so provides) would be paid and the employer would be committing himself or herself to that because the mutual understanding about the potential offer of employment would be in writing.

The Hon. R.B. SUCH: I understand what the member for Davenport is trying to do but the reality is that most of these type of arrangements are not in writing, and are not likely to be in writing, because if you go back to my original amendment you will see that it is heavily—

An honourable member interjecting:

The ACTING CHAIRMAN: Order, the member for Waite! Please give the member for Fisher the courtesy of listening to him.

The Hon. R.B. SUCH: It is heavily qualified in terms of the second part of paragraph (c), because it says:

If the commission is of the opinion that action under this section is justified in order to prevent the abuse of the performance of work on a trial basis in the relevant circumstances. . .

So, it has got a very strong conditional—

The Hon. I.F. Evans interjecting:

The Hon. R.B. SUCH: It allows the commission to take into account those specific aspects, but if you say that it has to be in writing—

Members interjecting:

The ACTING CHAIRMAN: Order! The member for Fisher is trying to explain his reaction to the amendment moved by the member for Davenport. Please give him some courtesy.

The Hon. R.B. SUCH: In an ideal world—

The Hon. K.O. Foley interjecting:

The ACTING CHAIRMAN: Order, the Treasurer!

The Hon. R.B. SUCH: —all employment arrangements would be checked by a lawyer and witnessed and all sorts of things, but you are not going to get an 18 year old who is dealing with the local restaurant to get something put in

writing, unless there was a standard pro forma or something like that which the employer would have to sign. I think that it is too vague, and it is never going to happen.

The Hon. I.F. Evans interjecting:

The Hon. R.B. SUCH: The employer does not want to put it in writing.

The Hon. I.F. Evans interjecting:

The ACTING CHAIRMAN: Order!

Amendment to amendment negatived; amendment carried; clause as amended 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 45.

The Hon. I.F. EVANS: The opposition will be opposing clause 45. This is a provision in relation to the outworkers in the bill, and this clause has a lot of difficulties in it. I have no doubt that it will pass, but I feel sorry for those who find themselves caught under this particular provision, because it is one of the most cumbersome in the bill. I have read the outworker provision a number of times, and I am still not sure whether I have it absolutely down pat, 100 per cent, but this is my interpretation of what the bill might be doing. I think the bill is saying that if I as a customer order some goods from a business and the business gets an outworker to make the article which I order, if the business does not pay the outworker, then I as the person who ordered the goods end up with a liability to pay the outworker even though I have already paid the business. I think that is how it works, in simple layman's terms.

This will be excellent for government, because when it orders goods and when the business goes broke and does not pay its supplier, or a whole range of other people, the government will be able to step in and pay them; so, that will be good. Interestingly enough, when we talk about outworkers, everyone thinks about non-English speaking background women slaving in the clothing trade: the clothing retail trade is exempt from this clause, which is bizarre, but that is as it is. Why are they exempt from the clause? They are probably exempt from the clause because they were probably the only business group that was consulted about the clause, because most people do think about the clothing industry when they talk about outworkers, and so the clothing industry actually put in a submission saying, 'Hello, this actually causes so many problems.' So the retail clothing sector is exempt; no other retail sector is exempt. Why not? Why the clothing sector? Why is it that someone who orders the goods from the clothing sector is not caught by this provision but, gee whiz, if I order some shoes, or anything else, I am suddenly caught by this provision?

This provision is absolute nonsense. People are going to go about their normal daily lives ordering goods, not realising that the business they are ordering from is using outworkers as defined, and they will get caught for double payment. They can pay upfront a deposit, for instance, and then ultimately the business does not pay the outworker—well, you as the person who ordered the goods are going to have to pay. There must be a simpler and less complex way to deal with outworkers.

For those who want a clear interpretation of what happens in the bill, I will refer you to some of the clauses in it. We start off with a description of remuneration. Remuneration means, 'any remuneration.' That is quite a good piece of drafting, that remuneration includes remuneration.

An honourable member interjecting:

The Hon. I.F. EVANS: That is what the bill says; it is not my bill, but that is what it says: 'remuneration includes—(a) any remuneration. . . ' That was clear, and we understood that bit. It then goes on to say, 'or other amount'. Does that include reimbursements, because that is an amount? Does that include honorariums, because that is an amount? It is unclear what the words, 'or other amount' actually mean. We know that it is not remuneration. It is something different from remuneration because it says, 'any remuneration or other amount.' Clearly, the other amount is not part of remuneration as we would understand it. So, what is it? I do not know, but it is something called 'or other amount'.

We then go through the actual clauses of this particular section of the bill to a thing called a 'responsible contractor'. It provides that:

. . . a person will be taken to be a responsible contractor in relation to an outworker or group of outworkers. . . under a contract of employment with someone else if the person is a person who initiates an order for the relevant work. . .

I am not sure, minister, what this means. Let us say that I am ordering some shoes: am I initiating the order for the shoes or is the shop that I am asking to get in the shoes for me initiating the order with the outworker? I am not sure who then becomes the responsible contractor under this particular provision. Not only is the responsible contractor someone who initiates an order for the relevant work, they could be distributors of the relevant work. It is possible that you can have one person who orders the relevant work and someone else who distributes it, like a courier, for instance. You could actually have two responsible contractors—the person who ordered the goods and the person who distributes them. In that case I am not sure who becomes the actual responsible contractor but, certainly, we have at least one and maybe two. New section 99B provides:

A person whose sole business in connection with the clothing industry is the sale of clothing by retail will not be taken to be a responsible contractor under this section (but may be taken to be an employer under a contract of employment between the person and an outworker).

Therefore, an outworker could be deemed to be employed by a retail clothing shop as long as the clothing shop only sells clothes—I am not sure what happens if they sell accessories, but the way this is defined it is clothes—and the person whose sole business, in connection with the clothing industry, is the retail sale of clothing is exempt. It states that it will not be taken to be the responsible contractor. In other words, they cannot initiate the original order and they cannot distribute the relevant work. That is the way that I interpret section 99B. I am sure that you are all following this with great interest because it is such a very clear provision.

We then have a thing called 'Code of practice'. This is the code of practice which is not going to be scrutinised by the parliament, the Industrial Relations Commission or the Industrial Relations Court—no, no, no! The minister is going to bring in a code of practice, and the code of practice is 'for the purpose of ensuring that outworkers are treated fairly in a manner consistent with the objects of this Act'. It may make different provisions according to the matters or circumstances to which they apply. It can adopt or incorporate a standard or other document prepared or published by a body specified in the code. The code of practice does not have effect unless it

is published by the minister in the *Gazette*. A code of practice may—how is this: the minister is going to do this as a code of practice—require employers or persons engaged in an industry or a sector of an industry to adopt the standards of conduct and practice with respect to outworkers set out in the code. So, the minister is going to set this out as he sees fit.

Under the code, the minister can make arrangements relating to the remuneration of outworkers. So, he is actually going to set the rate of pay for outworkers as a political instrument, not through the commission but as a code. There are lots of issues in relation to the code of practice. There needs to be no consultation with the employer; the minister can just do it. So, there are no requirements in relation to consultation.

We then come to the recovery of unpaid remuneration. This is not 'any remuneration or other amount' as mentioned earlier in the first part of this particular provision; this is unpaid remuneration. This means that an outworker may initiate a claim for unpaid remuneration against a person identified by the outworker as the person whom the outworker believes to be a responsible contractor. You order some goods from a business; the business gets an outworker to make the goods; the business does not pay the outworker; the outworker says—a bit like a line-up—'I think he's the one who initiated the order.' Because the outworker says 'It's him,' you become not the responsible contractor—that would be too simple—but something new called the apparent responsible contractor.

So, we have responsible contractors and apparent responsible contractors. The unpaid remuneration claim may be for all or any of the remuneration that is payable to the outworker on account of work performed by the outworker that was, or apparently was—I do not know in whose judgment; it must be the outworker's judgment—initiated or distributed by the apparent responsible contractor. So, as long as the outworker thinks that the apparent responsible contractor apparently ordered the goods, you become the apparent responsible contractor and you become responsible for the debt because the business from which you ordered the goods did not pay the outworker. It puts a lot of power into the outworker's hands.

The unpaid remuneration claim must be made within six months. So, you have to remember this after six months. You order a pair of shoes and six months down the track you get nominated as the apparent responsible contractor. Well, good luck with remembering all the circumstances about that! So, we have someone called an apparent responsible contractor. Then we have a section that talks about the liability of the apparent responsible contractor. It provides:

> The apparent responsible contractor can, within 14 days after being served with an unpaid remuneration claim, refer the claim to another person the apparent responsible contractor knows or has reason to believe is the employer of the outworker under this act.

