LEGISLATIVE COUNCIL

Wednesday 30 May 2001

The PRESIDENT (Hon. J.C. Irwin) took the chair at 2.15 p.m. and read prayers.

LEGISLATIVE REVIEW COMMITTEE

The Hon. A.J. REDFORD: I lay on the table the 21st report of the committee.

QUESTION TIME

ELECTRICITY, PRICING

The Hon. CAROLYN PICKLES (Leader of the Opposition): I seek leave to make a brief explanation before asking the Treasurer a question on the subject of the electricity price hike.

Leave granted.

The Hon. CAROLYN PICKLES: From the beginning of the financial year, 300 government sites will face higher power bills as a result of this government's privatisation and mismanagement of entry into the national electricity market. My question is: will Thursday's budget provide specific detail on an agency-by-agency basis of the extra costs of operating government departments as a result of electricity price rises averaging 30 per cent and as high as 100 per cent?

The Hon. R.I. LUCAS (Treasurer): No, because the assumptions made in the honourable member's question are not necessarily accurate. As my colleague the Hon. Mr Lawson has indicated on a number of occasions, the government is negotiating a contract with a number of retailers. When that contract negotiation is resolved, the issue of what price increase, if any, government departments and/or agencies will face will be confronted. What I have said is that the government will ensure that government schools and hospitals will not see significant price increases in the cost of electricity. Obviously, until we negotiate and finalise the contract we are not in a position to know what price increases, if any, will need to be considered by government departments and agencies.

ELECTRICITY TASK FORCE

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Treasurer a question about the electricity task force.

Leave granted.

The Hon. P. HOLLOWAY: In a radio interview on 24 May, the South Australian Independent Industry Regulator, Mr Lew Owens, stated that the task force was 'struggling'. He went on to say:

> . . . for the first time getting to appreciate the complexity of this market. So I think the task force is still very much on a steep learning curve, and certainly at this stage no decisions or insights that are going to have any impact on the market price in the short to medium term.

He continued:

> . . . putting a group of people together from that background, is not likely to come up with any. . . radical insights into how it can be changed, and certainly not in time to help people on 1 July or even in the next 12 months.

During the same interview, Mr Owens also said:

> Until you actually see one of these plants up and operating—

he is referring to new generation facilities that have been announced this year—

> you have to take with a grain a salt whether they're going to come about. And certainly you could not assume, like a lot of people are, that there's been announcements of thousands of megawatts of new capacity, that that's ever going to be built. . . why on earth would they make that decision, only to reduce the price, when. . . they can get a high price and make good profits?

My questions are:

1. Given that the government's electricity task force is advising on proposals to take to the June COAG meeting, does the Treasurer accept the view of Mr Owens that the task force is only now coming to grips with the national electricity market and that it has no plans that would bring down prices in the short to medium term?

2. Does the Treasurer accept the view of Mr Owens that many of the announcements of new generation facilities may never happen because to do so would cut prices available to generators and hence reduce their profits?

The Hon. R.I. LUCAS (Treasurer): In answer to the second question, I guess the three announcements that have been made by companies with immediate currency in relation to additional supply are: Australian National Power's announcements in relation to Mintaro, Snuggery and a third site; Origin's announcements in relation to a site in Adelaide; and AGL's announcements in relation to a site at Hallett.

The Hon. Sandra Kanck expressed similar views to Lew Owens on this issue some weeks ago. I do not share the view of either the Hon. Sandra Kanck or the Independent Regulator about the three proposals I have indicated. Time will tell. They were announcements by independent power companies, and with the passage of time we will all be able to look back and see whether the Hon. Sandra Kanck and the Independent Regulator were right or, indeed, my sympathies—

The Hon. Sandra Kanck: Want to have a bet on it?

The Hon. R.I. LUCAS: Yes; I would not mind having a little bet. If the Hon. Sandra Kanck would like to have a quiet wager after question time, I am happy to take, with an independent monitor—I might nominate the Hon. Angus Redford or someone like that—

The Hon. K.T. Griffin: Do it on the internet.

The Hon. R.I. LUCAS: We will do it on the internet; we might do it interactively, knowing members' views. I am happy to have a little wager with the honourable member. Only time will tell. These announcements are made by individual companies. One can at least accept the contention of the Independent Regulator and the Hon. Sandra Kanck and, until they occur, some people who are more cynical than others may have some doubts as to whether or not they will eventuate. No-one at this stage can say absolutely until they are actually spending money and constructing or implementing their proposals.

In relation to those three—Australian National Power's, AGL's and Origin's peaking plants—given the current circumstances my view is that there is a very strong likelihood that they will proceed, unless there was to be some major change in terms of the market conditions. If the Independent Regulator's view that he expressed a few weeks ago about a $60 wholesale cap on the whole market—which would include peaking plant—was in some way to materialise, clearly a policy like that may well change investors' minds about investing in South Australia or elsewhere. Assuming that the current market conditions continue, I certainly have every expectation that most of those three

options I have talked about are likely to proceed. I am not of the view of the Independent Regulator and Sandra Kanck that (I forget the exact words) the vast majority or the bulk of those proposals are not likely to proceed.

I might say that the proposals of those three are not thousands of megawatts of extra capacity: I think it is in the ball park of 300 or 400 megawatts of capacity rather than thousands. I am not sure where that—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: I am not sure. No; I think the debate and that interview were about South Australia, so I do not think it is an Australia-wide debate. Time will tell, and I cannot say much more than that at this stage. Certainly, all the advice provided to me is that each of those three companies is proceeding apace. The government is providing fast tracking assistance to encourage each of them to get to the market before Christmas this year, and we will have to wait and see whether or not they meet that time line.

In relation to the first aspect, I would need to check the press records but I understand that, subsequent to that interview, a press report indicated that the Independent Regulator had either apologised or withdrawn some of the comments he made in that interview which the honourable member is quoting. I am surprised the honourable member has not referred to those press reports, so I would need to check the transcripts or the media clippings. I cannot remember whether it was a transcript or a media clipping, but I recall reading a press or media report which indicated that the Independent Regulator had either apologised for or withdrawn some or part of those comments. If that is correct, I would need to check to see which parts he has either apologised for or withdrawn.

The Hon. P. HOLLOWAY: As a supplementary question: in view of the Treasurer's answer about the three proposed generating plants, why have none of those plants to which he referred yet sought licensing approval from the industry regulator?

The Hon. R.I. LUCAS: That is one of the things that surprises me in the comments from the Hon. Sandra Kanck and others. The advice that has been provided to me is that one of those companies which is looking at two or three separate sites does not require a new generation licence. I know that the Hon. Sandra Kanck has been publicly using this information as justification as to why these things will not go ahead, because they have not gone to the regulator; and the regulator has also raised that issue.

The advice to me so far is that at least one of those three companies, which is looking at two or three different sites, does not require a generation licence and does not need to go to the Independent Regulator. I am told that one of the other ones may not require a new generation licence; it may require only a variation to an existing licence, which is a much shorter process. I am also advised that the third one lodged an application for a generation licence after it finalised its site location and planning and development.

I am surprised at the comments that I have heard from the Hon. Sandra Kanck and the Independent Regulator. I can only work on the advice that I have been provided with. Certainly, I do not see, in the information given to me, much evidence to indicate that these people are not proceeding with the necessary licences and investment that would be consistent with the decision that they have publicly announced, which is that they are proceeding.

So far, the conspiracy theory that is being mounted that, because they have not lodged applications in some way, that is proof that they are, therefore, only dummy proposals and not proceeding, I think lacks some substance in terms of an argument. But, again, I am only the Treasurer and minister in charge of the electricity industry. The Hon. Sandra Kanck, as the deputy leader of the Australian Democrats, may well have access to information that I do not have access to. Again, as I said, only time will tell who is correct in relation to this matter.

PUBLIC SECTOR SALARIES

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Treasurer a question about departmental staff levels.

Leave granted.

The Hon. T.G. ROBERTS: In response to a headline in today's *Advertiser* 'Savings of $400 million expected', with 300 positions being axed—

The Hon. R.I. Lucas: Did you say $400 million?

The Hon. T.G. ROBERTS: Savings of $40 million.

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: I have established that that is correct. The announcement, I take it, is accurate—more so than the reporting.

The Hon. P. Holloway interjecting:

The Hon. T.G. ROBERTS: That is right. Between 1996 and 2000, the number of employees who received $100 000 or more within the Premier's department nearly tripled; it increased from 11 to 31. Over the same period, the number of Treasury employees receiving $100 000 or more per year increased from 10 to 34. In the Department of Industry and Trade, the number increased from 13 to 24. My question is (with that correction in respect of the $40 million): given the government's announcement that it intends to cut a further 300 public sector positions in tomorrow's budget to pay for extra education and health services, will the Treasurer give a guarantee that there will be cuts in the number of people receiving more than $100 000 per year in his own department, the Department of Treasury and Finance, the Department of Industry and Trade and the Department of Premier and Cabinet, given the massive increases in these bureaucratic positions in those departments of recent times?

The Hon. R.I. LUCAS (Treasurer): I am disappointed in the Hon. Terry Roberts. This question was asked in the House of Assembly 30 minutes ago. I guess, having heard the criticism of the Hon. Paul Holloway for doing the same thing yesterday, they passed it down the line to the Hon. Mr Roberts. So, look out Ron, you are next—probably tomorrow, I think. It is going down the line as to who has to ask the—

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: You might be a bit smarter, you reckon, than the front bench. I said that rather than Ron. I would not want to put words into the Hon. Ron Roberts' mouth.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: I suspect I know what he is thinking, but I will not put words—

The Hon. R.R. Roberts: A lot of people have made that mistake.

The Hon. R.I. LUCAS: That is true. Some people actually thought you were thinking; they made that mistake. I thought the Premier's answer was a very good one. Indeed, this matter was raised by Mike Rann a few months ago on the front page, or page two or three, of the *Sunday Mail*. Surprisingly, the point that I made in response did not feature

in banner headlines the following week. Although I do not have the exact number with me at the moment, I referred to a significant number of public servants, and let us say that the number of public servants in Premier and Cabinet four years ago on a $100 000 package as quoted by Mike Rann was 20 and that it is now 30 or 40—whatever the number happens to be.

I understand that a significant number of these people in some departments are exactly the same people doing exactly the same job but they have had CPI wage increases over the last four years and have gone up from $90 000 or whatever the amount happens to be.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: If you look at the public sector and take into account the flow-on parity wage case which was paid to all public servants, teachers got a 17 per cent wage increase at the start of 1997 and the public sector wage increase was a bit later than that.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: Not all at once, I concede, but over a period of two or three years most public sector workers received broadly at least that 17 per cent wage increase. Even the Hon. Mr Roberts could do a quick calculation in relation to somebody earning less than $100 000 and getting a CPI wage increase. All of a sudden Mike Rann is in the *Sunday Mail* saying shock horror, there is a blow-out in the number of fat cats (as he termed them) in the public sector. Our challenge that John Olsen put to Mike Rann this afternoon and there was no reply is: is it Labor Party policy not to provide CPI wage increases to public servants?

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: No, a good number were people who existed before but they were just under $100 000. Clearly, the Labor Party policy must be that they are not going to provide CPI wage increases to these public servants, because that is the only way you will keep them below $100 000: you will freeze their wages and conditions so they do not go above $100 000. I am sure the Australian Education Union, the PSA and the other public sector unions will be delighted to know that the new Labor Party policy is to freeze public sector wages for those workers who are at that level, or, if not, once they go over $100 000, start weeding them out.

In relation to the story in the *Advertiser* today, I think the honourable member jumps from one step to the other and it is too big a step: there is no government announcement on the front page of the *Advertiser* today. There has been a lot of press speculation about what might or might not be in the budget, and some of it has been accurate and some of it has not. I think the Premier has confirmed today that the government is looking at a 5 per cent reduction in administrative executive positions within the public sector so that the money freed up in a voluntary way through the targeted voluntary separation package schemes can be reinvested in new initiatives and new services whether it be in education, health, police or wherever.

As we have done with reducing consultancy costs, the number of administrative executive officers within the public sector and in one or two other areas, the government is ensuring that any money that we save is reinvested in the delivery of services to communities in South Australia. I would be surprised if the—

The Hon. T.G. Roberts: Trainees as well?

The Hon. R.I. LUCAS: One of the schemes. I think there is a bit of confusion in some of the media comment. The government has a scheme called the enhanced targeted separation package scheme and part of the element of that scheme is the opportunity for departments to replace people who take a package with a young graduate—with a graduate, I suppose, and I do not know whether it necessarily says 'young', but the assumption I guess is a young graduate. Where older workers leave the public sector in a voluntary way taking a package, the opportunity is there for agencies to replace them in a targeted way with a graduate employee. That is part of what the Premier has talked about—rejuvenation of the public sector—the intention being to try to encourage more and more younger people within the public sector as some of the older workers take these packages and—

The Hon. T.G. Roberts: Then they come back on contract.

The Hon. R.I. LUCAS: There is a lot of folklore about that.

Members interjecting:

The Hon. R.I. LUCAS: No, I am happy to see it—

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: One of the issues with teachers—and I would need to get the exact numbers—is that, given the age profile in South Australia, there is a significant reduction in the number of school-aged children. Our ageing profile—all the older people whom we have talked about during a lot of the policy debate—means that we have many fewer school-aged children within our school system in South Australia. On a straight formula, that means a reduced requirement in at least the near future in the total number of teachers. There may well be the issue of retiring teachers needing to be replaced as the age profile of the teacher work force goes through, but you will need to factor into your thinking the fact that we have fewer and fewer students in our schools in South Australia given the age profile of the state.

MOUNT GAMBIER, GENERAL PRACTITIONERS

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Transport and Urban Planning, representing the Minister for Human Services, questions about general practitioners in Mount Gambier.

Leave granted.

The Hon. SANDRA KANCK: Last week, I travelled to Mount Gambier to hear first-hand about problems that the locals are having with getting to see general practitioners. The most pressing problem facing the community in Mount Gambier is the 3½ week waiting list to get an appointment at the two general practitioner clinics: Hawkins Clinic and Ferrers Clinic. The patient:doctor ratio has been reported to be the worst in the state with 1 540 people per doctor. The difficulty in recruiting doctors to this area has had a big impact on waiting lists and has resulted in one of the clinics closing its books for any new patients. The spin-off from this has been people going to the emergency department of the hospital to get treatment.

People with whom we have spoken have highlighted problems regarding the standard of care as well as difficulties in gaining access to consultations with GPs based on their ability to pay. For instance, an Aboriginal woman who has chronic diabetes tried to get an appointment at one of the clinics but was told that, due to an outstanding bill of her deceased adult daughter, she would not be seen. A woman took her four-year-old foster child to see a doctor for his

vaccination shots but was told that, due to an outstanding account of the child's birth mother, the child would not be seen.

A man suffering with knee joint pain could not work and needed treatment as well as a sick certificate. He managed to get an appointment but was not given treatment, was not given a sick certificate, and was not even referred to a specialist. He is currently receiving treatment in Adelaide. A woman experiencing gynaecological problems was told by her GP that either she had to go on the pill or have a hysterectomy. She was not referred to a gynaecologist. A woman suffering with flu symptoms went to work where the symptoms would most likely spread, knowing that she would have to wait three weeks to get an appointment to receive a sick certificate, by which time she would have recovered.

These people said that their cases were not isolated and that more and more people were travelling to surrounding towns for medical treatment, which usually means a trip of an hour each way. It was put to me that continued poor treatment and lack of access to treatment could place some of these GPs at risk of accusations of medical negligence and professional misconduct. My questions are:

1. Is the minister aware of community concerns regarding the standard of treatment provided by some Mount Gambier GPs?

2. Does he share these concerns?

3. If so, will the minister request the medical board to investigate the allegations?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I will refer the honourable member's questions to the minister and bring back a reply.

SOUTH-EAST RAIL

The Hon. A.J. REDFORD: I seek leave to make an explanation before asking the Minister for Transport a question about South-East rail.

Leave granted.

The Hon. A.J. REDFORD: Way back in June 1993, in the dark ages when the Bannon government was still in power, the South-East Trades and Labor Council called on the state and federal governments (both Labor governments in those days) to upgrade and link the threatened Wolseley-Mount Gambier rail line. Outspoken delegate, Mr Errock, said in relation to the topic of South-East rail:

> Delegates see the saga of the railway line as a very public example of governments deserting their commitments to those parts of the state outside the metropolitan area.

Obviously at that stage he was referring to Labor governments. Also following that, in June 1998 the editorial of the *Border Watch* called upon the state government to take a more proactive role in upgrading the link between Mount Gambier and Bordertown so that it could take advantage of the then proposed Darwin to Alice Springs railway line.

Members may recall that earlier this year I asked a question of the minister, indeed in February, about the tenders to be called for South-East rail, when the minister announced that the state government would call for tenders from interested parties to operate the South-East rail line. Indeed, in April this year she called for tenders from companies to operate the South-East rail line from Mount Gambier to Wolseley as a commercial enterprise. Indeed, at the time she indicated that the tender call was designed to solicit from the private sector firm bids that prove they will operate services on an ongoing commercial basis. I understand that tenders have now closed. In the light of that, my questions to the minister are:

1. Could she tell us how many tenders have been submitted?

2. What has been the general reaction to this process from those both within the industry and outside the industry?

3. Has there been any public comment, either here or interstate?

4. Does she expect to receive a letter of congratulations from Mr Eric and, indeed, from the editor of the *Border Watch* in the light of these recent developments?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): Well, it has not been my experience in eight years to receive any pleasant correspondence or editorial from the editor of the *Border Watch*, so my fortunes can only look up in those terms.

The Hon. T.G. Roberts interjecting:

The Hon. DIANA LAIDLAW: You think it could get worse, from nothing to worse! Oh well, I have a more positive outlook than that, and I am particularly positive today, and in fact very excited to report to this Council that the tenders for the South-East line closed yesterday, and I was advised this morning that six tenders have been received which is a particularly good result. I have not asked for or received the names of those who have tendered, but the tender documents and the briefings provided to interested parties made it very clear that the government was only interested in considering firm proposals from the private sector that would provide the South-East and this state with a commercial operator for this line, and on that basis the government would also be entertaining some arrangement for the funding to standardise and upgrade the Wolseley to Mount Gambier line.

Any lesser terms than those would be of no interest to the government, and I suspect that no company tendering would have bothered to go to the cost to themselves of submitting a tender, if they had not met those two basic conditions. In the meantime, I note public comment in both the Melbourne *Age* and the *Australian* on Monday the 28th of this week which highlights that the company Freight Australia, which bought V/Line intrastate track from the Victorian government some years ago, has reported most favourably on the way in which the South Australian government has approached the tender process for the reoperation and standardisation of the South-East line.

It is important to note the general criticism of the Victorian Labor government's decision over recent months to open up access on privately owned track to all operators. The reason given for that decision by the Victorian Government was to encourage greater competition and lower freight costs. The reports in the Melbourne *Age* and the *Australian* highlight that that is a very negative way of approaching the task that all governments in Australia have, and that is revitalising rail and making sure that it is a viable, competitive, safe and reliable option compared with road. Our task as governments, in my view, is to see a modal shift from road to rail.

What is interesting in terms of the approach taken by the Labor government in Victoria and the approach taken by this government, and remarked upon by Freight Australia, is that South Australia believes that the competition is not between rail operators utilising interstate and intrastate track: it is road to rail. That was made very clear by the South Australian government when it was negotiating with the National Competition Council for exclusive access to the operator and

investor in the Adelaide-Darwin line. It has also been highlighted as an issue that the South Australian government will entertain in terms of the standardisation of the South-East line if it is able to get a commercial operator.

With respect to the South-East line, the government has offered seven years of exclusive access to the operator, which the government would also wish to see invest in the standardisation of the line. I believe very strongly that, if we are to maximise private sector investment and minimise state investment, the operator should be given an opportunity to have exclusive use of the line to gain a return on its investment.

What I also believe very strongly, and what has certainly been remarked upon by private operators in the eastern states, is that the issue is not competition between rail operators. No rail operator will invest in a new business, invest in the standardisation of a line, and then charge rates from which it will not get a return on its investment. That is the discipline to keep the rates down. It does not need competition and open access, as the Victorian Government has insisted upon in that state between rail operators. I simply reinforce the view of this government that the freight task before us in this state is to see a modal shift from road to rail, and the competition for freight is between road and rail, not rail operators competing for access on the one line.

The Hon. R.R. ROBERTS: I have a supplementary question. In the contracts for this operation, is it the South Australian government's intention to allow the private operator the same rights as the Australian Rail Track Corporation has with federal lines, that is, it charges farmers to use access across the railway lines where easements have been in place for a hundred years. Also, responsibility for the maintenance and public liability, which was picked up by the federal government, has been transferred to Australian Rail Track and, as I understand it, it intends to license those accesses and charge a yearly $200 fee for farmers to have access to their own property across land that they originally owned.

The Hon. DIANA LAIDLAW: I am aware of this issue and, as the honourable member would be aware in turn, it was raised some three years ago after the sale of AN when Australian Southern Railroad (ASR) purchased the intrastate line. At that time, it sought to issue a licence for farmers, for instance, to gain access across that line. At that time I intervened, and ASR did not pursue the issue. I am interested now to learn that the Australian Rail Track Corporation is seeking a similar approach, but it means that it is seeking that approach across Australia in all areas where it owns the line.

As the honourable member is aware, the ARTC is a federal government corporation. My views have been made known to the federal government and I am in the process of writing to the ARTC to indicate that I believe it could entertain other options in this area. It is my view that it could reach a performance agreement, or licence agreement, with the adjacent landowner where the landowner would maintain the access at the landowner's cost and not pay ARTC for access and, in my opinion, supplement the ARTC's coffers.

The Hon. R.R. Roberts interjecting:

The Hon. DIANA LAIDLAW: I give the benefit of the doubt here because I have not pursued the point, but I am not sure whether the ARTC is doing this on a cost recovery basis or to gain revenue because of its commercial agenda, which it is required by the commonwealth parliament (not just the government) to abide by and meet. I want to establish that fact.

Secondly, if it is simply cost recovery, I believe that the ARTC should entertain the proposal that I will put to it, that is, that it should consider not charging the adjacent landowner for access but offer it in exchange for the adjacent landowner maintaining the rail crossing.

The Hon. R.R. Roberts: Is that your attitude to the South-East line as well?

The Hon. DIANA LAIDLAW: Yes, that is true. As I said to the honourable member, I intervened in relation to the Pinnaroo line. I do not believe it is an issue with the South-East line but I will confirm this. It was never raised—

The Hon. A.J. Redford interjecting:

The Hon. DIANA LAIDLAW: The Hon. Angus Redford interjects helpfully today—not like last night—and he is even smiling at me today, because the Hon. Angus Redford knows the area well. It is not the same issue because it does not have the same crossing points from Wolseley to Mount Gambier. That is also my view from the earlier experience with the ASR line from Tailem Bend to Pinnaroo because, when the adjacent landowners were upset then, it was confined to landowners from Tailem Bend to Pinnaroo and never to the South-East, even though it was the same owner of the rail line in each instance.

BREAK EVEN GAMBLERS REHABILITATION NETWORK

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Human Services, a question about the Break Even Gamblers Rehabilitation Network.

Leave granted.

The Hon. NICK XENOPHON: Two weeks ago, I asked the minister a question about a number of problem gamblers seeking urgent assistance having to wait up to five weeks to obtain a face-to-face appointment with a gambling counsellor. In the *News Review* Messenger of 23 May in an article by Jenny Hullick headed 'Addicts crying out for help' Reverend Neil Forgie, the Break Even Network Chairman, said:

> If someone has an addiction, they are at risk. The people who call us are already pretty much in debt and in many cases their whole world has fallen in. Those who are at risk could commit suicide if they don't receive immediate counselling.

Reverend Forgie goes on to say that the Break Even Network will need an additional $300 000 in government funding just to pay for adequate service delivery, and the network was also supposed to be providing community education but had no resources for the task. My questions are:

1. Has the minister's office had discussions with the Break Even Network in the past two weeks over the crisis in waiting lists for problem gamblers, particularly in light of Reverend Forgie's concerns over individuals being at risk?

2. What steps has the minister taken to ensure that waiting lists for problem gamblers are dealt with immediately?

3. When will the minister be in a position to respond to the other matters I raised in my previous question of him on this issue?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I will refer the honourable member's question to the minister and bring back a reply.

ADELAIDE PARKLANDS

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to table a ministerial statement relating to the future protection of the Adelaide parklands made earlier today by my colleague the Minister for Local Government.

Leave granted.

AUSTRALIAN WORKERS UNION

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking a question on the subject of AWU electoral rorting.

Leave granted.

The Hon. L.H. DAVIS: I made serious allegations yesterday concerning the Australian Workers Union and electoral rorting within the Labor Party. As at 31 March 2000, the AWU was affiliated for 14 010 members with the Labor Party. However, the 1999-2000 annual accounts of the AWU, signed by Bob Sneath as AWU Secretary, reveal that there were only 10 208 members of the AWU in South Australia as at 30 June 2000. This was a difference of almost 4 000, or almost 40 per cent. The *Advertiser* this morning reported the Hon. Bob Sneath MLC as saying:

> The 14 010 figure includes not just the greater SA branch of the AWU but the glass workers and Whyalla-Woomera branches as well. Mr Sneath said, 'These branches will bring the total to the 14 000 figure.'

The Hon. R.K. Sneath interjecting:

The Hon. L.H. DAVIS: I am quoting the *Advertiser*: 'These branches will bring the total to the 14 000 figure.' Labor Party state secretary Ian Hunter said he had 'no reason to believe any problem with the affiliation of any party to the state convention. But if any such evidence was presented, I'd have to look at it.'

It is perhaps unusual for a Liberal Party politician to present evidence to the state Secretary of the Labor Party, but the evidence is quite clearly there. Members of the Labor Party have today advised me that the Whyalla-Woomera branch of the AWU is in fact affiliated to the ALP for just 650 members. In fact, they pay their own affiliation fee to the ALP at $3.75 per member. The glass workers in South Australia have only 300 members, and they also pay their own affiliation fees to the Labor Party. Therefore, the Whyalla-Woomera branch with 650 members and glass workers with 300 members add only 950 members to the 10 208 members signed off by Bob Sneath at 30 June 2000. That makes a total of 11 158—nearly 3 000 fewer than the 14 010 members for which the AWU claimed Labor Party affiliation as at 31 March 2000.

