LEGISLATIVE COUNCIL

Thursday 26 July 2001

The PRESIDENT (Hon. J.C. Irwin) took the chair at 11 a.m. and read prayers.

SITTINGS AND BUSINESS

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

That standing orders be so far suspended as to enable petitions, the tabling of papers and question time to be taken into consideration at 2.15 p.m.

Motion carried.

STATUTES AMENDMENT (STALKING) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Criminal Law Consolidation Act 1935, the Domestic Violence Act 1994 and the Summary Procedure Act 1921. 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.

The crime of stalking is one which has only been recognised fairly recently. South Australia enacted its stalking legislation in 1994.

A recent development in the area of stalking has been behaviour commonly dubbed 'cyberstalking'. Cyberstalking occurs when stalkers take advantage of information technology as a means of stalking their victims.

Cyberstalking can occur in a number of different ways. The cyberstalker may send emails to his or her victim; he or she may seek to contact his or her victim through chat-rooms; information about the victim may be posted on the internet; or the victim may be directed to offensive or threatening websites. Like other stalking behaviour, much of this may be behaviour which under different circumstances would be considered 'normal'. What makes this behaviour stalking is the intention of the perpetrator either to cause physical or mental harm to the victim, or to cause the victim to feel serious apprehension or fear.

The prevalence of cyberstalking has been better documented in the USA than in Australia. However, in March of this year, the Supreme Court of Victoria had to consider jurisdictional issues regarding a case in which a Victorian man was alleged to have stalked a Canadian woman, using the internet among other tools to stalk his victim.

In Australia, Victorian legislation currently takes the use of electronic forms of communication into account in its stalking legislation. Other legislation takes a more general approach which could include electronic communications within the definition of stalking behaviour.

South Australia's stalking legislation makes no direct references to the use of electronic forms of communication for stalking purposes. The Government considers it desirable to make it clear that stalking 'on-line' is equivalent to stalking 'off-line' and should be treated as such.

This Bill will amend not only the provisions of the *Criminal Law Consolidation Act* which create the offence of stalking, but also the related provisions in the *Domestic Violence Act* and the *Summary Procedure Act* which provide for the making of restraining orders. It is desirable to maintain consistency across these three Acts, and to ensure that there is the same scope for prevention via a restraining order as there is for punishment via the offence provisions.

No form of stalking, whether on-line or off-line, is acceptable behaviour in a modern society. These amendments will reinforce the existing stalking laws and strengthen their application to cyberstalking.

Explanation of clauses

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

Clauses 1, 2 and 3 are formal.

PART 2

AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT 1935

Clause 4: Amendment of s. 19AA—Unlawful stalking

Section 19AA of the *Criminal Law Consolidation Act 1935* provides that a person who stalks another is guilty of an offence and describes the type of behaviour that amounts to stalking. Clause 4 proposes an amendment to that section to add two new types of behaviour that may amount to stalking. That is, that stalking may occur if a person, on at least two separate occasions—

publishes or transmits offensive material, by means of the internet or some other form of electronic communication, in such a way that the offensive material will be found by, or brought to the attention of, the other person; or

communicates with the other person, or to others about the other person, by way of mail, telephone, facsimile transmission or the internet or some other form of electronic communication in a manner that could reasonably be expected to arouse apprehension or fear in the other person.

The proposed amendment also provides that if material is inherently offensive material the circumstances of the dealing with the material cannot deprive it of that character.

PART 3

AMENDMENT OF DOMESTIC VIOLENCE ACT 1994

Clause 5: Amendment of s. 4—Grounds for making domestic violence restraining orders

Section 4 of the *Domestic Violence Act 1994* provides the grounds on which a domestic violence restraining order may be made. This clause proposes to add to the grounds already covered by the Act the situations where the defendant, on two or more separate occasions—

publishes or transmits offensive material, by means of the internet or some other form of electronic communication, in such a way that the offensive material will be found by, or brought to the attention of, a family member; or

communicates with a family member, or to others about a family member, by way of mail, telephone, facsimile transmission or the internet or some other form of electronic communication.

The proposed amendment also provides that if material is inherently offensive material the circumstances of the dealing with the material cannot deprive it of that character.

PART 4

AMENDMENT OF SUMMARY PROCEDURE ACT 1921

Clause 6: Amendment of s. 99—Restraining orders

Section 99 of the *Summary Procedure Act 1921* provides for restraining orders where a person behaves in an intimidating or offensive manner and describes the type of behaviour that will amount to this. This clause proposes to add to that behaviour the situations where the defendant, on two or more separate occasions—

1. publishes or transmits offensive material, by means of the internet or some other form of electronic communication, in such a way that the offensive material will be found by, or brought to the attention of, a person; or
2. the defendant communicates with a person, or to others about a person, by way of mail, telephone, facsimile transmission or the internet or some other form of electronic communication.

The proposed amendment also provides that if material is inherently offensive material the circumstances of the dealing with the material cannot deprive it of that character.

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

CRIMINAL LAW CONSOLIDATION (OFFENCES OF DISHONESTY) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the criminal Law Consolidation Act 1935; to repeal the Secret Commis-

sions Act 1920; and to make related amendments to other acts. Read a first time.

The Hon. K.T. GRIFFIN (Attorney-General): 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 is the result of a review of the criminal law in the area of criminal offences punishing dishonesty in its various forms. The review is based on the earlier comprehensive work of the Model Criminal Code Officers Committee (MCCOC), a committee reporting to the Standing Committee of Attorneys-General which, in turn, drew largely on the substantial English experience in reform of the criminal law in this area. The MCCOC review involved substantial public consultation. Following the Model Code Report, which was published in December 1995, South Australia developed the model reflected in this Bill. The Bill (and a brief accompanying explanation) was released for public comment and the comments received have been taken into consideration.

The State of the Law in South Australia

South Australian criminal law on theft, fraud, receiving, forgery, blackmail, robbery, and burglary is almost entirely contained in the *Criminal Law Consolidation Act 1935*, Parts 5 and 6, sections 130-236, as largely supplemented by the common law. The offences are antiquated and inadequate for modern conditions. They are, in general terms, the offences contained in the English consolidating statutes of 1827, 1861 and 1916. Those consolidating statutes, in turn, brought together a wide range of diverse specific enactments that went back to the time of Henry III (*circa* 1224).

The definition of larceny at common law as the 'asportation of the property of another without their consent' dates from the *Carrier's Case* of 1474.

Cheating was a common law offence from very early times, but false pretences was not made a criminal offence until 1757.

The current South Australian false pretences offence (section 195) is in very much the same form as it was originally. The distinction between obtaining by false pretences on the one hand, and larceny by a trick on the other, turns on the question whether the fraud induced the victim to intend to pass property or merely possession to the thief. This is very difficult to understand and apply, and makes no real sense at all. It is only one example of the deficiencies and unnecessary complexities of the current state of the law.

Examples could be multiplied but, in general terms, the position can be summarised by saying that South Australian law in the areas of theft, fraud, receiving, forgery, blackmail and robbery (and associated offences) is the common law, as overlaid and supplemented by numerous other enactments, of various ages, which, in many cases, are inconsistent with the general principles with which they are supposed to work. In addition, there are a large number of anomalies, such as offences directed at the forgery of currency (sections 217-220) and offences relating to the conduct of company directors (sections 189-194). Neither of these sets of offences are of any use.

South Australia has the most antiquated law in these areas in Australia. It is unnecessarily complex, difficult to understand, full of anomalies and a barrier to the effective enforcement of the law against dishonesty generally, both in this State and nationally.

In 1977, the Mitchell Committee said:

The defects of the present law are that it is unduly complex, lacks coherence in its basic elements and has not kept up to date with techniques of dishonesty. . . . [The] distinctions are difficult enough for lawyers; for laymen they are an abyss of technicality.

The law in South Australia on 'secret commissions' is set out in the *Secret Commissions Prohibition Act*, enacted in 1920. It came into effect on 1 January 1921. It creates a series of offences which, broadly speaking, criminalise the behaviour of giving, soliciting, or receiving payment by or for an agent in order to influence a judgement or decision. Some offences deal with 'secret' payments and some do not. Some offences require that the payment be made or received 'corruptly' and some do not. The object of the legislation was to create a series of criminal offences dealing with corruption in both private and public life. The offences deal with variations on bribery and deceit in dealings. It differs from the more widely known criminal laws dealing with bribery and corruption in that it was primarily aimed at private, rather than public, business dealings.

In 1992, the South Australian Parliament passed the *Statutes Amendment and Repeal (Public Offences) Act 1992*. That Act contained a new regime of public sector oriented corruption offences. Although the current secret commissions legislation does cover 'servants of the Crown', the 1992 offences dealing with bribery and corruption of public officers and abuse of public office deal comprehensively with the serious offences appropriate to this area. The area left untouched by the 1992 reforms is the area of corruption and bribery in private life and business.

There are a number of reasons why this Act requires an overhaul.

- The *Secret Commissions Prohibition Act* is drafted in a style common to legislation of that age, but one which makes it hard to understand, and obscure to those who must conform their actions to its dictates. Further, in South Australia, its prohibitions have remained in an obscure separate Act of Parliament rather than, as in most other jurisdictions, incorporated into the mainstream of criminal legislation, be that a Criminal Code or a general Crimes Act. At the very least, therefore, the legislation requires a modern form and an integration into the general body of the criminal law.
- Much has changed since the legislation was originally passed. It overlaps with the general criminal law relating to fraud, extortion, and bribery and corruption, and the assumptions about those areas of the criminal law against which its needs were assessed and its scope defined may not be valid today. The same is true, if not more so, about the society in which it operates. The legislation needs to be reconsidered in light of the current legal and social environment in which it is intended to operate and, in particular, integrated with bribery and corruption offences.
- While the offences contained in the legislation have not been widely used since its enactment, a number of matters requiring attention has been exposed. These include, significant confusion about the meaning of the word 'corruptly', a reversal of onus of proof which could be described as 'draconian', a need to reconsider the applicable penalties, and a peculiar statute of limitations which bars action 6 months after the principal discovers the offence.

The Model Criminal Code and the Standing Committee of Attorneys-General

In 1991, the Standing Committee of Attorneys-General (SCAG) formed what became the Model Criminal Code Officers Committee (MCCOC) with a remit to make recommendations about a model criminal code for all Australian States and Territories. In September 1992, a special SCAG meeting on complex fraud cases requested MCCOC to give priority to theft and fraud as the first substantive chapter of such a code. This request was based in part on Recommendation 8 of the National Crime Authority's conference on white collar crime held in Melbourne in June 1992, which said:

That the various State laws and codes be revised so as to provide uniform fraud legislation as a mechanism for consistency for investigation and presentation of evidence in all Australian jurisdictions.

MCCOC took up the issues in the following way. It issued 2 discussion papers; the first, in December 1993, dealing with theft, fraud, robbery and burglary and the second, in July 1994, dealing with blackmail, forgery, bribery and secret commissions. In December 1995, it issued a Final Report which consolidated its recommendations in those areas. The Final Report was based on nation-wide submissions (including 40 written submissions) and consultations. In June 1996, MCCOC released a Discussion Paper on conspiracy to defraud followed by a Report in May 1997. Implementation of the Model Code recommendations is a matter for each Australian State and Territory to decide for itself.

It follows that the current law in South Australia in the areas of theft, fraud, receiving, forgery, blackmail, robbery, burglary and secret commissions is long overdue for reform. A complete overhaul of the law is overdue, not only on its intrinsic merits, but also in light of the recommendations of the National Crime Authority Conference and the special meeting of the SCAG.