That person is called the 'designated employer'. So, we have responsible contractors, apparent responsible contractors, and now designated employers. The silly thing about that provision is this: if the outworker has received an instruction from an employer to make my shoes, the outworker actually knows who is the employer. I do not have to wait to be notified, as the apparent responsible contractor, of an unpaid remuneration claim and then say, 'There's the employer' 14 days later. I do not need to do that because the outworker knows who is the employer. Why is it up to me as the apparent responsible contractor to decide that? I am not sure. How would I know who is the employer at the end of the day? I am not sure. So we now have someone in this provision called the 'designated employer'.

Then what happens is that the designated employer is served with a claim under this particular section, and within 14 days of being served they accept the liability for the whole or any part of the amount of the unpaid remuneration claim by paying it to the outworker. However, a designated employer who accepts liability under this particular provision must serve notice in writing on the apparent responsible contractor of the acceptance of the amount paid. So, there is some notification backwards and forwards in regard to who is actually covering it.

Then we come to a section that deals with the recovery of an unpaid amount of remuneration. It provides:

> An amount payable to an outworker by an apparent responsible contractor who is not paid in accordance with the requirements of this division may be recovered by the outworker as a monetary claim. . .

Proposed new section 99G(3) provides:

> In the proceedings brought under this section, an order for the apparent responsible contractor to pay the amount claimed must be made unless the apparent responsible contractor satisfies the court that the work was not performed or that the amount of the claim for the work in the unpaid remuneration claim is not the correct amount in respect of the work.

Ultimately, how would I know as the person ordering the goods whether the employer has paid the outworker the right amount of money? All I have done is order the damn goods. This whole provision is a nonsense. I understand what the minister is trying to do, but it is so cumbersome that I am not sure it will achieve anything at all.

Then we have a section that allows the responsible contractor to claim contributions or to make deductions. This provision states that, if the responsible contractor pays to the outworker the whole or any part of the amount of any unpaid remuneration claimed under this particular division, the apparent responsible contractor—that is, the person who ordered the goods, or at least the person whom the outworker thinks ordered the goods—may recover the amount paid from a related employer. So the person whom the outworker thinks ordered the goods can notify a related employer that they might be responsible for the recovery of some moneys due. Here they can deduct or set off the amount paid from or against any amount that the apparently responsible contractor owes to a related employer.

This whole section is indeed very complex. The business community is totally opposed to it. It thinks there has to be a simpler way to address the provisions that the outworker clause seeks to address. The outworker definition, of course, includes clerical work (and we should not forget that) in the current provisions within the act. The opposition is not opposed to trying to bring in a fair mechanism so that outworkers are treated fairly, but the mechanism that the minister proposes is an absolute nonsense.

The Hon. M.J. WRIGHT: What has been put forward by the shadow minister is absolute rubbish. All we have heard for the last 10 minutes or so is nothing more than rhetoric. We have come forward with a sensible proposition. It is clearly set out in the bill. We are talking about the protection of outworkers, who are some of the most vulnerable people in our work force. This is similar to what we were talking about earlier in the bill in regard to minimum standards; these people need and deserve protection. This clause is modelled on the legislation that already exists in New South Wales and

Victoria. It is all about the code of practice, the chain of responsibility and abdication of responsibility.

One of the major problems relates to the chain of contractors engaging outworkers. A principal contractor may let work out to agents, who then enter into arrangements with a variety of subcontractors. The person who engages the outworkers—the employer—can fail to pay and attempt to disappear without paying the outworker, and there is no capacity for the outworker to recover payments from other contractors who have gained the benefit of their work and are more readily identifiable. The nature of this industry means that this is a bigger issue than in other areas. Recovery provisions are proposed to deal with this issue.

This is a very important area. We think that there needs to be protection for outworkers, and we think that the clause that sets this out does so in an appropriate way. As I said, it has been modelled on the legislation that is already in existence in New South Wales and Victoria. There is no great mystery here. There is a number of pages, but so what? It sets out the various categories in regard to code of practice, chain of responsibility, abdication of responsibility and so forth.

Mr HAMILTON-SMITH: I wonder whether, at this point, the government has really consulted with its federal Labor Party colleagues, who seem to be saying that the direction of this part of the bill is totally out of step with where the federal Labor Party wants to be going. The leader of the federal Labor Party has said that the Labor Party needs to rekindle its relationships with outworkers, contractors and small businesses and that it needs to reform. It seems that this government has not caught up with that fact.

The provisions in this part of the bill were not contained in the draft bill. I believe that Workplace Services has conducted some consultations, but they came as a bit of a surprise. It is difficult to see any clear limits with respect to the application of some of these provisions. As my friend has explained, it creates a convoluted chain of arrangements that could result in people suddenly finding themselves liable for remuneration and payments they had no idea they were obligated to pay, through no fault of their own. It seems to be creating this complex web of interactions that will just bog business down in a whole lot of red tape and costs that they do not need to sustain.

At the conceptual level, it involves an additional and considerable exposure for business because, as I have said, if the primary contractor does not meet its obligations, for example, through some sort of financial difficulty, clients can end up picking up the bill. My friend has given a few examples. Some outworkers working at home could suddenly find themselves chasing clients through a third party and have no idea why they are being pursued.

Frankly, the whole thing is a bit of a mess. There is no requirement for the proposed code of practice to be subjected to parliamentary consideration or scrutiny in any form. But if that code of practice provides entitlements for outworkers, those entitlements can be pursued through the court. I am interested in proposed new section 99C(5), which provides:

> The minister may, by notice in the gazette—
> (a) amend the code of practice; or
> (b) revoke the code of practice; or
> (c) substitute the code of practice with a new code of practice.

New subsection (6) goes on to describe a code of practice. It is, essentially, telling businesses how to do business. It is, essentially, giving the minister the right to intervene in the most intricate details of how outworkers, contractors and businesses do business. It really is government regulation. It is the highly controlled, centrally controlled economy. This is straight out of true Labor socialist dogma, and is the sort of stuff that Friedman and von Hayek would abhor. Instead of freeing the economy, instead of bringing about micro-economic reforms designed to make business flow, to create jobs and to create enterprise, this will slow enterprise down, impact on jobs and have a negative effect on the economy.

The exclusion afforded to a person 'whose sole business in connection with the clothing industry is for the sale of clothing by retail' is totally curious, as my friend has mentioned. Why has the minister not answered this question—why this one particular industry somehow gets a waiver and is not required to adhere to the law? What about a range of other sectors of industry that I could name? The entire outworkers provision is a mess. I was intrigued when Business SA initially said that this reworked bill was terrific, that the government had listened and that everything was sweet. This clause contains some of the more punitive measures from the earlier draft of the bill that was released in December last year. They have been reworded and thrown back into the new bill in this section and will have the same effect of achieving what the unions want, namely, to crack down on contract labour and outworking networks in order to bring everybody back under the union wing.

The Hon. J.W. WEATHERILL: I rise to make a contribution to respond to what can only be described as a right wing rant by the member for Davenport. We have heard a contribution in which it is suggested that the most vulnerable section of our work force—often women, almost invariably low paid and certainly without any access to the same levers of power of those who engage them—should not be afforded certain modest rights under this legislation—modest rights that bring us up to the sorts of standards that exist in other states. The first thing to note is that to suggest that bringing us up to the modest standards that exist in most enlightened economies would be deleterious to our economy rather flies in the face of the experience of the Victorian and New South Wales economies. So, that proposition is a complete nonsense.

The suggestion that this creates a liability in someone who, through no fault of their own, is contracted with someone ignores one central fact: there is such a thing as taking some social responsibility for your conduct in the way in which you undertake business. Notions of corporate social responsibility are generally accepted by mainstream business in Australia, but they are not accepted by the other side of the house. They remain completely unenlightened in their approach to the business community. I have always found it fascinating that, in terms of industrial relations, you can hear an echo of the 19th century in the chamber. The real world of industrial relations is carried out on a constructive basis, where mainstream employers understand that they have responsibilities.

Those opposite have managed to whip up some degree of anxiety. They have mounted a bit of a campaign and have frightened a lot of employers into believing that somehow this will be the end of the earth. However, the truth is that if they knew the people they were defending on a daily basis when promoting their crazy amendments to this legislation and resisting this bill, they would be ashamed of themselves. But they are hidebound and run these arguments in this place because, ideologically, they are required to. I also find it fascinating that they seem to stand for a union system in which only unionists get decent wages and conditions under the award system. It is quite strange for the Liberal Party to

stand for a Rolls Royce system for unionists but bugger all for anyone else.