Just this morning we saw Mr Sneath in the *Advertiser* say that it would make the 14 000 figure. There is in fact a 3 000 difference. The official records of the Labor Party back up these facts. At 30 June 1997 the AWU financial statement signed off by Bob Sneath as AWU Secretary certified that there were 13 256 AWU members. At the ALP convention that year the AWU was affiliated for 14 010 members. At 30 June 1998, the AWU financial statement signed off by Bob Sneath certified there were 12 102 members. At the ALP convention that year, the AWU was again affiliated for 14 010 members. At 30 June 1999 the AWU financial statement signed off by Bob Sneath certified that there was 10 718 AWU members. There was no ALP convention that year. At 30 June 2000, the AWU financial statements—

The Hon. P. Holloway interjecting:

The PRESIDENT: Order, the Hon. Paul Holloway!

The Hon. L.H. DAVIS: Paul, I thought that you would be shocked by this, and I thought you would be listening to it.

The PRESIDENT: Will the Hon. Mr Davis get on with it.

The Hon. L.H. DAVIS: At 30 June 2000, the AWU financial statement, signed off by Bob Sneath, certified there were 10 208 AWU members. At the ALP preselection in that year, at which Bob Sneath was preselected for the Legislative Council, the AWU was affiliated for 14 010 members. In other words, between 1997 and 2000, the AWU membership shrunk by 3 048, as certified by Bob Sneath, Secretary to the AWU, yet in that same period the AWU remained affiliated to the Labor Party for 14 010 members. Even Alice in—

The Hon. T.G. Cameron: And they had only just reduced that from 17 000.

The PRESIDENT: Order! The honourable member should be close to asking his question.

The Hon. L.H. DAVIS: I am very close, Mr President. Even Alice in Wonderland would have struggled to believe that. Later in 2000, the AWU membership for ALP affiliation was adjusted down from 14 010 to 13 010 members—curiously, a drop of exactly 1 000 members. Curious, that; a drop of exactly 1 000. In the last 24 hours, I have had contact from several parliamentary and staff members of the Labor Party, who have confirmed the accuracy of my question yesterday. In over 20 years in the Legislative Council, I have never experienced such Labor leaking. One Labor member of parliament told me that everyone in the Labor Party knows there is a massive cover-up on AWU membership, which has allowed them to have more votes than they were entitled to, and so change the outcome of important elections. Clearly, there is an enormous cover-up and conspiracy of silence involving Mr Rann, Mr Hunter and Mr Sneath.

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: My question to the Treasurer is: will the leader take these latest facts into account when consulting with relevant ministers about these serious allegations of electoral rorting by the AWU and the Labor Party?

The Hon. R.I. LUCAS (Treasurer): Certainly, I will take these latest revelations, which I am sure have stunned and shocked all members in this chamber, given the statements the Hon. Bob Sneath made—

The Hon. T.G. Cameron: We know all about it. No-one was ever shocked.

The Hon. R.I. LUCAS: On this side of the Council we would have been shocked. Given the statements made by the Hon. Bob Sneath to the *Advertiser* this morning, that the discrepancy of 4 000 would be simply explained by the glass workers—I think—in the Whyalla-Woomera branch of the AWU, one would have thought that the Hon. Bob Sneath would have at least done his sums and worked out that there were 4 000 members in those two sections, or branches. As the Hon. Mr Davis has clearly indicated, either the Hon. Bob Sneath cannot count or he has been very poorly advised by someone in relation to all these particular—

The Hon. T.G. Cameron: Or it was deliberate.

The Hon. R.I. LUCAS: Or it was deliberate, yes—a deliberate intention to mislead the community and the *Advertiser* by the explanation that he gave to them last evening. One will have to check the statements that the Hon. Bob Sneath made last week in response to the question (for which, I might say, we are forever indebted to the Hon. Ron

Roberts) on the parliamentary record in relation to potentially misleading the Legislative Council and the state parliament on this issue. That, perhaps, will be an issue that will have to be explored further down the track.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: A lot of this is being said outside. I have seen all sorts of inflammatory leaflets from both sides on this issue. I would have thought that there would probably be legal writs flying around left, right and centre.

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

The Hon. R.I. LUCAS: The Hon. Mr Dawkins says that there was radio advertising on 5AA over the weekend on this issue. There are pretty big stakes for the Hon. Bob Sneath in relation to this matter—potentially, his parliamentary future. Also, as we highlighted yesterday, there are big question marks hanging over the leadership of Mike Rann in relation to this issue. He made a clear and unequivocal statement two years ago in relation to these issues as to what he would do if he found anyone in his team who was involved in rorting.

The Hon. L.H. Davis: We've found someone.

The Hon. R.I. LUCAS: Yes. We are still waiting for members of the media to fearlessly put that question to Mike Rann, with respect to the clear commitment that he gave two years ago in relation to this issue. I am staying tuned to hear Mike Rann's response to his comments two years ago and his comments now in relation to the allegations that have been made about one member of his parliamentary caucus.

The Hon. T. CROTHERS: As a supplementary question, when the Treasurer is doing his investigation into the AWU as he has promised, will he include in his report how many AWU members are permanent workers and how many are casuals? Sometimes unions—

The PRESIDENT: Order! The honourable member will go straight to the question.

The Hon. T. CROTHERS: That is the question.

The PRESIDENT: No; you're explaining the question now.

The Hon. T. CROTHERS: That is the question.

The PRESIDENT: All right. The honourable member will resume his seat.

The Hon. T. CROTHERS: Sir—

The PRESIDENT: If you have asked your question, you will resume your seat.

The Hon. T. CROTHERS: Please, sir, you have taken a point of order on me. I reject that point of order, sir. I dissent from your point of order on me.

The Hon. R.I. LUCAS: I am not sure whether you have the power to reject the point of order, Mr Crothers: it was a novel thought, anyway. I understand the honourable member's question. Certainly the dogs are barking in the corridors and not just about the AWU. When one talks about one of the other powerhouses of the Labor right—the STA—and its membership numbers within the Labor Party, in particular its membership coverage of 14, 15 and 16 year olds working in McDonald's, Hungry Jacks and a variety of others—

The Hon. L.H. Davis: Fast food membership!

The Hon. R.I. LUCAS: Fast food membership and fast food members—this issue about permanent, part-time or temporary—transitory perhaps is a better word—membership entitling you to extra votes in the ALP may be an issue, as I understand it, for some members of the Labor Party who are not very happy with what the right is doing at the moment. There may well be future revelations in relation to that as well, so we are led to believe.

ELECTRICITY, SUPPLY

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Treasurer a question about the competitive delivery of power.

Leave granted.

The Hon. CARMEL ZOLLO: In the Treasurer's second reading summing up on the Electricity Corporations (Restructuring and Disposal) Bill in August 1998 he commented on most other members' contributions, including mine. The Treasurer mentioned that I had raised the issue of how any single private consumer was able to be provided with true competitive delivery of their power given that it can be delivered from alternative sources by the one system of existing lines. This could lead one to wonder just how much individual choice any one consumer in any suburb of Adelaide would have.

In response to my query the Treasurer advised that in many respects it would be very similar to the telecommunications industry where we have seen a competitive market develop with Optus and Telstra. He went on to say:

> We will see increasing competition and we will have around 20 or so retailers competing in our market from 15 November this year for large industry customers, first, and eventually by the end of the year 2003 individual households will be in the same position as they are now of being able to choose between alternative retailers of electricity in their home.

Is the Treasurer still hopeful that 20 or so retailers will be offering power to large industry customers, especially from 1 July this year, which is already more than two years later than he indicated, or that individual households by the end of year 2003 will be in the same position as they are in now of being able to choose between alternative retailers of electricity in their home?

The Hon. R.I. LUCAS (Treasurer): I would need to check the particular exchange of views at the time. Certainly it should not have been the end of 2003; it should have been the end of 2002 or the start of 2003. Full retail contestability for household consumers commences from 1 January 2003. I will have to check for the honourable member, but at the time I think that about a dozen to 15 retailers were licensed in South Australia. However, I understand that the number in the year 2001 is significantly less than that. There are a number of other retailers such as Citipower, North Power, TXU and AGL who are active in our market and competing for business, although AGL is obviously the dominant and incumbent retailer.

It is the government's expectation that, at the very least, those retailers, together with some others, will still be part of our market in 2003 when we have full retail contestability for household customers. It is also our hopeful expectation that we will see further retailers. Ultimately, whether we do or do not will depend on whether or not we are able to see a more competitive electricity market in both generation and retail in South Australia. For the reasons that I have outlined on numerous occasions, all the government's policy intentions are directed towards encouraging a more competitive electricity market in South Australia as quickly as we can.

KANGAROO ISLAND

The Hon. IAN GILFILLAN: I seek leave to make an explanation before asking the Treasurer, representing the Minister for Tourism, a question about the disposal of raw effluent into American Bay on Kangaroo Island.

Leave granted.

The Hon. IAN GILFILLAN: On 28 March, I asked a question regarding untreated sewage being discharged into American Bay following Professor Joanna Lambert (from the University of Oregon) identifying this problem. I said, quoting from her letter, that she had stayed at the Kangaroo Island Lodge because of its 'self-titled claim to luxury in unspoiled beauty'. Professor Lambert went on to say that it was inconceivable to her that the lodge 'which touts itself as catering to ecotourists could be pumping raw effluent into the bay'. I asked a series of questions at that time regarding that particular situation and the special licence that the lodge has, and I am still awaiting an answer from the minister to those questions.

However, I have since received a copy of a further letter which was written to Professor Joanna Lambert by Mr Bill Spurr, the CEO of the South Australian Tourism Commission. It is interesting to note that Roger Cook, the current Chair of the South Australian Tourism Commission, is a part owner of the Kangaroo Island Lodge, which is the subject of this complaint and the issue raised by Professor Lambert. The letter states:

Dear Joanna,

Thank you for your letter of 15 February 2001 regarding the effluent outfall from the Kangaroo Island Lodge at American River. I can assure you that the South Australian Tourism Commission (SATC) is addressing this matter.

The letter states further:

In order to address the effluent discharge problem, not only was it necessary to provide an improved effluent treatment plant for Kangaroo Island Lodge, but also an improved fresh water supply. The SATC have been working with the owners of the Lodge to ensure a timely completion for both these projects, and—

I emphasise 'and'—

we have provided significant financial support for these.

From that quote, it is clear that the South Australian Tourism Commission has actually provided financial support to the Kangaroo Island Lodge. I therefore ask the minister:

1. How much financial support has been provided to the Kangaroo Island Lodge and under what terms?

2. Who made the decision that this support would be made available, and when?

3. Why is this already privileged motel, which is licensed to actually pollute the waters of American Bay, being further privileged to receive taxpayers' money to install such systems when, at the time of the said financial assistance, the owners of the Kangaroo Island Lodge were in possession of, or had access to, enough capital to enable them to invest in another business on Kangaroo Island, namely, Kangaroo Island Ferry Connections?

The Hon. R.I. LUCAS (Treasurer): I will refer the honourable member's questions to the minister and bring back a reply.

ELECTRICITY, J-METERS

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Treasurer a question about power cuts and electricity J-meters.

Leave granted.

The Hon. T.G. CAMERON: I have received correspondence from a Mr James Ward, who is concerned about the way in which recent power cuts have impacted on J-meters. Electrically driven clocks run J-meters for off-peak electric hot water services. Theoretically, they are run at night when demand for electricity is as a minimum. However, every time a power cut occurs it stops the clock that activates the J-meter.

When the power is restored the clock restarts but unless it is reset it will be running late. Over a period of time this means the J-meter could be activated during peak periods when power is more expensive, and not during off-peak periods when it is cheaper. Mr Ward is concerned that the late running J-meters could add extra stress to the power grid, particularly on hot weather days when airconditioners and other high consumption equipment are in use and power use is at a premium, possibly leading to further blackouts. My office contacted AGL and has been informed that this is a problem for some customers. It said that most customers can usually reset their J-meter clocks by using the reset button, but this is not always possible depending upon the age of the hot water service and, of course, some people may not be aware that they are required to do it. People can also contact either AGL or ETSA Utilities, and they have advised me that they will be happy to send someone out to reset their J-meters at no charge.

My questions to the minister are: considering that incorrectly set J-meters may be adding to the strain on the state power grid, particularly in the summer months, will the government investigate just how widespread this problem is and will the government consider implementing an information campaign to educate the public about what to do and who to contact if they believe their J-meters are incorrectly set?

The Hon. R.I. LUCAS (Treasurer): I am happy to take advice on the honourable member's question. I must confess I do not have any detailed knowledge of the particular concern or problem that he has raised, but I am happy to take the question on notice, get as much as advice as I can and get back to him as soon as I can.

FESTIVAL OF ARTS

In reply to **Hon. CAROLYN PICKLES** (10 April).

The Hon. DIANA LAIDLAW: Further to the answer I provided the honourable member on 10 April, I re-confirm that the financial losses incurred by the Adelaide Festival Centre Trust (AFCT) were all fully disclosed in the 1998-99 and 1999-2000 annual reports—and have already been widely reported in the media.

As the honourable member should recall, I foreshadowed these losses at the Arts Estimates Committee hearings in June 1998. At this time I also outlined the steps to be taken to ensure such losses will not be experienced again, including the placement of the trust under the Public Corporations Act. Since that time the AFCT has not been involved in productions which can prove to be high risk.

Subsequently, as already disclosed in last year's Annual Report, the Treasurer approved a re-financing package of $8.7 million and a further loan of $1.5 million from Arts SA.

I do not yet have the benefit of Mr Ian Kowalick's report. With the co-operation of the AFCT, he has been asked to look at all the issues relating to the operations of the Adelaide Festival Centre and to properly and objectively examine the centre's future funding needs and structure.

MATTERS OF INTEREST

SOUTH-EAST RAIL

The Hon. A.J. REDFORD: Today I want to talk about South-East rail and, in particular, the announcement made by the minister today, which is to be welcomed. I am well aware

of and well recollect the day that Don Dunstan and that great railway man Gough Whitlam announced the transfer of country rail services, in particular, to the federal government, which led to the inexorable and accelerated demise in railway services to country people throughout South Australia. I well remember at the time we had a daily freight service from Mount Gambier, a daily day passenger service and a train each evening travelling from Mount Gambier to Adelaide. I well recall watching the slow demise of rail under the 20 out of 23 years of Labor state governments that we experienced, up until 1993. Indeed, I well remember the conversations that a number of us had at our state convention in 1993, prior to winning the 1993 election, about the extraordinary challenge that we had ahead of us to reinstate rail to its appropriate position.

I well remember having conversations with the then federal transport minister, Bob Brown, a man whom I admired and respected, about the raw deal that the Keating and Hawke Labor governments had given rail in terms of its ability to be able to deliver an appropriate service to country and regional Australia. As I said in my question, I well remember the concerns expressed by Mr Steve Errok of the South-East Trades and Labor Council when he said that the saga of the line was a public example of governments deserting their commitments to those parts of the state outside metropolitan areas. He pointed out that it would make it that much more difficult to attract investment to the South-East.

I also recall that, in 1998, the *Border Watch* ran a strong campaign for the development and enhancement of rail services to the Lower South-East during that period. The South-East Local Government Association also jumped on board and called for an improvement to rail services to the South-East. In February 1998, the Australian Southern Railroad Chief Executive Officer met with the South-East Economic Development Board, pledging a full commitment to undertake a study into the viability of reopening the line, which was welcomed by a range of people in the South-East. In the *Border Watch* in February 1998, Damian Cox pointed out that there was increasing interest in those days.

So it was with a great deal of interest that the South-East community greeted the statements and the releases of the minister earlier this year about opening up the line to tender. It received national comment, and perhaps more comment in interstate newspapers than in South Australia, with articles appearing in the *Australian* of 28 May and in the Melbourne *Age* of 28 May, particularly in the light of the changed process that the Victorian Bracks Labor government brought into place for the demise of rail. It is pleasing to see that we have six tenders, and hopefully that will lead to a process that will deliver better rail services to the South-East and take some of the pressure off the roads and lessen the damage to roads caused by heavy road transport.

MARINE PARKS

The Hon. T.G. ROBERTS: I would like to pass some comment on the prospect of the declaration of marine parks in this state. I congratulate the government on taking the issue into the community for discussion and debate and on taking on some individuals within communities who wield a certain amount of influence and power and who, in some cases, have been making very uninformed comments about the intentions of the current Liberal government and Minister Ian Evans' proposals, and the intentions of a future government, which will have the responsibility of carrying out those declarations.

A lot of community stakeholders are involved in the declaration of marine parks and, although a lot of parks have been declared on land for which management plans are being drawn up, the marine park management program and declaration is much more difficult. It is very difficult to explain to people—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: That's right. It is very difficult to explain to people exactly what exists in a marine park whereas it is self-evident with respect to flora and fauna in a land-based park. The intention of marine parks is to protect the fish stocks and, in the case of many parts of South Australia, southern rock lobster as an integral part of a marine economy. We also have to protect the stocks for future generations and for the general public.

We also have to make sure that the mistakes that have been made in other parts of Australia in relation to the mismanagement of marine stocks and water quality are not repeated in this state. We have a chance to make such declarations in a consultative way so that the people who make their living out of the harvest of the wealth in the sea are protected, while ensuring that the fish stocks are not over-exploited to a point at which no-one can make their living from the sea.

The discussions are only beginning, but it would be good if the best scientific information that is being prepared for the declarations were taken into the public arena so that the less informed comment that is being made in communities does not allow the debate to start on an uneven footing. The best way to discuss these issues is to put the best marine science information into the public arena using departmental specialists and also using the human resources that are allocated in each region.

The Environment, Resources and Development Committee is conducting an inquiry into environmental tourism, ecotourism, and cultural and heritage tourism, and the potential along our pristine coast for aquaculture opportunities and environmental tourism needs to be balanced against the protection of the resources so that we can get it right. We have an opportunity to learn from the mistakes of others, but we certainly do not want to hear the arguments that marine parks are being set up by governments of either persuasion to lock people out of particular areas. The intentions of many of the people to whom I have spoken on both sides of the chamber is to have multiple-use parks and, if it is necessary to protect unique fish stocks or seagrasses, they will be treated the same as wilderness. Protection will be provided for protection's sake to ensure that this resource is available for future generations.

Time expired.

GREEKS OF EGYPT AND MIDDLE EAST SOCIETY

The Hon. J.F. STEFANI: Today I speak about the 50th anniversary celebrations of the foundation of the Greeks of Egypt and Middle East Society of South Australia Incorporated, which took place on Sunday 20 May 2001. I was privileged to receive an invitation to this function and to share this special event with many of my friends from the South Australian Greek community.

History records the conquest of Egypt by Alexander the Great in 333 BC when he drove out the Persians from that country. After installing himself as king, he founded the city of Alexandria, and he went on a pilgrimage to the Temple of

Amoun in the Siwa Oasis, which was a very famous area at that time.

Over a period of almost 300 years, Greek civilisation had a significant influence on the development of that country, with the establishment of the Greek cities of Alexandria, Nacratice and Ptolemis. The city of Alexandria became one of the most important international cities of the time. It comprised five districts and boasted imposing royal palaces incorporating libraries, gymnasiums, a courthouse and cemeteries. Subsequently, the city of Alexandria became larger than any of the ancient Greek cities and maintained a leadership role as the centre of civilisation. It grew to develop into the biggest trade centre in the world.

Through a strong Greek influence many sciences, especially medicine, botany, engineering, mathematics and astronomy, made great progress. Greek architecture also influenced the styles of temples, houses and ornamental arts and monuments. So it is that, with this proud history and background, many Greek immigrants from Egypt and the Middle East settled in South Australia and made their contributions and established a home for themselves and their families. Fifty years ago, they also founded the Greeks of Egypt and Middle East Society of South Australia Incorporated and, through their hard work and voluntary efforts, the members of this community group established clubrooms at 56 Richmond Road, Keswick. The premises provided a very attractive setting for community activities and have been the centre for many cultural, social and folkloric festivities.

I take this opportunity to express my sincere thanks for the kind invitation and warm hospitality extended to me by the President and members of the Greeks of Egypt and Middle East Society of South Australia Incorporated on the occasion of their celebrations. I pay tribute also to the many contributions that members of the society have made and continue to make to the development and well being of our state. I offer the President, Mr Tony Charal, and all members of the association my heartfelt congratulations on achieving their golden anniversary and my best wishes for the future.

KERNEWEK LOWENDER

The Hon. CARMEL ZOLLO: On the Adelaide Cup long weekend, it was my pleasure to represent the Leader of the Opposition, the Hon. Mike Rann MP, at the official opening of the 2001 fifteenth Kernewek Lowender Festival at Kadina. The festival, which commenced in 1971, has become the largest Cornish festival in the world.

I understand that it was first organised by local residents and the then Premier of South Australia, Don Dunstan. Whatever side of politics one comes from, Don Dunstan could never be accused of being anything but inclusive and visionary in his promotion and celebration of the South Australian peoples. I understand that he had Cornish ancestry. No doubt, he also saw the enormous tourism potential for the Copper Coast.

The festival is a wonderful family affair that recognises the significant contribution made to our state's prosperity by the miners of the copper triangle. So much was made possible by the created wealth from copper product; it contributed to the building of many fine state buildings, including Adelaide University. Several highlights marked this year's festival, in particular, the Cape Cornwall Singers (described as an eclectic mix of 25 singers who included farmers, fishermen and former Geevor miners). They sang at the official launch and certainly lifted the hearts of everyone present.

The local Furry Dancers were wonderful to see, in particular the participation of the young people dressed up with garlands of flowers in their hair, dancing in the main streets of Kadina.

An honourable member interjecting:

The Hon. CARMEL ZOLLO: Not quite. At this year's festival, over 100 people were trained for this traditional Cornish processional dance. Vintage cars were everywhere to be seen on the Saturday in readiness for the Cavalcade of Cars and Motorcycles that was to make its way through the Copper Triangle on Sunday 20 May. Victoria Square in Kadina very much resembled the village green with people everywhere and with arts, crafts and food being offered for sale, particularly the cornish pastie, which is unique and no doubt the best.

At the first festival held at the Moonta Oval, so many people turned up (around 12 000) that organisers ran out of cornish pasties because of the shortage of flour. I understand that the floor of the mill had to be swept to find more flour—but I am not at all certain that someone was not using a vivid imagination. Petrol stations also ran out of fuel.

The success of the festival is assured by the cooperation between the towns of Kadina, Wallaroo and Moonta. Charter President, Mr Keith Russack, is credited with much of the success in getting the three towns working together. People from so very many diverse backgrounds make up our great state, and the history of Cornish migration is very interesting. The Cornish miners were attracted to South Australia in great numbers after the discovery of silver and lead at Glen Osmond as early as 1841. In an attempt to attract more miners when copper was discovered in Kapunda (1843) and Burra (1845), the new colony of South Australia set up migration agents in Cornish towns. By the time copper was discovered on Yorke Peninsula in 1859, 42.5 per cent of all migrants to South Australia between 1863 and 1864 were from Cornwall.

I congratulate everyone involved in the 2001 Kernewek Lowender, in particular this year's President, the Mayor of the Copper Coast District Council, Mr Paul Thomas. I certainly enjoyed my visit and took the opportunity to visit the other two towns celebrating the festival, both of which were also full of people with a wonderful atmosphere and history on display everywhere. It is a wonderful way to celebrate the history and contribution of the Cornish peoples to this state. It is also a time to acknowledge the very many people who contribute to the maintenance and the promotion of Cornish heritage. I wish future festivals great success.

CSIRO BRIEFINGS

The Hon. CAROLINE SCHAEFER: I speak today about the parliamentary briefings presented on a periodic basis by the CSIRO. These briefings are offered to any member of parliament, and interested members of the public are also welcome if they make a booking with the CSIRO. These briefings cover the latest scientific research on matters of interest to legislators. I have had the privilege of chairing these briefings for some time now and I consider it a privilege each time to learn about things that have not yet been reported in the papers. They are matters that are not only of immense interest but will also influence the future. Input from legislators is also requested, there is question time and we are asked to bring forward matters for future topics.

In the past, there have been diverse topics such as salinity (both dry land and rising water table salinity), biotechnology and food science. We are scheduled to be briefed on the array telescope next Tuesday 5 June immediately after question time, and I certainly urge all members to make the time to attend that briefing. We are also scheduled to be briefed on the latest research into climatic change some time later this year.

As I have said, the next briefing is on the array telescope, which will be 1 square kilometre in diameter, and it will be privately built for research into the solar system. It is a multimillion dollar project employing about 1 000 people in its assembly and about 200 people permanently. I understand that at this stage countries across the globe are being assessed as to where it might be assembled. Certainly, northern South Australia is one of the favoured sites. I believe it would be beneficial for us all to have some information on this project because it may well be very important. I confess that I have a personal interest because one of the favoured sites is only about 15 kilometres or 20 kilometres north of the family home where I grew up. Certainly, that sort of employment opportunity in Upper Eyre Peninsula or the lower north of South Australia would make a huge difference to the lifestyle, quality of life and income of many residents in that area.

The Hon. Diana Laidlaw: And a bonus for local tourism.

The Hon. CAROLINE SCHAEFER: Yes, it would be a huge bonus for local tourism and, of course, road infrastructure, schools, and so on. Again, I urge members to find time to attend if they possibly can. The previous briefing was on the latest research on healthy foods.

As an example of the calibre of speakers on that day, we heard from Dr Michael Eyles, Chief Executive Officer of Food Science Australia; Dr David Topping, CSIRO Health Sciences and Nutrition, who came from Sydney; and Mr Mark Lloyd, CEO of Coriole Vineyards, who spoke about olive oil and Woodside Cheese Wrights. They put out a brief press release at the time under the heading, 'Healthy foods are a good investment, MPs were told.' I found Dr Michael Eyles and Dr David Topping to be extremely interesting. Dr Topping spoke on the strong link between the increased consumption of polyunsaturated fats and the reduction of risk from coronary heart disease as a cause of death and referred to recent research which identified olive oil as being very desirable for that type of health need. He also spoke a great deal about the favourable fats in omega-3 fatty acids and the development of our aquaculture industry, particularly the provision of salmon as a possible source of omega-3 fatty acids.

Time expired.

BREAK EVEN GAMBLERS REHABILITATION NETWORK

The Hon. M.J. ELLIOTT: I want to raise questions of funding for those groups providing services to people with gambling problems. The Break Even Network has sent me correspondence under the name of Neil Forgie which I think would be of interest to this place. At this stage an additional $311 000 is being sought for the Break Even Network immediately, just to meet basic demands for the agencies serving people with gambling problems. The Productivity Commission noted that 2.1 per cent of adults are estimated to experience significant problems with their gambling, and still others are at risk. There is a higher prevalence of problem gambling for regular players of gaming machines, raising Casino table games and the average duration of gambling problems is around nine years.