MCCOC recommended a structure for theft, fraud and related offences based on the English *Theft Act*. The *Theft Act* model was developed by the English Criminal Law Revision Committee in 1966 and enacted in England in 1968. It represents an almost entirely fresh start and is, so far as is possible, expressed in simple and plain language. Its basics are offences of theft, obtaining by deception, and receiving, with the aggravated offences of robbery, forgery, burglary and blackmail. There are, in addition, supplementary offences, such as taking a motor vehicle without consent and making off without payment. Some form of the *Theft Act* model has already been enacted in Victoria, the Australian Capital Territory and the Northern Territory. The scheme thus has the advantage of having been tested

in 3 Australian jurisdictions and more substantially tested in England over the past 28 years. However, the view has been taken that the drafting of the English *Theft Act* and, in consequence, the MCCOC recommended provisions, is antiquated and does not comply with the drafting style of the South Australian statute book. Consequently, an entirely fresh version adopting a substantially modified approach to the whole subject has been drafted. The result is a Bill quite different in form from other models, although its effect is very similar.

Theft

The general offence of larceny and the large number of specific offences of larceny, currently contained in sections 131-154 of the *Criminal Law Consolidation Act*, are to be replaced with a general offence of theft. Hence, specific offences of stealing trees, dogs, oysters, pigeons, and so on, will be subsumed into a general offence. Theft is defined as the taking, retaining, dealing with or disposing of property without the owner's consent dishonestly, intending a serious encroachment on the proprietary rights of the owner.

The core of the meaning of theft (and a number of other offences in the Bill) is 'dishonesty'. The Bill captures and codifies the meaning of 'dishonest' as it has been developed in the English *Theft Act* environment. 'Dishonest' is defined as acting dishonestly according to the standards of ordinary people and knowing that one is so acting. This is a community standard of dishonest behaviour and, accordingly, will be a matter for a jury to decide in serious cases.

It may be noted that the definition of dishonesty includes the current common law defence of 'claim of right'—that is, a person will not be dishonest if he or she mistakenly believes that he or she is exercising a right. This is (and has always been) an exception to the old rule that ignorance of the law is no excuse—but the mistake must be about some legal or equitable (in the technical sense of that word) right, as opposed to moral right. It is not enough that the person thinks that there is some moral right to do what they are doing (such as defrauding rich insurance companies). They must believe that they are acting in accordance with law—for example, taking back property which the defendant honestly (but mistakenly) believes belongs by law to her.

The old offence of larceny required proof of what was known as an 'intention to permanently deprive the owner' of the object of the larceny. The meaning of this phrase became the subject of some litigation at common law. In the case of the *Theft Act* and this Bill, the law is reduced to a codified form of words, rendering the state of the law more certain. In the case of this Bill, it is referred to as 'intending a serious encroachment on an owner's proprietary rights'. The existing law concerning theft by trustees, rules in relation to theft of real property and the rule relating to 'general deficiency' are preserved by the Bill.

In common language, a thief is someone who steals goods and a receiver is someone who pays the thief for the stolen goods. However, it has never been as simple as that. There has always been a considerable overlap between theft and receiving and that overlap has produced complex legal disputes. This has been so ever since the offence of receiving was invented by statute. Section 196 of the *Criminal Law Consolidation Act* currently says:

> *(2) Charges of stealing any property and of receiving that property or part of that property may be included in separate counts of the same information and those counts may be tried together.*
>
> *(3) Any person or persons charged in separate counts of the same information with stealing any property and with receiving that property or part of that property may severally be found guilty either of stealing or of receiving the property or part of the property.*

Under the modern approach to the area, theft is defined, in law, so widely that all receiving amounts to theft, because theft has moved away from its medieval roots as a crime simply involving the *taking* of possession without consent. The only reason for keeping any crime of receiving is the popular perception that there is some kind of difference between the archetypal thief and the archetypal receiver. This maintains an unnecessary complication in the law and unnecessarily complicates the task for judge and, where it is appropriate, jury. Therefore, the crime of receiving is being formally incorporated into theft and hence the *separate* offence of receiving will disappear; but, in deference to the popular conception, the name of receiving will still be referred to in the crime of theft.

Robbery

The traditional offences of robbery and aggravated robbery are retained with no substantive change. The double references to assault with intent to rob are removed, with assault with intent to rob being dealt with by section 270B of the *Criminal Law Consolidation Act*.

Money-Laundering

The offence of money-laundering is transferred from its current location in the *Criminal Law Consolidation Act* to a Division just dealing with money laundering.

Fraud and Deception

A variety of offences of fraud are replaced by one general offence of deception. The effect of this is to do away with the archaic differences between the various statutory fraud offences and, also, to do away with the archaic difference between the offence of obtaining by false pretences and larceny by a trick. The offence also collapses the distinction between obtaining and attempt to obtain. No actual obtaining as a result of the deception is required.

Conspiracy to Defraud

The common law offence of conspiracy to defraud remains alone among the abolition of the rest of the common law relating to offences of dishonesty. While this decision is not in line with a determination to codify the law for reasons of access and precision, it conforms to the same decision that has been made in Victoria (and other places, notably, the UK). It really is an amorphous 'fall back' offence of uncertain content designed to catch innovative dishonesty when all else fails.

There is no doubt at all that conspiracy to defraud catches conduct that goes beyond any specific offences. It exists in 2 main forms, which are not mutually exclusive. The first variant was described by an eminent judge as follows:

> *[A]n agreement by two or more by dishonesty to deprive a person of something which is his or to which he is or would be or might be entitled and an agreement by two or more by dishonesty to injure some proprietary right of his, suffices to constitute the offence of conspiracy to defraud.*

This form of the offence does not necessarily involve deception.

The second form of the offence requires a dishonest agreement by two or more persons to 'defraud' another by deceiving him/her into acting contrary to his/her duty. It now appears to be settled that the person deceived need not be a public official and need not suffer any economic loss or prejudice.

Some time ago, the UK Law Commission comprehensively surveyed what it thought conspiracy to defraud covered, which was not caught by the then existing (*Theft Act*) law. The latest summary of the position is quoted immediately below. Like the Law Commission, the position taken by this Bill is that it is not currently possible to represent adequately, and in a principled manner, the scope and operation of the protean offence of conspiracy to defraud and, therefore, as a matter of practical reality, it must be retained.

> *. . . we have already concluded, in our conspiracy to defraud report, that we could not recommend any restrictions on the use of conspiracy to defraud 'unless and until ways can be found of preserving its practical advantages for the administration of justice'. Our view at that time was that conspiracy to defraud added substantially to the reach of the criminal law in the case of certain kinds of conduct (or planned conduct) which should in certain circumstances be criminal. We set out a number of instances of conduct within that category, some of which we have subsequently considered. One such lacuna was that it was not possible to prosecute an individual for obtaining a loan by deception. We recommended that the offence of obtaining services by deception, contrary to section 1 of the Theft Act 1978, should extend to such a case; this recommendation was repeated in our money transfers report and implemented by section 4 of the Theft (Amendment) Act 1996. Another lacuna, that of corruption not involving consideration, has been addressed in our recent report on corruption. Yet another, the unauthorised use or disclosure of confidential information, is the subject of our continuing project on the misuse of trade secrets. There are further possible lacunae that might emerge if conspiracy to defraud were abolished. We think that the proper course is to await the responses to this consultation paper and then, if it is agreed that a general offence of dishonesty would not be appropriate, consider whether the matters that we have previously considered as possible lacunae should be the subject of specific new offences. We are very conscious that some of them are highly controversial.*

Forgery

The current law contains a great many specific offences of forgery which are of considerable age. They are all to be replaced with a general offence of 'dishonest dealings with documents' which extends the offence of forgery, based on the pivotal notion of

dishonesty, beyond creating and using a false document to dishonestly destroying, concealing or suppressing a document where a duty (as specified in the Bill) to produce the document exists. There is also a summary offence of strict liability of possession, without lawful excuse, of an article for creating a false document or falsifying a document. It should be noted that the definition of 'document' includes electronic information.

Penalties

It is appropriate, at this point, to comment about maximum penalties. Forgery maxima provide as good an example as any. Some of the current forgery offences are punishable by life imprisonment. This is merely the result of the abolition of capital punishment (and its replacement by life imprisonment) in relation to non-homicide offences in the nineteenth century, and is absurd in the twenty first. It amounts, in its current state, to an abdication by the legislature of any role at all in indicating to the courts the level at which penalties for offences should be set. It is not only the life maxima that are absurd. Interference with a crossing on a cheque with intent to defraud carries a maximum of 14 years compared with, for example, 10 years for the indecent assault of a child under 12 years of age. Preserving the sanctity of certain, sometimes important, documents is one thing-getting comparative social priorities right is quite another, and it is the latter that should take precedence. It is not intended by any amendments in the area of penalties to send the message to either the judiciary or the general public that the current applicable penalties in practice should be reduced. On the contrary, all that is being done is to fix applicable maxima at a realistic level when compared to other offences of comparable general gravity.

Computer and Electronic Theft/Fraud

It is notorious that the old common law system had great difficulty dealing with the new ways in which various old forms of dishonesty (and some new ones) were facilitated by the use of electronic and, more recently, computerised forms of money and money's worth. There are essentially 2 ways in which the law can be changed in order to cope with the problem. The first is to try to use definitions in order to integrate the new concepts to a general set of offences. That is the course that has been taken in relation to the new offences relating to the dishonest dealings with documents. The second method is to try to create a specific offence or specific offences to cover the field. The latter is what the Bill tries to do with general dishonesty offences. The Division is headed *Dishonest Manipulation of Machines* and the notions of manipulation and machine have been defined specifically with this in mind.

The Problem Of Appropriation

The common law of larceny and, hence, current South Australian law, requires that the offender take and move the goods before they can be stolen. This reflects the requirements of a traditional society in which a thief was seen as someone who took something. But that is inadequate. The common law had to invent the idea (and offence) of 'conversion' to cover the idea that a person could come into possession of something lawfully and then unlawfully do something with it. The *Theft Act* offence of theft, and those models derived from it, solve the problems created by this *ad hoc* approach by basing the offence on the idea of 'appropriation' which, in turn, is defined in terms of 'any assumption of the rights of the owner'.

This concept is, and was intended to be, wider than the combined offences of taking and conversion. But it, in turn, has given rise to problems. This can best be illustrated by example.

> *Example 1:* Suppose D removes an item from the shelf of a supermarket and switches labels with another item with the intention of getting a lower price from the checkout. Is that an act of appropriation? The answer is—yes. And so it should be. What is the appropriation? The answer is—the switching of labels. It cannot be the taking of the item off the shelf, because that is not an act by way of interference with or usurpation of the rights of the owner in any way (and because, otherwise, all shopping would be appropriation—which would not be sensible, and the court so held). There is no problem under the general formula of 'assumption of the rights of the owner'. The owner has the right to affix the price to the item but D has assumed that right.
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> *Example 2*: Suppose D1, D2 and D3 go into a supermarket. D1 and D2 distract the manager while D3 takes 2 bottles of whiskey from the shelf and conceals them in her shopping bag. Is there an appropriation? The answer is—yes. Where is the appropriation? On parity of reasoning, it has to be the concealment of the bottles. It is very hard to find an exact usurpation of the rights of the owner there.

Other examples can be given. This sort of problem gave rise to some complex and confusing English court decisions on the subject. The result appears to be that the general concept of appropriation has become so wide as to have virtually no limits at all. In that case, it is reasonable to question whether it serves any useful purpose.

The solution adopted by the Bill to this problem is to return to basic concepts of taking, retaining, dealing with, or disposing of, property, including the notion of conversion, and to supplement these ways of describing theftuous offences with supplementary offences which specifically cover the margins of appropriation.

So, for example, the instance of label swapping in example 1 is dealt with by an offence of dishonest interference with merchandise. Other famous examples are included under an offence of dishonest exploitation of advantage. These offences savour of both theft and fraud and so are set out on their own.

This set of offences also contains a generalised offence of making off without payment. The current offence, which is contained in section 11 of the *Summary Offences Act 1953*, is confined to food and lodging, but there is no sound reason (but for the accidents of history) why that should be so and, indeed, there has been a consistent demand from the petrol station industry for a general offence to criminalise 'drive-offs' from petrol stations. This offence will cover that situation.