What is most galling when those opposite criticise the outworker legislation is when they throw in these bon mots: they say that they really feel for the outworkers, but this legislation is unworkable. However, the complete hypocrisy is that they do not come to this place with an amendment to improve the bill: they sit there and snipe at this honest attempt to improve the legislation and to give some very modest rights to the most vulnerable members of our community. Their attitude to this bill is an absolute disgrace. They think that they are on a winner politically on this issue. We will remind the working men and women of South Australia that those opposite at every turn took every step they possibly could to ensure that modest improvements to the rights of working men and women in this state have been resisted. There will be a test.

Members interjecting:

The Hon. J.W. WEATHERILL: That is right, but you will be facing us at the next election, and we will see what the people think of you.

The Hon. I.F. EVANS: It is unfortunate that the member for Cheltenham misrepresents the position. The ramifications of clause 99B(1) are this. If the company that accepts the order and places it with the outworker does not pay the outworker, someone else pays it on behalf of the company. We oppose that. The member for Cheltenham says that we are sticking up for companies that do the wrong thing: we are not. We say that the company that does the wrong thing should pay the outworker. The member for Cheltenham has misrepresented our view. Clause 99B(1) allows those companies that engage outworkers on behalf of third parties to escape their responsibility. The member for Cheltenham and his party are allowing companies that do the wrong thing to escape paying outworkers. Why he would do that, when he parades as someone who cares for the less fortunate, is beyond me.

The Hon. G.M. GUNN: A few moments ago, it is obvious that the left wing of the Labor Party decided they had better show their colours in this debate.

The Hon. I.F. Evans interjecting:

The Hon. G.M. GUNN: We had the minister not responsible for the bill suddenly get up and give us a lecture on our social conscience.

Ms Bedford interjecting:

The Hon. G.M. GUNN: I would suggest to the honourable member, if she wants to enter into this debate, that she have enough guts to stand up and show her true colours, because her record—by the time we have finished reading the court transcripts of some of the things she was involved in she will have a bit to answer for, make no mistake about that. We are looking forward to that day, because the honourable member and her mate Peter Duncan—if she had a social conscience she would bring Peter Duncan back here to face his masters.

An honourable member interjecting:

The Hon. G.M. GUNN: That is what the Labor Party stands for. They stand for protecting people like Peter Duncan.

Members interjecting:

The ACTING CHAIRMAN (Ms Thompson): Order! The member will address the clause.

The Hon. G.M. GUNN: I have been provoked, Madam Acting Chair, and I am not normally one to respond to that sort of provocation.

The ACTING CHAIRMAN: Member for Stuart, I am sure you have sufficient experience to resist provocation and stick to addressing the clause under question.

The Hon. G.M. GUNN: I was responding to the rather unfortunate contribution of the member for Cheltenham when he attempted to justify what is not justifiable. He has not read *The Australian* this morning, otherwise he would not have made that speech. I put one other thing to him, because I have the page right here for him: 'Labor pains over change of heartland' and 'ALP's search for lost souls'. The honourable member is a lost soul.

Members interjecting:

The Hon. G.M. GUNN: Can I tell him one other thing: one of the great surprises of my life was on federal election night when I scrutineered the votes at the typical blue collar working class suburb of Davenport at Port Augusta, and they voted for Barry Wakelin. They voted from the heartland of Labor. The minister has not learnt. If Labor wants to ignore and make life difficult for small employers and contractors they will do so at their own peril.

The committee divided on the clause:

AYES (22)

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 (20)

Brokenshire, R. L.	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.
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(S)

Atkinson, M. J.	Brindal, M. K.
White, P. L.	Brown, D. C.

Majority of 2 for the ayes.

Clause thus passed.

Clause 46.

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

Page 27, line 37—Delete 'a declaration' and substitute:

Subject to subsection (6), a declaration

Page 28, after line 8—Insert:

(6) A declaration under subsection (3)(a) or (b) may only be made as part of a state wage case.

Clause 46 is the amendment of section 100 of the act, 'Adoption of principles affecting determination of remuneration and working conditions'. I will speak to both these amendments at the same time. Essentially, we seek to limit a declaration under subsections (3)(a) and (3)(b) so that it can be made only as part of a state wage case. Subsection (3) provides:

A declaration under this section may be made on the basis that it is to apply in relation to (and prevail to the extent of any inconsistency with)—

(a) awards generally; or

(b) awards generally, other than a specified award or awards; or

(c) a specified award or awards (and no other awards).

Our amendment narrows the effect of the provision and allows other matters that would be caught by the provision in its broader form to be properly put through the normal process. We think that narrowing it to the state wage case is the right result in this instance.

The Hon. M.J. WRIGHT: The government does not support the amendment. We think that test cases should be able to flow on across the system, where appropriate, without unnecessary process, and our proposal allows that to occur.

Amendments negatived; clause passed.

Clause 47.

Mr HAMILTON-SMITH: The opposition has some serious concerns about this provision, and so should the government. The extension of record-keeping obligations to people employed in informal or non-commercial arrangements is contrary to the very basis of the arrangement. No case has been made for this requirement, and it does not seem to have been consulted on very thoroughly. It would place additional and unnecessary compliance obligations on organisations, particularly organisations such as local sports clubs that are already struggling to deal with the other costs and regulatory imposts imposed by government.

The extent and detail of this obligation is unclear in so far as it could apply to declared employees. The exemption in respect of employees 'who are not paid on a basis on which the rate of pay varies according to the time worked' is unclear. If someone works on a fractional basis—for example, two days a week—the rate of pay may reflect 0.4 full-time equivalent. The number of hours worked on that particular day may not be specified. This would not be uncommon for part-time professional staff; nonetheless, the rate of pay will vary according to the days worked, although not necessarily the particular hours worked during the day. Whilst they would not be paid on an hourly basis, are they paid on the basis where 'the rate of pay varies according to the time worked'? Failure to correctly answer this matter will expose the employer to prosecution.

The reference to 'rate of pay' is ambiguous. The rate would not have regard to particular hours worked; however, an employee would get more for working three days a week than they would for working two days a week. Does the rate refer to the make-up of the payment having regard to days or having regard to hours? In that scenario, it is unclear when the employer would be obliged to keep a time book. Even the term 'time book' in this clause is a little deceiving. Most businesses do not now keep time books as such: the time book may be a sign-in or a sign-out sheet, and I note the bill acknowledges that it may be electronic.

Imposing this new requirement on businesses is simply going to bog them down. There will now be a requirement to keep these time books for all employees unless an award or agreement provides otherwise—clearly extending, as I mentioned earlier, this requirement to declared employees and people employed in informal or non-commercial arrangements. At present there is no obligation to keep time books in respect of these non-award employees. So, we are requiring that records be kept for all employees including for the first time (and this is important to note) non-award workers and—without a case having been made for this—people employed in informal or non-commercial arrangements. The obligations are unclear in both the extent and detail vis-a-vis declared employees.

So, we have more regulation, more red tape and more complexity. We have higher labour and business costs and reduced efficiency within the business, which can only have an effect on the state economy, and a system which encourages employers to move to the federal workplace relations system. This is not a good clause, and the bill would be better without it.

The Hon. M.J. WRIGHT: I am not sure whether a question was asked, but it is probably a good time to make some contribution. Clause 47, in relation to subsection 6 of the legislation, deletes subsection 107(7) of the act and members can see what is there for them to consider. The intent of this is to provide that, where an employee's remuneration does not vary depending on the hours that they work, where they are paid a salary as opposed to wages, there is no need to keep a time book, as it is not relevant to their remuneration entitlements.

The member also touched on another issue, and it is probably worthwhile drawing his attention to the fact that we have proposed an amendment to the bill which makes it clear that, if the employee is not paid on a basis under which the employee's remuneration varies according to the time worked, there is no need to keep a time book under the section. If need be, I can speak to the amendment, which will come up a little later through this clause, in more detail.

So, the changes we make here are in line with nationally agreed principles, including those of the commonwealth, and the time for which records are to be kept is consistent with the commonwealth requirement.

The Hon. I.F. EVANS: The minister just said that these provisions are in line with nationally agreed principles. Nationally agreed by whom?

The Hon. M.J. WRIGHT: By various ministers at state and commonwealth level.

The Hon. I.F. EVANS: So, the way I understand that answer is that this has the formal sign off of the ministerial council. I just want to walk through a few concerns that the wine industry has in regard to this, and I am sure that the minister would have consulted the wine industry before it was signed off at the national level. It would be very unfortunate if the minister, in all his enthusiasm, has whizzed off to Canberra and Sydney, not consulted with business but signed up to a national agreement. That would be so unfortunate.