There is also a well established direct correlation between the level of gambling turnover and the level of problem gambling. Every increase in the volume of gambling turnover results in an increase in the level of problem gambling. In South Australia there has been a 57 per cent increase in turnover for gaming machines in the period 1995-96 to 1999-2000. The turnover for all gambling during that same period was 40 per cent. Break Even services, particularly in the Adelaide metropolitan area, are now forced to maintain waiting lists to manage burgeoning demand, with waiting lists of up to four to five weeks becoming increasingly common.

The increase in demand can be explained by two major factors: first, the direct relationship with demand for gambling services from problem gamblers and their families growing as levels of gambling activity grow, noting, also conservatively, that at least five people are affected for every problem gambler; and, secondly, the comparative newness of gaming machines in South Australia, coupled with the Productivity Commission evidence that there is an average duration of problem gambling of nine years. That means there are many more new clients than clients leaving services with their problems resolved.

The base funding levels in real terms have remained static for at least six years. Some agencies have received small, add-on funding components. These have been netted out in calculations to determine real levels of funding. Taking base funding levels also means that the four largest providers of direct services are comparable. The locus for real funding for agencies is calculated from base GRF funding to a metropolitan service. I have been sent a graph with years on the horizontal scale and the Break Even base funds and the electronic gaming machine turnover on the vertical scale. What we see is that the Break Even funds remain static whilst the growth in turnover is about 40 per cent. It clearly shows the additional pressure being applied to Break Even services.

I understand that the government may consider providing extra moneys to gambling services generally, recognising the changes in legislation which went through this parliament only last evening. What is important is that at the very least there is an increase in funding to the Break Even services—those at the coal face—of around 40 per cent which, on the calculations of Break Even, is about $311 000 a year.

I think it is important to note that in conversations I had with agencies right from the very beginning they indicated that they were not receiving sufficient funds to supply their services and were dipping into their own funds to do so. So, gambling services provided by churches were not reliant just upon moneys coming from the government or the amounts coming from the hotel industry: they were always dipping into their own funds as well. With this significant increase that we have seen in turnover and therefore in terms of problem gamblers, it is apparent that even just the request of $311 000 for coal face delivery of services really is not enough, but anything less than that will mean that they are worse off than they were when these services were first established.

FEDERAL BUDGET

The Hon. T. CROTHERS: In the five minutes allotted to me I want to speak, appropriately enough, on the federal budget. What I have to say about that can flow down to the state budget. One of the points I want to make involves

certainly the Democrats under Meg Lees, the Labor Party and the Liberal Party in the framing of budgets. Stott Despoja made a statement which I heard with great delight four or five days ago where she had a go. Funnily enough, I said something like this to my colleague the Hon. Mr Cameron about four weeks ago.

The Hon. T.G. Roberts: Did he listen?

The Hon. T. CROTHERS: If you listened, you might learn, though; I know that much. Of course, you are, like most of the members of the major political parties, not prone to listening too much at all.

The Hon. T.G. Roberts interjecting:

The Hon. T. CROTHERS: Kim Beazley is not listening. Labor listens; Labor listens but never learns. Having got over that ribald interjection, I want to say that Stott Despoja came out and said that her view was that budgets should be framed as an economic blueprint for the well-being of this nation's citizens both now and into the future so that we leave the economy and the state of the nation very healthy indeed for our children and our children's children. Unfortunately, this has not been the case ever since I have lived in Australia.

The Hon. T.G. Roberts: That's your fault.

The Hon. T. CROTHERS: It is my fault that I know you, unfortunately, but there you are; you have to take the good with the bad. Unfortunately, it has not been the case ever since I have lived in Australia that our budgets have been an economic blueprint with the exception perhaps of old Xavier O'Connor, who was castigated for his pains. Our budgets have not been a blueprint for the nation's future economic health. Both major parties and the Democrats under Meg Lees have listened to the vociferous cacophony of noise emanating from the loudest loud mouthed minority of Australians, so $50 million has been given here, $500 million here and $200 million there. At the end of the day, instead of us being a wealthy nation rich in mineral resources, agricultural resources, talent and in any way or measurement you care to apply, we have finished up like ragged urchins, because governments fail to introduce a budget which, in the words of Stott Despoja, will be a good economic blueprint for our future.

Most of the people who are the most vociferous are the most wealthy. There are the press barons waxing righteously with great morality amongst some of the people who are responsible for money being spent wrongly, foolishly and unwisely in this nation.

There are so many things that we could be doing. All the water that is running out to sea in the Northern Territory could be diverted by putting in an underground tunnel and bringing the water back into somewhat benevolent use in our southern grazing land; our southern arable land. Meg Lees is a prime example. When the GST was introduced, people said to me, 'What about that John Howard and the GST?' I would say, 'What about the Democrats and the role they played in putting the GST through?' Meg Lees and the other six or seven who voted with her to get the GST through are still there. Fortunately for the Democrats, Stott Despoja and the new young Senator from Queensland voted against the GST. I was not opposed to the GST. If it had stayed the way in which federal Treasurer Costello initially introduced it, I could have supported it. But now it is nothing. It was supposed to be the tax to end all other taxes, but there have been that many giveaways—forced by John Howard listening to the great unwashed, forced by people such as Meg Lees, and forced by people in the Labor Party—that, instead of being the tax to end all taxes, they will have to go back to the drawing board and find other areas from which to produce tax.

Time expired.

HIH INSURANCE

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

That the Legislative Council urges the South Australian government to provide assistance to persons affected by the collapse of the HIH Insurance Group and, in particular, policyholders or those making a claim against policyholders.

Some weeks ago, I was contacted by a family which has been affected by the collapse of the HIH Group. I will get to their particular story and the effects that the collapse has had upon them in a moment, but first I want to make some general comments. For those who have been trying to follow the HIH saga in the media, I think there has probably been some level of confusion about who is accepting what responsibility. More recently (in fact, I think it was the 21st of this month), Minister Hockey of the federal government made an announcement about a major package of assistance to people who had been affected by the HIH collapse. A couple of days later in the media there was some suggestion that this package was coming unstitched because state governments were not cooperating.

Yesterday I had a telephone conversation with a representative from Minister Hockey's office to seek some clarification in relation to this matter. I was told that the package being offered by the federal government at this stage does not relate to insurance services which are required under state legislation. A number of insurance products will fall into that category, but probably one of the more significant ones is the insurance required of people who are building a home. Because that has been established under state legislation, it is one of those areas that will require, according to the federal government, state government intervention. The federal government has no intention of picking up that insurance product.

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: That is right. We had an argument about who required the insurance and who was supervising the insurance—

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: In fact, we could to and fro for quite some time but I guess, at the end of the day, what we will have to do is look at the impact it has had on real people out there in the community, regardless of who is to blame, and so on. This home insurance product that I discussed, I guess, falls into a number of categories. One of the obvious victims are, I suppose, builders who have perhaps purchased product and then found that they have to reinsure. A number of people are finding that they have to reinsure for a period they have already insured for, and there is the potential for significant costs. It depends upon which insurance products they have but, at the end of the day, there is the potential for some significant cost.

However, I do not think that these people will be the victims most seriously affected. Certainly, the building industry is seeking assistance, and there have been arguments about whether or not the government should remove stamp duties, and those sorts of things, where a new policy has been taken out to replace one that is no longer active because of the collapse of HIH. It would seem to me in the circumstances that that would be a fairly reasonable request, otherwise a

person will have paid two lots of stamp duty for the same amount of insurance for, essentially, the same period.

I think that there will be a number of requests and packages and that the government will to and fro on that. I am not suggesting, by any stretch of the imagination, that it is a minor consideration, but it is compared with, I think, one other type of category, and that is where in fact a claim is being made, and where a claim might be very significant—where it is several times the value of a person's salary, for instance, and they stand to lose everything they have and still be left with debt at the end of it. I do not really think, without getting into an argument about who is right or wrong between the federal and state governments, that we can stand by and allow that group to suffer for a long period of time.

I have one particular example that I want to put on the record today, and it might be that, with further exploration, other issues arise from this case. I think it at least gives an indication of the level of exposure that some people might suffer. I refer to a letter that I received from a family in Blackwood. I will not give the family's name (I do not think that that is important at this stage), and I will not name any company other than, obviously, the insurance company. The letter states:

Dear Mr Elliott,

My family and I have fallen victim to the recent provisional liquidation announced of the insurance companies HIH/FAI. This has been a devastating blow to us having spent the last three and a half years and a great deal of our hard-earned savings battling the system to rectify the problems our builders left us with. I have attached a comprehensive guide to our legal battle with the builders, the announcement of the builder's liquidation, the procedure with a claim against the home owner's warranty, and finally the announcement of the liquidation of FAI. Please take the time to read it. We are now left with no alternative but to take this case to as many people with an interest in consumer affairs to see if there can be some sort of assistance provided to us and other claimants in our situation.

Our other issue is also the regulation and prosecution, where applicable, of builders who without care continue to build outside of all current regulations and standards and in our case outside their licence. When we were choosing a builder to build our dream home, we ensured that they were a member of the Master Builders Association of South Australia. Last week my wife rang a senior person within MBA to ask what position they took on the whole issue, and part of their response was to acknowledge a lack of regulation in the industry. When she told them which builder we had been dealing with, their answer was, 'You will find that [and I will leave the name out] were no longer members of the Master Builders Association at the time of their liquidation.' This did not give us any consolation, as when we built they were members and actively sought assistance from the association against us.

[The company] were taken to court by every client they had and many of their contractors in their short company life, yet the directors have no financial liability as the company had no assets at the time of liquidation. The directors have suffered little, if any, yet my family are at a loss of nearly $90 000.

In fact, I understand it might be more than that, but I will get to that afterwards. It continues:

How can this be acceptable? I believe they are still involved in the building industry.

This whole saga has taken a heavy toll on myself and every member of my family. We are a young family with only one full-time income and four children aged between 10 and two. All of the money we have spent on experts and solicitors from the beginning is now over $30 000. This has precluded us from doing any work around our house, fencing or landscaping at our new house.

We do not qualify for any legal assistance and have had to pay market rate for representation in this matter.

We signed to build with a member of the Master Builders Association of South Australia, and because of this, we are on the verge of financial ruin. As well as having a house with local council section 84 enforcement notices on, which we are unable to sell to recoup any money at all. We do not have the financial resources to even have the work done to eliminate the enforcement notice.

Is there a 'duty of care' on the Master Builders Association of South Australia, who placed our insurance premium with their preferred insurer? The Master Builders Association have in fact recently changed their insurer, but did not advise any existing clients. Why did they change insurer?

Since the liquidation of HIH and FAI we have not received any formal notification from them in relation to this matter. In fact, FAI have advertised in the media that it is business as usual. They are apparently ignoring the many clients who have outstanding claims. We do not consider this appropriate.

I would like to provide you with copies of any documents referred to in the attachment. My wife and I are also very happy to meet with you, and discuss any of the issues further. . . My family and I thank you four your assistance with this matter. . .

The chronology of events is as follows:

- In June 1997, my wife and I signed a building contract for the building of a new house on a previously owned block of land. The builder was. . .
- The directors of this company were. . .
- [The company] was a financial member of the Master Builders Association South Australia and used this association's contract in dealings they had with us.
- Included in this contract and the cost was an allowance for an insurance policy to be written against the failure of the builder. The policy was with FAI General Insurance Company Limited, Builders Warranty Division, in Melbourne.

They give the builder's insurance number, the policy number and the premium they paid for the policy, which was $205. It continues:

- My wife and I had no say in where this policy was written, as it was the preferred insurer of the Master Builders Association South Australia.
- During the construction of our house, no progress payment was ever late or withheld. At the conclusion of the project the final payment was made prior to handover.
- Handover of the house occurred on 8 October 1997. Prior to this a document was prepared which listed a number of jobs, which the builder had not adequately finished but would continue to do so after handover. [A director of the company] and myself signed this document.
- After handover, it became impossible to contact the builder to discuss an ever-increasing number of problems which arose during the standard three month maintenance period. They ignored us after we had made the final payment
- As a result of being ignored by [the building company] we commissioned a report on our house by the Timber Development Association of South Australia Inc. in January 1998. . . . a technical director, prepared this report. The report was eight typed pages in length and outlined many serious defects in work and standards that existed in our new house. A copy of this report was sent to the builder.
- [The building company] still continued to ignore us, after many letters where written to them outlining defects that were occurring in the house.
- In February or March of 1998, we placed this matter in the hands of solicitors. . .
- In March 1998, a report was commissioned to further identify defective work and standards in our house. [A consultant] undertook this report. His initial report consisted of 15 typed pages outlining further defects in our house. He also subsequently prepared an addendum report as more defects came to appear over time. [The building company] were supplied a copy of this report.
- On 11 September 1998 an inspection of our house was undertaken by an independent building consultant appointed by. . . of the Adelaide Magistrates Court. . . . undertook this inspection and prepared a report for the court. His report is highly critical of the builder and supportive of our experts.
- On 28 October 1998 the City of Onkaparinga (our local council) issued an order against me for defects in our house. This order was a section 84 enforcement notice. This notice related to the most serious defects in our house, even to the demolition of part of the structure. This notice prevents us from selling our house until it is complied with.
- A further report was commissioned to have an expert prepare a report on the cost of all the rectification work, as outlined in the reports of the Timber Development Association of South

Australia and the SA building consultants. An expert in this field. . . prepared this report. The final cost contained in this report was $52 740. Note this figure was at the time of April 1999 and does not include GST.

- Legal action was commenced against [the building company] after repeated attempts at conciliation. This commenced in the Adelaide Magistrates Court but progressed to the District Court of South Australia, due to the amount of our claim exceeding the limits of the Magistrates Court's authority. Regardless of the cost of the claim, it could have been dealt with in the lower court with the consent of [the building company], they denied this opportunity.
- Initially [the building company] was legally represented but dismissed the solicitors a short time into the action in the Magistrates Court. They now acted on their own behalf, and as a result did not incur any legal costs. Our expert and legal costs continued to mount, as [the building company] did not appear at many court hearings, further delaying the proceedings and costing us more money.
- A trial was commenced in the District Court of South Australia in January 2000. We were represented by a barrister (as is required) and an instructing solicitor. [The building company] continued to represent themselves. By this time our legal costs were having a severe effect on the financial viability of my family as we had to lodge a large fee in trust prior to the trial. Barristers are extremely expensive to retain.
- After four days of the trial, where no witnesses were called because of the delaying antics of [the building company], they finally conceded that our evidence was overwhelming and consented to orders being made in relation to the rectification of work on our house and the payment of $23 000 of our costs.
- This order was made by Judge Smith of the South Australian District Court on 13 January 2000.
- Contained in this order were certain time frames that compelled [the building company] to undertake specific tasks and lodge certain moneys in trust. All of these conditions of the order were ignored, resulting in us having to incur further legal costs to enforce the order.
- A 'Statutory Demand' was subsequently served on [the building company] due to their failure to comply with the consented order of the District Court.
- In March 2000, [the building company] commenced a legal action against us in the Supreme Court of South Australia. [The building company] sought an application to set aside the statutory demand. A judge of the Supreme Court subsequently ruled in our favour.
- On 19 May 2000 my solicitors wrote to FAI General Insurance in Melbourne to advise them of the District Court order we had secured against [the building company] and noting our intention to subsequently make a claim against FAI if [the building company] were insolvent or placed in liquidation.
- On 6 June 2000, as a result of a vote by creditors, [the building company] was placed into liquidation. . . . was appointed as the liquidator of the company. From this time to now, the creditors of [the building company] have not received any advice from the liquidator as to the status of his investigation.
- On 8 June 2000 my solicitor. . . wrote to FAI General Insurance in Melbourne, advising them of. . .
- In July 2000 the claim was lodged with FAI General Insurance, based on the contents of the order made by Judge Smith in the District Court of South Australia on 13 January 2000. Our total claim was for approximately $78 000.
- After this, a number of letters were exchanged between our solicitors and the firm representing FAI in Adelaide. . . Generally these dealt with matters of clarification of certain aspects of our claim.
- On 24 October 2000. . . undertook an inspection of our house on behalf of FAI Insurance. His total inspection lasted only 90 minutes, with him failing to have a copy of our claim and not bothering to inspect some items relating to our claim.
- On 7 January 2001 my solicitors received a letter from [the solicitors] representing FAI. At this time they acknowledged our claim and offered a cash settlement of $38 000 less $400 policy deductable. [A representative of FAI] compiled the costings contained in this response after his short inspection. [This person] is not an expert in the area of costing.
- On 16 February, FAI were advised that their offer was insufficient, given the expert costing we provided, against the estimate provided by [FAI's representative]. No further correspondence of significance has been had with FAI after this time.
- In March 2001, media reports indicated that HIH and FAI were placed into liquidation, as a result of massive debts.
- Our claim is still outstanding and we have been advised by the liquidator. . . that we will be very fortunate to receive any monies as the result of our claim, and if we do it may take years to resolve.
- We believe that claims have been settled by FAI that were lodged after they received ours, some specifically related to projects built by [the same building company].

This is just one example, which I think illustrates that, aside from the more obvious victims of the insurance company's falling over—that is, the people who hold a policy and have to renew it—the problems that those sorts of people face are minor compared with those who are trying to make a claim against the insurance company—and some of those claims are quite significant.

This also demonstrates that by the time you make a claim against the insurance company you may have been in deep financial stress for a number of years. It is not helpful at this stage for the government to say: we are talking with the federal government and looking at what the other state governments are doing, and we are considering our position. I know that it will take some time for the government to be able to fully resolve this matter—indeed, there may be the need to spend some time considering it—but when you have people who are on the threshold of bankruptcy through no fault of their own because there has been a failure in the system—let us not have an argument now about whether the federal government or the state government is to blame—I believe there is room for some compassion and reasonableness.

I ask members to consider my motion, which is very broad. It simply urges the South Australian government to provide assistance to persons who have been affected. I have not suggested that there be immediate restitution in respect of all claims or anything like that, but it seems to me that it is possible for the government to establish a fund that would be capable of giving at least some level of reasonable assistance to some of these more serious cases to ensure that what is already an extremely precarious financial position is not allowed to deteriorate further and that at least they can see some ray of hope in the future.

At this stage, all these people are waiting for is resolution from the liquidators. That may take many years and, even if money does become available, we have no idea how much it will be. I think that is an untenable and unreasonable position in which to leave anyone. This is a single income family with four young children. They are in their new house, but the debts are worth more than the house itself and they cannot sell it because it has an order against it. How they can live like that for a couple of years, go through what they have been through and now have $30 000 of legal costs as well, I do not know.

I do not think it is reasonable that, at this point, the government should say that it is going to consult and try to encourage the federal government to do X, Y or Z, see what the other states are doing and further consider the position. I understand why it might want to do that in relation to the smaller policies that do not have claims against them—there might be time to come to a final resolution in terms of those—but it must be possible for a government to say, 'Let's look at these sorts of cases.' At the end of the day, these claims will not break the state government's or anyone else's bank but they are having an impact on individuals and

families. I think it would be reasonable for the government to provide assistance to these people even if, in the first instance, as I said, it is not full restitution immediately. At least give them some prospect that things will not continue to get worse so that they can see a ray of hope, a ray of light for the future. I encourage all members to support the motion.

The Hon. CAROLYN PICKLES secured the adjournment of the debate.

BENLATE

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

That the Legislative Council urges the South Australian government to provide assistance to those horticulturalists whose crops were damaged by Benlate but who have been unable to reach a settlement with DuPont.

Members who have been in this place for some years will know that I have raised this issue of Benlate on a number of occasions. I will provide a brief history of it for the new readers and refer them to *Hansard* for the full story. In the first instance, I was approached by a flower grower who spoke to my secretary. His claim was that Benlate killed his orchids. I had Benlate on my shelf at home. It was something that you could buy from the local hardware store. It is a fungicide that home gardeners often spray on their roses to control blackspot and various other things.

My response was: how could a substance used by home gardeners kill crops? I was pretty sceptical about this claim, to put it mildly. I asked my personal assistant to go back to this man and ask him whether he knew of anyone else who had experienced this damage. To my surprise, I recall that he identified about three more growers who were claiming that Benlate had affected their crops.

As I started to look at this issue, I was pretty incredulous at the response from the Department of Primary Industries in terms of what it said was happening. For instance, about half of this man's orchids had died. When he went to the Department of Primary Industries, the response was that they were killed by a fungus. These plants died just after he treated them with a fungicide. What was even more intriguing was that—not surprisingly I suppose—his plants were in pots laid out in rectangular blocks. You would expect that, if a fungus was spreading through your crops, there would be patchiness in terms of die-off, that some plants close to each other would die and that you would have areas where they did not. They did die in areas; in fact, they died in rectangles. You could see one rectangle where they had died, but in the next rectangle they had not. I was informed that those plants which had died had been treated with Benlate but those that had survived had not. It is amazing that the Department of Primary Industries would argue that the plants had died because of a fungus.

I spoke to a number of other growers and visited their properties to look at the damage that had been done. I began to form a view—at this stage not a researched view—that it looked like there was a possibility that Benlate was responsible. These people with whom I had discussed the matter had been busy on the internet, corresponding with people in the United States. They had established that in the United States literally hundreds of growers were claiming that Benlate had affected their crops.

I raised the issue in this place on a number of occasions. I felt that it was an issue that, considering that it seemed to involve a registered chemical, was one that the government should be very active in. I must say that the impression I was left with was that the government really did not want to know about it at all. Initially, might I add, this was, as I recall, under a Labor government, but the later part of this period that I will be discussing was happening under the Liberal government. I had discussed the matter with Minister Kerin fairly early in his term as Minister for Primary Industries, and I was hopeful for a while that the issues might be tackled. I do not know whether it was the minister or whether, indeed, it was some of the bureaucrats handling it but, whatever, it struck me that there just seemed to be a lot of stalling.

In my view they just simply had not done the research that I thought was necessary to establish whether Benlate indeed was the problem that it appeared to be or not. So I went on a fact finding trip to the United States to take a closer look at the whole issue. The full detail of the trip, for those who want to look at the matter in more detail, can be found in *Hansard* of 11 October 1995 and 25 October 1995. I made a contribution which I think in total ran for some three hours, as I sought to put on the record all that I had found in relation to Benlate in that trip to the United States.

I went to three places in the United States. I went to Hawaii and to Florida, two areas where there had been very large numbers of growers who had claimed Benlate damage and where there had been some fairly extensive litigation, and I went to Seattle, because basically in Seattle there was a horticultural researcher there who had done a lot of leg work in relation to the legal cases, and the leg work had been done on behalf of the complainants.

Not only did I speak with this horticultural expert in Seattle but in both Hawaii and also in Florida I met with university scientists who had done research work in relation to Benlate and had been involved in a number of experiments. I met with lawyers who had represented growers in both Florida and in Hawaii, and I met also with growers themselves who had been affected, and, finally, with departmental officials from the departments of agriculture in those two states.

I came back from the United States absolutely convinced that Benlate as a product had been responsible for doing significant damage to crops. In fact, the reason for the damage may not have been the same in all cases. Certainly, in the United States evidence was found for contamination of some batches of Benlate with a substance known as sulfonylurea—SU for short. In fact, many people who initiated prosecutions chased that as the causative agent, and indeed it is quite likely that it was in a number of cases. But I think some people found themselves chasing a red herring in that, while SUs may have been responsible for damage to some plants, in many cases there was an alternative explanation. It is one that I went into in great depth in my speech given on 11 October and 25 October 1995.

The basis of it was that Benlate itself is not actually an active ingredient, that Benlate, when supplied in solution, breaks down to form two molecules. Each Benlate molecule breaks down to form two molecules. One of those is the active ingredient which supposedly kills fungus, but according to some scientists that I spoke with the other molecule which formed, which was not an active ingredient, was the one which was most likely doing damage in some cases, and the most likely cause of damage was as it evaporated and then came into contact with water again up against the surface of the plant, and it was at that point that damage was being done.

What I found particularly intriguing was that, of all the cases I knew of in Australia in terms of Benlate damage, certainly it was true in South Australia that all of the damage

was happening in hothouses. The one exception I knew of elsewhere in Australia was that there was one grower of eucalypts in Western Australia who had claimed Benlate damage to his trees but, as I said, he was the odd one out. So there was something about the environment of the hothouse that seemed to be implicated in the damage in some way. Interestingly, not all the damage overseas was being done in hothouses, but if one looks at the two places I visited where most of the cases occurred I think you can find another commonality.

The two other hotspots, if you like, in the United States for damage were Hawaii and Florida, and what we are talking about are warm and humid places, really the same sorts of conditions that one would expect to find in a hothouse. Clearly, there was something happening in this chemical breakdown of Benlate to these other molecules that, in my view, was responsible. In fact, scientists at the university in Hawaii actually took me through the chemical pathways that were likely to have resulted in the damage being done to the plants, and that I put on the record in this place.

I will not spend any further time talking about the damage, other than saying that I am convinced that damage has been done by Benlate. I am convinced that some damage in some cases has been done by SUs, sulfonylureas, but I think in many other cases it was simply done by the breakdown of Benlate in warm, calm, humid conditions, like those found in the hothouses in the South Australian cases, at least, where the damage was claimed.

In talking to lawyers, the other thing I found was that DuPont had the same tactic all the time. DuPont has never ever—and I am talking about 1995, and I could also talk about the year 2001—admitted liability, and I suppose for good reason, because it would cost it an arm and a leg, and a lot more than that. DuPont has never admitted liability. It gets into the courts and the cases go and go and go. Eventually a couple of things happen. Either the whole legal process gets too expensive and people back off or a settlement is reached. But to my knowledge even on the few occasions when a court has finally ruled—and I am aware of only a few cases—DuPont has then appealed it. So DuPont can continue to claim to this day that, effectively, it has not lost a case, nor has it admitted liability. That is the process that it followed in America.

I spoke with American legal firms that had spent millions of dollars in class actions, and they were saying, 'If we'd known what this was going to be like we would never have taken it on in the first place.' Some of these were quite strong legal firms, but you have to be pretty strong and have deep pockets to take on a company like DuPont. In Australia, generally people were pretty daunted, but finally a few legal cases did find their way into the courts. I am advised that there have been a couple of out of court settlements in Australia.

As in the United States, those settlements have been reached, DuPont has admitted no liability and, again, as so often happens in cases that settle out of court, the size of the settlement is confidential and even the fact that there has been a settlement is supposed to be confidential. I suppose that, inevitably, the word has got around that some settlements have occurred. I have growers coming to me who have been financially destroyed by crop damage which they say was caused by Benlate, they say that is not fair, they are not getting any assistance from the government in this matter, they do not have the money to take the company to court, and they want to know what to do.