Preparatory Conduct—Going Equipped

The current law contains a series of offences labelled 'nocturnal offences'. These include the offence of being armed at night with a dangerous or offensive weapon intending to use the weapon to commit certain offences, possession of housebreaking equipment at night, and being in disguise or being in a building at night intending to commit certain offences. These offences also attract generally disproportionately high maximum penalties ranging from 7 to 10 years imprisonment. The current offences are also limited in that they are only committed if the relevant conduct takes place at night.

These offences derive originally from the notorious *Waltham Black Act* of 1722 (9 Geo 1, c 22) entitled 'An Act for the more effectual punishing of wicked and evil disposed Persons going armed in Disguise, and doing Injuries and Violences to the Persons and Properties of His Majesty's Subjects, and for the more speedy bringing of Offenders to Justice'. In fact, the *Waltham Black Act* was the most severe Act passed in the eighteenth century and no other Act contained so many offences punishable by death.

The current provisions of section 171 of the *Criminal Law Consolidation Act* (Nocturnal offences) derive from that Act. For example, the *Waltham Black Act* was so called because it made it an offence to be out at night with a blacked up face. The offence was aimed at nocturnal poachers. That provision is now in section 171(3) ('being in disguise at night with intent'). There seems no obvious modern justification for such an offence, particularly one punishable by 7 to 10 years imprisonment. The offence in section 171(4) ('being in a building at night with intent') has been dealt with more comprehensively by the home invasion amendments of 1999.

It is proposed to deal with the offence in section 171(1) ('being armed at night with a dangerous or offensive weapon with intent') in 2 ways. First, the proposed offence in what would become section 270C will cover possession of *any* article with intent in relation to offences of dishonesty, whether it be during the day or at night. However, the ambit of the current offence will be limited, in that it must occur in 'suspicious circumstances', as defined in the Bill. It is suggested that this limitation is justified by the true purpose of the offence; that is, to catch behaviour preparatory to the commission of a more serious offence. Second, insofar as the current offence deals with possession of weapons with intent to commit an offence against the person (as opposed to an offence of dishonesty), a corresponding offence is proposed to be enacted as section 270D. It can then be reviewed in its proper context when offences against the person are examined in the future.

Similarly, it is proposed to replace the offence in section 171(2) ('possession of housebreaking implements') with new section 270C. This section will cover possession of *any* article with intent, whether it be during the day or at night. However, again, the ambit of the current offence will be limited in that it must occur in 'suspicious circumstances', as defined in the Bill. It follows that *mere* possession of housebreaking implements at night is proposed no longer to be an offence as such, but will have to occur in suspicious circumstances as defined.

In general, therefore, it is proposed to replace these outmoded offences with modern offences, with suitable penalties, directed at similar conduct. The Division is headed 'Preparatory Conduct', for these offences are aimed at conduct which is more remote from the

offence than an attempted offence, extending to behaviour which is preparatory to the commission of an offence. It is for that reason that an intention to commit an offence in suspicious circumstances is required.

Secret Commissions

The South Australian *Secret Commissions Prohibition Act 1920* is the current source of law on this subject, and its shortcomings have been addressed above. The Bill, therefore, proposes a new Part in the *Criminal Law Consolidation Act* to replace the *Secret Commissions Act*. The offences concern unlawful bias in commercial relationships. They cover both public and private sector fiduciaries. The essence of the offences is the exercise of an unlawful bias in the relationship, resulting in a benefit or a detriment undisclosed at the time of the transaction. The series of offences also includes a correlative offence of the bribery of a fiduciary.

Payola

This sequence of offences contains a new concept for an offence known as 'payola' It is allied to secret commissions. The principal difference between the 2 is that secret commissions concern the breach of a fiduciary relationship and payola does not. The essence of the offence of payola occurs when a person holds him/herself out to the public as an independent expert giving impartial advice on any subject when, in reality, the person has an undisclosed financial interest in giving the advice. The commission of the offence may be avoided by appropriate disclosure of the financial interest. It is this offence which would have been brought into play in the recent 'cash for comment' controversy.

Blackmail

Blackmail (or extortion, as it is sometimes known) has always been regarded as a serious offence and there are a number of variations on the offence in the *Criminal Law Consolidation Act*. These are all old specific variations on the main theme, and the essence of the proposal contained in the Bill is to generalise them into one offence. The difficult part of the offence(s) is, and has always been, that the demand must be 'unwarranted', and the Bill proposes that the test be analogous to that proposed for the equally slippery notion of 'dishonesty'; that is, a demand will be 'unwarranted' if it is improper according to the standards of ordinary people and if the accused knows that this is so.

Piracy

The part of the *Criminal Law Consolidation Act* under review contains a series of very serious offences, indeed, dealing with piracy. These offences are very old and are, more or less, almost identical to the English statutes from which they were copied. For example, the offence contained in section 208 of the Act is almost word for word from the *Piracy Act* of 1699 and the offence of trading with pirates in section 211 is almost word for word from the *Piracy Act* of 1721. These are all punishable by life imprisonment as a result of the abolition of the death penalty.

It should be obvious that there is not a great deal of piracy in South Australia but that some offence of piracy should be on the criminal statute book, not only because of the obligations imposed by international conventions, but also because of the complexities surrounding the reach of State and Commonwealth criminal laws in the seas surrounding the State. The Bill, therefore, contains updated piracy offences. Advice is being sought from the Commonwealth about a co-operative legal regime in this area. The old piracy offences are punishable by life imprisonment and that maximum penalty is retained in the Bill.

Maximum Penalties

The subject of maximum penalties has been discussed in part above. In general terms, the maximum penalties provided for this sequence of offences in current legislation are inconsistent and the product of uncorrected historical accident, with the exception of the offences relating to serious criminal trespass, where the law was renewed and the will of Parliament firmly expressed in late 1999. An attempt has been made to rationalise the rest. It is repeated that there is no intention to send a message that any of this rationalisation is directed at a lowering of currently applicable actual penalties. The law relating to serious criminal trespass remains substantively the same as that passed in 1999.

The following table compares the old maximum penalties and those proposed by the Bill.

Offence	Old Maximum Penalty	New Maximum Penalty
Larceny (General)	5 years	10 years
Larceny (Various specific)	Up to 8 years	2 years to 10 years
Robbery	14 years	15 years
Aggravated robbery	Life	Life
Receiving	8 years	10 years
Money laundering	$200 000 or 20 years (individual) $600 00 (body corporate)	$200 000 or 20 years (individual) $600 000 (body corporate)
Fraud (Deception)	4 years (general offence) 7 years (some specific offences)	10 years
Forgery (Dishonest dealings with documents)	Various, but up to life in a number of instances	10 years
Dishonest manipulation of machines	N/A	10 years
Miscellaneous dishonesty offences	N/A	2 years to 10 years
Nocturnal offences (Preparatory offences)	7 to 10 years	Up to 7 years
Secret commissions offences	$1 000 or 6 months (individual) $2 000 (body corporate)	7 years
Payola	N/A	5 years
Blackmail	Various—2 years to life	15 years
Piracy offences	Life	Life

Conclusion

This Bill represents a major reform effort in a technical and complex area of the criminal law. Technical and complex it may be but, in a sense, there are few more important areas of the law. A great deal of the workings of the criminal justice system are spent in the area of offences of dishonesty. Dishonesty is distressingly prevalent, but it has ever been thus. The law of South Australia has, for many years, been burdened with an increasingly antiquated legislative framework which represents the law as it essentially was in 1861 and earlier. This Bill is an attempt to reform and codify the law on the subject, bring it up to date, sweep away anachronisms and provide a fair and reasonable offence structure.

I commend the bill to honourable members.

Explanation of clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Substitution of ss. 130-166

Sections 130 to 166 of the principal Act (which comprise much of the current Part 5 of the principal Act) are to be repealed and new Parts 5 (Offences of Dishonesty) and 6 (Secret Commissions and Payola) are to be substituted.

PART 5: OFFENCES OF DISHONESTY

DIVISION 1—PRELIMINARY

This Division is necessary for understanding how new Part 5 is to be interpreted and applied in relation to a person's conduct and the criminal law.

130. Interpretation

New section 130 contains quite a number of definitions for the purposes of the new Part, including definitions of benefit, deception, detriment, fundamental mistake, manipulate (a machine), money laundering, owner (of property), proceeds, property, stolen property and tainted property.

131. Dishonesty

New section 131 discusses what makes a person's conduct dishonest (and, therefore, liable to criminal sanction). The concept of what constitutes dishonest conduct flows throughout new Part 5.

There are 2 limbs to dishonest conduct. A person's conduct is dishonest if—

1. the person acts dishonestly according to the standards of ordinary people (a question of fact to be decided according to the jury's own knowledge and experience); and
2. the person knows that he or she is so acting.

The conduct of a person who acts in a particular way is not dishonest if the person honestly but mistakenly believes that he or she has a legal or equitable right to act in that way.

132. Consent of owner

Reference to the consent of the owner of property extends to—

- the implied consent of the owner; or

· the actual or implied consent of a person who has actual or implied authority to consent on behalf of the owner.

A person is taken to have the implied consent of another if the person honestly believes in the consent from the words or conduct of the other. A consent obtained by dishonest deception cannot be regarded as consent.

133. Operation of this Part

This clause provides that new Part 5 operates to the exclusion of offences of dishonesty that exist at common law or under laws of the Imperial Parliament. However, the common law offence of conspiracy to defraud continues as part of the criminal law of South Australia.

DIVISION 2—THEFT

134. Theft (and receiving)

Three things must be satisfied for a person to commit theft. A person is guilty of theft if the person takes, receives, retains, deals with or disposes of property—

· dishonestly; and
· without the owner's consent; and
· intending to deprive the owner permanently of the property or to make a serious encroachment on the owner's proprietary rights.

The maximum penalty for theft is imprisonment for 10 years.

Subclause (2) explains how a person intends to make a serious encroachment on an owner's proprietary rights. This will occur if the person intends—

· to treat the property as his/her own to dispose of regardless of the owner's rights; or
· to deal with the property in a way that creates a substantial risk (of which the person is aware) that the owner will not get it back or that, when the owner gets it back, its value will be substantially impaired.

A person may commit theft of property—

· that has lawfully come into his/her possession; or
· by the misuse of powers that are vested in the person as agent or trustee or in some other capacity that allows the person to deal with the property.

However, if a person honestly believes that he/she has acquired a good title to property, but it later appears that the title is defective because of a defect in the title of the transferor or for some other reason, the later retention of the property, or any later dealing with the property, by the person cannot amount to theft.

Theft committed by receiving stolen property from another amounts to the offence of receiving (but it is not essential to use that description of the offence in an instrument of charge). If a person is charged with receiving, the court may, if satisfied beyond reasonable doubt that the defendant is guilty of theft but not that the theft was committed by receiving stolen property from another, find the defendant guilty of theft.

135. Special provision with regard to land and fixtures

A trespass to land, or other physical interference with land, cannot amount to theft of the land (even when it results in acquisition of the land by adverse possession), but a thing attached to land, or forming part of land, can be stolen by severing it from the land.

136. General deficiency

A person may be charged with, and convicted of, theft by reference to a general deficiency in money or other property, and it is not necessary, in such a case, to establish any particular act or acts of theft.

DIVISION 3—ROBBERY

137. Robbery

A person who commits theft is guilty of robbery if—

· the person uses force, or threatens to use force, against another in order to commit the theft or to escape from the scene of the offence; and
· the force is used, or the threat is made, at the time of, or immediately before or after, the theft.

The maximum penalty for robbery is imprisonment for 15 years.

A person who commits robbery is guilty of aggravated robbery if the person—

· commits the robbery in company with one or more other persons; or
· has an offensive weapon with him/her when committing the robbery.

The maximum penalty for aggravated robbery is imprisonment for life.

If 2 or more persons jointly commit robbery in company, each is guilty of aggravated robbery.

DIVISION 4—MONEY LAUNDERING

138. Money laundering

A person must not engage in money laundering (*see new section 130*). The maximum penalty for a natural person convicted of money laundering is a fine of $200 000 or imprisonment for 20 years and, for a body corporate, a fine of $600 000.