The wine industry has some concerns with this and I will walk the minister through them. It says:

This provision provides that an employer must keep records for **all employees** but excludes the requirement to keep a time book for employees who are not paid an hourly rate or on a basis where the rate of pay varies according to the time worked. The wine industry assumes that time books will be required for casuals (hourly paid) and persons employed under mixed function type arrangements. However it should be noted that many pay records that we have seen also set out the hourly rate for salaried staff. Therefore the intention of the government is paramount to understand the ramifications of this proposal.

So, can the minister confirm, when he responds, whether salaried staff who are paid on an hourly rate fall under this provision? It continues:

The wine industry notes the reduction in penalties and expiation fine amounts from the December 2003 consultation bill. No rationale has been advanced and no justification has been made out for an increase in record keeping from 6 to 7 years as referenced in s102(3). . .

So we ask why we are increasing the record keeping provision to seven years. It goes on:

> In addition it would appear that should the provision be successful, those employers who have destroyed records for the seventh year as permitted by the current legislation will be in breach of the proposed bill if parliament approve[s] this change.

So, can the minister confirm whether the transitional provisions exempt employers from being subject to a fine if they have already destroyed information from the seventh year?

Proposed new section 102(8)(e) requires that, if the employer has made a contribution to a superannuation fund for the benefit of the employee, the name of the fund where the contributions are made and the amount of the contribution must be on each pay slip. This seems to be impractical to apply and fails to reflect reality. For example, where an employer may pay a 9 per cent contribution to a super fund, as required by the Superannuation Guarantee Charge Act, payment does not need to be made in line with each pay cycle. In other words, payments may be made on a weekly, fortnightly or monthly basis but the payment into the superannuation fund may be only on a three monthly basis. So people will have to rewrite computer programs to show all the pay slips differently for those months. In some months the slips will show superannuation amounts and in other months they will not.

It will add cost and complexity to the running of the business. Of course, if the poor employer fails to show the superannuation amounts or the name on the pay slip, they are liable to a fine. It is such a terrible thing that an employer would forget to put the name of a superannuation fund on a pay slip once.

While the 9 per cent contribution arises as a result of the payment of wages, when it is paid to a super fund it does not necessarily coincide with the pay day. In addition, the federal law requires reporting contributions made by employers to a super fund on behalf of employees on a quarterly basis, not on a pay cycle basis. The proposed bill requires an additional report in line with section 102(8)(e). This is, indeed, over-regulation by the various levels of government. The requirements of section 102(8)(e), as discussed, would appear to the wine industry employers to be difficult to comply with. Not complying with it, of course, results in an expiation fee and/or a penalty.

In addition, most awards set out the payment of the productivity component of 3 per cent. While the overall 9 per cent includes this amount, it is possible that the award component is directed to one superannuation fund and the 6 per cent directed to the other superannuation fund, so that employers will have to show details of two superannuation funds, and payments to both, on the pay slips in the pay period to which the superannuation payments refer. However, they may not necessarily occur together or in line with the pay cycle, making it an administrative nightmare for those people who still wish to employ. While the intent of the proposal is understood, the proposed change, according to the wine industry, is unworkable and should not be supported.

The Hon. M.J. WRIGHT: I do not accept that and, as the shadow minister just made the point 'as proposed by the wine industry', maybe he does not share that view either. More to the point—

The Hon. I.F. Evans interjecting:

The Hon. M.J. WRIGHT: You do share all those views? It is good to have that on the public record. As I recall, there were three specific questions asked of me, the first being about salaried staff. The member might have missed it but I referred to it in my earlier contribution to government amendment no. 11, to which I refer the shadow minister. The second question was, 'Why seven years?' I also referred to that in my earlier contribution: it is to bring us into line with the commonwealth. And in answer to the third question, it is not retrospective.

Mr HAMILTON-SMITH: Section 102 is amended by inserting after subsection (5):

> On the transmission of the records, the employer's obligations in relation to the records passes to the transferee or assignee.

Looking at subsection (5) of the parent act, I am seeking the minister's guidance on the mechanics of how this will work. If the business has been operating under a particular company name and if somebody comes in and buys that business, they do not necessarily buy the company: they might buy the business under the auspices of a totally new entity. This amendment seems to be requiring the transmission of all records to the new owner. Not only that, it seems to require the transmission of all the employer's obligations to the new owner. My understanding of a business sale and purchase is that the purchaser and the vendor reach an agreement in regard to things such as long service leave, accrued sick leave, etc. They reach an agreement on each employee with the agreement of the staff and then a line is drawn.

If a dispute arises after the sale, who does the employee attack with their union? Do they attack the new owner or do they attack the previous owner? Clearly, if it is a matter of long service leave or sick leave owing, I guess it would be the new owner, but it might be that, if an issue came up subsequently about, say, underpayment of wages or some benefit not paid by the previous owner that in good faith the new owner had no knowledge of, and if all the records had been passed onto the new owner, who does the employee attack in those circumstances? Do they attack the previous owner or do they attack the new owner?

The Hon. M.J. WRIGHT: Two questions were asked by the member for Waite so I will try to address them both. In regard to the first one he was talking about, it is already required to transmit all records; that is in subsection (5). Here, the obligations 'to maintain and keep' are being passed on. In regard to his second question, this area is about record keeping and does not affect substantive requirements, such as the long service provision.

Mr HAMILTON-SMITH: I thank the minister for his answer. I suppose I am getting to the issue where, as the vendor, I might want to retain certain records for my own purposes in case an employee were to come at me later for some issue that occurred during my period of ownership of the business. I note that, under the existing act, all the records have to be transferred, but it states that 'all the employer's obligations in relation to the records passes to the transferee or assignee'. I am really asking whether, as the vendor, I can then conclude that all of my responsibilities and obligations of any kind in regard to employees have gone with the records, and that, in effect, I do not need to keep any record, and that I can really walk away, having sold the business, in the full comfort and knowledge that the new owner is responsible for all the records and obligations in relation to those records?

The Hon. M.J. WRIGHT: If you want to keep a copy of the records, that is fine. My earlier reference was to substantive requirements, such as the ones which the member was

talking about, such as long service leave and, I think, a couple of others that he cited.

The Hon. I.F. EVANS: I have a couple of questions. In the transition of business provisions about which the member for Waite asked questions about a minute ago, if the previous owner passes all the records to the new owner, the previous owner having failed to comply with the act, and that is then discovered under the jurisdiction of the new owner, does the new owner become responsible because the old owner passed on to the new owner records that did not apply to the act?

The Hon. M.J. WRIGHT: No.

The Hon. I.F. EVANS: Okay; that is interesting. Given that under the declaratory judgment section which we discussed yesterday the contracting party that is declared an employer inherits all the retrospective obligations of employment, which you mentioned yesterday about WorkCover, and so on, can it then be penalised under this section because they have not kept the appropriate records as an employer would of an employee?

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

Clause 47, page 29, line 4—
Delete 'on which the rate of pay' and substitute:
under which the employee's remuneration

The shadow minister has made the point about retrospectivity previously, and I said then that it is not retrospectivity; he is missing the point. If records were not being kept, and the person was an employee, they should have been kept.

The Hon. I.F. EVANS: That has not helped me, minister. If a—

The Hon. M.J. WRIGHT: You do not understand declaratory judgments.

The Hon. I.F. EVANS: I do not understand declaratory judgments? Okay. Let us leave it there then.

Amendment carried; clause as amended passed.

Clause 48.

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

Page 29, line 26—
After 'workplace' insert:
,or any other premises where records are kept or work is performed

The government amendment is essentially a consequence of government amendment No. 1, which was about the definition of workplace. The proposed powers do go beyond the employer's premises, because if there is a need to access records that are kept elsewhere inspectors should be able to do so. It may be necessary to see where the work is performed to make assessments about entitlements to penalties such as confined space penalties. It may well be that that requires access to premises which are not the employer's premises. As I said, this is essentially a consequence of an early amendment—the first that was moved by the government.

The Hon. I.F. EVANS: Can you explain to the committee whether this allows an industrial inspector to now enter an employer's home?

The Hon. M.J. WRIGHT: On complaint, that has always been the case.

The Hon. I.F. EVANS: I did not ask whether it was on complaint; under your bill they do not need a complaint to enter any workplace. Under this provision can an industrial inspector enter the home of an employer where there is no complaint?

The Hon. M.J. WRIGHT: Yes, there is no dispute about this. Under your act, it is on complaint; under this bill, it is not.