I am not sure whether this is the last roll of the dice for me in this regard but, having raised this a long time ago, having done detailed research, having put that on the record here, having assisted a lot of people in making contacts and helping them build their cases, having seen some of them go to the courts and having seen settlements occur, in my view there are still growers who, simply because of lack of financial means, are being dudded, and the government is standing idly by. From what I am told, unfortunately, a few bureaucrats in government departments have been complicit in that dudding, and some of them might be protecting positions that they took many years ago. Whatever, it causes me concern.

By now, the government should have enough evidence to believe that there has been a problem with Benlate, and I do not understand why it cannot find the capacity to acknowledge that damage may well have been caused by Benlate and that there have been some innocent victims, some of whom have been severely affected, some of whom have lost everything they own. Why the government cannot show a capacity for an ex gratia payment or some form of assistance, even placing pressure on the company itself, I do not understand. At this stage, I believe that it is small-mindedness.

One other footnote I should add is that Benlate is no longer sold for the purposes from which it is claimed that damage was done. Benlate cannot be bought for use in a horticultural situation, nor can it be bought for domestic use. It is being sold only for broad acre use for treatment of grains and, I assume, legumes. I imagine that, in the general field situation, the sort of climate problems that I referred to—the combination of heat, humidity and calm conditions—are not found, particularly since broad acre crops in South Australia grow mostly in late winter and into spring, so the conditions are unlikely to occur for damage to be caused.

It may be true that Benlate is a suitable fungicide for broad acre use. I really do not know. The company itself withdrew it from sale, its reason being that it was not a market that was worth bothering with. The market was causing the company bother, but that was because of the problems that had emerged from its use. If members go to the local hardware store, I am sure they will find the same company selling other products in the domestic market. If members want more detail, I urge them to approach me because I have plenty of it. Most of it is on record in *Hansard* on the dates I referred to in October 1995. I ask members to support the motion which urges the government to provide assistance to those horticulturalists whose crops were damaged by Benlate but who have been unable to reach a settlement with DuPont.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

GRANT DISTRICT COUNCIL

Order of the Day, Private Business, No. 1: Hon. A.J. Redford to move:

That the District Council of Grant, various by-laws, made on 23 November 2000 and laid on the table of this Council on 13 March, be disallowed.

The Hon. A.J. REDFORD: I move:

That this Order of the Day be discharged.

Motion carried.

DOGS

Order of the Day, Private Business, No. 4: Hon. A.J. Redford to move:

That the Corporation of the City of Salisbury by-law No. 5 concerning number of dogs, made on 18 December 2000 and laid on the table of this Council on 13 March, be disallowed.

The Hon. A.J. REDFORD: I move:

That this Order of the Day be discharged.

Motion carried.

Order of the Day, Private Business, No. 7: Hon. A.J. Redford to move:

That the Corporation of the City of Mitcham by-law No. 6 concerning dogs, made on 30 January and laid on the table of this Council on 13 March, be disallowed.

The Hon. A.J. REDFORD: I move:

That this Order of the Day be discharged.

Motion carried.

CAFFEINATED BEVERAGES

Adjourned debate on motion of Hon. M.J. Elliot:

That the Legislative Council requests that the South Australian government—

I. (a) Examines whether caffeinated drinks should be banned from sale to minors, in the same manner as tobacco and alcohol;
   (b) Promotes caffeinated energy drinks as being unsuitable for the general population, particularly children and caffeine-sensitive people;
   (c) Endorses proposals by the Australia New Zealand Food Authority for stricter labelling and marketing controls for caffeinated energy drinks; and

II. Uses its role on the Australia New Zealand Food Standards Council consisting of health ministers, to lobby for the passage of strict food standard regulations to cover formulated caffeinated beverages.

(Continued from 11 April. Page 1336.)

The Hon. CARMEL ZOLLO: I have been concerned for some time about so-called energy drinks, referred to in this motion as formulated caffeinated beverages. Specifically my concerns lie with the availability and targeted promotion of these products, which are high in caffeine, to children and young people generally. These concerns were expressed in my recent question without notice.

While I support the general sentiments of the honourable member's motion, I am mindful also of the comments made by the minister in her contribution. As with the minister, I am not convinced that the prescriptive nature of part of the motion is appropriate and I support her suggested amendment. I believe that seeking to promote caffeinated energy drinks as unsuitable for the general population is a disproportionate response to this issue. I make those comments also, of course, on behalf of the Labor caucus.

Formulated caffeinated beverages, as distinct from soft drinks, are a new phenomena in the Australian market. Although caffeine has been used for over a century in cola drinks—primarily as flavouring—its use in this new breed of beverages appears to be primarily for the stimulant and possible addictive qualities of caffeine. In Australia, it is legal to have up to 145 milligrams of caffeine per kilogram in cola soft drinks, but it is excluded for use in other soft drinks.

As I mentioned in my earlier question on this matter, formulated caffeinated beverages are non-alcoholic and are characterised by the addition of several ingredients that claim to have energy enhancing qualities, including caffeine, guarana (a herbal source of caffeine) and various vitamins and amino acids. The typical ingredient list on any one of these drinks reads like a pharmacological report. For the benefit of members not familiar with these drinks, I will list the main ingredients of just one product: carbonated water, sugar, food acid, Glucuronolactone (a type of carbohydrate), taurine (an amino acid), flavours, preservatives, inositol (used as an antidepressant), caffeine, vitamin C, niacin, B1, guarana, ginseng and colours. This particular product had no labelling advice to indicate that it was not suitable for children, as some other brands have started to incorporate on their packaging. The recommended dosage was no more than five cans or 1.25 litres per day. The amount of caffeine also is not clearly indicated in the nutritional information. The only indication being 'Guarana extract 13 milligrams per serve', in addition to the unquantified amount of caffeine. Nor was there an indication of how much sugar was contained in a serve.

As they are considered to be foods under the Australian food code, they have been imported into Australia using New Zealand legislation, which has higher limits for caffeine in foods. Some manufacturers have exploited conditions in the Trans Tasman Mutual Recognition Agreement, which allows the importation of these goods into the Australian market. They manufacture these drinks in New Zealand under the Dietary Supplement Regulations 1995. As mentioned, while the Australian food standards code restricts the addition of caffeine to soft drinks, cordials and syrups, it does not limit naturally occurring caffeine in foods such as tea, coffee and guarana.

On 29 November 2000, the Australian Food Authority gave notice of a proposed change to food regulations and a further invitation for submissions. The report highlights several matters and suggests some principles in its consideration of these energy drinks. One of these principles is as follows:

Health and related claims on energy drinks should be subject to the current prohibitions, or proposed conditions of substantiation as health and related claims generally.

It is pleasing to note that the authority has highlighted this principle, as even a cursory view of some of the promotional material advertising and marketing energy drinks reveals some extraordinary claims.

In its report, the authority calls for a new standard to be set called Formulated Caffeinated Beverages, with strict labelling and warning advice to be on all products, including that a product contains caffeine. A consumption limit will be provided and there will be statements informing that the product is not recommended for children or caffeine-sensitive people.

As I have said, I am sympathetic to the minister's possible amendment of paragraph I(a) but I would also like to see some specific reference to the protection of minors, which is in keeping with the original intent of the mover, the Hon. Michael Elliott. As expressed in my recent question without notice, one of my primary concerns is that this type of drink is not freely available in schools. Young people are easily influenced by the lure of labels and image marketing campaigns. Although none of the manufacturers claim to be targeting minors, clearly the message and image surrounding these products is appealing to young people. One company actively recruits university students as product ambassadors to promote the beverages on campuses in Australia.

If we go down the path of banning the sale of the products to minors, it raises a number of serious questions, not the least being the enforcement of restricting caffeine sales to minors. The current wording of the motion could perhaps lead to the ludicrous situation where a cafe, deli or supermarket would ask young people for ID before selling them a cup of tea or coffee—or maybe we should limit the sale of Coca-Cola or Pepsi as well.

The intention of the motion is for serious consideration but the extent of the limitations it is seeking to impose is of some concern to the Labor caucus. I would not like to see this motion fail because it places onerous and unworkable conditions on retailers. In urging social responsibility in relation to caffeine and ensuring that the health considerations are seriously noted, I do not believe this Council should be promoting caffeine as unsuitable for the general population. I am particularly concerned by the Hon. Mr Elliott's suggestion that we should have a consistent approach to how we treat all drugs, and not have an artificial line whereby some drugs are declared legal and treated in a certain manner and others declared illegal and treated in a different manner.

My concern is not about being consistent but that he would put all these so-called drugs (a term with a very wide meaning) in the one basket, so to speak. We are not comparing like with like when we talk about the addictive nature and harm of drugs such as caffeine, tobacco, alcohol, cannabis or heroin. The addictiveness and harm vary from one end to the opposite end of the spectrum, and I do not agree that they should be treated in a similar legal manner. They may all be drugs—in the widest sense of the definition—but their impact on human behaviour is totally different. I think most of us would prefer to be on the road with drivers who have overindulged on caffeine rather than alcohol any day and, similarly, most of us would prefer our kids to experiment with caffeine and alcohol rather than cannabis or heroin.

The problem with such a wide definition of 'drug' or 'substance' is that there are many other substances that can be harmful and even addictive. Some can even become addicted to chocolate. In fact, these days it does not take long for scientists to show that all good things in life that we start to enjoy—although usually overindulge in—are not good for our health. Nonetheless, it is widely recognised that caffeine is the world's most highly consumed and socially accepted drug. However, as the Hon. Mr Elliott points out, the health consequences are often not recognised, especially the effects on children.

I am alarmed by the possibility that excess consumption of these types of beverages in some parts of the world has even been associated with the death or injury of young people, including school children. However, I do not think it is possible or responsible—and it is definitely hypocritical—for this Council to seek a blanket ban on caffeinated drinks. Modern research remains divided on the effects of moderate caffeine consumption. In fact, some studies point to some beneficial effects in adults, which is not to say that the effects are beneficial in children at crucial stages of their development.

I am confident that the best way to deal with this issue is to inform the community of the potential harm of excess consumption, to provide some sensible marketing restriction that makes access to these beverages difficult for minors, and to encourage ANZAFA's current course of action in calling for stricter labelling advice for consumers. On behalf of the opposition, I move:

Paragraph I—Leave out subparagraphs (a) and (b) and insert—

(a) Examines what sale labelling and marketing restrictions should be imposed on formulated caffeinated beverages, particularly in relation to minors.

(b) Promotes excessive consumption of caffeinated energy drinks as being unsuitable for the general population and that caffeinated energy drinks are particularly unsuitable for children and caffeine-sensitive people.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

LODGING HOUSES

Orders of the Day, Private Business, No. 20: Hon. A.J. Redford to move:

That by-law No. 4 of the Corporation of Charles Sturt concerning lodging houses, made on 4 October 2000 and laid on the table of this Council on 24 October 2000, be disallowed.

The Hon. A.J. REDFORD: I move:

That this order of the day be discharged.

Motion carried.

DOGS

Orders of the Day, Private Business, No. 21: Hon. A.J. Redford to move:

That by-law No. 21 of the Corporation of Charles Sturt concerning Dogs, made on 4 October 2000 and laid on the table of this Council on 24 October 2000, be disallowed.

The Hon. A.J. REDFORD: I move:

That this order of the day be discharged.

Motion carried.

DIGNITY IN DYING BILL

Adjourned debate on second reading.

(Continued from 2 May. Page 1408.)

The Hon. J.S.L. DAWKINS: I rise today to speak on the dignity in dying legislation introduced by the Hon. Sandra Kanck. This bill if passed would allow access to voluntary euthanasia for people who are hopelessly ill and who have made a request for it to be carried out. I indicate here my general support for voluntary euthanasia, and that I will vote for the second reading. If the bill passes that stage, it is my intention to closely examine the bill after the committee stage and before determining my vote on the legislation. This is the first occasion on which I have had the opportunity to speak on voluntary euthanasia legislation since entering this place. However, I voted in favour of a select committee being re-established after the 1997 election to examine the voluntary euthanasia bill initially sponsored by the Hon. Anne Levy. The select committee had been established prior to the election, but it lapsed when the poll was called. That motion failed by one vote and was replaced by an amended motion which referred the Levy bill to the Social Development Committee.

I have closely followed the debate about voluntary euthanasia for a number of years. This bill does not talk about making the decision for others: it is about voluntary euthanasia for those who are hopelessly ill. Many in this chamber would know that I spent a number of years working for three federal members of parliament. During that time the matter of voluntary euthanasia was frequently raised. This increased dramatically during the period in which the Northern

Territory's legislation was challenged in federal parliament by what was known as the Andrews bill. My thoughts on the issue were provoked considerably during this period, particularly by some of the comments made by my employers' constituents on both sides of the issue. In addition to the pure issue of people having the right to ask to die, there was also the issue related to the right of the Northern Territory parliament to make and sustain its own laws.

I have given a significant amount of thought to a range of issues in relation to this legislation and the international debate about voluntary euthanasia. Some of these issues I will canvass now. The first is palliative care. I am a strong supporter of palliative care, but I would like to quote from the second reading speech made by the Hon. Sandra Kanck on this bill, as follows:

> The local branch of the Australian Medical Association. . . stated that it preferred to opt for palliative care. But is it an either/or question? Palliative care and voluntary euthanasia are not mutually exclusive. Palliative care allows for the disconnection of life-sustaining technology which can allow for some form of voluntary euthanasia if, for instance, your disease is lung cancer and a ventilator is keeping you alive. But if you are unfortunate to have, for instance, a brain cancer, there will not be the equivalent of a ventilator that can be disconnected, and one does not usually get to determine which debilitating condition might hit you.

The Hon. Sandra Kanck continues:

> . . . it is perfectly feasible that a person who is hopelessly ill would use palliative care to its fullest extent and opt to hasten death via voluntary euthanasia, if the palliative care is no longer able to provide for the patient in terms of pain, discomfort or dignity. Just as I have given the example of a person with brain cancer not being able to disconnect from the life support system, there are other examples where the patient can be let down by the current laws. Terminal sedation is basically available only to those suffering a great deal of physical pain. But what if your pain is psychological? If you do not, for instance, want to continue life being pricked and prodded, confined to your bed, developing bed sores, perhaps vomiting, perhaps with diarrhoea, you will be compelled to stay alive.

That is the end of the quote from the Hon. Sandra Kanck. I will give a couple of definitions, beginning with 'euthanasia'. The word 'euthanasia' comes from the Greek language and means 'a good death'. As Mary Gallnor, a stalwart of the South Australian Voluntary Euthanasia Society, and the immediate past President of the World Federation of Right to Die Societies says, unless it is voluntary at the request of the patient and regulated, we cannot be sure they would have a good death. A further definition is that of 'hopelessly ill'. This term has been used in medical literature since 1984. The definition in the bill requires that the condition either deprives the person of identity or is so grave and irreversible as to make continued living intolerable. Voluntary euthanasia is patient driven, but the bill requires two doctors acting independently to agree on a professional assessment that a patient is hopelessly ill.

I would now like to make a few comments in relation to reaction from members of the general community, and opinion polls. I am well aware of the opinion polls, which indicate that a clear majority of the population favour voluntary euthanasia. Some would say that it is easy for people to say 'Yes' to a vague question about voluntary euthanasia, but that they might change their mind if it relates to themselves or to a family member. I understand that the question asked by the Morgan Gallup organisation is unambiguous and is as follows:

> If a hopelessly ill patient who was suffering intolerably asks a willing doctor to help them die, should the doctor give them a lethal injection or not?

I have also spoken to many community members about the issue of voluntary euthanasia and I have been surprised at the level of interest expressed by most people. There seems to be a higher than average degree of understanding of a so-called political issue. There also seems to be a similar level of support to that which is indicated by the opinion polls.

The next issue I want to canvass briefly is the Physician Assisted Suicide Act in the American state of Oregon. Once again, I will quote from the Hon. Sandra Kanck's second reading explanation, because that seems to me to summarise that situation as well as anything I have seen. The Hon. Ms Kanck said:

> Let me turn to some comments made at the Boston conference—

in relation to euthanasia—

> in regard to Oregon's Physician Assisted Suicide Act. Of those who have used the Oregon act, when asked why they were accessing it, loss of autonomy and dignity were given as the principal reasons. No matter how good the pain management, overwhelming weakness and fatigue cannot be controlled. In the first year of operation of the Oregon act, a total of 15 people hastened their deaths by using the act and 27 in the second year. For the two years 1998 to 1999, there were 60 000 deaths in Oregon, of which 43 used assistance in dying. When so few people have used the act, why is it important that it be able to continue working? The answer is that because of the act tens of thousands of people in Oregon have been able to face death knowing that they will not have to face a terrorised death. These are not people who want out: they want to know where the key is.

I think that is a very good summary of that act, which is one in which I have taken some interest. For comparison purposes, the population of Oregon is approximately 3.3 million people, which is just more than double the population of South Australia. It is interesting to perhaps translate those figures into what might be expected to be the number of people who would use the Dignity in Dying Bill in this state if it is passed.

I would now like to make some comments in relation to the proposed monitoring committee. I am pleased that the bill includes the provision of a monitoring committee, which would include representatives nominated by the AMA, the Law Society, the Palliative Care Council, the South Australian Voluntary Euthanasia Society and the Council of Churches. This committee would monitor and keep under constant review the operation and administration of the act and make recommendations to the minister relating to possible amendments to, or improvements in the administration of, the act. In addition, the committee would make an annual report to parliament.

I would now like to read into *Hansard* a letter which I received (and which I think other members of parliament have received) from Dr Roger Hunt, Senior Consultant, Palliative Medicine, who is based at North Adelaide. The letter states:

> I am a specialist in palliative medicine. I have cared for terminally ill patients and their families for over 17 years. I want to advocate for the wishes and interests of my patients in relation to the Dignity in Dying Bill. In South Australia we have excellent palliative services. Initially, I accepted the rhetoric that palliative care had all the answers—if suffering was relieved there would be no need for voluntary euthanasia. I soon discovered, however, that not all suffering can be relieved and many dying patients experience awful suffering despite the provision of the best available palliative care. Surveys from even the most prestigious palliative care centres show that dying patients experience multiple concurrent symptoms as well as psychological and spiritual distress that cannot be eliminated.
>
> I have been challenged many times by patients suffering from a cruel terminal disease who ask me to provide a quick merciful release. My options have been:
>
> 1. Simply turn down the request but offer palliative treatments that may slowly hasten death. This is legal if my intent is to relieve

suffering, but some patients do not want to linger in a moribund state and would prefer a quick peaceful exit.

2. Accede to the patient's wish, act compassionately, and risk prosecution for murder.

The weakening, wasting and physical degradation associated with advanced progressive disease causes 5 per cent to 10 per cent of terminally ill patients to request euthanasia. Evidence indicates that patients of designated palliative services are more likely than others to request euthanasia, perhaps because they are encouraged to be more expressive of their concerns and wishes. A survey of Daw House Hospice patients' spontaneously expressed statements showed 6 per cent persistently requested staff to hasten their death. This figure is remarkably similar to the 7 per cent of cancer deaths that involve voluntary euthanasia in the Netherlands.

I believe the current law is crude and unjust, and you should change it. People want reassurance that if they are suffering and dying they can receive excellent palliative care and, as a last resort option, voluntary euthanasia. I believe doctors will be very serious and responsible about new discretionary powers in this area. . . I believe a sensible and compassionate framework for care of the dying will be a hallmark of civilised society.

I highly respect the views of all my colleagues on this issue, as is the case on all conscience issues. I have been a lifetime member of the Methodist Church and, more recently, the Uniting Church in Australia. While I have not possessed a firm view on the issue of voluntary euthanasia, I have had an opportunity to take account of many letters, telephone calls, emails and verbal conversations relating to this matter. I am most conscious of the absolute need for any voluntary euthanasia legislation to contain strict safeguards and to avoid any possible loopholes. The bill as it stands goes a long way towards satisfying my wishes in relation to addressing the situation that is so accurately summarised by Dr Hunt's letter. As I said earlier, I will ultimately make my decision on whether or not to support this legislation at the conclusion of the committee stage if, of course, it passes the second reading.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

LEGISLATIVE REVIEW COMMITTEE: ROCK LOBSTER POTS

Adjourned debate on motion of Hon. A.J. Redford:

That the report of the committee concerning the allocation of recreational rock lobster pots be noted.

(Continued from 16 May. Page 1478.)

The Hon. CAROLINE SCHAEFER: I thank the committee for its work on the report. I acknowledge that this is a very emotional issue; lobster licences seem to stir up a great deal of emotion in most people. I have a friend who estimates that, by the time he has bought a beach house near the rock lobster, a boat to catch them in and a licence, his recreational lobsters have cost him of the order of $250 000. Therefore, no-one can say it is a cheap sport. However, I admit that I cannot see that it is much of a sport at all.

I have no desire to catch my own rock lobster: I like to buy one occasionally when I can afford it. As such, I, like the majority of South Australians, am dependent upon the professionals for my supply of lobsters. I have no wish to come down on the side of either the professionals or the recreationals, and I think it is important that we acknowledge that both have a right to access this stock.

I would like to put on the record some of my concerns which, I suppose, are in some ways similar to those of the industry. The EPA report of 1998 entitled 'State of the Environment Report' alleges that the resource is already fully exploited, that is, year in and year out we can afford to take no more stock than we are already if we wish to retain a sustainable industry.

The South Australian industry is widely acknowledged as being one of the world's most sound both environmentally and sustainably. That is due in no small part to the fact that over the years the professionals have recognised that they have a finite resource—it is certainly expensive, and I do not think any of them would claim that they have not made a huge amount of money out of it—but if they do not look after it they will have no industry in the future.

Over the years they have introduced a number of measures limiting and assessing the size of their catch. This year the southern rock lobster zone assessed that it had lower than usual stock and immediately lowered its annual quota. This quota is managed in the southern zone by limiting the number of lobsters caught, and in the northern zone by limiting the number of days fished. In both cases they have quite strict standards and minimum sizes of stock that can be caught. Over the years they have reduced their catch, the number of boats and the number of licences. They have also reduced the number of licence holders who can take lobster professionally.

It is alleged that 20 per cent of the people catch 80 per cent of the stock, and that it is the recreationals who do that. The professional fishermen also have invested a huge amount of money in research into the rock lobster industry and into forms of catching and fattening rock lobster in the same way tuna is currently developed. As I understand it, those experiments have been somewhat unsuccessful, but most of their research has been voluntarily funded and in my view it has done a great deal to enhance the sustainability of the industry.

I do not think there is any easy answer to this. The licensed professional industry has developed methods of assessing the size and sustainability of their catch. There is no such system of checks and balances with recreational pot holders. Indeed, I cannot see how there could be such a method because I do not believe that we would have the resources to police that many recreational fishers.

Contrary to the report, my information is that in both Tasmania and Western Australia, where there is no limit on recreational pots, over the years the catch is increasing and the stocks are decreasing, and I got that information from fisheries officers in those two states. It seems to me that, although everyone is moderately dissatisfied with what we do in South Australia, we have a very precious and fragile industry in our rock lobster industry and we need to be very careful before making recommendations that may jeopardise the sustainability of that catch.

I do not wish to come out on the side of either the recreationals or the professionals, but I believe that there needs to be limits, checks and balances. This state is the envy of some of the other states where there is no limit on recreational pots. I think it may be regressive for us to change the current system. There is no doubt that the system of allocation needs to be improved. Perhaps one answer is for recreational pots to be limited to one or two per day instead of the current four per day, thereby doubling the number people who can catch rock lobster.

I do not know the answers and I do not begin to pretend that I know the answers. However, when a decision is made and a solution is reached—I assume by the Department of Primary Industries and by the minister—I hope that it is

reached in consultation with all the key players, including the professionals and the recreationals.

The Hon. T. CROTHERS secured the adjournment of the debate.

LAW REFORM (CONTRIBUTORY NEGLIGENCE AND APPORTIONMENT OF LIABILITY) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to reform the law relating to contributory negligence and the apportionment of liability; to amend the Wrongs Act 1936; and for other purposes. Read a first time.

The Hon. K.T. GRIFFIN: I move:

That this bill be now read a second time.

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

Leave granted.

This bill will change the effect of the decision of the High Court in the case of *Astley v Austrust* concerning the interpretation of section 27A of the *Wrongs Act 1936* of South Australia.

That decision provoked immediate criticism. All Australian States and Territories had a provision similar to section 27A. The matter was discussed by the Standing Committee of Attorneys-General and model provisions for a bill were developed. Acts based on, but not identical with the model have been passed in Tasmania, Victoria, New South Wales and the Australian Capital Territory. There is a similar bill before the Northern Territory Parliament. Although the South Australian bill draws on the model, it was decided following consultation, to introduce a slightly wider reform.

The core of section 27A is as follows:

> *"(3) Where any person suffers damage as a result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage:*
>
> The word "fault" is defined by section 27A(1) as:
>
> *"'fault' means negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would, apart from this Act, give rise to the defence of contributory negligence.*

Section 27A was enacted in 1951 to reform the common law of tort. It allows the courts to reduce the amount of damages payable to a plaintiff if it is found that the plaintiff contributed by his or her own negligence to the loss in respect of which he or she is claiming damages. Where the plaintiff has been guilty of contributory negligence, the court is required to assess the full amount of the plaintiff's damages and then reduce the damages by such amount as is just and equitable having regard to the extent of the plaintiff's responsibility for the damage.

Although section 27A was enacted in South Australia in 1951, it was not conclusively settled whether or not the section was applicable in cases of breach of contract until the High Court's ruling in *Astley v Austrust* in 1999, reported in (1999) 197 CLR 1. The High Court by a majority of 4:1 ruled that it did not—it applied only to claims for damages for tort. The majority said that "*the history, text and purpose of the Wrongs Act make it clear that that Act was not intended to apply to claims for breach of contract.*

Prior to *Astley v Austrust*, many legal practitioners had adopted the practice of treating section 27A as applicable to cases of breach of a contractual duty of care and many cases were settled or decided on that basis. There were some higher court decisions that supported that view as well as some that did not. Many thought that the weight of judicial authority supported the view that section 27A did apply, at least to cases in which the duty of care imposed by the common law and the duty of care under the contract were the same. The overwhelming response to the decision in *Astley v Austrust* from legal practitioners, academics and the insurance industry was that the statute should be changed.

The bill will do that. It will allow the courts to reduce the plaintiff's damages on account of his or her contributory negligence in any case of breach of a contractual duty of care, subject only to any agreement between the parties or other legislative provision to the contrary.

In addition, the bill will make the contribution provisions that currently apply only between tortfeasors applicable to claims for breach of contractual duty of care. These provisions were enacted in 1939 to allow a party who has paid, or who is liable to pay, damages to obtain contribution from any other liable parties. Courts have found that *Astley v Austrust* has caused difficulty in some cases in applying the contribution provisions of the *Wrongs Act.* This was raised by the Supreme Court of South Australia in December last year in an appeal in *Duke Group (in liquidation) v Pilmer & Ors (No2).* This bill would remove that problem in cases in which there has been a breach of a contractual duty of care.