DIVISION 5—DECEPTION

139. Deception

A person who dishonestly deceives another in order to benefit (*see new section 130*) him/herself or a third person, or cause a detriment (*see new section 130*) to the person subjected to the deception or a third person is guilty of an offence the maximum penalty for which is imprisonment for 10 years.

DIVISION 6—DISHONEST DEALINGS WITH DOCUMENTS

140. Dishonest dealings with documents

For the purposes of this new section, a document is false if the document gives a misleading impression about—

· the nature, validity or effect of the document; or
· any fact (such as, for example, the identity, capacity or official position of an apparent signatory to the document) on which its validity or effect may be dependent; or
· the existence or terms of a transaction to which the document appears to relate.

A true copy of a document that is false under the criteria prescribed above is also false.

A person engages in conduct to which this new section applies if the person—

· creates a document that is false; or
· falsifies a document; or
· has possession of a document knowing it to be false; or
· produces, publishes or uses a document knowing it to be false; or
· destroys, conceals or suppresses a document.

Proposed subsection (4) provides that a person is guilty of an offence if the person dishonestly engages in conduct to which this proposed section applies intending one of the following:

· to deceive another, or people generally, or to facilitate deception of another, or people generally, by someone else;
· to exploit the ignorance of another, or the ignorance of people generally, about the true state of affairs;
· to manipulate a machine or to facilitate manipulation of a machine by someone else,

and, by that means, to benefit him/herself or another, or to cause a detriment to another. The maximum penalty for such an offence is imprisonment for 10 years.

A person cannot be convicted of an offence against proposed subsection (4) on the basis that the person has concealed or suppressed a document unless it is established that—

· the person has taken some positive step to conceal or suppress the document; or
· the person was under a duty to reveal the existence of the document and failed to comply with that duty; or
· the person, knowing of the existence of the document, has responded dishonestly to inquiries directed at finding out whether the document, or a document of the relevant kind, exists.

It is a summary offence (penalty of imprisonment for 2 years) if a person has, in his/her possession, without lawful excuse, any article for creating a false document or for falsifying a document.

DIVISION 7—DISHONEST MANIPULATION OF MACHINES

141. Dishonest manipulation of machines

A person who dishonestly manipulates a machine (*see new section 130*) in order to benefit him/herself or another, or cause a detriment to another, is guilty of an offence, the penalty for which is imprisonment for 10 years.

A person who dishonestly takes advantage of the malfunction of a machine in order to benefit him/herself or another, or cause a detriment to another, is guilty of an offence, the penalty for which is imprisonment for 10 years.

DIVISION 8—DISHONEST EXPLOITATION OF ADVANTAGE

142. Dishonest exploitation of position of advantage

This proposed section applies to the following advantages:

· the advantage that a person who has no disability or is not so severely disabled has over a person who is subject to a mental or physical disability;

· the advantage that one person has over another where they are both in a particular situation and one is familiar with local conditions (*see new section 130*) while the other is not.

A person who dishonestly exploits an advantage to which this proposed section applies in order to benefit him/herself or another or cause a detriment to another is guilty of an offence and liable to a penalty of imprisonment for up to 10 years.

DIVISION 9—MISCELLANEOUS OFFENCES OF DISHONESTY

143. Dishonest interference with merchandise

A person who dishonestly interferes with merchandise, or a label attached to merchandise, so that the person or someone else can get the merchandise at a reduced price is guilty of a summary offence (imprisonment for a maximum of 2 years).

144. Making off without payment

A person who, knowing that payment for goods or services is required or expected, dishonestly makes off intending to avoid payment is guilty of a summary offence (imprisonment for up to 2 years).

However, this proposed section does not apply if the transaction for the supply of the goods or services is unlawful or unenforceable as contrary to public policy.

PART 6: SECRET COMMISSIONS AND PAYOLA

DIVISION 1—PRELIMINARY

145. Interpretation

New section 145 contains definitions of words used in new Part 6. In particular, a person who works for a public agency (as defined) by agreement between the person's employer and the public agency or an authority responsible for staffing the public agency, is to be regarded, for the purposes of this new Part, as an employee of the public agency.

DIVISION 2—UNLAWFUL BIAS IN COMMERCIAL RELATIONSHIPS

146. Fiduciaries

A person is, for the purposes of this new Part, to be regarded as a fiduciary of another (the principal) if—

· the person is an agent of the other (under an express or implied authority); or
· the person is an employee of the other; or
· the person is a public officer and the other is the public agency of which the person is a member or for which the person acts; or
· the person is a partner and the other is another partner in the same partnership; or
· the person is an officer of a body corporate and the other is the body corporate; or
· the person is a lawyer and the other is a client; or
· the person is engaged on a commercial basis to provide advice or recommendations to the other on investment, business management or the sale or purchase of a business or real or personal property; or
· the person is engaged on a commercial basis to provide advice or recommendations to the other on any other subject and the terms or circumstances of the engagement are such that the other (that is, the principal) is reasonably entitled to expect that the advice or recommendations will be disinterested or that, if a possible conflict of interest exists, it will be disclosed.

147. Exercise of fiduciary functions

A fiduciary exercises a fiduciary function if the fiduciary—

· exercises or intentionally refrains from exercising a power or function in the affairs of the principal; or
· gives or intentionally refrains from giving advice, or makes or intentionally refrains from making a recommendation, to the principal; or
· exercises an influence that the fiduciary has because of the fiduciary's position as such over the principal or in the affairs of the principal.

148. Unlawful bias

A fiduciary exercises an unlawful bias if—

· the fiduciary has received (or expects to receive) a benefit from a third party for exercising a fiduciary function in a particular way and the fiduciary exercises the function in the relevant way without appropriate disclosure of the benefit or expected benefit; and
· the fiduciary's failure to make appropriate disclosure of the benefit or expected benefit is intentional or reckless.

Appropriate disclosure is made if the fiduciary discloses to the principal the nature and value (or approximate value) of the benefit and the identity of the third party from whom the benefit has been (or is to be) received.

149. Offence for fiduciary to exercise unlawful bias

A fiduciary who exercises an unlawful bias is guilty of an offence and liable to a maximum penalty of imprisonment for 7 years.

150. Bribery

A person who bribes a fiduciary to exercise an unlawful bias is guilty of an offence and liable to a penalty of imprisonment for up to 7 years.

A fiduciary who accepts a bribe to exercise an unlawful bias is guilty of an offence and liable to a penalty of imprisonment for up to 7 years.

It is proposed that this new section will apply even though the relevant fiduciary relationship had not been formed when the benefit was given or offered if, at the relevant time, the fiduciary and the person who gave or offered to give the benefit anticipated the formation of the relevant fiduciary relationship or the formation of fiduciary relationships of the relevant kind.

DIVISION 3—PAYOLA

151. Public fiduciaries

A person who expresses opinions or gives advice to the public through a public information medium (that is, a newspaper, periodical, radio, television or the internet—*see new section 146*) is a public fiduciary if—

· the person is paid to do so; or
· the person or a business in which the person is engaged stands to gain a commercial benefit of some kind; or
· the person represents (expressly or by implication) that the opinions or advice are not influenced by the person's private financial interests.

152. Unlawful bias

A public fiduciary exercises a relevant bias if the public fiduciary—

· has received (or expects to receive) a benefit for promoting, or refraining from criticism that might harm, the business interests of a particular person; and
· expresses an opinion, or gives advice, through a public information medium, on a subject affecting the business interests of that person,

and the opinion expressed, or the advice given, is consistent with an agreement or arrangement under which the fiduciary received or expects to receive the benefit.

A public fiduciary exercises an unlawful bias if—

· the public fiduciary exercises a relevant bias without making appropriate disclosure of the public fiduciary's personal interest; and
· the public fiduciary's failure to make appropriate disclosure is intentional or reckless.

There are 3 ways in which a public fiduciary can make appropriate disclosure of his/her personal interest, as follows:

(1) disclosure of the nature and value of the benefit and the identity of the person from whom the public fiduciary has received or expects to receive the benefit; or
(2) disclosure of the nature of the agreement or arrangement under which the public fiduciary has received or expects to receive a benefit, together with enough detail to give a general idea of the extent of the benefits that might be available to the public fiduciary under the agreement or arrangement; or
(3) disclosure of information required by the regulations in a manner and form required by the regulations.

A public fiduciary does not, however, exercise an unlawful bias—

· if the public fiduciary, in expressing an opinion or giving advice through a public information medium exercises a relevant bias in favour of the proprietor of the public information medium, or a company or organisation with which the fiduciary is publicly associated; or
· if the material in the course of which the public fiduciary expresses an opinion or gives advice is clearly identified as an advertisement.

153. Offence for public fiduciary to exercise unlawful bias

A public fiduciary who exercises an unlawful bias is guilty of an offence and liable to a penalty of imprisonment for up to 5 years.

DIVISION 4—EXCLUSION OF DEFENCE

154. Exclusion of defence

It is not a defence to a charge of an offence against new Part 6 to establish that the provision or acceptance of benefits of the kind to which the charge relates is customary in a trade or

business in which the fiduciary or the person giving or offering the benefit was engaged.

Clause 4: Substitution of heading

It is proposed that sections 167 to 170 (as amended in a minor consequential manner—*see clauses 5 and 6 below*) will become a separate Part of the principal Act. These sections would comprise new Part 6A to be headed 'SERIOUS CRIMINAL TRESPASS'.

Clause 5: Amendment of s. 167—Sacrilege

Clause 6: Amendment of s. 168—Serious criminal trespass

On the passage of the Bill, the use of the term 'larceny' will become obsolete and 'theft' will, instead, be used. The amendments proposed in these clauses are consequential.

Clause 7: Substitution of ss. 171 to 236

it is proposed to repeal sections 171 to 236 of the principal Act and to substitute the following new Parts dealing with blackmail and piracy.

PART 6B: BLACKMAIL

171. Interpretation

New section 171 contains definitions of words and phrases use in this new Part, including demand, harm, menace, serious offence and threat.

The question whether a defendant's conduct was improper according to the standards of ordinary people is a question of fact to be decided according to the jury's own knowledge and experience and not on the basis of evidence of those standards.

172. Blackmail

A person who menaces another intending to get the other to submit to a demand is guilty of blackmail and liable to imprisonment for up to 15 years. The object of the demand is irrelevant.

PART 6C: PIRACY

173. Interpretation

A person commits an act of piracy if—

- the person, acting without reasonable excuse, takes control of a ship, while it is in the course of a voyage, from the person lawfully in charge of it; or
- the person, acting without reasonable excuse, commits an act of violence against the captain or a member of the crew of a ship, while it is in the course of a voyage, in order to take control of the ship from the person lawfully in charge of it; or
- the person, acting without reasonable excuse, boards a ship, while it is in the course of a voyage, in order to take control of the ship from the person lawfully in charge of it, endanger the ship or steal or damage the ship's cargo; or
- the person boards a ship, while it is in the course of a voyage, in order to commit robbery or any other act of violence against a passenger or a member of the crew.

174. Piracy

A person who commits an act of piracy is guilty of an offence and liable to imprisonment for life.

Clause 8: Amendment of s. 237—Definitions

The amendment proposed to section 237 of the principal Act is to keep Part 7 consistent with new Part 6. Both of these Parts deal with offences by public officers. The proposed amendment will insert into section 237 the broader interpretation of who is to be a public officer for the purposes of Part 7 of the principal Act.

Clause 9: Amendment of s. 270B—Assaults with intent

Section 270B of the principal Act comes under the divisional heading of *Assault with Intent to Commit and Offence* and provides that a person who assaults another with intent to commit an offence to which the section applies is guilty of an offence. The proposed amendment to this section is consequential (the note to section 270B refers to larceny). The note to section 270B is to be struck out and a subsection inserted that provides that the section will apply to the following offences:

- an offence against the person;
- theft or an offence of which theft is an element;
- an offence involving interference with, damage to, or destruction of, property that is punishable by imprisonment for 3 years of more.

Clause 10: Insertion of ss. 270C and 270D

New sections 270C and 270D deal with preparatory conduct.