Mr HAMILTON-SMITH: If the employer keeps his records at home in a cupboard in the kitchen or the bedroom, can an inspector, without notice, knock on the door, legally enter the premises and go straight to that cupboard or search the premises?

The Hon. M.J. WRIGHT: If that is where the records are kept, what else is going to happen if we are conducting an investigation? If the records are kept at home, they need to be looked at.

Mr HAMILTON-SMITH: As the minister has asked me a question, I will answer. The bill could propose that the employer provide those records at a given place and time as required or demanded by the inspector so that the inspector does not have to force his way into their home. For example, the inspector could require that he must present those records at the front door or at the office of the inspector within a certain period of time, or something along those lines. Why is it necessary for the government to provide a legal power for inspectors to go to the homes of small businesspersons, go into their bedroom, kitchen or lounge room and search for records when another less draconian device could achieve the same outcome?

The Hon. M.J. WRIGHT: As I said, they can do that now with a complaint. You cite the bedroom. It may well be, but in all probability they would not be in the bedroom, and the inspector would not want to go into that room, anyway. In most cases—hopefully in all cases—if this was required, a convenient arrangement could and would be arrived at. Why would the inspector want to make things any more difficult than they need to be? If those arrangements can be made conveniently with mutual agreement, that would be the way the inspectorate would want to go about their business.

The Hon. I.F. EVANS: This provision was not consulted on with anyone.

The Hon. M.J. WRIGHT: The whole bill was consulted on.

The Hon. I.F. EVANS: But was this amendment consulted on? Name one business association with whom you consulted on this amendment.

The Hon. M.J. WRIGHT: To the best of my knowledge, I think this has been discussed with Business SA. I make the point that that is to the best of my knowledge, and it is also the belief of my adviser. But I will check that. If we had not moved the amendment to 'workplace', the effect of this would have taken place, anyway. This amendment is a consequence of an earlier amendment to 'workplace' for unions and has a consequential effect here for inspectors.

Mr HAMILTON-SMITH: Under this power to enter people's homes that you seek to add by amendment, will a workplace inspector be required to be accompanied by a police officer, and will this power include a power to use force? For example, if a small businessperson or their spouse said, 'What are you doing here?' and the inspector showed his ID and said, 'I'm here to carry out an inspection and I'm coming in, so get out of the way,' I suppose under this part of the bill that would be a lawful act and force would be justified—and, I presume, without the accompaniment of a police officer or a search warrant.

The Hon. M.J. WRIGHT: There were two questions: the answer to both questions is no.

The Hon. I.F. EVANS: I just want to check that. The minister's advice to the committee is that an industrial inspector who attends an employer's premises that is unoccupied—

The Hon. M.J. Wright interjecting:

The Hon. I.F. EVANS: Well, no-one is home—right?

The Hon. M.J. Wright: Yes.

The Hon. I.F. EVANS: They cannot enter. I do not see a provision in the bill that prevents that.

The Hon. M.J. Wright: They cannot break in.

The Hon. I.F. EVANS: They cannot break in?

The Hon. M.J. WRIGHT: Not without the assistance of a police officer exercising their powers.

The Hon. I.F. EVANS: Why is it that a police officer who investigates crimes needs a general warrant issued by the Commissioner? An industrial inspector needs no such warrant issued by any authority, whether it be the Director of Workplace Services or anyone. The minister is giving the industrial inspectors a right to enter people's homes even if there is no complaint, just on a whim. Do it by numbers.

The Hon. M.J. WRIGHT: The inspector is authorised by the parliament to undertake their own activities.

The Hon. I.F. EVANS: I understand that. So is the police officer. But why is the minister asking the parliament to authorise an industrial inspector to enter a home without a warrant when a police officer, who could be investigating far more serious matters, has to obtain a general search warrant issued by the Commissioner? The minister is giving the power to an industrial inspector to enter someone's home where there is not even a complaint. They could just be conducting a random audit or, as the earlier amendment states, an audit or systematic—

The Hon. M.J. Wright: In a home?

The Hon. I.F. EVANS: It is a workplace.

The Hon. M.J. Wright: They are going to do an audit in a home, are they?

The Hon. I.F. EVANS: Why else would they be attending if not to audit the records? Why else would they be attending if not to look at the records? The member for Waite made a very good point. If one looks at the Native Vegetation Act, I think one will find that it was the member for Stuart who moved amendments, which were accepted by the government, for a different process to request paperwork and records from people's homes. The government accepted that. A process was put in place where, from memory, a time period was given, and if they needed to enter a home they had to go to a magistrate and obtain a warrant. If it is good enough for the officers acting under the Native Vegetation Act, why is it not good enough for industrial inspectors? It just seems to me that there is an inconsistency in the government's approach.

The Hon. M.J. WRIGHT: I do not share the views of the shadow minister and the member for Waite. From the way the member is talking, it sounds to me as though he does not even support the existing arrangements under the act. This is done under the current law with a complaint. All we are suggesting is that they can do it without a complaint—and we are talking about a home where there are work-related activities, to inspect the records.

Mr HAMILTON-SMITH: I wish to correct the minister on the first point he made. I refer to section 102 of the existing act, 'Records to be kept', the section that we are amending. I am happy to be corrected if I am wrong, but I do not think it says that an inspector can go into someone's home.

The Hon. I.F. Evans interjecting:

Mr HAMILTON-SMITH: All right. But I struggle to see where at the moment in the existing act they can go into someone's home and exercise these powers. I come from the school of thought that, if the bill passed by the parliament becomes an act and creates a law that gives a bureaucrat a power to do something, the minister's assurances to us tonight that the police must be present and that they cannot force entry do not matter. I come from the school of thought that, if the law says it can be done, it can be done. Unless there is a constraint in the act that qualifies those powers and provides that a police officer must be present and that entry cannot be forced, an inspector may well believe that they have the power to force entry.

Earlier, my honourable friend mentioned the case of the inspector arriving and no-one is at home. He explained that the inspector could not force entry and that a police officer would be required. However, I am more concerned about when someone is at home—perhaps the businessman's wife or children—and the inspector says, 'You've got the door open. I'm coming in, and I'm searching for those records,' and he believes that he has the power under the act to force his way into the home to search for those documents without a search warrant or a police officer present.

Since the minister tells us that a police officer is required, between the houses will he undertake to amend this part of the bill, and any other confluent parts that require amendment in this respect, to qualify these powers so that an inspector understands that he or she cannot use force to go into someone's home to search for or to seize these records, or shall we do that tonight? I seek guidance from the minister on whether or not he agrees in principle that these powers should be so qualified and, if so, whether we should do that tonight in this committee, or will he give a commitment that it will be done between the houses?

The Hon. M.J. WRIGHT: This is a strange argument that is being presented, because the scenario given by the member occurs at the moment in regard to the existing law. I acknowledge that—

Mr Hamilton-Smith interjecting:

The Hon. M.J. WRIGHT: It is the same, except that (and I have already acknowledged this) under the existing law there has to be a formal complaint. We are removing that component. However, the issue in relation to a police officer breaking in and so on exists under the current law. If this were such a big issue, or if it has been such a big issue, I would have thought it would have been raised with all of us. It has not been raised with me since I have been in the parliament, either as a shadow minister or as a minister. I am not sure whether the issue raised by the honourable member has been raised with the current shadow minister or, for that matter, with anyone else in the chamber at the moment; I suspect not, but I do not know that for sure.

Mr HAMILTON-SMITH: Section 104 of the existing act, comprising eight subclauses, relates to the powers of inspectors. Part of the reason this issue may not have been a problem is that it is my understanding that the existing act does not empower inspectors to go into someone's home. It empowers them to go to a place of work. It may be that someone is at a place of work, it is a business premises and, therefore, this issue has not been raised before. This amendment and this bill extend what is in the existing act now to include people's homes—not only people's homes but that part of the home which is other than the workplace and where records may be kept, which, as I have said, could be the bedside drawer or the kitchen cupboard. I think that is the defining difference. I take the minister's point that this has not been a problem in the past, but I think the amendment and the bill now create a potential problem. As my honourable friend said, there seems to be an incongruity in that the powers of the police and the requirement for warrants stand

apart from the powers in this bill. If it is empowered by the bill, it can happen; if it can happen, perhaps it will happen.

The Hon. M.J. WRIGHT: In the spirit of bipartisanship, and taking account of the hour, I will look at this between the houses. I do not think that it creates the mischief to which the member for Waite alludes, but I will look at it and discuss it with him and the shadow minister, and we will see what comes out of those discussions. I will not go beyond that, because I am not sure that he would be able to make the argument to me that it creates the mischief he implies.

The CHAIRMAN: I note the minister's commitment. I think it very important that this aspect be looked at closely between the houses.