As the new provision that would be enacted by this bill will apply not only to claims in tort, but also to some claims in contract, namely claims for damages for breach of a contractual duty of care, they would be removed from the *Wrongs Act* and placed in a separate Act. Enacting contribution and contributory negligence provisions in a separate Act is not novel: it is the way the legislation of most other jurisdictions has been enacted.

The opportunity has been taken to redraft all these provisions, which currently comprise Divisions 1 and 2 of Part 3 of the *Wrongs Act,* to modern drafting standards and to remove some obsolete provisions.

The bill will not have retrospective effect. However, if the facts that give rise to a claim occur partly before and partly after the Act comes into force, the Act will apply to that case.

Some historical background, explanation of *Astley v Austrust* and examples will assist in understanding this bill.

The common law of tort was that people who claimed damages for a breach of a duty of care could not recover any damages if they had contributed by their own negligence to their loss. The claims of these plaintiffs were completely defeated by their contributory negligence, no matter how minor that fault was. For example, in a road accident case, a plaintiff who failed to keep a proper look-out was *not* entitled to *any* damages even though the main cause of the collision was the gross negligence of another driver speeding through a red light. This was seen as unfair.

In 1951 South Australia reformed this common law rule by enacting section 27a of the *Wrongs Act*. Section 27a was based on an English provision. It abolished the common law rule and substituted a provision that said the court is to assess the plaintiff's full damages and then may reduce those damages by such amount as is it thinks just and equitable having regard to the plaintiff's share in the responsibility for the damage.

The common law of contract operates differently. If the defendant is in breach of a duty to perform his or her obligations under the contract with reasonable care or due diligence, the plaintiff is entitled to recover full damages as assessed according to the law of contract without reduction on account of his or her own contribution for the loss suffered. The case of *Astley v Austrust* put beyond doubt the fact that this was not altered by the 1951 amendments to the *Wrongs Act.*

In breach of contract cases courts can sometimes use other means of ensuring that the end result is fair. For example, the amount of damages awarded to the plaintiff for a breach of contract could be affected by the rules relating to causation of damage, failure to mitigate damage (including failure before the breach) and remoteness of damage in contract. However, the courts' ability to do this in professional negligence cases is limited.

Contractual Duty of Care

Many contractual relationships include a contractual duty of care. This duty may be an express duty set out in a formal contract, or it may be a duty that is implied by the common or statute law into the contract. Contracts to provide services frequently include an implied duty to take reasonable care. For example, there is a contract between the taxi driver and the passenger under which the taxi driver agrees to carry the passenger and the passenger agrees to pay the fare and it is an implied contractual duty that the taxi driver will exercise reasonable care in performing his or her contractual duty to carry.

Parties to written contracts sometimes agree that a party is to observe a level of care that is higher or lower than reasonable care or agree to change the normal incidents of its breach, eg by limiting or excluding damages, providing a method of calculation of damages or providing for consequences other than damages. Often one party pays a substantial consideration for the other party undertaking to exercise a particular level of skill and care or for assuming certain risks. The *Wrongs Act* does not impinge upon this: it gives primacy to the contract over any claim in tort.

Common Law (Tortious) Duty of Care

Many contractual relationships nowadays also give rise to a separate common law duty to perform the contract with reasonable care and skill: for example, professional advisers to their clients; employers to their employees; building companies to their principals, taxi and bus drivers to passengers in their vehicles. Breach of this duty is a tort.

The duty of care imposed by the common law on professional advisers is the same as the duty of care implied into the contract. The extent to which professional advisers may vary their duties of care by contract may be limited by rules or ethics of the profession or legislation.

Statutory Duty of Care

In some cases, a further layer of duty is imposed by statute. For example, section 74 of the *Trade Practices Act 1974 (Cth)* implies into certain contracts for services a term that the services will be rendered with due care and skill. The *Occupational Health, Safety and Welfare Act* (SA) imposes on the employer and the employee a statutory duty of care. Breaches of these statutory obligations give rise to civil liability to pay damages for injury or other harm occasioned by the breach. Sometimes the statute prohibits the parties from contracting out of the statutory duty.

Multiple Duties

When the plaintiff believes that the defendant has breached two or more duties owed to the plaintiff, then the plaintiff can sue on any one or more of them and elect to take judgment in whichever cause of action gives the remedy most beneficial to the plaintiff.

Astley v Austrust is an example of this. Austrust Limited, a trustee company, proposed to become the trustee of a commercial venture. Mr Astley, a legal practitioner, had a general retainer to advise Austrust about transactions into which it proposed to enter. Austrust failed to make any enquiries about the commercial soundness of the venture, but positively assured Astley that the venture was commercially viable. Astley did not advise Austrust about the desirability of including in the trust deed a clause excluding or limiting Austrust's liability to beneficiaries of the trust. Austrust entered into the venture, which soon failed. Austrust became liable for losses that exceeded the assets of the trust. Austrust sued Astley for damages alleging (a) that Astley had breached his implied contractual duty of care under his retainer to advise Austrust and so was liable for damages for breach of contract, and (b) that he breached his common law duty of care to Austrust arising from the relationship of solicitor and client and so was liable to pay damages for his negligence.

The High Court's decision was as follows:

(1) There was an implied term in the retainer that Astley would perform his work with reasonable care and skill. (Contracts for services generally carry an implied term to this effect.)

(2) As a professional adviser, Astley had a concurrent common law duty to Austrust to exercise reasonable care and skill.

(3) A plaintiff is entitled to sue with respect to the same incident for both breach of contract and the tort of negligence.

(4) Astley was negligent and also had breached his contractual duty of care in not warning Austrust about its potential for liability. However, Austrust failed to take reasonable care to look after its own interests and was 50% responsible for the loss it suffered.

(5) Section 27a of the *Wrongs Act* applies only to wrongs (torts). It does not apply to breaches of contractual duty of care.

(6) Austrust was entitled to elect to take its judgment on the basis of Astley's breach of his contractual duty of care, rather than on the basis of his tort.

(7) Therefore Austrust could recover from Astley its full loss of $1.5 million. If it had been liable only in the tort of negligence, it would have recovered $750 000.

As mentioned earlier, this decision provoked immediate calls for law reform.

Some criticised the High Court's distinction between the duty of care imposed by the common law and an implied contractual duty of care as unrealistic in the context of the many minor oral contracts entered into with little thought by the parties about the terms. It is said that there is really no practical difference between the law imposing a common law duty of care and the law implying a term into certain contracts, and so the results of breach should be the same. Examples given include contracts of carriage between passenger and taxi driver, contracts for services entered into between doctor and patient or between handy man or woman and householder.

Some have criticised the assumption implicit in the High Court decision that parties are free to determine for themselves the terms of their contracts as unrealistic in the above type of case and as obviously wrong in those cases in which a statute imposes a contractual duty and forbids contracting out of the duty.

Some submissions received in response to the invitation to comment on the model bill prepared by the Standing Committee of Attorneys-General urged more far reaching reform than that which would have been achieved by the model bill or by this bill. It was suggested that the statutory provisions relating to contributory negligence should apply in all cases, whatever the cause of action. Also, it has been suggested that the contribution provisions should apply to all cases. At first glance this may appear to be a simple matter, but it is not. Other Australian jurisdictions have not changed their law to the extent suggested, although it is believed that they received similar submissions. There are obvious advantages in consistency between laws of Australian jurisdictions on these topics. Because of the complexity of the issues, a proper consideration of the wider reforms that some would wish this Parliament to make would require considerably more time. If the law is to be reasonably consistent across Australia, and it is obviously desirable that it should be, then the process would take even more time. In the meantime, this Parliament can achieve the moderate reform proposed by this bill.

An advanced draft of this bill was sent to 15 selected people and organisations. As a result of comments, some drafting changes were made. This bill will be sent now to a wider group of people with an invitation to make a submission or comment on it. The Attorney-General's Office will make it available to anyone who thinks he or she may wish to comment on it. It is expected that if there are any defects in the policy or drafting of the bill, they will be identified by this further consultation process.

I commend this bill to the Council.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This measure will be brought into operation by proclamation.

Clause 3: Interpretation

This clause sets out defined terms for the purposes of the measure.

Clause 4: Application of this Act

The measure will apply to—

(a) a liability in damages under the law of torts;

(b) a liability in damages for breach of a contractual duty of care;

(c) a liability in damages that arises under statute.

The measure will apply subject to any other statutory provisions that specifically deal with the apportionment of liability. However, the measure will have no bearing on criminal proceedings and does not render enforceable agreements for indemnity that would otherwise be unenforceable.

Clause 5: Judgment does not bar an action against person who is also liable for the same harm

A judgement for damages against one person does not bar a further action against another person who is also liable for the same harm. However, the general rule is that multiple actions should not lead to greater rights of recovery or claims for costs. A court will have a discretion to provide differently if there are reasonable grounds for bringing separate actions.

Clause 6: Right to contribution

This clause sets out rules relating to rights and actions for contribution. A right to contribution arises if the other party is also liable in damages for the same harm. The contribution is assessed according to what is fair and equitable having regard to the extent of each contributory's responsibility for harm. It is possible to affect or limit a right of contribution through the giving of an indemnity or by contract. An employer cannot claim contribution from an employee except in a case amounting to serious and wilful misconduct.

Clause 7: Apportionment of liability in cases where the person who suffers primary harm is at fault

This clause confirms that contributory negligence does not defeat a claim, and sets out the process for dealing with cases of contributory negligence.

Clause 8: Transitional provision

The measure will apply to a cause of action that arises from an incident that occurs on or after its commencement. The Act will also apply to a cause of action that arises in part from an incident or incidents that occurred before its commencement and in part from an incident or incidents that occur on or after its commencement.

Clause 9: Consequential amendments
Consequential amendments must be made to the *Wrongs Act 1936* and the *Survival of Causes of Action Act 1940*.

The Hon. CAROLYN PICKLES secured the adjournment of the debate.

EXPLOSIVES (MISCELLANEOUS) AMENDMENT BILL

The Hon. R.D. LAWSON (Minister for Disability Services) obtained leave and introduced a bill for an act to amend the Explosives Act 1936. Read a first time.

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

That this bill be now read a second time.

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

Leave granted.

The *Explosives (Miscellaneous) Amendment Bill 2001* represents the first step in implementing a new system for regulating the use of fireworks in South Australia.

The Government has decided that the current system of regulation is inadequate. The present regulations control the sale, but not the use, of fireworks. The practice of imposing conditions on permits for sale is unsatisfactory under the current regime.

This bill clarifies the powers under the *Explosives Act 1936* to make regulations and to issue licences and permits under these regulations. In particular, the bill specifically authorises the variation of conditions of licences and permits.

Additionally, the bill confers significantly increased powers on the police. These powers allow the police to deal with instances of fireworks misuse in an expeditious manner and should enhance compliance with the requirements of the proposed new regulations in South Australia.

The changes proposed by the Government concerning the sale and use of fireworks follow a review of the existing system of fireworks regulation. The review was initiated after significant concerns evidenced by:

- many representations by MP's and citizens and community organisations;
- petitions tabled in Parliament;
- reports that fireworks were involved in the starting of 32 grass fires over the New Year period;
- the RSPCA receiving over 1000 calls concerning lost animals over the New Year period;
- representations to the Minister for Workplace Relations by local councils and the Local Government Association;
- much adverse comment on radio, in newspaper articles and letters; and
- large numbers of complaints to Workplace Services.

The major changes proposed in the report include:

- a requirement that anyone buying or using fireworks be licensed in this State as a pyrotechnician;
- a requirement for pyrotechnicians to obtain authorisation prior to holding a fireworks display;
- notification of displays to the surrounding community and relevant authorities such as the police, fire services and local councils; and
- substantial increases in the penalties for breaches of fireworks regulations.

To ensure that this new regime can be implemented, it is necessary to have adequate regulation making powers in the *Explosives Act 1936*. This Act originated in the 1930's and legal advice indicates that the provisions and language are outdated. There is doubt as to the validity of some of the regulations created under this Act and the capacity to apply conditions to licences or permits issued under the regulations.

The Government wants to ensure that public safety and amenity is protected by ensuring that only licensed professional operators can access and use fireworks in South Australia. It is important to note that large scale professionally run events such as 'skyshow' can continue to operate in South Australia under the proposed new regulatory regime.

All professional operators who want to conduct a display in South Australia will need to be licensed and demonstrate relevant competency and experience in the use of fireworks. It is proposed that conditions will be attached to the licence issued to these persons which:

- limit access only to those fireworks which they are competent to use;
- ensure that safe storage and transport procedures are applied;
- outline staff supervision responsibilities; and
- ensure that safe work practices are implemented.

Further protections are proposed by ensuring that authorisations are obtained for each display run by the professional operators and assigning conditions to these authorisations aimed at protecting public safety and reducing noise and nuisance problems. It is proposed that such conditions may include:

- separation distances from the display and the public and from the display and any building;
- notification arrangements to neighbours, emergency services and local councils;
- fire safety arrangements; and
- the size and type of products to be used.

Clearly, to introduce and be able to enforce this new regulatory environment for the use of fireworks in South Australia, it is essential that the system be underpinned by valid and modern enabling legislation. This bill represents the first stage in the process. It is proposed to introduce the new regulations as soon as practicable after Parliament has approved the passage of this bill.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement
Clauses 1 and 2 are formal.

Clause 3: Amendment of s. 4—Interpretation
Clause 3 proposes an amendment to the interpretation provision of the principal Act to include police officers as inspectors of explosives.

Clause 4: Amendment of s. 23—Keeping of explosives
Clause 4 is a drafting amendment.

Clause 5: Insertion of s. 48A
Clause 5 proposes inserting a new section into the principal Act to provide that the Minister or the Director may, at any time, vary or revoke a condition of, or attach a further condition to, a licence or permit granted under the principal Act or the regulations.

Clause 6: Amendment of s. 50—Penalty on and removal of trespassers
Clause 6 is a drafting amendment.

Clause 7: Substitution of s. 52
Clause 7 proposes repealing the regulation making power in the principal Act and replacing it with a more general regulation making power in order to ensure the validity of regulations made under the principal Act.

Clause 8: Validation
Clause 8 provides that the regulations made under the principal Act have the same force and effect in relation to acts, omissions or things occurring after the commencement of this measure as if made under the principal Act as amended by this measure.

It also provides that if a licence, permit, exemption, approval, authorisation, consent or direction purportedly in force under the regulations at the commencement of this measure could, if granted or given after that commencement, have been validly granted or given, the licence, permit, exemption, approval, authorisation, consent or direction—

- is (and is taken always to have been) a valid licence, permit, exemption, approval, authorisation, consent or direction; and
- is subject to any conditions purportedly in force at the commencement of this measure that could have been validly imposed after that commencement.

Clause 9: Further amendments of principal Act
Clause 9 further amends the principal Act to convert divisional fines to monetary terms.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

LAND AGENTS (REGISTRATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 October. Page 147.)

The Hon. P. HOLLOWAY: The Land Agents (Registration) Amendment Bill has been before this parliament for a

long time, so I think I should give a quick precis of its history. A competition policy review of the Land Agents Act was completed in December 1999. This report recommended, amongst other things, that a legal practitioner who was qualified in appraisals could be registered as a land agent. The government announced that as part of its policy and, at the same time, introduced amendments to the Conveyancers Act and the Land Agents Act on 6 July 2000. So, the government's policy position giving effect to the recommendation in relation to legal practitioners and the other suggested amendments to the bill as a result of the competition review came into this parliament on 6 July last year.

On 4 October, opposition members received correspondence from the Real Estate Institute of South Australia expressing its disappointment with the government's desire to what I think it described quite correctly as fast tracking lawyers to register as land agents in South Australia. On 5 October, after extensive consultation, the Conveyancers (Registration) Amendment Bill and the Land Agents (Registration) Amendment Bill were reintroduced into parliament at the start of the new session. Both bills were in the same form as originally introduced.

On 12 October, the Hon. Ian Gilfillan introduced amendments to the land agents bill and the conveyancers bill. Later that month, the Attorney-General responded to a question asked by the Hon. Caroline Schaefer regarding the concerns of the Real Estate Institute. As part of his response at that time, the Attorney accused the Real Estate Institute of circulating a letter amongst parliamentarians that was defamatory. On 27 October last year the Real Estate Institute's response to the National Competition Policy Review Final Report was released, and the Real Estate Institute stated:

> The Real Estate Institute of South Australia submits that in this instance the Attorney-General has an impossible conflict of interest between his roles as Attorney-General and as Minister for Consumer Affairs. On the one hand, the Attorney-General is responsible for directing the implementation of the recommendations of the review panel, yet, on the other, he is responsible for protecting the consumers of South Australia, the very people who will be adversely affected by the proposed policy change.

In conclusion the submission stated:

> How does the state government justify that a person with only legal and appraisal qualifications will provide to the consumers competent real estate services without possessing skills in marketing, selling, auctioneering, advertising, property management, and the other skills which the regulations of the act require a land agent to possess at present?

On 7 November the Attorney gave a ministerial statement announcing that the review panel, which considered the competition policy review of land agents, would be revived, and the Attorney invited Mr Cliff Hawkins to join the panel. The Attorney stated:

> I have no reason to believe that the panel got it wrong in its final report, nor do I give any weight to the criticism by the Real Estate Institute of South Australia that the panel did not have a land agent on it. . . I find it offensive to suggest that they have not been unbiased. The process was open and there was extensive consultation with extensive opportunity for submissions to be made, and the Real Estate Institute of South Australia took those opportunities.

On the same day, that is 7 November last year, I gave my second reading speech to the Conveyancers (Registration) Amendment Bill. As the bills were introduced at the same time and covered similar matters I made some comments on the whole situation at that time in relation to this issue of lawyers becoming real estate agents. At the time I said:

> From the information I have had from the Real Estate Institute of South Australia I understood that in principle it certainly was not opposed to lawyers becoming land agents. I understand that the institute is not opposed to lawyers becoming land agents if they have the proper qualifications; and, in fact, a handful have become land agents under the existing practice. I think what is of concern to the institute, and to others I would suggest, is that, if we have a fast-track process where lawyers can be admitted into the profession fairly quickly, with a minimum of additional work, there are fears as to whether the public interest will be served by that. I think one of the concerns that needs to be addressed is, if we do have the vertical integration that will come about as a result of these changes to the Conveyancing Act, whether that will not, in fact, give an unfair advantage to lawyers within this industry.

The opposition at that time—we are talking about November last year—indicated that we supported, in general terms, the position that the Real Estate Institute of South Australia took, and the press release that was issued by the opposition at the time, on 8 November, stated:

> It would be seem sensible not to move ahead on plans to allow lawyers greater access to the real estate industry while the views of the real estate industry are still being considered. The shambolic way this issue has been handled has created fear and anger in the real estate industry.

As we know, the Attorney did the right thing. He had reconstituted the panel. He had listened to the criticisms that were made, although it did not appear that way at first, but ultimately he did. There was a review panel, which looked at these issues. The supplementary report of that review panel, the National Competition Policy Review of the Land Agents Act, was completed in March this year. It was tabled by the Attorney yesterday. Basically, the reconstituted review panel recommended:

> The qualifications held by an admitted legal practitioner, or a person entitled to admission in South Australia, in combination with demonstrated skills in:
>
> 1. Appraisal; and
> 2. Undertaking property sales by a private treaty and conducting property sales by auction, limited to the discrete areas of—
>   - listing process from first call to final signature;
>   - marketable features of residential properties which may have an effect on the sale/lease price and/or marketability of a property
>   - the common types of selling/leasing agencies used in the context of the South Australian market;
>   - understanding the costings and procedures for all methods of sale; and
>   - understanding that one method may be more suitable for a particular property than another method—
>
> should be accepted in satisfaction of the requirements under section 8(1)(a) of the Land Agents Act 1994.

As I say, the supplementary report was released by the Attorney on 23 May and was tabled in this parliament yesterday. That was accompanied by a press release from the Attorney. As to the response of the Real Estate Institute, I think since I have gone through this history I should at least put that on record. The Real Estate Institute welcomed the findings of the review into the Land Agents Act. I will just read the first part of its press release, which is dated 24 May. It states:

> The Real Estate Institute of South Australia (REISA) has welcomed a state government announcement that it will increase qualifications for solicitors wanting to practise as land agents.
>
> REISA President Barrie Magain said the decision was a win for consumer protection.
>
> 'This is a shift from earlier recommendations that would have permitted individuals to become land agents with minimal training'.

Then the press release goes on with more details. But it is clear from that that the Real Estate Institute supports the changes. So this whole saga has taken some time. It has involved another competition policy review, but I think the

final outcome is of benefit to this state. Clearly, an arrangement has now been reached whereby lawyers, if they are to become land agents, will have to undertake more study than was originally intended. The procedure is still there for them to do that. The transitional problems have been handled in what we believe is a fair way. The Real Estate Institute is happy, and therefore we believe that the whole exercise has had a worthwhile outcome, even though, of course, it has put the whole thing on hold for the past seven or eight months.

As I have said, we declined to pass the bill when it was introduced, for the second time, in October last year, because we thought that the government should have looked at this matter again. It has done so. It has come up with a satisfactory solution. So we are now in a position where we are quite happy to see this bill go through fairly quickly. I just make the comment that the changes that have been recommended by the review panel, since they involve administrative action, do not, I understand, require any amendments to the Real Estate Act. So the bill before us can essentially go through in its current form, and we would welcome that happening, now that this matter has been resolved, as quickly as possible. With those comments and with that background to the bill, I indicate that the opposition will now happily support the second reading and further passage of this bill.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 December 2000. Page 836.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The opposition supports the second reading, but merely to try to progress this bill to a select committee. This bill has generated much controversy in the community and in the industry. From the moment this bill was tabled I and many of my colleagues have been inundated with letters of opposition and concern. The interesting thing was that many of these letters were from interstate, and obviously, because of the nature of the bill, many were by way of email.

I hope that this bill does successfully progress to a select committee, but I will outline briefly the intentions and aims of the bill. The bill seeks to make changes in two areas. First, it seeks to respond to national calls for improvements in the effectiveness of the act, particularly in relation to the enforcement of offences. Secondly, it seeks to add a new section dealing with internet content. I understand this is the area causing concern in the community and industry.

As the Attorney-General has stated, this bill forms part of a national scheme of classification that has been in operation since 1995. Each state and territory has similar legislation and, under the commonwealth act, items are classified according to a nationally agreed code and guidelines. The first amendment to the act deals with the prosecution of an unclassified item. Presently if a prosecution is to proceed regarding an unclassified item, the item must first be classified. The cost of the classification can range from $100 for a publication to $2 590 for a film. It is unclear to me at this stage who pays for the classification. I presume it is the authorities.

As the Attorney reports, and as I agree, there are some items such as serious child pornography where the potential classification is obvious to both the enforcing agency and those selling the item. I agree that, in such circumstances, it negates the need to go through the lengthy and costly process of classification in order to mount a prosecution.

In this case, the bill proposes to serve the defendant with a notice proposing the classification. The defendant then has two choices. They can either sign the notice and agree with the classification, which avoids cost and delay, or they can dispute the classification. In choosing the latter, if the prosecution is successful in proving that classification, the defendant pays the cost of the classification.

The second amendment relates to forfeiture. It is proposed that, where more than one product is seized on the same day from the same premises and the defendant is then convicted of serious offences, that is, items classified X or RC, in respect of 10 or more items that are forfeit, all the other items seized at the same time are also forfeited. While this measure makes a number of assumptions, it also sends a very clear message that illegal commercial activity is not tolerated. However, if there are items where no offence has been proven, the owner of those items can then apply for their return, provided they can prove they would have been classified lower than X or RC.

Thirdly, the bill introduces a provision for the expiation of offences for less serious offences. This means that, where offences are uncomplicated and of a technical nature, for instance, the failure to display a classification notice, an expiation notice will be issued. If the alleged offence is disputed, the standard procedure will apply. A further amendment will enable community liaison officers to issue these notices as well as police.

The bill makes further minor amendments to the act, as follows. It proposes that the South Australian Classification Council stipulate a time within which information must be furnished or a person must attend or produce an item in response to a requirement from the council. Presently there is no such time limit.

The bill also strengthens the provision regarding a parent or guardian accompanying a minor under 15 years to see a film classified MA15. Some parents are accompanying children into the cinema but then leaving and returning at the conclusion of the film to collect the children. This amendment will enable parents to leave the film to go to the toilet, for example, but otherwise they must be present throughout the film. I am appalled, quite frankly, at some of the films that pass the classification MA15 and I certainly did not take any of my kids to see such very violent films. It seems that, today, people get very upset about pornography but do not mind seeing someone's brains splattered all over the screen and think that is suitable for kids under the age of 15.

The enforcement of commercial copying and sale of illegal films, that is, films RC or X, will also be strengthened. Where three or more copies of an item are found in possession, it will be deemed that they were intended for exhibit or sale. Presently it is 10 copies. However, the defendant will have the opportunity to lead evidence to prove that the copies were for other purposes. An offence is also proposed if a person is in possession of these illegal items, even if they were not responsible for making them. The bill also establishes a defence where a seller can prove that they reasonably believed that the offending item was not classified RC or was not a submittable publication.

The second aspect of the bill proposes a model for online content regulation that complements the 1999 amendment to the federal Broadcasting Services Act 1992. Basically the bill seeks to make illegal online material that is illegal offline. I believe that it is that aspect of the bill that is causing controversy. Can the Attorney advise whether any other states have introduced similar legislation as is proposed in this bill?

It would seem that the intention of this legislation is worthy; however, the means by which the bill proposes to deal with the issues is problematic. That portion of the bill is further complicated for members of the opposition as some aspects represent a conscience vote. However, it is the fundamentals of the legislation that pose the greatest concern for the opposition at this stage. Provisions of the bill refer to objectionable matter which consists of online computer games or films which would be classified X or RC. That may include child pornography but it depends on what is termed 'objectionable'.

Secondly, reference is also made to matters unsuitable for minors, which is material classified R and may be available to adults on a restricted access basis. As the Attorney reports, the provisions in this section of the bill intend to catch the content provider, not the internet service provider or the content host. However, I believe that that is where there is some cause for concern and clarification is required.

From my understanding of the issues, the concerns regard the practicality of the legislation's implementation. For instance, although the legislation intends to catch the content provider, the bill has enormous ramifications for those in the middle, like the internet service providers. For instance, it has been put to me that there is no practical cost effective means by which a classification can be obtained for internet content prior to its being provided online. I understand that the Office of Film and Literature Classification has not provided classification fees for internet contents. I ask the Attorney whether that is correct.