270C. Going equipped for commission of offence of dishonesty or offence against property

A person who is, in suspicious circumstances, in possession of an article intending to use it to commit an offence to which new section 270C applies is guilty of an offence, the maximum penalty for which is—

- if the maximum penalty for the intended offence is life imprisonment or imprisonment for 14 years or more—imprisonment for 7 years;
- in any other case—imprisonment for one-half the maximum period of imprisonment fixed for the intended offence.

It is proposed that this new section will apply to the following offences:

- theft (or receiving) or an offence of which theft is an element;
- an offence against Part 6A (Serious Criminal Trespass);
- unlawfully driving, using or interfering with a motor vehicle;
- an offence against Part 5 Division 6 (Dishonest Dealings with Documents);
- an offence against Part 5 Division 7 (Dishonest Manipulation of Machines);
- an offence involving interference with, damage to or destruction of property punishable by imprisonment for 3 years or more.

A person is in suspicious circumstances if it can be reasonably inferred from the person's conduct or circumstances surrounding the person's conduct (or both) that the person—

- is proceeding to the scene of a proposed offence; or
- is keeping the scene of a proposed offence under surveillance; or
- is in, or in the vicinity of, the scene of a proposed offence awaiting an opportunity to commit the offence.

270D. Going equipped for commission of offence against the person

A person who is armed, at night, with a dangerous or offensive weapon intending to use the weapon to commit an offence against the person is guilty of an offence.

The maximum penalty for such an offence is—

- if the offender has been previously convicted of an offence against the person or an offence against this proposed section (or a corresponding previous enactment)—imprisonment for 10 years;
- in any other case—imprisonment for 7 years.

Clause 11: Amendment of s. 271—General power of arrest

1 On the passage of the Bill, the use of the term 'larceny' will become obsolete and 'theft' will, instead, be used. The amendment proposed in this clause is consequential.

Clause 12: Repeal of ss. 317 and 318

These sections of the principal Act are obsolete and are to be repealed.

Schedule 1: Repeal and Transitional Provision

The *Secret Commissions Prohibition Act 1920* is to be repealed as a consequence of new Part 6.

The principal Act as in force before the commencement of this measure applies to offences committed before this measure becomes law. The principal Act as amended by this measure applies to offences committed on or after this measure becomes law.

Schedule 2: Related Amendments to Other Acts

Schedule 2 contains amendments that are related to the amendments proposed to the criminal law by this measure to the following Acts:

- *Criminal Assets Confiscation Act 1996*
- *Criminal Law (Sentencing) Act 1988*
- *Criminal Law (Undercover Operations) Act 1995*
- *Financial Transaction Reports (State Provisions) Act 1992*
- *Kidnapping Act 1960*
- *Shop Theft (Alternative Enforcement) Act 2000*
- *Summary Offences Act 1953*
- *Summary Procedure Act 1921.*

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

LAW REFORM (DELAY IN RESOLUTION OF PERSONAL INJURY CLAIMS) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to provide for the award of damages for the benefit of the dependants or the estate of a deceased person where a person against whom a claim for personal injury lies unreasonably delays resolution of the claim; to amend the Wrongs Act 1936 and the Survival of Causes of Action Act 1940 for that and 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 would add a new Division 10A to Part 3 of the *Wrongs Act 1936*. The new Division is entitled "*Unreasonable Delay in Resolution of Claim"*. The bill would also amend the *Survival of Causes of Action Act 1940* and update it by removing references to obsolete causes of action.

New Division 10A would create a new entitlement to damages in certain circumstances. Courts and tribunals will be able to award damages under section 35C on the application of the personal representatives of a person who has suffered a personal injury (including disease or any impairment of physical or mental condition) and who has made claim for damages or compensation, but died before damages or workers compensation for non-economic loss have been determined. The section 35C damages could be awarded if the defendant is found liable to pay damages or compensation to the person who suffered the injury and certain other factors exist. The damages would be awarded against the defendant or other person who has authority to defend the claim, such as the insurer, a liquidator or the personal representatives of a deceased defendant. They are called in the bill "the person in default". The section 35C damages would be payable if the court or tribunal finds that the person in default knew, or ought to have known, that the claimant was, because of advanced age, illness or injury, at risk of dying before resolution of the claim and that the person in default unreasonably delayed the resolution of the claim. The question of whether the person in default unreasonably delayed is to be determined in the context of the proceedings as a whole, including negotiations prior to the issue of proceedings in a court or tribunal, and including the conduct of the deceased person and any other parties.

The amount of the damages would be at the discretion of the court or tribunal. In determining the amount of these damages the court or tribunal would be required to have regard to the need to ensure that the defendant or other person in default does not benefit from the unreasonable delay in the resolution of the deceased person's claim, the need to punish the person in default for the unreasonable delay and any other relevant factor. The first element is based on concepts of unjust enrichment and is restitutionary in nature. The amount by which the person in default would benefit or be unjustly enriched by unreasonable delay is the amount of the liability for non-economic loss. The second element is punitive in nature. The third element ensures that any other factors that are relevant are taken into account.

However, the amount that may be awarded when the claim that has been delayed unreasonably is a claim for workers' compensation may not exceed the total amount that would have been payable by way of compensation for non-economic loss under the relevant workers' compensation Act if the worker had not died.

The bill would direct that normally the damages be paid to the dependants of the deceased claimant, but the court or tribunal has a discretion about this. If they are not paid to dependants, then they are paid to the estate. In apportioning the damages between dependants, the court or tribunal would be required to have regard to any statutory entitlements, such as those that are conferred on dependants by the workers' compensation legislation.

A new provision would be added to the *Survival of Causes of Action Act 1940* to make clear the intention that nothing in that Act prevents an award of damages under section 35C of the *Wrongs Act 1936.*

A claim for section 35C damages could be added to proceedings commenced by the deceased person and continued by the personal representative or the personal representative could issue separate proceedings within 3 years of the date of death of the deceased person.

The object of these new provisions is to deter delay by persons who stand to gain by a reduction in their liability if the claimant dies before the claim is resolved. The bill should remove the incentive for them to delay claims and also provide an incentive to deal with them quickly.

The need for this reform arises because of the current state of the law, which gives an incentive to those who are liable to pay damages or compensation to delay a claim if it is thought that the claimant is likely to die in the near future. The manner in which this comes about is now summarised.

A person who suffers personal injury because of the civil wrong (tort) of another person may sue for common law damages, including for non-economic loss, i.e. for the claimant's personal pain and suffering, loss of mental or bodily function and loss of expectation of life. However, the liability for damages for non-economic loss ceases upon the death of the claimant. (Damages for economic loss have survived the death of the claimant since enactment of the *Survival of Causes of Action Act 1940.)*

A worker who suffers a permanent compensable disability in the course of his or her employment has a statutory right to compensation for his or her non-economic loss without proof of any fault on the part of the employer. The lump sum for non-economic loss is not payable under the *Workers' Rehabilitation and Compensation Act 1986* unless the worker survives for 28 days after suffering the disability, although the spouse and any dependants become entitled separately to compensation on the death of the worker. Some argue that compensation for non-economic loss is payable after the worker's death when the worker's injury is caused by something that occurred entirely before 30 September 1987 and the *Workers' Compensation Act 1971* applies, but this is not a view to which WorkCover subscribes.

Thus, if the claimant dies before the claim is settled or determined by the court or tribunal, the defendant is relieved of liability for damages or compensation for non-economic loss.

The new remedy would be available in any case in which the claimant dies after the Act comes into operation. This would have the effect of discouraging delay by defendants of claims that have been made already. It would ensure also that people who have been exposed to injurious substances in the past, but who have not yet made a claim, perhaps because they have not yet developed manifest symptoms, will have the benefit of the effect of this reform. It is thought that it is a fair approach because a defendant against whom a good claim is made is liable to pay damages or compensation for non-economic loss if the claimant lives. If the claimant dies, thereby relieving the defendant of that liability, a risk of a different liability would arise in its place, i.e. the risk of liability to pay the section 35C damages if the defendant is found to have unreasonably delayed the proceedings knowing that by reason of advanced age, injury or illness the claimant was at risk of dying before the claim was resolved. Unreasonable delay in the circumstances in which this new remedy would apply is unconscionable and the defendant should not be permitted to benefit from it regardless of whether it occurred before or after the Act came into operation.

The government bill was prepared in response to the *Statutes Amendment (Dust-Related Conditions) Bill 2000* that was introduced as a Private Member's Bill. That bill would remove the incentive for defendant's to delay in a limited range of cases by making the damages or compensation for non-economic loss payable to the estate of the deceased claimant. The Government has a number of concerns about that bill. One of those concerns is that it would apply only in cases in which the deceased person suffered a dust-related condition without any good reason for distinguishing between those cases and other cases. The Government's bill is of broad application. It would apply without distinction as to the cause of the injury. It has been introduced in the belief that it is a fairer bill and that it will have a more general beneficial effect.

Obsolete Provisions of the Survival of Causes of Action Act 1940

Section 2 of the *Survival of Causes of Action Act 1940* provides that the causes of action of defamation, seduction, inducing one spouse to leave or remain apart from the other and claims under section 22 of the *Matrimonial Causes Act 1929-1938* for adultery do not survive the death of the plaintiff or the defendant. Actions for seduction, enticement and harbouring were abolished in 1972 by the *Statutes Amendment (Law of Property and Wrongs) Act 1972*. The time limit within which these actions must be brought is 6 years and all pending proceedings would have been finalised by now. Section 22 of the *Matrimonial Causes Act 1929* (SA) concerning actions for damages for adultery ceased to have any effect when the *Matrimonial Causes Act 1959* of the Commonwealth came into operation in 1961. Although the 1959 Commonwealth Act, which replaced it, allowed a husband or wife to sue for damages for adultery, this right was abolished on 1 January 1976 by the *Family Law Act 1975.* The High Court ruled that an action for damages for adultery could not be maintained after I January 1976. Thus the reference in the *Survival of Causes of Action Act* to damages for adultery became obsolete in 1961, or at the latest in 1976. Thus, the only one of these causes of action that can now be pursued is an action for defamation. Section 2 of the Act has been repealed and recast to modern drafting standards with reference to the obsolete causes of action removed.

Although a cause of action for breach of promise to marry survives the death of the plaintiff or defendant, section 3(1)(c) of the *Survival of Causes of Action Act* limited the damages recoverable for the benefit of the estate of the jilted party. The right to sue for damages for breach of a promise of marriage was abolished in South Australia on 18 November 1971 by the *Action for Breach of Promise of Marriage (Abolition) Act 1971*. All proceedings issued before 18 November 1971 would have been finalised by now. Section 3(1)(c) of the *Survival of Causes of Action Act* is now obsolete and so is to be repealed.

Section 3(2) of the *Survival of Causes of Action Act* is a transitional provision which is no longer needed. It is to be repealed.

Consultation

The bill as introduced will be sent to people who made a detailed comment on the draft bill that was sent to over 90 people. Any further comments or submissions will be considered before the commencement of the Fifth Session.

I commend this bill to the council.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will be brought into operation by proclamation.

Clause 3: Amendment of Survival of Causes of Action Act 1940

This clause provides for the amendment of the *Survival of Causes of Action Act 1940* to update its application and to provide that nothing in this Act will prevent or limit the recovery of damages for the benefit of the estate of a deceased person under Division 10A of Part 3 of the *Wrongs Act 1936* (*see* clause 4).