The committee divided on the amendment:

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.
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.

PAIR

White, P. L.	Brown, D. C.

The CHAIRMAN: There being 22 ayes and 22 noes, the chair has the casting vote. I believe there are legitimate concerns about this particular amendment. The minister has given an assurance, which I will want fulfilled, that this matter will be looked at between the houses, because there seems to be a discrepancy between what the inspector can do and what the union official can do. The union official access was clarified further, and I think the inspector access needs to be clarified. I give my vote for the ayes, but on the condition that the minister reviews the matter.

Amendment thus carried.

Progress reported; committee to sit again.

PARLIAMENTARY REMUNERATION (RESTORATION OF PROVISIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 September 2004. Page 194.)

The Hon. I.F. EVANS (Davenport): This matter deals with the bill which was previously passed in July 2004 and which required the Remuneration Tribunal to make a determination that provided members of parliament with a motor vehicle on terms as far as possible the same as those that apply to federal members of parliament, and there was some debate about that both in this and in the other chamber. Certainly, there was some public debate. The minister, in the second reading explanation, makes the point that, following the passage of the legislation, the Auditor-General informed the government that it was his view, based on advice from the Australian Government Solicitor, that the passage of the bill did not comply with section 59 of the Constitution Act in regard to its being a money bill. The government then sought its own advice from the Solicitor-General, Mr Kourakis QC—

The SPEAKER: With respect, it did not.

The Hon. I.F. EVANS: According to the second reading explanation—

The SPEAKER: Which is inaccurate.

The Hon. I.F. EVANS: —the government sought advice from the Solicitor-General, Mr Kourakis, who confirmed the advice received from the Auditor-General. I have not seen the exact detail of that advice, but I take the minister at his word that advice was sought and the advice confirmed what the Auditor-General claimed was in the advice from the Australian Government Solicitor. Following receipt of that set of information, the government announced its intention to recommend to the Governor the introduction of an administrative scheme in relation to the supply of members of parliament with a vehicle, subject to a financial contribution from the members of parliament participating in the scheme.

So, a decision has been taken by the government to implement the scheme administratively rather than by an act. I understand that the details of the scheme will be finalised shortly. Negotiations have been occurring between parties in relation to the matter. The scheme will be administered by Fleet SA and members of parliament will be required to make a $7 000 contribution, which the second reading explanation indicates is from the electoral allowance of each member who participates in the scheme. The scheme is separate from and independent of the allowance determination process of the Remuneration Tribunal.

In light of all the circumstances, the government has decided that, given that it is proposing to implement an administrative scheme involving a significantly greater financial contribution from members of parliament, it is proposing to repeal the Parliamentary Remuneration Act and restore the law to the position that existed prior to the enactment of those amendments back in July. The government has some amendments, which the minister will no doubt address in the committee stage of the bill. The opposition is not going to oppose the government's proposal in this matter. It is important that we get the process right and, if the best advice to government is that this is the process we need to go through to get it right, then we should follow that advice.

Mr HANNA (Mitchell): I appreciate that this is the first time today we have had this spirit of bipartisanship. I have a question of the Treasurer and hope that he can answer it in reply in this debate. The question is whether South Australian taxpayers will actually be outlaying more under this scheme for provision of vehicles for MPs than before such a bill was brought into parliament and, if so, what are the implications?

Mr VENNING (Schubert): Just to give some balance to this argument, I have gone to the trouble of getting all the facts and figures. I know how emotive this debate is, particularly with what the member for Mitchell has just said. I put my own operations on a bit of paper and costed it right

out, and it is not all that attractive. I did mine on a vehicle with a value of $45 000 doing 60 000 kilometres a year, which is probably a few more than I would do, which would be approximately 52 000. When you look at the costs of running the vehicle per year—and the costs are tax deductible—and the tax saving on that, since most MPs are on a pretty high rate of tax, you have to work these costs off your tax and take all these things into consideration. I am happy to show anyone these figures because these are all basic figures on that car on those kilometres.

When you look at the bottom line after tax costs, in the first year, in my instance, although other members' figures would not be exactly the same, the after tax cost was $9 940 that you are getting for your $7 500; in the second year, $8 293 for your $7 500; and in the third year, realising that these cars are for three years or 60 000 kilometres so that a lot of members will have their cars for three years, the after tax cost is $7 300. So, you are behind the eight ball. You are down. You have lost—and the car is not yours. Members all have to weigh this up, because in the end the car is not yours.

A lot of members will be keeping the car for three years because they will not be doing those kilometres. The likes of the member for Stuart, the member for Flinders, a couple of others and I will certainly be in other cars every 12 or 14 months. It is reasonably attractive. But when you look at that bottom figure, $7 384 is the third-year figure. So I suggest that before members rush in, and before anyone wants to can us and say that we are getting a fantastic deal, speak to your accountant. After all, we have a choice in this matter: you can keep your existing arrangements going—and you have done that and you have obviously sought advice, whatever way you do it. MPs have to have a motor car.

It always annoyed me that my kids could all salary sacrifice but I never could. Well, now we have a choice in this matter. You can look at the facts and figures—after all, you have to run your parliamentary career as a business because if you do not you are not going to have any assets or anything to show for it when you retire. So you do have a choice in this matter. I believe that this scheme will have to be fine tuned, because it is coming in, and I congratulate the government on putting this down. The figures are so close to line ball that the government has obviously had an accountant have a look at this. When I look at those figures and I look at my own circumstances, I am going to ask, 'Well, will I or won't I?' and my wife says, 'No, you won't.' With the system I had before, I had my car of choice—I drove what I liked to drive—and at the end of the scheme it was my car and I could do what I wished with it. And there are also other things that you cannot claim. I will be accepting this, and I thank the government for doing what should probably have been done many years ago. I support the motion.

The Hon. R.B. SUCH (Fisher): I will be relatively brief. There was a lot of nonsense when, after many years of frustration in this place trying to see this issue resolved, I tried to do something about it by having the matter of a vehicle and other non-monetary benefits dealt with by the Remuneration Tribunal. Without being too harsh on the tribunal, I think it is fair to say that it has not been all that amenable to the needs of members of parliament trying to do their duty. In fact, in my appearance before the tribunal I would have to say that, while it was not personally hostile, I detected an unwillingness to understand the role and responsibilities of MPs.

There are in this chamber some members—I would say the members for Croydon and Norwood—who can do their electorate duties without a car, but I do not know of anyone else who can, and I would say that any member of parliament who does not need a car in this day and age, apart from those few exceptions, is not doing their job; they are not attending school councils, they are not attending fetes or fairs. The member for Stuart is at one end of the spectrum in terms of extreme use of a vehicle, but other members in the city need to use a motor car a lot. In that respect we are no different from, say, a commercial traveller except that we probably have to get out and about seven days a week.

I think there was a lot of very unfortunate misrepresentation by some people in another place who should have known better and who were out talking about a $750 car and getting out on North Terrace with a toy Mercedes. That sort of behaviour brings the whole parliament into disrepute. They could have attempted to deal with this matter if they had wanted to, and I point out that members in another place actually get a bigger allowance than metropolitan members in the House of Assembly—and those in the upper house who live in the metropolitan area do not have the same electorate commitments. I have found it rather galling that we have had people trying to gain cheap political points by denigrating the vast majority of members—whether they are in the upper house or here—who actually get out and about serving their constituents and who need a motor car to do it. Even in my electorate, which is relatively small compared to some of the country electorates, it is an hour's return trip to attend a naturalisation ceremony for the City of Onkaparinga.

If people are not doing that and attending those sorts of things then they are not doing their job. I suspect that every member in this house, at least, is doing their job—I would not regard anyone in here as a slacker—and I resent people who try to score a cheap political point and who are not willing to discuss the issue with the proposer of the bill but who are willing to rush out to the media after saying that they are too busy to discuss it. They have time to go the media before the matter is even canvassed through the parliament properly, and then they give excuses that they have not opened their mail for a month and all that sort of nonsense. It was just pathetic.

There was nothing in my bill that suggested that the car would be available for $750. That was an interpretation that people put on it and, as a member for Schubert has just outlined, the new provision is not all that generous. If MPs continue to flog themselves by denying superannuation, which was a generous provision, but then cutting back so that the role of member of parliament is one that will only be available to the rich then we are doing a disservice to the whole community. We will reach a point where people will not want to come in here. They give up their career to come in here, and there are many here who are in the same situation as myself, who gave up my career midway. I lost all my superannuation, all my entitlements, and then we come in here and find that when you want to do your job with a work vehicle we get petty minded people who try to denigrate their colleagues to score a cheap point.