If unsatisfactory legislation is implemented without adequately addressing these practical concerns, the effect will be to drive these online businesses interstate or overseas, which defeats the legislation. Even the Attorney acknowledges that this bill cannot be a complete solution to the problem of offensive or illegal internet content, much of which is made available from outside South Australia, and that begs the question: why are we trying to do this? As this is a relatively new area of the law, or one that is certainly new for this parliament, I propose that the bill would benefit from the careful scrutiny of a select committee. I hope that the select committee will help distil the issues for further public consideration.

In a contribution from a constituent in relation to this bill, some thoughts were put up which I would like to include in my speech because I think that they are sensible suggestions. The document states:

> Some suggested means of improving the scheme proposed by the Bill follow. These are general and preliminary suggestions only, and I do not put forward a solution to the issues, but only to make the point that other approaches are available that may not have been canvassed due to the lack of industry consultation.

That has been an overlying theme, that there has been no industry consultation. My constituent suggests that the methods could be to:

- Introduce a cost-effective 'pre-vetting' process, allowing organisations to obtain a ruling as to the classification of material before providing it online.
- Encourage the use of technology-based solutions, such as content-filtering software packages that block inappropriate sites to minors at the user's end.
- Look at the R classification and query whether it is sufficiently fine-grained to allow for freedom of speech while also protecting minors from inappropriate material; when discussion of divorce and suicide are lumped in the same category as sex, swearing and violence, one would wonder whether these categories are appropriate.
- Query whether a film classification scheme is appropriate for internet content and, if so, how the anomalies caused by deeming internet content to be a film can be addressed.
- Greater industry education as to what is appropriate and what is inappropriate content and advertising to promote South Australia as a place to do business in relation to the internet are other strategies that could be pursued.

This bill is out of step with the realities of the internet. It will penalise legitimate local content providers and ISPs while having little effect on the real offenders, who may get around the bill with ease. The bill's adverse impact should not be underestimated. Given this, and that it is unlikely to provide any short or even medium term benefits to the community, I believe that its passage should be delayed and its regulatory model re-assessed and, if possible, improved. This is why we have suggested that a select committee be established. I put on record questions I would like the Attorney to answer when he responds to the second reading debate. My questions are:

1. What assessment has been made of the economic impact of this bill on the South Australia IT&C industry?

2. What assessment has been made of the actual practical benefits of the proposed legislation?

3. What alternative methods and models of regulating this content have been examined?

4. What assessment has been made of the volume of information that will no longer be available on the internet if this bill is passed?

I urge honourable members to consider this bill very carefully and adopt the opposition's suggestion that it be referred to a select committee for further fine tuning. We have heard in a previous contribution that a delay sometimes makes quite substantial improvements to legislation. I believe that a select committee is the best mechanism to do that. Labor Party members are not keen to progress this bill beyond a select committee because of the reasons expressed in my second reading contribution, and many others. It is felt that it is such a complicated and complex issue with many implications that have not been looked at carefully by the government.

The Hon. J.S.L. DAWKINS secured the adjournment of the debate.

[Sitting suspended from 5.58 to 7.45 p.m.]

SUPPLY BILL

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

The Hon. R.I. LUCAS (Treasurer): I move:

That this bill be now read a second time.

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

Leave granted.

> This year the government will introduce the 2001-02 budget on 31 May 2001.
>
> A Supply Bill will be necessary for the first few months of the 2001-02 financial year until the budget has passed through the parliamentary stages and received assent.

In the absence of special arrangements in the form of the Supply Acts, there would be no parliamentary authority for expenditure between the commencement of the new financial year and the date on which assent is given to the main Appropriation Bill.

Due to the early conclusion of the parliamentary budget session in July, it is possible that assent may not be received until parliament resumes in September.

The amount being sought under the Bill is $1 400 million.

Clause 1 is formal.

Clause 2 provides relevant definitions.

Clause 3 provides for the appropriation of up to $1 400 million.

The Hon. P. HOLLOWAY secured the adjournment of the debate.

STATUTES AMENDMENT (GAMBLING REGULATION No. 1) BILL

The House of Assembly agreed to amendments Nos 1 to 10 and 12 to 22 made by the Legislative Council without any amendment and agreed to amendment No.11 with the amendment indicated in the following schedule:

Legislative Council's Amendment—

No.11 Page 9—After line 16 insert new clause as follows:

Amendment of s.14A—Freeze on gaming machines

17A. Section 14A of the principal Act is amended—

(a) by inserting after subsection (2)(b) the following paragraph:

(c) an application made by any other person n prescribed circumstances.;

(b) by inserting after subsection (2) the following subsection:

(2a) A regulation made for the purposes of subsection (2)(c) cannot come into operation until the time has passed during which the regulation may be disallowed by resolution of either House of Parliament.

(c) by striking out from subsection (6) '2001' and substituting '2003'.

House of Assembly's amendment thereto:

Leave out paragraphs (a) and (b).

Consideration in committee.

The Hon. A.J. REDFORD: I move:

That the Legislative Council do not insist on its amendment No.11 but agrees to the House of Assembly's amendment to amendment No.11 of the Legislative Council.

When we dealt with this last night in the form of a division and a vote I concede that we dealt with it very late at night and that some members were not present in the chamber during the course of the debate: there may well have been some level of confusion. I say that in the spirit of forgiveness and being magnanimous toward those who might have voted in a way that might have contradicted something they said during the course of debate. These things happen, and I am a forgiving sort of fellow. I must say that it is not often that I come to the conclusion that the lower house is right and the upper house on the odd occasion is wrong, but once in every six or seven years events such as that may occur.

The Hon. R.R. Roberts interjecting:

The Hon. A.J. REDFORD: Yes, and I am sure that on reflection and with a good night's sleep people will have thought this through more carefully. I draw members' attention to the fact that in the contribution on this issue in the lower house this afternoon the shadow Treasurer—who I understand has some level of confidence that he will be in charge of the Treasury following the next election—spoke in favour of the original amendment moved by the Hon. Paul Holloway. Other than the Premier, who spoke very briefly on it, the only speaker was the member for Mitchell who, in a very short but eloquent contribution, pointed out why Mr Foley was incorrect. Then I note that the vote that took place was some 33 votes to 13, so there was quite a significant majority on this issue in the lower house.

There are two ways of looking at this. One is that they are right and we are wrong: others might think we are right and they are wrong and may not wish to change their view. I might suggest that there is another way around this hiatus, because I would hate to see a deadlock conference take place on an issue such as this, particularly where conscience votes prevail. Members may be aware that on the *Notice Paper* there is another bill dealing with the poker machine cap. In particular I refer to the Gaming Machines (Cap on Gaming Machines) Amendment Bill, No.84.

One way in which we may be able to avoid the difficult process of a deadlock conference in relation to this issue is to agree with the position taken by the House of Assembly and then revisit the issue in relation to that other bill with more reflection and more thought. It may well be that the Hon. Paul Holloway, in the long run, will prevail in relation to his amendment. That course has some advantages. The first advantage is that the package that we are delivering to the people of South Australia will go through parliament tonight, without any risk of it being overturned through stubbornness that might prevail between the two houses of parliament. The other advantage is that the Hon. Paul Holloway may be able to convince more of his colleagues in the lower house of the strength of his argument, supported by the Treasurer and the shadow treasurer, in the fullness of time. We should allow that process to continue in a normal fashion, rather than in the pressure cooker, so far as time is concerned, that we are in at the moment.

Members, I am sure, would be acutely aware of the fact that, if this bill does not go through tonight, the cap will not be in existence for some period of time. One would not need to be a Rhodes Scholar to work out that that is likely to bring forth a rash of applications for increased numbers of poker machines over the next few weeks. I would hate to see the Legislative Council—an institution of which I am quite fond—subjected to what I suspect would be extraordinary criticism and media publicity if we do not go down this path. I make that suggestion—in a sense, to those members who agree with the Hon. Paul Holloway's amendment—in a way that might get us out of the hiatus and, at the same time, allow us to develop the arguments more fully.

I know that, with respect to the view that I put last night—that we could have poker machine applications legally made, notwithstanding the fact that both houses of parliament have had the opportunity to agree—there is some suggestion (and I understand that the Attorney-General is of this view) that my view is incorrect. I must admit that earlier today I took counsel on this issue with my staff on the Legislative Review Committee, and they are of the view that the clause as presently drafted is ambiguous, and that arguments could be mounted in either direction. I think that that in itself creates an enormous risk in undermining what the parliament, on the face of it, appears to have decided—and that is, that there ought to be a cap, and that cap ought to extend to May 2002. We would then have, if members follow my suggestion, a period of time within which to develop the issue more fully.

In essence, I am suggesting that we do not insist on our amendment. As the member for Mitchell said in another place, 'We either have a cap or we do not.' The real risk is that, if there is a hiatus, the bill falls over. There is another risk. The lower house might concede, and we can play a game of brinkmanship with the lower house. There are some extraordinary risks involved with that, as members would be

aware. There are some complexities about what might happen if a deadlock conference fails and the bill lapses. We would bring the whole of the parliament—and, in particular, the Legislative Council—into some degree of disrepute in the mind of the public if that happened as a consequence of this clause, particularly when there is an opportunity available to the Hon. Paul Holloway to continue to agitate his amendment in relation to the other government bill.

At the end of the day, I think that this package is far too important in terms of the range of initiatives and suggestions that we have worked very hard on over a considerable period of time for us to run the risk of having the bill lapse because of some jousting of egos between the two houses of parliament.

The Hon. P. HOLLOWAY: I wish to make a few brief comments—we have spent enough time on this debate already. A number of significant measures are contained in the bill that has come back from the House of Assembly, including this one issue of dispute. There are a number of significant provisions that will address many of the problems associated with gambling, particularly the poker machines. I think that that is worth recognising. In many ways, I think a cap and this associated provision, in particular, are among the least significant items in terms of what they will do. I think it is unfortunate that, in many ways, this resolution has attained a symbolic significance that is way beyond its real importance in terms of what it will do—and, in my view, the cap itself has attained that significance. I think the other provisions that have been agreed to already will be far more significant than the cap in addressing the problems associated with gambling.

It is unfortunate that we have this time constraint upon us. If there was more time, it would certainly be more convenient for us to address this issue in a more structured way. Unfortunately, we do have this time constraint. It is certainly not of my making. It was just unfortunate that the bill was delayed for such a lengthy time in the House of Assembly before it arrived here.

I still believe strongly that this measure is desirable. I think that is reinforced by the statement that was made in the *Advertiser* this morning by a representative of the Australian Hotels Association who said that they would now be looking to see a trade in gaming machine licences, and that is the fear that I have. When you have a cap, and the cap is continued for some time—

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: I was hoping to wrap this up as quickly as I could; I do not want to take up time. Let us put ourselves two years down the track. There will clearly be a lot of pressure from the Hon. Nick Xenophon, if no-one else, whatever happens, that this cap should be extended. So, what options do we have? By then, distortions in the market will be starting to appear—new towns and suburbs will have sprung up and there will be pressure from developments. Pressures will be growing in relation to this matter. The pressure will be on to allow some trading scheme in gaming machine licences, and that is what I am particularly concerned about.

I think that, at least if this passes, we can say to any of those hoteliers who will be pushing for a trade in machines (and they have let the cat out of the bag in the paper this morning), 'Here is a test for you. If you can come up with something and convince a majority of the members of both houses of parliament that it is in the state's interest, you have some chance of getting it up. But unless you can do that, do not bother.' That is a pretty stringent test, but I can see quite clearly what will happen in a couple of years. There will be pressure to extend the cap. The hoteliers—and the richest ones, I am sure—are quite happy with a cap; after all, it removes competition. They are not in the least bit concerned about having a cap on gaming machines. It improves their financial position. They will be able to look forward to another windfall if we get a trading scheme in gaming machine licences. Clearly, the pressure will be on for that to happen if we do not have some safety valve.

I believe that, with all its imperfections, the amendment we have here is a safety valve, and that is one of the particular reasons why I believe we should insist on the amendment. But, as I have just acknowledged, there are a number of difficulties in us considering this provision at the moment. It is unfortunate, but the difficulties are not of my making. This is a conscience vote for members. All we can do is be true to our conscience. I believe that, if we end up with a system, as I fear we will, of some sort of a trade in gaming machine licences, it will be in no-one's interests whatsoever. For that reason, I believe that we should insist on the amendment, in spite of the problems that I understand it will cause.

The Hon. NICK XENOPHON: I support the Hon. Angus Redford's view that we agree to the House of Assembly's position in relation to this matter. The Hon. Paul Holloway made a number of points. One of those points was that there will be pressure to allow new licences. Let us put this into perspective. The pressure is coming from the Hotels Association; it is not coming from the broader community, if one accepts the position set out in the Productivity Commission's extensive national survey, where something like 92 per cent of Australians said that they do not want any more poker machines.

It is not simply symbolic: it also makes a practical point that if the cap is in place we can begin to look at the existing problems we have with gaming machines and at winding back the problems. I commend the government for having an Independent Gambling Authority, but I am sceptical as to how far it will go to wind back the damage. Undoubtedly, it is a step in the right direction; it is a step that I hope will lead to a reduction in problem gambling in the community.

If we accept the Hon. Paul Holloway's proposition, we turn the psychology of the cap on its head. Instead of having a position where the bill introduced by the Premier says, 'No more poker machines', we are in effect saying through the Hon. Paul Holloway's amendment, 'You can have poker machines with various exemptions, subject to the provisions in the amendment.' The danger with that is that there will inevitably be pressure from every hotel developer in this state to get new poker machine licences.

It will mean that there will be continual debate and continual pressure to increase the number of machines in this state. According to the Productivity Commission, accessibility to the number of machines is a factor in levels of gambling addiction. Instead of the original clause which effectively said enough is enough, the Hon. Paul Holloway's amendment in a sense is saying that we cannot get enough in terms of poker machines with respect to the position of some developers.

I urge all members, in the spirit of what this bill is trying to achieve—to wind back the problems caused by gambling addiction in this state—to support the position of the House of Assembly, otherwise the cap will not really be a cap, it will not be effective and it will send the wrong signal to the community. Let us see what happens in the next two years in terms of winding back the damage. I urge members to support

the position that the Premier has had in this regard. It has been long overdue—

The Hon. A.J. Redford: Mike Rann supported this, too.

The Hon. NICK XENOPHON: The Hon. Angus Redford says that the opposition leader in the other place, Mr Rann, supported the bill. If members want this cap to be effective, if they want to set the scene in terms of winding back the damage caused by gambling, I urge them not to turn it on its head and not to reverse the psychology and the position of the cap where, in effect, we are saying, 'Enough is enough.' If the Hon. Paul Holloway's amendment is passed members are in effect saying that we cannot get enough of poker machines. It will erode and corrode, I think, the positive aspects of the bill. I urge members to support the position of the House of Assembly.

The Hon. CARMEL ZOLLO: It would be fair to say that a few people were surprised that yesterday I supported the amendment of the Hon. Paul Holloway, and I did so because I was persuaded by the logical and eloquent debate of my colleague. I have always been consistent in voting for a freeze, and I did so under this bill as well. I saw the exemption amendment of the Hon. Paul Holloway as no different from the one that was contained in the private member's legislation of the member for Spence, which we dealt with in this place last year. Given the safeguards that are contained in this amendment in that both houses have to agree to it and also the manner in which subordinate legislation is supposed to be dealt with, I frankly wonder why any investor would bother to seek such an exemption unless there were extraordinary circumstances for doing so.

In conclusion, I believe that this exemption amendment has been given far more importance—importance beyond its weight. As I said, I have always been consistent in voting for a freeze. I was only one of a few to do so the very first time we voted for a freeze under a bill of the Hon. Nick Xenophon. In the interests of getting this legislation through, I am happy to agree to the schedule from the other place.

The Hon. R.R. ROBERTS: I oppose the proposition that we withdraw the amendment. I am not convinced of the Hon. Angus Redford's magnanimity, because when you have been done over 16 to four you have to be magnanimous if you want to change that position. The argument that has been put is that somehow the amendment will lessen the effect of the cap. The amendment was passed 16 to four by the committee last night—with the absence of two members, I admit, who I note are also not present at the moment. Therefore, that other argument of the Hon. Angus Redford again fails.

This proposition does what I have been seeking to do for a couple of years now: my voting record demonstrates very clearly that I have always been in favour of a cap. The Hon. Paul Holloway's amendment provides for unique and exceptional circumstances. He has been lobbied by the Hotels Association, which has said that there will never be another hotel built in South Australia while there is a cap. One has to say that on occasions we have to take into account exceptional circumstances.

If we are talking about subordinate legislation, there is a classic example within the parliamentary system where we have done exactly that. The subordinate legislation process demands that when a regulation is made it must lie on the table—I am not sure now whether it is for three or four months—for a considerable period of time so that those who are affected by it can make submissions to the Legislative Review Committee and so that it can make recommendations to the Council, and within 14 sitting days either house of parliament can say that it is opposed to it.

When that legislation was being debated, a proposition was put that there may be exceptional circumstances whereby it has to come in here otherwise you could disadvantage some South Australian somewhere. So we invented the principle of clause 10aa(2) in the legislative review system which provided that, when there are exceptional circumstances, the minister can say so and will write a note, and then it starts immediately. We can apply that logic in this case so that this band of citizens—and they may be developers of hotels and models—deserve the opportunity in exceptional circumstances to put a case. That is all that this mechanism provides to those people who want to say, 'I have exceptional circumstances and I believe that they ought to be considered.' That is all this amendment gives them. It then has to come back to this parliament.

I would imagine a situation, if it came before the Legislative Review Committee, where I would demand a report from the Independent Gambling Authority in answer to the question, 'What are the exceptional circumstances; what do you have to say about this?' I would expect a report back and within that three or four month period I would expect that other people would have a point of view. But, unless there are exceptional and unusual circumstances, there is no way that I would be supporting it, and I am sure, given the commitment by both houses of parliament for some sort of break on the expansion of poker machines, it would be highly unlikely that it would succeed.

But this process always has another advantage, because the Hon. Paul Holloway said today that the cat was let out of the bag in the *Advertiser*. I put to you that the cat was let out of the bag last night by the Hon. Angus Redford during his contribution when he mentioned the property rights of hoteliers for poker machines. So therein lies the rub. There is a group of people within the poker machine industry who dearly want to have property rights so that they can trade in poker machine licences. What this basically says is that there will be a freeze for four years but we do accept—the parliament accepts—that, if there are exceptional and unusual circumstances, a proponent can try his arm within the legislative system: if he can convince us all that there are exceptional and unusual circumstances that warrant further consideration, then we consider it. There is no commitment for this parliament—this house or the other house—to pass the legislation. But it can be fairly said, as we do in the subordinate legislation area, that one of the criterion relates to whether this takes away rights previously conferred on a constituent.

We said that we would take away the general right, but we also said that you can have poker machines if the minimum circumstances are met. That has proved to be a failure of our system, so we have considered a cap. Having considered the cap, I believe that it is the responsibility of both houses of parliament to ensure that the rights of all citizens and all players in this scheme are given a fair opportunity to put their case. All this does is allow them to put their case; it does not say that they will get a licence for extra poker machines. I hope that, if any consideration is given to actually extending the number, they would look at the number of licences that have been issued and, if some licences have been handed in, provided the exceptional circumstances case is met, they apply that balance to a new licence.

The other point that Hon. Angus Redford made is that we can get out of this by saying that we will pass this now and

consider it again in the other bill. Conversely, I say that the opportunity is available to the lower house to do exactly the same thing. This matter was considered by us late last night after a tedious debate, and 16 members to four members believed that the proposition put by the Hon. Paul Holloway was in the best interests of South Australia.

No circumstance of fact has changed since that time; there is only a political circumstance. I do not believe that that circumstance warrants our changing our position—the considered opinion on a conscience vote of this Council last night—and I submit that we ought to insist on our amendment and send it back to members in the other place to see whether they can be statesmen and do the same thing as we are proposing to do here.

The Hon. CAROLYN PICKLES: I briefly want to place on the record that I have always opposed a cap on poker machines. I was a member of this place when we first introduced legislation on gambling. It was a long and difficult debate. Although personally I am totally bored by any form of gambling whatever, I recognise that people have a right to gamble. A freeze on gambling is an artificial thing. Last night we had a long debate about the amendment moved by the Hon. Paul Holloway. We all put our position, and there was a majority vote in this place.

I simply say that I support the Legislative Council insisting on its amendment. I know that some members have changed their mind. I do not have that sort of flexible conscience; my conscience is fairly well intact, and I still think that it is a sensible amendment and that it can work. It is not, in the flippant words of the Hon. Nick Xenophon, a partial thaw. He is very good at that kind of a glib one-liner, but I think he has misrepresented what this amendment seeks to do. It was passed in good faith by this chamber, and I believe that we should insist on it.

The Hon. T.G. ROBERTS: The only thing that has changed from last night to now is not the logic of the argument but the politics of the argument. It is clear that the Premier wants to have a win to take to the *Advertiser* so that he has his way—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: Well, it makes it difficult. When people get petulant about a position that they have developed, logic goes out the window. That is what we have here. In the Council we are generally used to basing our arguments on logic without the import of the debate that goes on in the other place where politics rules the logic of the day.

Nothing has changed in relation to the flexibility and the consideration that the amendment provides. The amendment provides for consideration to be given to what could be regarded as the frontier section of our state: the north and the north-west, to which very few people in the metropolitan area, who obviously had their voice heard in another place, give any consideration. If flexibility is to be applied to those regions to allow for some expansion of poker machines or gambling aids, then it goes out the window if we take the petulant view that there must be a total freeze.

I could understand a freeze being applied to numbers—similar to the Victorians when they considered the application of a freeze in particular regional areas—if a region or a metropolitan area has been saturated with machines to a point where they are considered to be harmful and dangerous to the interests of the community. However, we have not done that in terms of logic in respect of any other part of the bill. We have referred those provisions in the bill where we have found it difficult to make a decision because of lack of information to the broader inquiry that will take place at a later date.

If the message from the lower house is that we should consider this provision as part of a whole restructured debate based around a future snapshot of the information that is required for us to make better considered decisions than the ones we are making now, I could make some sense of that. I could say that I will put my position on hold to wait for the information that is going to be fed back into a general inquiry on the impact of either a freeze or a partial freeze or consideration by a committee of a position that would allow some flexibility whilst introducing a freeze into those areas where people have concern.

Most of the concern is in the metropolitan area because that is where most of the political pressure is being applied to bring about a political freeze. My position has not changed. I totally condemn the AHA's position in relation to even suggesting that we would consider as a parliament making suggested amendments that would include—

The Hon. A.J. Redford: Would that be a conscience issue?

The Hon. T.G. ROBERTS: I am just making the point on behalf of my conscience.

The Hon. A.J. Redford: If that issue came up, would it be a conscience issue for the ALP?

The Hon. T.G. ROBERTS: That matter would be determined in the party room.

The Hon. A.J. Redford: You are not sure?

The Hon. T.G. ROBERTS: I cannot say that with any certainty. As an individual, I do not declare conscience issues, but I am certain that the AHA's public position as declared has not helped the situation at all. In fact, it has not helped the AHA's position. It has inflamed the debate to a point where people who give these issues reasonable consideration will reject any future approaches that the AHA might make in relation to where the debate goes from here. What we need to get into perspective is what are the reasonable considerations by reasonable people in relation to the debate before us.

I suspect that the amendment moved by my colleague the Hon. Paul Holloway takes into consideration the flexibility that we would require in relation to this Council's position to add some value to the bill. It does not provide the certainty required by some, but it provides the logic and flexibility that is required for an orderly process to carry out what I would see as reasonable development in relation to the hospitality industry and its ability to use poker machines as an entertainment aid.

The Hon. J.S.L. DAWKINS: I think members here would be aware of my overall unease about supporting a cap or a freeze and the fact that I did not support that in earlier discussions of such measures. I have supported the two year cap in order to seek a balance in the community. I did last evening support the amendment by the Hon. Paul Holloway, on my understanding of what he was trying to achieve. Overall I think that the bill is a worthwhile product of a lot of genuine effort by the members of the Gaming Machine Taskforce, who represented the broad aspect of the South Australian community and obviously had some wide-ranging views about the gaming machine industry. I feel it is essential that this legislation is not stalled and, as such, I will support the proposal by the Hon. Angus Redford.

The Hon. J.F. STEFANI: I will keep my remarks very brief. Honourable members would be well aware of my position in regard to the poker machines. I can clearly recall

the night when poker machine legislation was passed in this place at some ungodly hour of the morning, and I opposed them very strongly and I still, in principle, do that. Having said that, I must say that I am convinced that the wisdom of parliament should be that, rather than learning from hindsight experience, it should forward think about the possibility of a requirement that may be of benefit to the community and, with that in mind, I have no problems at all in supporting the Hon. Paul Holloway's wisdom of a mechanism that allows both houses of parliament and the government of the day to submit to the houses of the parliament some exceptional proposal that might be of benefit to the community.

I can think of one straightaway and that relates to the opening of our railway line from here to Darwin. Port Augusta may have the requirement for a centre for tourists who want to stop over and there would be a special need to address and, in that sense, one of benefit to the Port Augusta community. I am not one that would look kindly upon the opening of the door to further poker machine expansion in our state, but I am of the view that the mechanism should be provided which will allow an appropriate consideration by both houses to exceptional circumstances, which will allow the introduction of poker machines where they would become a benefit, after a proper process of consideration, in perhaps a major development within our community. So for those reasons I am happy to indicate my support for the amendment introduced by the Hon. Paul Holloway, consistent with my position last night.

Motion carried.

APPROPRIATION BILL

The House of Assembly requested that the Legislative Council give permission to the Treasurer, the Hon. R.I. Lucas MLC, to attend at the table of the House on Thursday 31 May 2001, for the purpose of giving a speech in relation to the Appropriation Bill.

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That the Legislative Council grant leave to the Treasurer, the Hon. R.I. Lucas MLC, to attend in the House of Assembly on Thursday 31 May 2001 for the purpose of giving a speech in relation to the Appropriation Bill, if he thinks fit.

Motion carried.

EQUAL OPPORTUNITY (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 May. Page 1428.)

The Hon. SANDRA KANCK: As the Attorney-General acknowledged in his speech, this bill is a compromise. It is a compromise between the recommendations made by Brian Martin in 1994 and what the members of a conservative government are prepared to tolerate in legislation. I must observe that it is a pity that we do not have a complete revision of the act at this point, not least of all because we might not have to continue to resort to very clumsily numbering clauses, such as 85ZF, to accommodate the continuing amendments that have occurred to this act since 1984.