Clause 4: Amendment of Wrongs Act 1936

This clause provides for the amendment of the *Wrongs Act 1936*. It is intended to provide that a court may award damages, on the application of the personal representative of a deceased person, in certain cases involving unreasonable delay in the resolution of a claim for compensation or damages with respect to personal injury suffered by a person before he or she died. An award may be made if *(a)* the person in default, knowing that the claimant in the personal injury case was, because of advanced age, illness or injury, at risk of dying before the resolution of the claim, unreasonably delayed the resolution of the claim; *(b)* the person in default is the person against whom the claim lay, or is some other person with authority to defend the claim; and *(c)* the deceased person died before compensation or damages for non-economic loss were finally determined by agreement by the parties or by a judgment or decision of a court or tribunal. A court or tribunal will, in determining the amount of any damages, have regard to *(a)* the extent to which unreasonable delay in the resolution of the claim is fairly attributable to the person in default (and his or her agents), and the extent to which there are other reasons for the delay; and *(b)* the need to ensure that the person in default does not benefit for his or her unreasonable delay; and *(c)* the need to punish the person for the unreasonable delay. Damages will be paid, at the direction of the court or tribunal, to the dependants of the deceased person, or to his or her estate. The provision will apply if the deceased person dies on or after the commencement of the measure (whether the circumstances out of which the personal injury claim arose occurred before or after that date).

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

LIQUOR LICENSING (REVIEWS AND APPEALS) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Liquor Licensing Act 1997. 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 makes amendments to procedural provisions of the Liquor Licensing Act.

First, it alters the appeal pathway available to parties who wish to challenge a decision of the licensing authority constituted of the Liquor and Gaming Commissioner. To understand the reasons for this proposed change, it is necessary to understand the current structure of the licensing authority and the appeal and review pathways.

The licensing authority consists of the Liquor and Gaming Commissioner and the Licensing Court. An applicant for a licence, or a transfer or removal of licence, or for variation of conditions, must initially apply to the Commissioner. He or she will endeavour to conciliate the matter. However, if conciliation does not succeed, there are two options. If the parties agree, the matter can be heard by the Commissioner. If either party does not wish the matter dealt with by the Commissioner, it will be heard by the Licensing Court. The exception is limited licence applications, that is, applications for a licence for a special occasion. These must be dealt with by the Commissioner.

If the matter is heard by the Licensing Court, then any appeal against the resulting decision lies to the Supreme Court, by leave. If, however, parties elect to have the matter heard by the Commissioner, then a party dissatisfied with the Commissioner's decision may (in general) seek a review of that decision by the Licensing Court. This is a matter of right and proceeds as a rehearing, that is, the Court can receive further evidence in its discretion. There is no further appeal from the Licensing Court's decision.

The Government considers that it is anomalous that the Act allows the same decision, ie whether and on what conditions to grant an application, to be made either by the Commissioner or the Court, using exactly the same criteria and principles, but does not direct appeals against these identical decisions to the same authority. It also means that the Licensing Court acts either as the first instance decision maker, or as the review authority, at the option of the parties. This structure does not appear to be replicated elsewhere in our statute book, nor in the structures of licensing authorities of other States.

In case Members are not aware, it may be helpful if I make clear that at present, whether the parties elect to proceed before the licensing authority constituted of the Commissioner or the licensing authority constituted of the Court, the process is very similar. In both cases, the Act provides that the licensing authority must act without undue formality. The strict rules of evidence do not apply but the authority may inform itself as it sees fit. Whether constituted of the Court or the Commissioner, the authority has similar powers to summon witnesses, require the production of documents and require answers to questions. In either case, the parties are entitled to be legally represented, witnesses give sworn evidence, which is transcribed, and the authority publishes written reasons for decision. There is of course no difference in the applicable law or the considerations which go into deciding the application.

As it is the same authority, performing the same function, whether constituted of the Court or of the Commission, the Government considers that it would be more sensible to provide that, whichever primary decision-maker is used, the appeal should be the same. This will clearly put the Court and the Commissioner on an equal footing, and will treat like decisions alike. For this reason, this Bill would abolish the present review of the Commissioner's decisions by the Licensing Court and instead provide for an appeal from such decisions to the Supreme Court, just as applies in the case of first-instance decisions of the Licensing Court.

Some minor points need to be understood. One is that it is not intended to alter the position with appeals from limited licence applications. These are licence applications seeking the grant of a short duration, one-off licence for a special occasion such as a festival. They are small matters not justifying the attention of the Supreme Court. The Bill proposes that these remain the exclusive province of the Commissioner at first instance, and be reviewed by the Court as provided in s. 22. Second, the Bill provides that all appeals to the Supreme Court are to be as of right on a question of law, and by leave on a question of fact. At the moment, the Act requires leave for all appeals from the Licensing Court, even on questions of law, but no leave for a review of the Commissioner's decision. In assimilating the two, the Bill removes the requirement for leave where the appeal is on a question of law. This is a typical provision in statutes which grant a right of appeal to the Supreme Court from a decision of an administrative nature, such as a decision to grant or refuse, or to attach conditions to, an occupational licence. The intention is that the Supreme Court be the final arbiter of disputed points of law and that parties are entitled to have access to the Court for this purpose, but that on questions of fact, the preliminary scrutiny of the Court is required to see that the matter merits its attention.

The Bill also adds a new provision that the licensing authority may grant an application on an interim basis, or specify that a condition of a licence, permit or approval is effective for a specified period. There is no such express power in the Act at present. This puts beyond doubt that the authority may grant approval on an interim basis, for a trial period, before deciding to confirm or alter it. This is desirable because a licensing decision can have significant consequences both for the parties and for the community in general, and it can be valuable for the authority to be able to evaluate the likely consequences of the proposed decision, through practical trial, before committing itself to a final decision. Indeed, this is often welcomed by the parties as it gives the applicant the opportunity to prove the decision desirable and the respondent the opportunity to assess the real effects of the decision, before it becomes final.

Finally, the Bill also provides that, where the parties so request, the Commissioner must deal with a complaint about noise, etc., emanating from licensed premises. At present, a noise complaint which cannot be conciliated must be referred to the Court, even though the parties would have been satisfied for the Commissioner to dispose of it. The provision does not, however, alter the present position where either party for any reason objects to the Commissioner determining the matter. Again, this is a matter of commonsense designed to speed up and simplify the process for the parties.

The amendments proposed by the Bill are intended to make the procedures in this jurisdiction more internally consistent and more effective. I commend the bill to honourable members.

Explanation of clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides that this Act will be brought into operation by proclamation.

Clause 3: Amendment of s. 22—Application for review of Commissioner's decision on application for limited licence

This clause limits the power of the Licensing Court to review decisions of the Commissioner to decisions relating to the grant of limited licences. The Commissioner is also required to give written reasons for any such decision. What is meant by a review being conducted as a 'rehearing' (the current subsection (4)) is spelt out as it is in the *District Court Act* for the District Court when hearing an administrative appeal.

Clause 4: Repeal of s. 27

This clause repeals section 27 (Appeals from orders and decisions of the Court). The appeal provision is reinserted by clause 7 of this Bill.

Clause 5: Amendment of s. 53—Discretion of licensing authority to grant or refuse application

This clause makes it clear that a licensing authority (i.e., the Court or the Commissioner, as the case may be) may grant an application on an interim basis, or impose a condition for a specified period, and give any necessary consequential procedural directions.

Clause 6: Amendment of s. 106—Complaint about noise, etc., emanating from licensed premises

This clause requires the Commissioner to determine a complaint under this section if the parties so request.

Clause 7: Insertion of Part 10A

This clause inserts a new Part dealing with both appeals from decisions and orders of the Licensing Court and from those of the Commissioner. Appeals lie to the Full Court of the Supreme Court as of right on questions of law, and by leave of the Supreme Court on questions of fact. The Supreme Court may substitute its own order or decision in the matter if it thinks fit.

Clause 8: Amendment of s. 128—Commissioner may review order

This clause makes it clear that the Commissioner's decisions on reviewing barring orders made by licensees are not appealable.

Clause 9: Further amendment of principal Act

SCHEDULE: Statute Law Revision Amendments

This clause and the Schedule make several non-substantive amendments of a statute law revision nature.

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

FOOD BILL

Adjourned debate on second reading.

(Continued from 25 July. Page 2083.)

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I thank honourable members who have addressed this bill. I recognise that in the last week of a session there is some pressure in dealing with this matter. We have also received last minute representations on a number of issues, which has made consideration of some of the matters difficult, given the limited time available in this session. I also note, however, in terms of those last minute representations, that this bill has been under consideration for a long time; it has been out for consultation for a considerable time; it has been considered already by the other place; and it has been before us for some time, being introduced in this place on 4 July.

The Hon. Sandra Kanck, in her contribution last night, raised four issues that I want to address briefly in summing up, which will perhaps limit concern when we discuss specific clauses in the bill. The first relates to the role of local government. Under the current Food Act 1985, local councils have responsibility for the hygiene of food premises and equipment and for ensuring that food sold in that area is fit for human consumption. The Department of Human Services (DHS) has responsibility generally for the act, for the exercise of emergency powers and for ensuring that food complies with the compositional quality and labelling requirements of the National Food Standards Code. Local government receives no fees for this role: the role has been funded from rate revenue for many years. The Food Bill now before us continues this two-tiered structure. It follows the model food bill in providing for the following:

1. A 'relevant authority' (being the minister, and DHS on his behalf) having overall responsibility for the act, exercising emergency powers, establishing guidelines and approving auditors, analysts, etc.

2. An enforcement agency with powers to appoint authorised officers who can inspect premises and issue improvement notices, issue prohibition orders, receive notifications, classify food businesses for auditing frequency purposes and receive audit reports.

The definition of 'enforcement agency' provides for an agency to be declared by regulation. The government has consistently indicated its intention to prescribe the local councils for this purpose throughout the consultation process and in the second reading speeches, both in the other place and in this place. In the meantime, the LGA, as a matter of principle, has indicated its concern at the powers being delegated by regulation. The bill was amended in the House of Assembly to require consultation with the LGA on such a regulation before it is made, as well as on the legislation generally. I understand that has satisfied the LGA.

In terms of resources for local government, I am advised that the LGA has expressed concern that the resource implications of the food legislation have not been addressed adequately. The LGA argues that, currently, some councils assign an inadequate level of resources to their food legislation responsibilities. It argues that additional resources will remove this inconsistency. The bill should not be a vehicle for compensating councils which have not assigned the proper priority to their current statutory duty to ensure proper food hygiene standards in their area. The LGA also seeks additional revenue for increased responsibilities under the bill, particularly as it relates to food safety auditing. Additional revenue sources are proposed for councils. I advise as follows:

- an audit fee paid by food businesses where a council officer is appointed as the auditor;

- a portion of the audit fee if the audit is conducted by a private auditor; and
- an inspection fee if a council officer is required to carry out an inspection of a food business to follow up on an audit report.

The move to food safety auditing will be progressive and will reduce the current reliance on random compliance inspections by council staff funded out of rate revenue. The fees will be set by regulation. The LGA will be consulted, and the resource issue will be an important part of the joint Local Government Association-Department of Human Services task force which is to be established by the minister.

In relation to funding for implementation, I am advised that $1.8 million has been provided in the DHS budget over the next two years ($0.9 million per annum) to support the implementation of the legislation. The funding will be used to support local government in industry in its implementation process. Local government will be supported through the provision of resource materials, explanatory pamphlets, etc.; training of council staff; and development of systems—for example, a computer system for the notification database. Industry will be supported through industry associations in the provision of information to members, development of food safety program templates and development of training packages. Resources will also be used to raise community awareness of the legislation.

The fourth matter raised by the Hon. Sandra Kanck related to priority classification. I advise that this matter of priority classification takes into account the nature of the food involved, the vulnerability of the population being supplied, the size of the operation and other factors. This morning I have also been provided with a publication on behalf of the Australian New Zealand Food Authority (ANZFA). It does not say when it was published, but it must be recent because the matters that are before us will have also been considered by ANZFA in the preparation of this information paper. It is an information paper regarding food safety, the priority classification system for model businesses, and a risk based system designed to classify food businesses into priority ratings based on the risk they present to public health and safety.

All the work across Australia (and incorporating New Zealand) has been undertaken on this matter, in terms of best practice by businesses in terms of food supply, public health and safety. We will be modelling our government work through DHS on the standards outlined in this information paper, which are to be applied not only in South Australia for us to do our own thing in a discretionary manner but also to be applied across Australia and New Zealand.

Bill read a second time.

In committee.

Clause 1.