I would have preferred this matter to be dealt with totally by the independent tribunal and for it to have progressed it in a sensible, rational way rather than seeming to take a hostile attitude to MPs as if we were on trial. I am very proud of the MPs in this chamber and most of those in another place; I think they serve the community well, they deserve better, and I think that they need a work vehicle. I am not opposed to what the government is doing, but members

should realise that what was expressed by legal people was an opinion and the only opinion that really counts is when it is tested in a court.

The Hon. G.M. GUNN (Stuart): I support the bill. This is a measure which must have the support of both sides of parliament. As someone who has been here for a long time I have seen a small element of the community set out to denigrate members of parliament, which I think is unhelpful and not good for democracy. At the end of the day, in my case a motor car is one of the most important elements in doing my job. As someone who drives well over 100 000 kilometres a year I have to have very good motor cars, because there is nothing worse than being stuck on the road at one in the morning, let me tell you.

I believe that this measure will help members of parliament. It is not extravagant. When I look around the major city in my constituency and I see what the heads of government departments are driving around in, I do not think that this measure is very extravagant. I support the measure, and I support many of the comments made by the member for Fisher. I am appalled by the cheap shots of Mr Xenophon and others. I do not agree with the Auditor-General: it is not his role to tell the parliament what it should or should not pass. If people are unhappy with the parliament and do not think that it is right, they should test it in the courts. It is not his role, and I believe that he is going far beyond his role as auditor. He is not a legal adviser to the parliament. I commend the government for bringing forward the measure.

Mr BRINDAL (Unley): I will not detain the house, but I was upstairs listening to the contributions of some of my colleagues and I would like to support them by saying that, in the 15 years that I have been here, I know no-one who has come in here for their own gain or for personal benefit. I, like some of my colleagues, am sick and tired of the kowtowing of many people in this house to get a quick popular vote—the pandering to a group of people in the community who think that they can get the best politicians that they can and the best public service that they can for absolutely nothing. Like many of my colleagues, I did not have an independent income, and I came in here.

Unfortunately, this is the way I have to earn my living and support my family, and I am not ashamed of what we are paid or the benefits that we get. Indeed, when I read some of the local press and see what directors of quite questionable companies, and sometimes very small companies, can get, when I see what the CEO of my local council gets, when I see what half the public servants get, I wonder why we get as little as we get. This parliament and the 47 people in this chamber and the 22 people in the other chamber constitute the will of the people of this state. We are the ones entrusted with making the laws and making the decisions that affect just about every other person, yet the Premier in this state is not the highest paid person in the state. I find that remarkable.

There is an issue with what we accept from the media, who want to carp and criticise and who are never very keen to put forward their own salary packages. I have some friends in the media and I happen to know what some of the radio presenters earn, and it is a figure that would stagger most members of this house. They do not, when they are criticising us for what we are earning, tell their listeners exactly what they are earning. Neither is it very public knowledge that a great majority of people who have a reasonable level of income have a car almost as an automatic right. It goes right through many of the levels of public servants, and not necessarily that senior. It goes right through business and it is one of those ways by which you can make your package extend further.

I commend the Treasurer for this measure, and I say to him, 'More strength to your armour.' It is about time we stood up and said that this is a reasonable right for people who work hard and, if the people of South Australia do not like it, there is always space on these green leather benches for people who want to run at the next election and beat those who are already here. If they think that what we do is so little worth, I invite any South Australian to run at the next election, come in here and vote to lower the salaries, because there is one thing that I will absolutely guarantee to every member of this house: once they get here and see how we work, they will not lower the salaries but they will probably want to put them up. I commend the Treasurer for his endeavours.

The Hon. K.O. FOLEY (Treasurer): Oh boy! Thank you. I will distribute that last piece in my newsletter widely—you commend the Treasurer for his efforts, full stop. Start quote, I commend the Treasurer, end quote, for his efforts. The government took a decision within executive government to make the provisioning of vehicles available to MPs at a cost of $7 000. The necessity for this bill, which has already been outlined in the second reading speech and through contributions, is on advice, notwithstanding that some people do not agree with that advice. There were problems associated with this bill, but more importantly from a policy sense we took a view that a $7 000 contribution from MPs would be an appropriate contribution for the provision of a vehicle.

I do not want to speak for long but in conclusion I will say this: I got my first company car when I was 23 years of age. I can remember it: it was a Datsun 200B. I was a sales representative for a company called ANI Austral Steel. I had two or three company cars with that company, as I did through a number of positions that I took within the private sector over 13 years. If I look back now on the work that I did as a sales representative, where the provision of a car is a necessity, and various management roles that I took within those companies—with less time on the road but a car was still of value—I do not think there is any job since that point, whether it was as an adviser to a minister or a chief of staff to a premier, since my being a sales representative to the day when I was elected to this house, that requires a car more.

No job would be more in need of mobility and appropriate compensation for that mobility than that of a member of parliament. In my view, that is a given. The view has been taken previously that the electoral allowance was sufficient to cover that. I think that most members would attest to the fact that that is not necessarily the case. The $7 000 represents the vast bulk of the cost of operating and running a vehicle. The added value to a member in a monetary sense, whilst of value, has to be weighed up against the fact that individual members are required to make a $7 000 contribution. We think that the balance is right between the necessity for a member of parliament, regardless of politics, to have access to a vehicle and to have an appropriate payment for that. We think that we have got the balance right, and I would say that there are a number of members who might think that $7 000 is excessive. I think that, on balance, we have got it right.

I respect and thank the opposition and other members of parliament for their support in this, particularly the member

for Fisher, who has been strong and very passionate about the need for the provision. As the honourable member quite rightly points out, the provision of a company vehicle is not an earth-shattering part of a remuneration package. It is widespread amongst the public and private sectors, and, as I said, some 21 years ago I got my first vehicle.

In relation to the question put forward by the member for Mitchell, as the honourable member would know, quite often in government, as Treasurer I am faced with having to meet unexpected costs to necessitate settling matters that involve individual members of parliament. The member for Mitchell knows exactly what I am talking about. One does not budget for that; one deals with that as and when it arises—as I did in the case of the member for Mitchell. As it relates to this bill, the cost of the cars will be included as the best guess we can do in the mid-year budget review. The figures will be released at that point. There will be a cost to the taxpayer, but only an appropriate allowance by the taxpayer to ensure that members of parliament can go about what is a difficult and onerous job.

Some might make mention of the fact that we are dealing with this legislation at 11.45 p.m. That is not because we have not been prepared to deal with this legislation earlier but, rather, we have had an important piece of legislation before us. I would have been more than happy for this bill to come on earlier. We have been upfront. Everything about this has been public. It has been on the public record. There is nothing new in what we are doing tonight that has not been widely debated and publicised, but I will leave the parliament with these comments: the fact that we are in this place at 11.45 p.m. for the second night running, and probably the second night of three, does indicate that, as much as many in the wider public would like to deride our profession, I am not sure of too many jobs where workers have put in three days running in excess of 16 or 17 hour days. We do that; we are not complaining. At the end of the day these are jobs which are extremely demanding, and I do not think the provision of a car with appropriate payment by MPs in the 21st century is inappropriate or a point to be criticised.

Bill read a second time.

The SPEAKER: There are some remarks which I am compelled to make in consequence of my own dismay at the public remarks that were made about the legislation at the time it was first publicised. I strongly supported the initiative—and still support the initiative taken by the member for Fisher (Deputy Speaker and Chairman of Committees)—and the way in which he went about this in order to provide members of parliament, as other members referred to in the course of their remarks, with a vehicle that is reliable to get them around this place called South Australia in the course of doing their work. I was also dismayed at the ill-advised, incompetent remarks made by some other people who pretended knowledge of the background to the legislation. After all, we passed it through this house and the other house. Having done that, those members of either house—particularly the other house—who were prepared to be critical publicly of their colleagues in consequence, not because it is on this particular matter, still should be held to account for that criticism.

There are some facts that need to be put on the record. The second reading speech of the minister in the course of explanation, which was incorporated in *Hansard* without reading it, has some mistakes in it. The first, of course, is that the Auditor-General has any standing: he does not. The Public Finance and Audit Act by any other name—I cannot recall it at this hour and I do not have my papers with me; it has come on as rather a surprise and I am caught in the chair—which appoints the Auditor-General does not give him powers, responsibilities or any other duty to make any remark as to whether or not a bill passed by parliament is constitutional.

The Hon. K.O. Foley: That is not correct.