But more importantly, our society has changed since the Equal Opportunity Act came into existence, back in 1984. The role of women has continued to be much more inclusive. There has been an increase in openness about homosexuality. We have some advances in community understanding during the International Year of the Disabled. There has been a greater acceptance of multiculturalism. We understand that a family is much more complicated than simply mum, dad and 2.4 children. And an increasing number of Australians have begun to reconcile themselves with our Aboriginal community.

Last year I made my first overseas study trip and, amongst other things, whilst in Canada I met with the Commissioner and Deputy Commissioner of Human Rights for the province of British Columbia. I was most impressed with the way in which they are dealing with what we call equal opportunity issues, and I think it is a model that we should aspire to. As I hope to be able to amend this bill before us so that it reflects some of the methodologies of the British Columbia Human Rights Commission, I will describe some of its roles and how it sets about fulfilling those.

The province of British Columbia has a—and this is capital letters—Minister Responsible for Human Rights, which says a lot about how advanced their thinking is. Their Human Rights Code, passed in 1996, amongst other powers gives the Human Rights Commission the mandate to educate and the right to hold public meetings on any human rights issue. It has officers in the city of Vancouver and Victoria and free call numbers and it is a very proactive organisation.

At the time of my visit, it had been found that people in geographically isolated areas were not accessing the services of the Human Rights Commission to the same extent as those in metropolitan areas, and plans were afoot to further promote the service. I think that makes quite a strong contrast with the way in which services in human rights and equal opportunity areas have been cut back in Australia over the past few years. Contrasting with our act is the fact that their human rights code does not define discrimination. Instead, it is effectively defined by case law. Using this methodology, the commission has succeeded in removing a number of examples of direct and indirect discrimination. The code expressly mandates the commission to remove systemic discrimination.

The Human Rights Commission has a Chief Commissioner, a Commissioner of Investigation and Mediation, and a Deputy Chief Commissioner. All funding comes from the provincial government but the commission is free from ministerial intervention, apart from an obligation to submit an annual report. The Deputy Chief Commissioner, through the Public Interest Program, has the power to intervene when a complaint is lodged by an individual if he deems that the discrimination is systemic. The complaint, in effect, becomes the property of the Human Rights Commission. As the Deputy Chief Commissioner, Harinder Mahil, says in the commission's 1998-99 annual report:

If an individual with a disability or from a minority group is experiencing difficulty in receiving public services, or is having trouble participating fully in society in some way, then chances are that others with that disability or from that group are facing similar obstacles.

The individual who lodges a complaint might pull out or settle with the group or person alleged to have discriminated, but the Human Rights Commission can keep the investigation going in the Human Rights Commission's name.

The Deputy Chief Commissioner can also initiate a complaint if he becomes aware of a form of discrimination that he regards as systemic, and the action can be taken all the way up to the Supreme Court. The theoretical example given to me was of a complaint lodged by a boy claiming to be harassed by school mates making allegations about his sexuality. The boy might reach some agreement with his

school board but, should that happen, because the Human Rights Commission believes there are standards and expectations of behaviour that should apply to all schools about such behaviour, the commission would be able to pursue it through the courts.

The Human Rights Commission has already taken up the issue of barriers to participating in election for disabled people. As a consequence, polling booths had to be made more accessible, ballot-papers and campaign literature must now be available in larger print, and signing for hearing impaired people must be provided at public meetings. Case law has already determined that land agents and similar cannot discriminate against someone on the basis of the source of their income. Case law has also determined that people with physical disabilities must be accommodated in the workplace to the point of undue hardship.

When a local government entity refused to allow a gay and lesbian festival to use the term 'pride', the Human Rights Commission regarded it as a breach of human rights and accordingly intervened. The commission can also take up non-legal advocacy, and it now has a presence at most 'pride' days in the province. While we use the term 'vilification' in regard to race and sexuality, the British Columbia Human Rights Commission is more up-front about this practice and calls it what it is: hatred.

Most discrimination occurs in the workplace, so the Human Rights Commission has set up an employers' advisory group, which has been meeting for a year, and a manual with the title 'Preventing workplace harassment' has been prepared. If anyone is interested in seeing that, I brought back a copy with me. Related government portfolios include aboriginal affairs, multicultural affairs and, in the health portfolio, the position of mental health advocate has only just been created. The role is still being explored; however, the person holding the position is pursuing a cooperative arrangement with the Human Rights Commission.

That is a very brief summary of what happens in the province of British Columbia, and I believe there is much to learn from them and much of value in their approach. In the committee stage I will move amendments to give our Equal Opportunity Commissioner referral powers similar to British Columbia's.

While recognising that this bill is a compromise for the Liberals versus what Brian Martin QC recommended, and therefore in my opinion is somewhat timid in places, I also recognise that it makes some advances, and some of the positive steps that I want to acknowledge are:

- the inclusion of mental illness and infection with HIV as forms of impairment;
- the inclusion of discrimination on the basis of a past characteristic;
- the extension of the act to cover independent contractors;
- the extension of the act to cover discrimination based on the characteristic of a relative;
- the inclusion of discrimination on the basis of potential pregnancy;
- the inclusion of discrimination on the ground of association with a child, especially feeding a child;
- a change to the definition of sexual harassment so that the action does not have to be repeated;
- the phasing in of greater access to premises for people with disabilities; and
- the guarantee of confidentiality of counselling records in cases of sexual harassment.

I note that the Attorney-General, when speaking about the move to cover discrimination on the ground of past or presumed characteristics said:

> This would cover, for example, the situation in which a person wrongly presumes that another is of a particular race or sexuality, etc., and treats him or her less favourably on this ground.

I think this is a positive move but, given the government's past virulent opposition to recognition of same-sex relationships as in, for example, moves to include same-sex relationships in the De Facto Relationships Act, there is an inconsistency in the government's attitude. Clearly through the government's proposed amendments, the Attorney-General recognises that gay, lesbian, bi-sexual and transgendered people do experience discrimination. Unfortunately, however, it seems that he is only interested in this discrimination if it is directed at someone who is heterosexual.

Clearly there is a need to remove discrimination on the basis of sexuality and, in the committee stage, I will have amendments about same-sex relationships, and it will be very interesting, particularly in the light of the experience we had some years ago on the De Facto Relationships Act, to see how the Attorney-General responds.

The act defines discrimination in section 29 and refers to victimisation in section 86 and sexual harassment in section 87. I want to look at a situation that is occurring in Adelaide. I refer to the newspaper *Gay Times*, which is now defunct, specifically issue 195, 23 June last year, at page 3. It refers to the proprietors of a shop in Port Noarlunga who have been fostering anti-gay sentiment by displaying homophobic material on sandwich boards displayed in the window and on the footpath.

The Hon. T.G. Roberts: For what purpose?

The Hon. SANDRA KANCK: I am not sure what their purpose is. According to the article, the slogans attack many groups in the community with a predominance of anti-gay sentiment. A lesbian who phoned into *GT* about this said:

> The writings link gay men with paedophilia and are generally irrational. I've confronted the owners but they just become enraged. I complained to police who said they were in a difficult position because of inadequate laws to police such activity.

The article goes on to say:

> Sergeant Brian Smith of the Christies Beach police station said that police were in a difficult position regarding the offensive material. Because it's on private property they can do very little. 'If people are offended by the signs, they need to make a written complaint. Only then can we have the material removed,' he said.
>
> Flinders University law lecturer Wayne Morgan said that legally there is no avenue to address the problem. 'As we have no anti-vilification laws to protect gay men and lesbians police find it hard to act.'
>
> 'The police have powers to prosecute for offensive behaviour but just what constitutes "offensive behaviour" is judged according to the standards of an ordinary member of the public', Mr Morgan said. . . Long time gay activist, Ian Purcell said, 'Freedom of expression in a civilised society should not include freedom to abuse minority groups.' There is plenty of evidence to show that the vilification of homosexual people encourages anti-gay hate crimes. There would be a public outcry if these false and inflammatory statements on public display at Port Noarlunga were being made about Jewish people or Aborigines and rightfully so, but it seems that it is still okay to malign and abuse homosexuals in our society.

Quite obviously, such signs would not be tolerated in the province of British Columbia in Canada. It certainly does not say much for our society when such hatred, as I would call it, is allowed to continue unpoliced.

I would be interested to know, under our current laws, what the Attorney-General believes would be any remedies available for people who are victimised in this way. My view

of the current act is that the references that I have made to sections 29, 86 and 87 certainly do not cover the situation described in the article.

There really is a need for a definition of 'hatred' in our current act. Other states have tackled this issue. Section 19 of the Tasmanian Anti-Discrimination Act is actually headed 'Inciting hatred'. It provides that a person, by a public act, must not incite hatred towards, serious contempt for, or severe ridicule of, a person or a group of persons on the ground of race, disability, sexual orientation or lawful sexual activity or religious belief or affiliation, or religious activity of the person or any member of the group.

New South Wales has tackled this issue. In its Anti-Discrimination Act, section 38S, headed 'Transgender vilification unlawful', provides:

> It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of:
> (a) a person on the ground that the person is a transgender person

There is a similar provision, section 38T, 'Offence of serious transgender vilification'. Section 49ZT—that state has obviously also heavily amended its act, judging by that number—is about homosexual vilification being unlawful; section 49ZTA, 'Offence of serious homosexual vilification', is similarly worded, providing that 'a person must not, by a public act, incite hatred'. So, other states have got their act into gear on this: we in South Australia do not appear to have done so.

At the present time in South Australia, there is a campaign known as the Let's Get Equal campaign. Groups involved include the Gay and Lesbian Counselling Service of South Australia and the AIDS Council of South Australia Information Services. They are the two main ones listed on a leaflet I have. For the record, so that people understand the degree of discrimination that exists, they have conducted some research that indicates that at least 54 pieces of legislation in South Australia discriminate against gay and lesbian couples. The leaflet states:

> If you were in a gay or lesbian relationship, unlike married or heterosexual de facto couples. . .
> · You will not inherit your partner's assets if they die without a will.
> · You cannot claim compensation if your partner dies in an accident.
> · You have to pay expensive stamp duty when transferring property between yourselves.
> · If your relationship ends, you cannot get access to the same cheap and easy court assistance to disentangle finances and divide property.
> · You are not entitled to be paid compensation for the grief you suffer if your partner is killed as a result of a criminal injury.
> · You can be required to give evidence against your partner in court.
> · You may be denied access to your sick partner if they are hospitalised. You may be denied access to any information about their condition.
> · You cannot access assisted reproductive technologies.
> · You may be denied the right to participate in making vital decisions about an incapacitated partner's medical treatment.
> · If your partner dies, you may be denied the right to make any decisions about the body (like organ donation) or about the funeral. Indeed, you can be legally stopped from even attending the funeral.

I know that we cannot necessarily deal with all those matters within this bill, but they are issues that I am sure are raised with the Equal Opportunity Commission from time to time. We as a parliament, having responsibility to deal with issues of discrimination, ought to recognise the extent of unjustified discrimination that still exists for some people in our society. Acting responsibly as a parliament, we must look beyond the issue of whether or not one's religion is antagonistic to homosexuality. Refusing to recognise same sex relationships does not prevent such relationships occurring.

In the Democrats' view we should value all relationships which are based on mutual caring and support. A relationship does not have more value simply because it is heterosexual. At its simplest, current definitions of marriage or de facto relationship are based upon two people of the opposite sex who implicitly have or have had sexual relations with each other. Surely a mature society can advance beyond having sex as the criterion. We should recognise all sorts of relationships. Consider the TV series *Mother and Son.* Clearly, in that example there is a relationship of dependence and caring between those two people. Many families have two maiden aunts. These days we are increasingly seeing an elderly parent having to care for disabled children. These are the sorts of relationship that we need to consider. We need to go beyond defining relationship as simply being between heterosexual couples who have sex or have had sex with each other.

The Migration Act at the federal level has a very useful definition that I think we need to consider. It talks of 'interdependency relationship', and section 238 of the act defines this as a relationship:

> (a) between 2 persons who are not:
> (i) spouses, or other relatives, of each other under any of the regulations; or
> (ii) members of the same family unit under any of the regulations otherwise than because of an agreement to marry; and
> (b) that is acknowledged by both; and
> (c) that involves:
> (i) residing together; and
> (ii) being closely interdependent; and
> (iii) having a continuing commitment to mutual emotional and financial support.

As a mature society, I believe that is what we should be moving towards.

I understood that the proposal in the bill is to abolish the Equal Opportunity Tribunal and transfer its powers to the Administrative and Disciplinary Division of the District Court. The Attorney-General says as justification that it is government policy to get rid of specialist tribunals. I do not share his government's philosophical position, and he needs better arguments than that to convince me. It is precisely because of their degree of specialisation that such tribunals work so effectively. As I have observed earlier about the British Columbia Human Rights Commission, I can see real value in allowing the Equal Opportunity Commission to take matters through the court on its own initiative, but this is a very different concept to what the Attorney-General now proposes.

The Youth Affairs Council has provided a copy of its correspondence to the Attorney-General dated 21 December. Its comment about the abolition of the Equal Opportunity Tribunal reads as follows:

> We note that the obligation of the tribunal will be 'a formal rather than substantive change,' as acknowledged in your explanatory memorandum on page 4. However, we have serious doubts about the ability of a tribunal process located within the District Court to fulfil its functions as an alternative avenue for complainants.
>
> The proposed change will make a difference in terms of setting (the tribunal provides a far more comfortable setting for many individuals than does the court) and associated concepts held by individuals. This could potentially have the effect of cutting out people from more disadvantaged social groups, including many young people, from accessing the equal opportunity complaints mechanism for fear of the intimidation and interrogation experienced through the court system. This effect perpetuates a power imbalance that equal opportunity legislation is designed to stamp out.

The AIDS Council has told us that it sees no value in these changes. The Working Women's Centre has expressed concern about them, and the Let's Get Equal Campaign which, as I have already mentioned, is advocating on behalf of people in same sex relationships, opposes them. I again refer to the Let's Get Equal campaign. In relation to this move to abolish the tribunal it says:

> . . . we question whether transferring jurisdiction to hear complaints made under the act to the District Court will result in complaints being dealt with more efficiently or effectively. On the contrary, we consider that the transfer of jurisdiction may result in:
> · A less accessible and equitable manner of complaints adjudication, as a result of a more formal court proceedings in which the court is bound by rules of evidence and unable to act according to equity or to inform itself as it sees fit.
> · An increased costs risk for complainants, which would deter many complainants from pursuing their legal entitlements under the act.

I note that the Hon. Carolyn Pickles has said that the opposition will support the abolition of the tribunal, which I am very disappointed to hear. I note that in the past in regard to consumer affairs issues the Hon. Anne Levy opposed every move of the Attorney-General to remove tribunals, and I am perplexed by this turn-around by the Labor Party. I know that a number of community groups feel let down by it on this matter.

The Let's Get Equal Campaign has expressed a concern that members of the judiciary will not have the knowledge about or experience of dealing with equal opportunity legislation, and it also fears the risk of costs arising for complainants. While the Attorney-General has said 'The court will sit with assessors chosen very much as the lay members of the tribunal are now chosen,' and I note from my reading of the bill that the selection process is largely the same, the comment has been made to me that the judiciary will dominate, regardless. I ask the Attorney-General whether under the model he is developing there is any way he can ensure such domination will not occur. The Let's Get Equal Campaign has suggested that if the tribunal is to be abolished three things must occur:

1. Training and education of judges regarding Equal Opportunity Tribunal procedures, including the development of in-depth understanding of equal opportunity legislation;

2. Funds should be set aside for representation of complainants, either by extra legal aid funds specifically targeted for discrimination cases or the appointment of duty lawyers at the court to advise complainants; and

3. Certainty that the complainants will not have to meet costs.

I remind the Attorney-General that in his explanation he says:

> From the point of view of the parties, little will change. The strict rules of evidence will still not apply and the court will be obliged to do justice according the substantial merits of the case without regard to technicalities and legal forms.

I note that that appears largely to be covered by what is in the bill. The court would sit with assessors chosen very much as the lay members of the tribunal are now chosen. Costs would not generally be awarded except where the court considers this to be necessary in the interests of justice. As I said, I notice from the bill that most of what the Attorney has said there appears to be accomplished in new section 95A(3), which provides:

> In hearing and determining proceedings under this act, the court must act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms, and is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

The thing I do not see (and I would welcome a correction from the Attorney-General when he sums up) is something that deals with the matter of costs. If I have missed something in my reading of the bill, I would appreciate the Attorney-General's pointing that out so that I am clear on that matter. I also would be interested to hear what the Attorney-General thinks of those three points that the Let's Get Equal campaign has suggested, and I wonder whether there is any way that they can be accommodated.

The bill proposes to abolish the commissioner's role as representative of the complainant before the tribunal, and is doing so because this is what the Martin report recommended. But just what did Brian Martin recommend in regard to the commissioner's role? I will read from the report at pages 210-211, starting at (v): the recommendations are as follows:

> Section 95(9) that requires the commissioner to assist the complainant before the tribunal be repealed.
> (vi) In conjunction with the repeal of section 95(9), the act be amended to provide for:
> (a) The appointment of an independent solicitor to act as the solicitor for complainants before the tribunal.
> (b) The right of a complainant to retain the services of the solicitor.
> (c) The funding of the solicitor by the government.
> (d) The establishment of guidelines in respect of funding within which the solicitor is to work.

A number of other recommendations follow, but they are the ones that appear significant to me at this point. What has happened to these other recommendations? If they have been rejected by the government, on what basis were they rejected? The Attorney-General in his explanation said as follows:

> . . . it is still considered desirable that representation be provided in deserving cases by some other means at arm's length from the Commissioner and, to this end, the government is negotiating with the Legal Services Commission to provide a comparable avenue of representation for complainants in these matters.

I would like the Attorney-General to explain to us what a deserving case is, and also to advise us what stage he has reached in his negotiations with the Legal Services Commission.

The Australian Services Union has provided us with a copy of its correspondence to the Attorney-General dated 12 October 2000 in regard to this issue of the commissioner's representative role before the tribunal, and I will read its comments:

> The ASU is very concerned that it is proposed to remove the representative role of the Commissioner without putting in place a properly resourced alternative. We note that the government has had six years since the Martin report was completed to 'explore other avenues for providing representation'. By removing representation for complainants, lodging a complaint would achieve virtually nothing for many complainants. Respondents would be aware that the complainant would not have the resources to be able to pursue the complaint further than conciliation, putting the respondent in a very powerful bargaining position, and enhancing the power imbalance which already exists between complainants and respondents. This would disadvantage in employment situations particularly those complainants who are not members of trade unions, who will need to engage lawyers to represent them (whilst trade unionists may be represented by their union). Whilst we support the proposal to widen provisions permitting lay representation, the explanatory notes to the bill do not address the question of who will fund these lay advocates. Complainants without financial resources or those who do not have friends with financial resources will be severely disadvantaged by this proposed change.

I have already acknowledged that there are some things that we cannot do within the context of this bill. We cannot, for instance, amend various superannuation acts. But I do want to look at the issue of superannuation. In this leaflet from the Let's Get Equal campaign there is a quote about a lesbian

couple and what happened as regards superannuation, as follows:

> Dealing with the grief of losing Georgina after 14 years was bad enough. When I was trying to sort out her finances, I was shocked to find that I had no claim on her superannuation even though I was named as her beneficiary. Because I was her female partner, the fund didn't give me a cent. I lived on the dole for a few months while Georgina's super went to a distant cousin whom she hadn't seen in 20 years.

For most people, it is simply a matter of course that the surviving partner will receive the superannuation benefit. But some people in same sex relationships have found it very heavy going. Fortunately, for the most part, a majority of superannuation funds take a mature attitude to this matter and pay out to the surviving partner, regardless of sexuality. But, in some cases, a same sex partner will have to battle for it and then, most likely, will have to pay back up to 25 per cent of the lump sum in legal fees. Surviving partners in same sex relationships have successfully sued to get their partner's superannuation, but there have been no successful cases of suing for the death benefit. In one of those unsuccessful cases, which went to the Administrative Appeals Tribunal, Justice O'Connor said that, while the ethical and moral arguments were strong, the law did not allow her to recognise them. New South Wales, Queensland and, just a few weeks ago, Victoria, have recognised same sex couples. Tasmania is about to, and Western Australia has plans in motion. South Australia is behind the eight ball.

Last January, at the Democrats' national conference, which I attended, we had an MPs meeting, at which we discussed superannuation and benefits to same sex couples, and we had a very interesting example presented in that group of MPs. Members may recall that, just before Christmas, Senator Meg Lees was married. It was pointed out that if, for instance, on that night they had flown away and the plane had fallen out of the sky and Meg had been killed, Matthew would have been entitled to all Meg's super and the death benefit. On the other hand, Senator Brian Grieg, who has been in a same sex relationship with his partner for 15 years, would get nothing. As he said, it is his super contribution. Why should he not have the right to decide where the money goes?

We hope that we will be able to address at least some of these issues in the amendments we will be proposing for this bill. And if the Equal Opportunity Commission is given the power, through the legislation with which we are currently dealing, to say that discrimination cannot be allowed on this basis, certainly, more couples in same sex relationships will not have to spend their money unnecessarily on legal fees.

People suffering from attention deficit hyperactivity disorder are not able to access the Equal Opportunity Commission at the present time because of the definitions within the act. Those people and their families are keen to have the criteria for disability in the federal act brought into our act. The amendments before us define 'mental illness' in clause 3 as 'any illness or disorder of the mind'.

I believe that that is a step forward, but I want this expanded to ensure that there can be no doubt about it. I think we as a parliament need to consider expanding the criteria by matching the federal Disability Discrimination Act criteria of 'a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction' and 'a disorder that affects a person's thought processes, perception of reality, emotions or judgments that results in disturbed behaviour'. I believe it would be a very positive move for those in our community who are suffering attention deficit hyperactivity disorder.

I understand that my colleague, Mike Elliott, who is our party's education spokesman, will be taking up this issue when he speaks on this legislation. As I said earlier, it is a pity that the government has not used this opportunity to completely revise the act. I indicate that the Democrats will use the opportunity of amending the bill to the best of our ability to achieve some of the changes that might have been expected to be canvassed in a complete revision.

The amendments have been a long time in coming, but at least they are now here. This gives us something to work with. At present I am still working on draft amendments, but in speaking to the bill today I have placed on the record the main thrust of my concern and intentions so that members can know the progressive direction in which the Democrats are headed on the bill. We support the second reading and look forward to improving the bill with our amendments.

The Hon. T. CROTHERS secured the adjournment of the debate.

ELECTORAL (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 May. Page 1487.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their indications of support for the second reading of the bill. A number of issues have been raised in members' speeches. I will deal briefly with them but will not deal in depth with the various issues and the amendments: we can do that in the committee stage. I would like to give an indication as to where the government stands in relation to a number of them.

Clause 4 will require officers of public sector agencies to provide the commissioner with information held by those agencies. The Leader of the Opposition has asked for an indication of the nature of the information we are dealing with and what might be a typical request. The type of information sought by the commissioner will indicate changes to names and addresses such as might be held by Transport SA or the Residential Tenancies Tribunal, or information regarding persons who may have become or be about to become eligible to vote such as the list of Year 12 students held by the Senior Secondary Assessment Board of South Australia. I think it is particularly important that the Electoral Commissioner has access to information about those likely to become eligible to vote and also to their addresses at the earliest opportunity to afford them the opportunity to be enrolled.

The Hon. Mike Elliott has raised a question regarding the practice of political parties acting as intermediaries and has asked why this practice should be permitted to continue. The honourable member suggested that there is potential for this practice to be abused. However, there is no evidence so far to suggest any misconduct by those acting as intermediaries. The only problem that has occurred to date is some tardiness in the forwarding of applications, but there is no suggestion that there were any improper motives in this. There is therefore no good reason to prohibit a practice that is helpful in encouraging those members of the community who are unable to attend a polling booth for whatever reason to participate in the electoral process.

The Hon. Mike Elliott also commented that the amendments relating to the authorisation of how-to-vote cards will not address the issue of so-called bogus how-to-vote cards because a person could easily put the authorisation at the bottom of the card in small print so that very few people would notice it. Members will note that the bill provides for regulations to be made setting out requirements for the statement concerning the party or candidate on whose behalf the card is authorised. If in the future there appear to be problems then regulations could be made imposing a size requirement and/or a requirement that the statement be placed in a particular position on the card.

The Leader of the Opposition, the Hon. Terry Cameron and the Hon. Mike Elliott have placed a number of other amendments on file. I indicate that the government will be supporting some of them, it will not be supporting others and it will be seeking to move some of its own amendments to the bill and to move some amendments to the amendments of other members. The government supports expanding the type of information that can be provided to members and removing the requirement that the commissioner not provide details of a person who has requested in writing that the commissioner not provide those details; but it does not support the expansion of the category of persons to whom such information can be supplied.

Members will remember the provisions in relation to disclosure of information to state members of parliament of the age bands in which various electors fell. It was felt to be important that private information such as the date of birth should not be available publicly and that those electors who wish to have that information not included on the information which went to members of parliament should be able to opt not to have that information included. The government has re-examined that issue. It can see that there are competing interests in relation to information about the date of birth of an elector and believes that, on balance, we should not be inconsistent with federal legislation which allows this information to be made available to members of parliament in order that they might better service their electors.

Requiring the expeditious lodgment of declaration votes will be supported. The government also supports the principle that independent candidates should not be able to describe themselves using the name of a registered political party or a part of the name of a registered political party. The introduction of financial disclosure requirements in relation to political donations and expenditure is supported in principle. However, many parties are already subject to extensive disclosure requirements at commonwealth level. Those who are subject to those disclosure requirements should not be required to comply with very similar requirements at state level, and therefore I will be moving amendments during the committee stage to introduce disclosure requirements that do not apply to information required to be disclosed at commonwealth level. That will be a compromise on the amendments proposed by the Hon. Terry Cameron.

The government supports some changes in relation to related political parties. Political parties should not be able to rely on the parliamentary membership of a related political party to be registered. However, the complete removal of related political parties is not supported. Provided the parties can satisfy the membership requirement, although not common membership with another party, there is no reason why they cannot be related.

The government does not support the reduction of the voting age to 17 or any alteration to the method of filling casual vacancies in the House of Assembly. The issue of the reduction in the voting age provokes some considerable debate. In committee, I believe that we will be able to put the arguments both for and against the proposal in the amendments on file from the Hon. Terry Cameron.

The government will not support the prohibition proposed by the Hon. Michael Elliott in relation to the distribution of how-to-vote cards on polling day. We take the view that, if that were prohibited, even if it were prohibited anywhere in the state, it would limit very much the right of candidates and supporters of candidates to publicise themselves, their parties and their policies right up to the moment of an elector stepping inside the door of the polling booth. However much some people believe that the distribution of how-to-vote cards on polling day should be prohibited, that is something which the government strongly opposes.