The Hon. DIANA LAIDLAW: I have erred. I am representing the Minister for Human Services on two bills in this place, one being the Food Bill now before us and the other the Medical Practice Bill. All members have spoken on the Medical Practice Bill, but we do not have all the amendments before us: with the Food Bill we have all the amendments, but we do not have all members who have spoken. In summing up the second reading debate, I spoke before I should have because the Hon. Terry Cameron had not exercised his opportunity to contribute to the second reading debate for which I apologise to the honourable member—my error. Thank you for taking it in good faith.

The Hon. T.G. CAMERON: No problems; it is just an oversight. The purpose of any food laws should be to protect public health and to provide information enabling consumers to make informed choices. Legislation should provide a framework to ensure that food is correctly labelled, safe and wholesome. Australian food law is generally comprised of three regulatory elements. First, an act which establishes principles, frameworks, administrative structures, offences and penalties. The second aspect relates to food standards to set down compositional, microbiological, chemical, labelling and quality criteria. The third relates to food hygiene regulations to ensure production, processing, storage and handling of food.

Since 1985, there have been a set of national food safety standards, uniform standards. There has been a two-tiered administrative structure, meaning that government through the Department of Human Services is responsible for labelling and so on; and local government is responsible for hygiene and premises and is the enforcement agency, with the minister being the relevant authority. In 1996, the state government developed a green paper following community consultation. However, the moves by the state government were overshadowed by the federal government following a food regulatory review, the Blair review. A working group was established to look at the implementation of the regulatory reform, and in July 2000 the state government released a draft model bill based on the national model for consultation and feedback.

In November 2000, state ministers and the local government national president signed the COAG food regulation agreement. This bill has arisen from the national changes and there is no flexibility to deviate from the model food provisions annexure A, which governs the primary food production offences relating to handling, sale, equipment, emergency powers and so on. However, there is some flexibility for the state government in developing legislation in relation to model food provisions annexure B, which it has done. This bill continues the two-tiered administrative structure, with the minister being the relevant authority and the enforcement agency being the minister, and other persons or bodies as prescribed by regulation.

The enforcement agency and powers are not defined in the bill, and I believe that they should be. Apparently the intention is to prescribe them in regulation. I do not believe that that is good enough. We will be expected to carry legislation without knowing what the final result will be. The government has indicated that local government will be prescribed as the enforcement agency in clause 19(6), and 90 per cent of the bill has been applauded and welcomed by the key stakeholders. However, there are some contentious points, which I will refer to later. The bill provides a broad obligation on all involved in food supply from source to consumption to produce safe food. Requirements in the bill applying to food businesses do not apply to primary food production.

It is intended to prescribe the Meat Hygiene and Dairy Industries Act under clause 7(1)(e). Clause 37 sets out powers for inspectors, authorised officers, appointed by the enforcement agencies—that is, local council inspectors generally—which is similar to what is currently in place. In relation to food safety standards 3.2.1, 3.2.2 and 3.2.3, 3.2.1 relates to food safety programs and standards; 3.2.2 relates to food safety practices and general requirements; and 3.2.3 relates to food premises and equipment. Food safety standards 3.2.2 and 3.2.3 have both been incorporated into the food standards

code and it has been adopted into South Australian law by regulation. The food safety programs and standards (3.2.1) are deferred until after the commencement of the new act, as the current state act does not have the powers of enforcement.

Food safety standards 3.2.1 will be phased in over a two to six year period, dependent upon the risk classification of the business concerned. Food safety programs and food safety standards 3.2.1 involves a systematic analysis of all food handling operations, identifying potential hazards, documentation and implementation of the program, and maintaining records and regular auditing. In other words, it will mean more paperwork for business. I find this quite strange, considering that both the government and the opposition have pledged to small business that they will reduce red tape bureaucracy, paperwork and the cost on business, yet this bill seems to be heaping more of them onto small business, but I will come to that a little later.

The bill outlines that a high risk business will need to comply in two years, a medium risk business in four years and a low risk business in six years. The government argues that the majority of businesses in South Australia would be deemed medium-risk businesses. I would like some clarification from the government on that. I find that expressing it in those terms is not good enough and I would like to see some figure in relation to what percentage of businesses constitute low, medium and high risk. There is also a broad power of exemption for microbusinesses to allow some flexibility such as some charitable and community organisations.

An auditing provision has been included in this bill to ensure that proprietors of food businesses prepare, implement and maintain a food safety program that has not been approved as yet, and that is because of the two to six year lead time. Auditors will be appointed by the minister and could include local government officials and also private auditors who meet the specific criteria, although from my reading of the bill it seems very light on in relation to what qualifications these food auditors might have. I will come to that a bit later. This is a new legislative requirement, one that has caused an outcry from local government. That is not surprising, because the Local Government Association is very good at protecting its own bailiwick.

The bill prescribes that businesses appoint or hire their own third party auditors and must be audited as often as the enforcement agency prescribes, depending upon the level of risk of the business. Local government and the Australian Institute of Environmental Health both argue that the auditing process should be implemented and controlled through local authorities. It comes as no surprise that either the Local Government Association or the Australian Institute of Environmental Health would argue that. That does not necessarily mean to say that they are wrong, and I will also come to that a little bit later. They disagree that the onus is on the businesses to choose their own food safety auditors, and I believe that creates a potential for conflict. They both suggest that it is the privatisation of food enforcement. I think that is a bit of political rhetoric, but I do have some grave concerns about the proposition being put forward by the government.

It is estimated that inspections auditing would cost businesses between $50 and $100. Experience tells me that, if the range is between $50 and $100, we are likely to see the cost at the top end of that range rather than at the lower end. Local government and the Australian Institute of Environmental Health (South Australian Division) argue that, instead of a one-off notification requirement as is stipulated in the bill, a mechanism should be incorporated in the bill to allow for registration of a food business, with fees to pay for inspections and enforcement costs. Registration is provided for in most other states.

I do not necessarily accept the view that, because there is registration in other states, it is necessarily a good thing here or that they are right and we are wrong. It comes as no surprise that the Local Government Association would support a system of registration and fees. One thing that we can always rely upon with the Local Government Association is its consistency where its own vested interest is concerned. I do not support registration and I do not support the imposition of fees to pay for inspections and enforcement costs.

The Local Government Association argues that it is essential that authorised officers be appointed only on the basis of meeting criteria set by the minister, not simply at the discretion of local authorities. There is merit in the argument that it outlines there. I will be interested to hear from the minister, but I cannot find anywhere in the bill where the criteria for inspectors or auditors have been set down, which can only lead me to conclude that local councils will be able to set their own criteria or their own qualifications and, unless there is cooperation and communication between the councils, that could result in different councils setting out different criteria.

The Hon. Sandra Kanck: It is an extremely broad piece of legislation.

The Hon. T.G. CAMERON: It is an extremely broad piece of legislation and, if one could summarise it, it is saying, 'We would like to you pass a basic framework and leave all the detail to us.'

The Hon. Sandra Kanck: Trust us, we're politicians.

The Hon. T.G. CAMERON: Well, I have been dealing with politicians for 45 years and I do not trust the intent of this bill. Too much is being left to be filled in down the track through regulation. That may be all well and good for the government and the opposition, who may be included in that process, but, for the Australian Democrats, minor parties and Independents, governments have turned ignoring them when and where they can into an art form. I have seen too many instances in which legislation has been carried providing a broad framework only to discover with no consultation that the intention of the legislation when it was carried through has subsequently changed through regulation. I cannot think of any better example of that than the government's games and antics in relation to marijuana. Before I am prepared to support this legislation, I would like to see set out quite clearly what the criteria and qualifications for these food inspectors and auditors will be.

I received correspondence from the Small Retailers Association, which argues that there is too much emphasis on fines and arduous procedures rather than on training. Whilst I accept the point, I say to members of that association that, after the Garibaldi episode, it was quite clear that the public outcry that ensued demanded that higher fines be placed on people who handle and produce food. That group also points to the Victorian experience where the government went through a similar proposal to the one that we are looking at and, according to the association, the results were a disaster.

Members of the Small Retailers Association are concerned with the compliance aspect of the bill and they are worried that it could lead to a similar situation to that of the GST as far as paperwork and compliance is concerned. They also express concerns about the omission of the secrecy clause. Clause 106 covers some aspects of secrecy but does not

prevent disclosure before any offence is proven. I, too, have some concerns about the secrecy clause. It is a vexed issue. Of course the public is entitled to know if a retailer of food is not operating correctly, but sometimes inspectors, auditors and local government officials do not get things right. I am concerned that someone's livelihood could be irreparably damaged if that secrecy clause goes through.

I am concerned about the auditing process and I am concerned about the amendments to set up a registration process. I think notification is okay. The registration process is all about collecting fees and it will not add one thing whatsoever to the process. It annoys me at times when I see state and local governments collaborating to come up with fee structures, particularly on small business.

It has been the professed policy now of the five major parties—Liberal, Labor, National, Australian Democrats and SA First—to try to reduce the amount of paperwork, red tape and bureaucracy as well as the imposition of government fees for small business, yet here is another example of where they are being totally ignored. What is more, there does not appear to be any government assistance to small business in its attempts to comply with the increased paperwork and new compliance measures. In her second reading explanation the minister said:

> It is also intended that flexibility will be applied in relation to businesses in areas outside of local government boundaries so that they are not required to comply with onerous requirements.

I would like to know what the minister means by 'outside of local government boundaries' and 'comply with onerous requirements'.

I do not believe that the government has outlined a proper case to support the introduction of this legislation in its current form. As the Hon. Sandra Kanck interjected previously, this is a bit like being asked to sign a blank cheque. We know it is a cheque and we know that there will be some money coming out of our account at some time in the future, but we do not know when and we certainly do not know how much.

The move towards the appointment of private food auditors raises concerns—and it raises concerns in relation to a conflict of interest. What is a business supposed to do if it employs a private food auditor and that food auditor gives it a hard time? It is not too difficult to see what it will do: it will switch its business next year and go to a food auditor that gives it an easy time. One wonders how the process might be compromised if large chains such as Woolworths, for example, contract out the food auditor. Will Woolworths be motivated by a proposal that guarantees 100 per cent appropriate food auditing, or will it be influenced by other factors such as the cost of the quote?

It may be that the person making the decision could feel that they would be better off appointing a food auditor who was not so rigorous or tough on them. I think the opportunity for that to occur is much less if it is handled by either state or local government. I also raise the query as to why we are splitting it up, why we are creating what could be two completely separate groups of people doing the food auditing and food inspection. I would have thought that the simplest way of handling this would be to have one person doing the lot, but that is not the case with this legislation.

I also note from correspondence that I have received from the Australian Institute of Environmental Health that it is supporting the establishment of a head committee which, I understand, is set out in one of the amendments. I see that as more bureaucracy and red tape. Certainly, we need to have a proper food auditing and enforcement process in place, but please let us try to get the dead weight of state and local government off the back of small business and not support legislation that will impose more red tape, bureaucracy, uncertainty and costs on small business which eventually, as always happens, will be passed on to the general community.

I am surprised that the government is pushing ahead with this legislation, particularly considering the vociferous opposition that is coming from small business, health organisations and local government. I indicate that I will be supporting the second reading of the bill but that I am most uncomfortable with the legislation.

The Hon. DIANA LAIDLAW: I want to respond to the Hon. Terry Cameron's questions as best I could note them from his belated second reading contribution. The Hon. Terry Cameron asked for the percentage of businesses in terms of the classification priority system. He was concerned about the reference by the minister to the majority of businesses being medium, and he wanted more specific figures. I am advised that 10 per cent are low priority, 10 per cent have been judged as high priority and 80 per cent are medium priority.

The Hon. Terry Cameron asked about local councils setting their own criteria and standards for assessment. In terms of consistency, the bill does address this by providing for the guidelines, and that is what will help maintain standards across councils.

In terms of auditing companies and processes and quality control, the honourable member mentioned an example, I suspect hypothetical, of Woolworths contracting out or outsourcing the audit and concerns that might arise from that because they would be guided more by costs rather than influenced by the standards that they should be setting.