The SPEAKER: The Deputy Premier will remain in his place and remain in order. The Australian Government Solicitor has an even worse position to try to defend. If it was true that someone, either the Australian Government Solicitor or someone from that office provided advice, they would have absolutely no standing. They would have no more standing in this matter than a rabbit trapper at Yunta.

The Hon. K.O. FOLEY: I rise on a point of order, Mr Speaker.

The SPEAKER: The Deputy Premier will resume his seat.

The Hon. K.O. FOLEY: No, I won't, sir, I am taking a point of order, as I am entitled. Under what standing order, Mr Speaker, do you deem it appropriate that you can speak after I have spoken to wind up the debate on the second reading? I would like to know the standing order of this house that allows you to do that.

The SPEAKER: The practice has been standing since the Deputy Premier and other members of the government and the opposition appointed me as Speaker. I pointed out at the time that that is what I would do where I found it necessary to do so in the interests of clarity. I therefore continue. The Australian Government Solicitor has no standing in interpreting what the South Australian Constitution means. In the conversation which I had with the Solicitor-General, he told me that he did not believe that section 59 or any other section of the Constitution Act was offended by this legislation. Section 59 of the Constitution Act simply provides:

> It shall not be lawful for either house of the parliament to pass any vote, resolution, or bill for the appropriation of any part of the revenue, or of any tax, rate, duty, or impost, for any purpose—

'any purpose' are the operative words here—

> which has not been first recommended by the Governor to the House of Assembly during the session in which such vote, resolution, or bill is passed.

Of course, the enabling legislation had its origins in 1974. That, of course, was accompanied by a message from the Governor as was the repealing act of 1990. The provisions in 1974—these provisions were generally incorporated in the act replacing it on repeal; they were not repealed and excluded—are to be found in section 5B of the Parliamentary Salaries and Allowances Act 1965-1974. In short, section 5B(1) provides:

> . . . pursuant to any determination of the tribunal made after the first day of July, 1974, shall be fixed at such annual rate as the tribunal may determine having regard to all relevant matters including—
>
> (b) the effective means of travel available to the member within the member's electoral district and between that district and the city of Adelaide.

That is expressly stated in the original act for which, the purpose having been stated, the Governor sent a message approving it. Equally, it was incorporated in general terms in the act of 1990, thereby ensuring that what was done eight times out of the last 10 times in amending that act was lawful. As to whether or not it is lawful, there is an opinion from

learned counsel that is to be provided to the house within a matter of a day or two.

In all these matters, it is regrettable that the Auditor-General has so profoundly exceeded his powers as well as taken the arrogant view that he does not need to respond to a letter written by the Joint Presiding Officers of the Parliament to him during the period of time that the parliament had been prorogued. Both Mr President and I, after consulting the advice that we needed to consult—and I can say in erased type that that of course is the table officers of each of the chambers—found it astonishing that he would volunteer such an opinion, especially when it is at odds with the facts in such a profound manner.

Altogether, he then compounded that felony by misrepresenting what the Joint Presiding Officers provided to him as an inquiry on their letterhead as though it were coming from the Joint Parliamentary Service Committee, when he sought to attack both of us (particularly the Speaker) in the course of the remarks that he made before the Economic and Finance Committee recently. I think the whole saga is a sad one, and it reflects very badly on the way in which the Auditor-General has conducted himself within the powers provided to him under his act.

The Hon. K.O. FOLEY: On a point of order, Mr Speaker, you are not entitled, regardless of your opinion, to gratuitously stand in your place as the Speaker of this house and make the quite derogatory remarks which you have made and which are totally unrelated to this piece of legislation. I simply caution you at this point to understand your role as the Speaker. If you want to speak on this bill, you do so from your chair, but, if you think you can sit there and make the remarks you just have about the Auditor-General on matters unrelated to this bill, I think it is most unwise, and I ask you to reflect on that.

The SPEAKER: I have no intention of withdrawing because everything I have told the house is fact. The house will resolve itself into committee.

Mr HANNA: I rise on a point of order, sir. To the extent that you are ruling that there is no point of order, I dissent from your ruling.

The SPEAKER: I am not ruling that there is no point of order. I am simply stating that I am not telling the house anything that is untrue.

Mr HANNA: That is not the point of order as I understand it from the Deputy Premier. The point of order of the Deputy Premier is that it would be more appropriate, as I understand it, for the member for Hammond to speak to the second reading of the bill on matters of principle concerning the subject matter from a place on the floor of the house while someone else takes the chair, rather than using the throne—the position of the chair—to make that kind of contribution. The contribution is made as the member for Hammond, not the Speaker and, therefore, it is more appropriately made from the floor. The Deputy Premier makes a good point of order. If it is ignored, that is as good as ruling that there is no point of order. If that is your ruling, sir, I dissent from that ruling.

The SPEAKER: The member for Mitchell, of course, is not listening to what both the Speaker and the member for Hammond is telling him. The majority of the remarks I made (as both the member for Hammond and the Speaker in the chair) were in consequence of the advice I was given. They were made, therefore, as the Speaker. If it is necessary for the Speaker to clarify for the benefit of the house matters of constitutional importance, the Speaker must do that. I saw no reason to interrupt the proceedings of the house on two occasions, and I simply put before the chamber the same kind of remarks as have been made by the member for Stuart—quite properly—and the member for Fisher, and others who contributed to the debate earlier.

If the Auditor-General takes offence, that is a matter for him, but he misrepresented not just what the Speaker had to say but also what the President and the Speaker wrote to him. Indeed, he said that it came from the Joint Parliamentary Service Committee—it did not; it came from the Joint Presiding Officers. The matter has now passed, the second reading is agreed to, and the house is in committee.

The Hon. K.O. FOLEY (Deputy Premier): I move:

That standing orders be so far suspended as to enable the house to sit beyond midnight.

Motion carried.

In committee.

Clauses 1 and 2 passed.

Clause 3.

The Hon. K.O. FOLEY: I move:

Page 2, before line 10—
Insert:
(a1) Section 4A(2)—delete 'choose' and substitute: elect

The purpose of this amendment is to ensure that there is sufficient clarity in the legislation to enable members of parliament to salary sacrifice from their electoral allowance to enable a member of parliament appropriately to have the ability to make a tax deduction on their payment. The advice I am provided with is that this makes it quite clear that this is an item that will receive the appropriate tax treatment from the Australian Taxation Office to enable the vehicle cost to be offset as a legitimate business cost, which of course it is.

Mr HANNA: In the second reading debate, I raised what I thought was a fair question about the additional amount for which the Treasurer must budget to meet additional commitments should this bill be passed. The minister replied, at the conclusion of that debate, with what I suggest was a veiled personal attack on me. I invite the minister to apologise for bringing the debate down to a personal level, and I reiterate the question: presumably, some computation has been done about the amount that has been budgeted in relation to this measure.

The Hon. K.O. FOLEY: Get serious! Coming from a bloke who has attacked me personally in this chamber, I find that bizarre and amusing. As I said, the mid year budget review will provide the appropriate information. I am quite willing to provide the house with all sorts of information, if that is what the member for Mitchell would like. I am not hiding the costs of this. Once we have it calculated and include it in the mid year budget review, the figure will be made public.

The CHAIRMAN: I know it has been a long night tonight, as was last night, but I ask members not to become distracted from our purpose.

Amendment carried; clause as amended passed.

Clause 4 passed.

New clause 5.

The Hon. K.O. FOLEY: I move:

After clause 4—
Insert:
5—Amendment of section 6A—Ability to provide other allowances and benefits

Section 6A—after its present contents (now to be designated as subsection (1)) insert:

(2) If the parliament or the Crown offers to provide any allowance or benefit to a member of parliament under this section and it is a condition of that offer that the member pay a contribution towards the cost of providing the allowance or benefit—

(a) the provision of the allowance or benefit must be at the option of the member; and

(b) the member may, despite any other provision of this act, elect to pay the contribution by any of the following means, or by a combination of the following means:

(i) by way of a salary sacrifice by the member;

(ii) by way of a reduction in the allowances and expenses that would otherwise be payable to the member;

(iii) by a direct payment by the member to the Treasurer.

(3) For the purposes of the definition of basic salary in section 5(1) of the Parliamentary Superannuation Act 1974, the salary to which a member is entitled under this act includes the amount of any contribution that the member makes towards the cost of providing an allowance or benefit by way of a salary sacrifice under subsection (2).

New clause inserted.

Schedule and title passed.

Bill reported with amendments.

Bill read a third time and passed.

FIRST HOME OWNER GRANT (MISCELLANEOUS) AMENDMENT BILL

Received from the Legislative Council and read a first time.

ADJOURNMENT

At 12.8 a.m. the house adjourned until Wednesday 24 November at 2 p.m.