The government also intends to move amendments relating to the display of electoral advertising to provide for persons and material to be exempted by regulation from the provisions of the act requiring material to be provided to the commissioner and for material to be exempted from the authorisation requirements of section 116 and to limit the definition of 'parliamentary party'.

In relation to electoral advertising, when we included in the Electoral Act the provision which provides that during the election period electoral advertisements complying with the Electoral Act cannot be prohibited, it was intended that that would cover the field. However, provisions of the Development Act may allow councils to promulgate bylaws which have the opposite effect and prohibit the advertising of political candidates and parties during an election period. The amendment that I will propose will put this matter completely beyond doubt.

There are a number of other issues which one can raise in the context of the debate on this bill. They will be the subject of amendments and, obviously, debate on the clauses. I therefore propose to leave any further contribution with respect to specific matters to the committee consideration of the bill.

Bill read a second time.

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

That it be an instruction to the committee of the whole that it have power to consider new clauses in relation to the voting age of electors and to make amendments to the Age of Majority (Reduction) Act 1971, the City of Adelaide Act 1998 and the Local Government (Elections) Act 1999.

Motion carried.

EQUAL OPPORTUNITY (MISCELLANEOUS) AMENDMENT BILL

Second reading debate (resumed on motion).

(Continued from page 1633.)

The Hon. T.G. CAMERON: This state's Equal Opportunity Act was enacted in 1984, and 10 years later the government commissioned Brian Martin QC (now Justice Martin) to report on its operations. He made a number of recommendations which were examined in a subsequent reference group. The provisions of this bill expand the grounds of discrimination and alter the complaints process and the role of the Equal Opportunity Commissioner. Mental illness, being any illness or disorder of the mind, will be included as a recognised form of impairment under the act.

The act will also include the state of being infected by the HIV virus. It provides, however, that reasonable methods to stop the spread of the virus are not discriminatory. The Hon. Carolyn Pickles has indicated that she is unsure what 'reasonable' means. In accordance with the recognised legal position on 'reasonability', it would most likely mean actions that a person of reasonable prudence would take in order to prevent the spread of the virus, in other words, an objective standard rather than a subjective one.

Discrimination on the basis of past or presumed characteristics will be included, and mistaken assumptions will not be a defence to this. The bill extends the legislation to cover independent contractors. However, private home and non-business services will continue to be exempt. Potential pregnancy will become protected from discrimination. It is included above the general sex discrimination provisions to ensure that this situation is covered by the law.

Protection will be provided that people cannot be discriminated against on the basis of a relative's characteristics. The bill will prohibit discrimination on the basis of responsibility for care of a child, spouse, parent, grandparent or grandchild. However, I ask whether this covers any possible discrimination and whether the definition of 'voluntary carer' should be on a case-by-case basis, that is, unpaid care of a neighbour or nephew, etc. I ask the Attorney to have a look at that. It will prevent discrimination in terms of the provision of goods and services for breast-feeding mothers—that is, on the grounds of association with a child.

Sexual harassment laws in the workplace will be extended to cover harassment of staff in service industries as well as contractors and consultants. The purpose is to prevent the misuse of power in all workplace relationships. It provides that, if a person did not know and could not reasonably have known that a person was in a working relationship with them and they behaved in a way that would constitute sexual harassment, they would not be liable for it. This is to identify that private relationships should not be the basis of sexual harassment complaints as there is no additional power discrepancy that can be exploited.

The bill allows for an employer to be vicariously liable for sexual harassment by an employee. For their liability to be discharged, they must prove that they took reasonable steps to prevent the harassment from occurring by having and enforcing an appropriate policy. This reasonableness will be determined in part by the cost, viability and effects on the business when implementing such a policy. However, a person is not vicariously liable for an act of an independent contractor unless that act was on their instructions or through their pressure.

Disabled access to buildings under the act will be extended to a general obligation to all buildings, and the access must be safe. When determining exemptions, such things as the cost, the financial circumstances of the owner and the benefit or detriment that could result to the disabled persons will be considered.

Action plans lodged with the Human Rights and Equal Opportunity Commission must also be taken into account. This above section, as I understand it, would not come into effect until four years after the proclamation of this bill, to allow a period of compliance. Amendments to the concessionary fares section make it clear that discrimination in the form of reduced fares on the basis of age is permissible as long as it is beneficial, genuine and reasonable. There are also procedural changes to the commission and the commissioner. The Equal Opportunity Commission would be disbanded and its style, procedure and jurisdiction would be conferred to the administrative and disciplinary division of the District Court. The dual role of investigator and conciliator that the commissioner must undertake can lead to problems.

It is suggested that the intention of the act be codified by making it clear that the commissioner's investigatory role is to be limited to gathering enough information to determine whether or not the complaint should proceed. The power of the commission to require relevant documents will be extended to any person, not just the respondent in the case. However, incriminatory documents and those protected by legal privilege cannot be demanded, nor can counselling records in the case of sexual harassment complaints. The commissioner will have a discretionary power to disclose the documents they have obtained. They will not be automatically required to produce these to anyone else.

Counselling records in regard to sexual harassment complaints must be kept confidential by the commissioner and can be released only with the consent of the complainant. Complainants may also be required by the commissioner to attend a conciliation conference, whereas now they are not. However, such conferences may be conciliated without bringing the parties into direct contact. The powers of the commissioner to decline a complaint are to be increased to allow the declamation in cases where the complainant cannot be contacted or has shown a lack interest in pursuing the matter. A decision on this matter would be able to be appealed to the court on paper without the need for a hearing, but a hearing will still be able to be convened if necessary.

The commissioner currently operates as conciliator, then as advocate for the complainant, before the tribunal. In order to remove this conflict of interest it is proposed that the Legal Services Commission will provide a comparable avenue of representation for complainants. Other conflicts of interest comparable to this are repealed from the bill. However, the commissioner will still be able to appear before the court in some cases. The court can grant leave to any person to intervene, and the court may request the commissioner to assist with the proceedings, with the consent of the minister. The bill allows for the just and equitable extension of time for complaints to be lodged. It allows the commissioner to now conciliate civil racial vilification disputes. If it cannot be conciliated then the remedy under the Wrongs Act is still available. However, criminal racial vilification will be dealt with by only the criminal justice system.

SA First supports this bill. It does go some way to addressing the growing problem of equal opportunity to discrimination and, whilst it is not a perfect solution, I suspect a perfect solution would be very much an individual thing. I am not sure whether we could find a perfect solution in a bill like this, even within the respective parties. So I guess on this occasion I am in the good position of only having to decide for myself, and according to the people within SA First that I have discussed it with.

However, the bill does provide for an extension and recognition of rights that were not covered in the 1984 act, and, whilst I said I would be able to come up with a couple of suggestions that from my point of view would improve the bill, there may be 15 or 16 other members of the Council disagreeing with me, and I am sure the same thing would happen with other individuals. I commend the Attorney for bringing the bill to the Council, and it will provide, in my opinion, a significant benefit to all those who continue to fight against discrimination of any kind. SA First supports the bill.

The Hon. J.F. STEFANI secured the adjournment of the debate.

GRAFFITI CONTROL BILL

Adjourned debate on second reading.

(Continued from 2 May. Page 1413.)

The Hon. T.G. CAMERON: This bill is a response to the explosion of graffiti observed in the last 10 years. The government has provided initiatives such as local crime prevention committee programs, funding for local and state-wide anti graffiti strategies, web sites, newsletters and school awareness and education programs. Mechanisms for the rapid reporting and removal of graffiti, free wall space for graffiti and other local efforts to cut down on vandalism have been a focus in the past and have proven to be effective.

This bill enshrines in legislation the code restricting the sale of spray paint to those under 18 and requiring cans to be securely stored. It takes the provisions of graffiti offences, that is, marking graffiti and possessing of graffiti implement, out of the Summary Offences Act and places them in this act. Councils shall have the power to remove graffiti from private property, unless the owner objects, within 10 days of being notified. Councils and agents shall be exempted from civil liability for acting in this manner. However, these provisions are to remove graffiti that would otherwise not be removed. The bill makes it clear that the provision of graffiti removal by councils, for a fee, should be able to continue.

SA First supports the second reading of this bill, however we are dissatisfied with the bill as it currently stands. We are sceptical about the effectiveness of some of the provisions in cutting down on vandalism and believe that they are crass and motivated by political opportunism, more than seeking effective solutions. I think any reading of this bill would see that it is more about appeasing public concern on graffiti than about doing anything about getting rid of graffiti or attacking it. But such is the wont of politicians at times to appease the electorate. If they are happy with it, well so be it, I guess.

The Hon. T.G. Roberts: A bit like poker machines.

The Hon. T.G. CAMERON: Well, yes, I think we could stand guilty of passing a few resolutions on the poker machines bill, which were more about trying to convince the electorate that we were really doing more about poker machines than we were. But there needs to be a clear distinction between the types of graffiti. First, there is the graffiti that is associated with vandalism and, secondly, there is the painting style of graffiti, which is the style encouraged through free wall space. I can understand that the painting style that is used on free wall space might not tantalise the tastebuds of the Attorney, but some people enjoy it and like it.

Any strategy to use destructive graffiti should be a strategy to reduce vandalism and should be dealt with as both a legal and a social issue. Whilst it is easier said than done, and I guess things are always easier said than done, probably the most effective way of attacking vandalism would be to do something about the horrible youth unemployment rates that we have in this state. I am sure that, if the Attorney compared the incidence of reported graffiti with the youth unemployment rate, he would probably find that there is a positive correlation between graffiti incidences and youth unemployment. He might care to have a look at that matter.

Youth unemployment in some suburbs of Adelaide, particularly in the northern and southern suburbs, was in excess of 50 per cent at one stage. Whilst I did not have the statistics to support it, graffiti seemed to be occurring more in those areas than in suburbs that had youth unemployment rates that were down in the 15 per cent to 25 per cent range. Whilst I believe that youth unemployment is still too high, significant progress has been made in attacking youth unemployment here in this state. I have always thought that attacking youth unemployment, getting that down, would be a more effective way of dealing with things such as youth crime, drugs, graffiti, vandalism, etc.

I encourage the government—and this might be a big bite of the apple for the Attorney—to actively encourage the provision of free wall space. It is done in Sydney and Melbourne, and young artists can express themselves in that way. We should also aim to prevent the defacing and destruction of property, and the provision of free wall space may do something about reducing it.

The bill proposes to ban the sale of spray cans. However, the type of graffiti that we should aim to ban can be done with almost any implement. Indeed, the graffiti on trains, buses and signs is more commonly done with some of the range of textas that is available. I put it to the Attorney that we could completely ban spray cans in South Australia, but they will just start using the various textas that are available.

The Hon. J.F. Stefani: Very thick ones, too.

The Hon. T.G. CAMERON: The Hon. Julian Stefani has obviously had some experience in this matter because he has put his finger right on the type of textas that they use—the thick ones. I have had some experience with graffiti. I am the father of three boys, 18, 20 and 22 years old, and I can recall one of my sons asking me what I thought about all the graffiti that was going up at that time in Blackwood and Hawthorn-dene. It was everywhere. I did the fatherly thing and told him that people should not deface other people's property, that someone would have to pay to get that removed, and that, whilst he might think it looks okay, it presents a real cost. I did the fatherly thing and told him that I thought it was terrible but that the real problem was the difficulty associated with catching these people.

The next day a group of police officers visited the school and asked whether anyone knew who was doing the graffiti. It was done in confidence and my son quietly volunteered to tell the police, based on the good parental advice he had received from his father, who was doing the graffiti. I had to take him to school for about three or four weeks and we had to have quiet words with the parents of the children who were doing the graffiti because my son was physically threatened. They were going to kill him! He was too frightened to leave the schoolyard because they were in wait for him.

I wondered how on earth they discovered who had reported them to the police. The parents of the offending children told me that the police told the school kids who had dobbed them in. I think it was the last time anyone from that school ever reported anyone for doing graffiti. I have got some advice for the police: if anybody is good enough to give them information, please do not tell the people who have been committing the graffiti, because they will take action.

We also have problems in relation to the theft of spray cans, and the provision of spray cans by those over 18 years to those under 18 will undoubtedly occur. The Attorney may or may not be aware of the fact that young people, particularly young males, have become very adept at coping with the fact that they do not have much money, and they often spray their cars with spray can paint. I know that to be the case

because my young son Stephen just spent $24 and resprayed his motor vehicle, and it does not look bad.

The Hon. L.H. Davis: What did he put on it, 'SA First'?

The Hon. T.G. CAMERON: No, he did not put 'SA First' on it and the colour he chose was purple. That is his choice. The fact is that young males use spray paint quite a bit for doing touch-ups on their cars, respraying their cars, etc. These spray cans are everywhere. I do not see anything in the bill that requires me, if I have spray cans on my property, to keep them locked up or secured.

The Hon. K.T. Griffin: You are not selling them, are you?

The Hon. T.G. CAMERON: No, I am not selling them, and I do not expect an answer, but does the Attorney really think this bill will do much about the level of graffiti? I can see that the Hon. Julian Stefani agrees with me. I believe that this bill will be ineffective. What effect will this have on legitimate young artists who use spray paint on council-provided free space walls? It should not really affect them. However, I ask the Attorney to address the question, because he made quite a play on it during the prostitution debate.

If young artists who are under the age of 18 years have been commissioned to do a painting on council-provided free space, and they have got to use cans of spray paint, where are they going to get them from? Does the introduction of this bill mean that young artists, 15, 16 and 17 years old, will have to give up this form of art until they turn 18, because they will not be able to get a spray can? Or, if they do get hold of one, will they be illegally in possession of it? Perhaps the Attorney could think about that.

This provision of the bill could stop the commercial supply but it will not stop the private supply of spray paint. The bill also ignores graffiti vandalism on trains and buses as drawn by textas and pens. Removing the graffiti expedientlly may defeat the purpose of the graffiti and, while SA First supports this provision, it does not actively prevent graffiti, which is what we should be doing, but we can deal with that in committee.

I am a little bit concerned about the extent of council powers to remove graffiti from private property, but I accept and understand that sometimes this graffiti is offensive to other members of the public; and innocent members of the public should not be exposed to offensive material. I am concerned about the way councils are notified. What if someone does not receive a notification and then the council goes in there and does the work and then charges an arm and a leg? What if somebody comes back from holidays and opens their letterbox to discover that while they were away on holidays somebody graffitied their front fence and they find a notice about it and a bill from the council for $2 000 to clean it up?

People should have the right to be able to secure their own contractor to remove graffiti from private property. There should be a provision—and I will have a look at moving amendments to this effect—which allows the owner to notify the council that he or she is going to employ a contractor to clean their fence; and the owner should be given an extended period of time to do that. I know what some of these greedy councils will do. They will not be able to wait: on the eleventh day they will be out there removing the graffiti whether or not anyone is at home. The way some of these councils conduct themselves these days, they are like vultures preying on their ratepayers; any excuse to extort them or get a bit of money out of them is fair game. You just have to look at the way the Adelaide City Council conducts itself with parking meters, etc.—

The Hon. J.F. Stefani: And signs.

The Hon. T.G. CAMERON: And signs, as the Hon. Julian Stefani says. Just go down to the Unley council these days: you cannot go 10 metres without running into some kind of sign—'Don't do this', 'You can't do that', 'You can do this', etc. It is ridiculous.

The bill does not do anything about establishing or extending programs for young people to divert them away from vandalism. It does nothing about encouraging free wall spaces. It does nothing about addressing the social problems of graffiti and barely brushes the legal issues. It is focused on cleaning up the mess, rather than preventing it from occurring. Once again, this is a classic case of government introducing a bill designed to persuade the public that it is doing something about graffiti. It is not. This bill simply does something about cleaning it up. I would have thought that we could do better than this.

The Hon. J.F. STEFANI secured the adjournment of the debate.

CORPORATIONS (COMMONWEALTH POWERS) BILL

Adjourned debate on second reading.

(Continued from 29 May. Page 1545.)

The Hon. P. HOLLOWAY: This bill is part of a four bill package that deals with the referral of state corporations power to the commonwealth. I intend to make this my main contribution to the debate, and I indicate at the outset that the opposition supports the second reading of the bill. I intend to deal to some extent with the history of this matter. The bill we are currently debating, along with the three other bills which form the complete package, seeks to ensure that the national scheme of corporate regulation will be placed on a secure constitutional foundation. The effective system of corporate regulation is complicated by our federal structure, and historically states and territories have enacted different requirements relating to corporate regulation. As technology has changed and as the horizons of business have expanded from a local to a national to an international level, clearly the need for some national approach has become greater with time.

In July 1982, corporate regulation was based on a cooperative scheme between the commonwealth, the states and the Northern Territory. This was introduced with substantially uniform legislation applying to all jurisdictions, and if I recall correctly the administration was by the National Companies and Securities Commission (NCSC). Problems were perceived with this scheme. I notice that in his second reading speech the Attorney attributed it to a lack of commonwealth funding, and I guess the commonwealth would have blamed it on other factors. Nevertheless, there were problems emerging in that scheme in the late 1980s and a new national scheme was introduced in 1991. This scheme was based on the substantive Corporations Law which applied in the ACT, each state and the Northern Territory. In this new national scheme some commonwealth features were added to the arrangement, such as the enforcement of Corporations Law—which is clearly an important area—by the Australian Securities and Investment Commission

(ASIC), the Federal Police and the Commonwealth Director of Public Prosecutions.

Additionally, as part of this scheme the Federal Court was given power to hear matters arising under the Corporations Law of each state under a cross vesting scheme. This scheme was underpinned first by a heads of agreement and later by the Corporations Agreement, which set out the functions, objectives and voting arrangements relating to the administration of Corporations Law by the ministerial council of commonwealth and state Attorneys. This arrangement, which worked reasonably well until fairly recently, was upset in June 1999 when the Wakim case was decided by the High Court. This case invalidated the cross vesting legislation which had given the federal court power to hear matters arising under the Corporations Law of each state. A majority of judges held that Chapter III of the Constitution does not allow this scheme.

Further problems emerged in May last year in R v Hughes case. The High Court found here that a conferral of power, coupled with a duty on a commonwealth officer or authority by a state law, must be referrable to a head of power under the Constitution. For example, if a commonwealth authority such as the DPP or ASIC had a duty under Corporations Law, that duty must be supported by a head of power. This decision arguably had serious implications, not only for the corporations scheme—although I know that in his second reading speech the Attorney has debated, under some dispute, as to exactly how far that case could be extended. Certainly, some people have argued that it would also have severe implications for a number of other national schemes such as those that relate to transport, enforcement of GST and the like.

Because of these two High Court decisions, it was decided that the state should refer to the commonwealth sufficient legislative power to enact the text of the Corporations Law as a commonwealth law and to make amendments to that law subject to the terms of agreement. It is worth noting that our own Attorney-General was not in favour of the referral concept when he stated immediately after the Hughes decision on 4 May last year:

> Notwithstanding all the panic and pressure being placed upon states to commit to a solution before the problem has even been identified, the decision case yesterday indicates that there is no immediate problem.

Later, the Attorney said:

> South Australia's position is that we are not convinced that a referral of power is the only option.

Again I quote from *Hansard* from 4 May, when the Attorney then purported to speak on behalf of corporations and said:

> From the perspective of companies, I would suggest that companies do not give a damn about what underpins the Corporations Law.

This is certainly not the message that has consistently been put to me by business organisations since this constitutional dilemma first emerged. I think most businesses are very concerned to ensure that their business dealings under Corporations Law occur on a solid legislative footing.

In the *Advertiser* of 27 July last year the President of the Business Council of Australia stated that failure to resolve the situation would 'seriously undermine Australia's international business and financial reputation'. With further cases pending, it became obvious to the states and the commonwealth that this matter had to be resolved, although at that time both South Australia and Western Australia resisted the conferring of powers. I have also been advised by the Business Council of South Australia that it has been advocating for this referral of powers for some time in order to put beyond doubt the legislative and constitutional legitimacy of the Corporations Law.

Eventually an in principle agreement between all the states and the commonwealth occurred on 25 August last year. However, this agreement was undermined by the release in October of that year of two discussion papers entitled 'Breaking the gridlock: towards a simpler workplace relations system'. These papers released by the federal workplace relations minister, Peter Reith, advocated the use of commonwealth corporations powers to control workplace relations. Paper 2 subtitled 'A new structure' stated at page 14:

> . . . a system based on the corporations power. . . would apply automatically to all trading and financial corporations and to all their employees across Australia. The application of the system would not depend on the behaviour of those legal persons. It would not depend on the existence of real or contrived disputes. Instead, it would depend on the legal character of the employer, as a constitutional corporation, and the relationship of employees with the corporation.

Quite naturally, this proposal alarmed the states. It was feared that a referral of power would give the commonwealth the potential to legislate over industrial relations within the limitations of the referral. Therefore, further negotiations took place regarding the terms on which the referral of powers would occur. It was decided that industrial relations needed to be specifically excluded from the referral of power. On 28 November 2000 state ministers agreed on the terms of a referral bill. Further negotiation, however, took place between the Prime Minister and the Premiers of New South Wales and Victoria on the terms of the referral, and on 21 December last year an agreement was reached between those governments on the terms on which all states would subsequently be asked to refer power. The bills to be introduced that we are now debating in South Australia reflect this agreement.

The bill we are on now—the Corporations (Commonwealth Powers) Bill—enables the commonwealth parliament to enact as commonwealth laws the proposed Corporations Bill 2001 and the Australian Securities and Investments Commission Bill 2001 in the form of the bills which were tabled in the New South Wales parliament on 7 March 2001. Those bills represent the Corporations Law operations of ASIC as they had existed over the past few years.

The bill also enables the commonwealth to amend the laws and regulations only to the extent that the amendments are to the bills referred to the commonwealth. The bill incorporates safeguards to meet state concerns about referring power to the commonwealth. The objects clause in this bill includes a provision to the effect that the referred powers will not be used for the purpose of the commonwealth regulating specifically industrial relations or any other matter previously agreed upon by the states.

The bill also provides that the reference of power is to terminate five years after the commonwealth corporations legislation commences, or at an earlier time by proclamation. This referral can be extended beyond the five years only by an act of parliament. This is different, I point out, to what occurs in other states, which allow for an extension beyond the five years to be made by proclamation. I point out to the Council that, implicit in the five year time limit on the reference of powers, is the expectation that a more enduring solution involving a commonwealth referendum is required ultimately to more permanently settle the matter. I guess we will wait with interest to see what evolves from the various meetings of commonwealth and state attorneys on that front.

The referral of powers can be terminated earlier than the envisaged five years if the commonwealth parliament makes amendments to the new Corporations Act which go beyond the referred power. The bill also provides for the termination of the power of the commonwealth to amend the referred laws by proclamation. However, if only the amendment reference is terminated, the state terminating the reference would cease to be a part of the new scheme, unless all the states revoked the reference, giving six months' notice prior to revocation. I guess the reality for us all is that, for a small state such as South Australia, with less than 8 per cent of the nation's population, our companies cannot effectively operate outside a national corporation system. Therefore, our options are strictly limited.

I point out that it is necessary for this legislation to pass through parliament in the next two weeks, so that South Australia can be part of the new national scheme, which commences on 1 July this year. The opposition will support the second reading of the bill and will do what it can to facilitate the passage of this bill through the parliament so that, indeed, our corporations can be provided with the security that the new national scheme will allow. I point out that this bill, as with some of the others, is identical to the bill that is passing through the other houses of parliament in Australia, with the one exception that I mentioned earlier. We would, therefore, not seek to amend it.

The Hon. J.F. STEFANI secured the adjournment of the debate.

CORPORATIONS (ANCILLARY PROVISIONS) BILL

Adjourned debate on second reading.
(Continued from 29 May. Page 1546.)

The Hon. P. HOLLOWAY: This is a technical bill which is complementary to the bill I have just mentioned. It contains transitional provisions under the new corporations legislation to be enacted by the commonwealth. The bill enacts those ancillary provisions which relate to the reference of corporation powers to the commonwealth. Again, I understand that this bill is, essentially, identical to legislation passed in other states, and the opposition supports its second reading.

The Hon. J.F. STEFANI secured the adjournment of the debate.

CORPORATIONS (ADMINISTRATIVE ACTIONS) BILL

Adjourned debate on second reading.
(Continued from 29 May. Page 1547.)

The Hon. P. HOLLOWAY: This is the third bill in the package of changes to the corporations law. This bill applies to any action taken by a commonwealth officer under the corporations legislation that might be challenged as invalid because the action was taken pursuant to a state act, when that power could not have been conferred by a commonwealth act. The High Court decision to which I referred earlier, R v Hughes, caused uncertainty over the exercise of powers by commonwealth agencies such as the Australian Securities and Investment Commission (ASIC) and the commonwealth Director of Public Prosecutions.

While I note in the Attorney-General's explanation it is almost certain that these actions would be valid, this bill puts the matter beyond doubt by ensuring that such actions are deemed to have had the same effect as if they were taken by a state officer. I understand that this bill is essentially identical to the legislation passed in other states, and we support its second reading.

The Hon. J.F. STEFANI secured the adjournment of the debate.

STATUTES AMENDMENT (CORPORATIONS) BILL

Adjourned debate on second reading.
(Continued from 29 May. Page 1550.)

The Hon. P. HOLLOWAY: This is the final bill in the package of four that addresses the corporations law problem. The bill contains consequential amendments to a number of state acts so that they refer in future to the new commonwealth legislation. In other words, reference is made to what will be the new commonwealth Corporations Act rather than the act that applied the previous scheme. As such, this bill is different from that in other states because clearly it has to amend a wide range of acts in the state jurisdiction.

The bill does contain one important provision. Clause 69 of the bill provides an amendment to the Corporations (Commonwealth Powers) Act should the amendment reference be terminated by the states. This clause, which will sit on the books unless required, amends the objects clause of the Corporations (Commonwealth Powers) Act by striking out subsection (3), which refers to limiting the commonwealth power to amend the legislation and inserts a far more wide-ranging clause dealing not just with industrial relations but also with powers over associations.

I know the Attorney-General has put the view that powers over associations should require more attention than perhaps has been given by the other Attorneys-General. I guess time will tell whether he is right or wrong on that matter. Clause 70 is a transitional provision which provides that clause 69 does not affect any law of the commonwealth corporations legislation made under the amendment reference within the meaning of the Corporations (Commonwealth Powers) Act, and the opposition is quite happy to have that clause sitting there in the bill. We are happy to support the second reading and at this stage do not propose any amendments to any of the four bills.

The Hon. J.F. STEFANI secured the adjournment of the debate.

REAL PROPERTY (FEES) AMENDMENT BILL

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

ADJOURNMENT

At 10.10 p.m. the Council adjourned until Thursday 31 May at 11 a.m.