The Hon. T.G. Cameron: May be.

The Hon. DIANA LAIDLAW: May be, yes. I am advised there are safeguards to address such an issue if that arises, that as part of the audit process people must have approved skills, and they will be judged in terms of their competency by the relevant authority, in this instance the minister. In terms of your concerns about splitting up the enforcement, I assume that the concerns refer to what is already current practice in having a two-tiered system or structure. In answer to an earlier question from the Hon. Sandra Kanck in her second reading speech, I can indicate that the relevant authority is the minister or Department of Human Services acting on his behalf and then there is also the enforcement agency with powers to appoint authorised officers. In this instance I understand it does reflects current practice in the Food Bill 1985.

The Hon. Terry Cameron expressed misgivings about more red tape, uncertainty and costs to small business ultimately passed on to the community. This has been quite a difficult process for the government to work through. We have national standards and expectations to meet. We have health and public safety issues, a lot of media and community interest, as well as small business interest. It can be charitable organisations, voluntary based organisations in terms of food. This has been a complex issue, and certainly I can assure the honourable member that, from the government's perspective, these issues of red tape costs and uncertainties were to the fore in our thinking. Equally, we have these other responsibilities in terms of due care, in terms of the legislative base for the wider public safety and interest. So you cannot necessarily expect in this complex environment that we will be meeting everybody's expectations and interests as they would see them, but what we have sought to do is in every

way address every interest, and sometimes that has meant some compromise but, overall, the government's duty in this regard is public safety and standards, and working within a national framework.

Clause passed.

Clause 2 passed.

Clause 3.

The Hon. SANDRA KANCK: In my second reading speech I raised the issue of there being no clear definition of high, medium or low priority businesses, and there is nothing in clause 3 that refers to this. At what stage and where will we find such a definition?

The Hon. DIANA LAIDLAW: In summing up the second reading debate earlier, my first attempt to do so, I did refer to the ANZFA document, Food Safety Standards, the priority classification system for food businesses. I am not sure whether the honourable member has seen a copy of this document or has a copy.

The Hon. Sandra Kanck: I have a copy on my desk.

The Hon. DIANA LAIDLAW: Okay. This document does provide the guidelines for designing a risk based system, and on page 11 at section 4, 9.2 provides the definitions of a high risk food, a medium risk food and a low risk food, and it will be based on those definitions, and the other matters addressed in this document, to see how ultimately these measures are defined, implemented and classified.

The Hon. SANDRA KANCK: Will they ultimately be included in the regulations or will businesses have to keep a copy of that on hand?

The Hon. DIANA LAIDLAW: I am advised that this will not be defined in the regulations, that this document, ANZFA Food Safety Standards, provides the guidelines to assist the enforcement agencies, being the councils, to assess and classify the food businesses.

The Hon. SANDRA KANCK: So it will be the responsibility of all councils to contact food businesses and tell them which priority they have fallen into? Is that the case?

The Hon. DIANA LAIDLAW: I am advised that the bill before us provides that the food businesses are required to notify the council that they conduct a food business and, on the basis of that notification to the council, the council visits and assesses that business. If a food business is detected for not meeting the terms of the bill, in terms of requiring notification to council, there is a penalty regime for that failure.

The Hon. SANDRA KANCK: So the council, having been notified by the business that they are a food business, will inspect every business and tell them which of those classifications they fit into? Is that the way it will be done?

The Hon. DIANA LAIDLAW: The notification, apparently, provides certain information to the council. If the council determines that it needs more information, the visit is undertaken to that business.

The Hon. SANDRA KANCK: How will the council determine whether it needs more information? How will it be clear, for instance, that the information provided is correct?

The Hon. DIANA LAIDLAW: The intention is that the Department for Human Services, the minister's delegate, will work with the LGA and the councils on an electronic system of notification to capture the data that is required in terms of the notification process. It is at that point that a judgment will be made as to whether or not the information provided is sufficient, following the notification that the council will undertake the inspection.

The Hon. SANDRA KANCK: If the council has decided that a business is, for instance, medium priority, does the council then write a letter to that business and advise it that that is the classification that it has been given, and all that that entails?

The Hon. DIANA LAIDLAW: I refer the honourable member to clause 79(2) of the bill, 'Priority classification system and frequency of auditing', as follows:

> The determination must be made having regard to a priority classification system for types of food businesses approved by the relevant authority.

Clause 79(3) provides:

> The appropriate enforcement agency must provide written notification to the proprietor of a food business of—
>
> (a) the priority classification it has determined for the food business;

And then it goes on to paragraphs (b) and (c).

The Hon. T.G. CAMERON: In relation to the priority classification system as set out under clause 79, if a council is required to subsequently go out and inspect the business in order to determine the priority classification system, will any fee be charged?

The Hon. DIANA LAIDLAW: I point out that, although we are debating clause 3, questions are being raised about clause 79. So, when we get to clause 79, we might ask people to refer back to clause 3. There is provision for inspection fees—

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: I am just trying to help people who will be interested because the questions being asked by the honourable members are relevant. I want to make sure that the wider community does not look at the debate on clause 79 and find that no questions were asked because they were all exhausted during debate on clause 3. I am just trying to be helpful.

The Hon. T.G. Cameron: I have noticed.

The Hon. DIANA LAIDLAW: Yes—and accurate and accountable. There is provision for inspection fees. The dollar figure has not yet been determined but there is a requirement, as I mentioned in summing up the second reading debate, for that figure to be determined in consultation with the Local Government Association.

The Hon. T.G. CAMERON: I will ask the other questions I have in relation to clause 79 when we get to clause 79. I appreciate the time to prepare them.

Clause passed.

Clause 4.

The Hon. P. HOLLOWAY: I move:

> Page 7, after line 2—Insert:
>
> 'Committee' means the *Food Quality Advisory Committee* established under Part 9

I will use this amendment as a test clause for the insertion of new clauses 96A, 96B, 96C, 96D and 96E. This amendment seeks to establish a Food Quality Advisory Committee. Under the current act, there is provision for an advisory committee. However, we have been informed by the minister that, for various reasons, that committee has not met for 10 years. I suggest that, if that committee had been a little more active in performing its role, some of the problems that we have had in the food safety area may not have arisen. Nevertheless, we are not here to go back over history but to look at the new situation before us.

The point I make at the start of this discussion is that we are entering a new era of food regulation. The Hon. Terry Cameron, the Hon. Sandra Kanck and others have pointed out

that there are many things that are unknown in this area. The reason for that is that this is model legislation, and all states have agreed to these particular provisions, but much of the detail will appear in the regulations when ultimately they come out. So, this is an area where we believe there is a need for a considerable amount of consultation with the industry, those who have to enforce these rules and those who work in the industry to give them a chance to be consulted. One of the issues that has consistently come up as far as the opposition is concerned is that people have been saying that they have not been adequately consulted in relation to what is happening. Of course, to some extent that is no doubt due to the fact that the regulations are not available, so there is much that is unknown about it.

We are proposing to establish this Food Quality Advisory Committee so that it can look at the operation of these new measures and make recommendations in relation to them. Under our proposal, the committee will consist of 10 members appointed by the Governor, of whom one person will be nominated by the minister; one will be an officer of the department of the minister; two persons will be nominated by the Local Government Association—this is the body which, in many ways, is at the front line of the enforcement of food regulations; there will be one person who, in the opinion of the minister, is an expert in a discipline relevant to production, composition, safety or nutritional value of food; there will be two persons who, in the opinion of the minister after consultation with Business SA, have wide experience in the production, manufacture or sale of food from a business perspective—in other words, we are seeking to involve the industry in this committee so that it can have an input; a person will be nominated by the United Trades and Labor Council so that the workers in this industry, through their relevant trade unions, can have a representative; and there will be two persons who, in the opinion of the minister, are suitable to represent the interests of consumers.

So, we are proposing a balanced committee representing the industry, the union, local government and government, as well as consumer representatives. The functions of the committee are set out under section 96. Basically, they are to advise the minister on any matter relating to the administration, enforcement or operation of the new act, to consider and report to the minister on proposals for the making of regulations under the act, and to investigate and report to the minister on any matters referred to the committee for advice.

As I have said, there will need to be significant feedback and continued monitoring given that this is such a profound change in the food area and, in the light of the regulations which are currently being drafted—I imagine that they will take a considerable time to draft because of their complexity—we believe there should be a body that can report back to the relevant groups (the industry, unions, local government and so forth) so that there can be some formal input whilst this whole process is being developed.

When this matter was proposed by my colleague in another place, the response of the minister in opposing this clause was that essentially he believed that we should have a national approach and that this amendment was not necessary because the Australian New Zealand Food Authority (ANZFA) had taken over the advisory role. The point I make about that is that there are two annexes to the schedule. Annex A is the model food act. That is the part that has been agreed to by all states. Those parts of this bill that relate to annex A are essentially the same as those to which the commonwealth and all states have agreed. However, under annex B (which relates to implementation), it is understood that individual states have some flexibility in terms of how they go about the implementation of this bill. So, essentially we see the Food Advisory Committee looking into those matters that come under annex B—in other words, those matters which are specifically related to the implementation of the new food act in South Australia.

Because there will be some unique features, our bill is not identical (in those parts relating to annex B) with what is occurring in other states. We are sure that ANZFA, which is looking at the overall perspective of food and the model food act, will not be looking at the specific implementation issues that we have in South Australia. So, it is for that reason that we reject the argument that the minister used in another place that a national approach to all matters is necessary here. With those comments, I seek the support of the committee to accept this important amendment to establish an advisory body that can advise the government during this very important implementation phase of the new food act.

The Hon. DIANA LAIDLAW: The government opposes the amendment. I note that the current Food Act provides for a Food Quality Committee but, as the Hon. Paul Holloway has indicated, with this bill we are entering a whole new era with the focus being on a national program in terms of food quality, safety and standards. Just because we have a Food Quality Committee under the current Food Act, it is important that that should not be a reason for including it in the next regime. Regarding the fact that the committee under the current act has not met for a couple of years, its functions have been made largely redundant by the automatic adoption into state law of the National Food Standards. There is a consultation mechanism in the food standards specified in the ANZFA Act, and they are adopted through the National Ministerial Council process.

So, the government opposes the amendment, but I want to make it very clear that we are proposing what we believe is a far more relevant process—certainly more flexible—to deal with issues as they arise. You do not set in place a structure which is there for all time and which may not necessarily have the relevant skills to deal with specific tasks or take in the interests of the specific industry sectors at any given time. As we know, these matters change, and relevant industry groups have different levels of interest in different matters. The task force and advisory group process that the government proposes will accommodate this demanding—and I think complex and new—way in which, across the nation, we are dealing with the very important matter of food safety.

In terms of the structure of the advisory committees and task groups which the Minister for Human Services proposes, I point out that I have some interest in this as Minister for Transport. For instance, Transport SA has been very involved as a representative of the whole of the transport freight sector in terms of the refrigeration of food and the handling of it and the cold food chain from source to manufacture or packaging and then onto ship, rail, road or air.

All of these matters are relevant and must be considered in terms of the handling of food and the guaranteed quality of food, but they are not relevant to every issue in this bill. So, I very much want to see the transport sector represented but through this more flexible, broad based arrangement that the government has proposed so that transport's specific interests can be taken into account and our responsibilities undertaken properly in terms of the act, rather than see us frozen out of this issue because we do not have representation

on a statutory structure, as is proposed by the opposition in respect of this bill. We are moving on, overall, in terms of how we deal with food quality nationwide and we should move on in terms of the Food Quality Committee in the current act which is now not an entirely relevant structure for the new way of dealing with this important issue.

The Hon. T. CROTHERS: I have heard the minister's summary and she has touched on some of the matters I wish to raise as to why I support the Hon. Mr Holloway's proposed amendment, which I think is essential in this day and age of globalisation and air travel. We are now going to complete the rail link from Alice Springs to Darwin, which will mean that sooner or later Adelaide itself will become, if you like, a port with much more cargo coming into it which can be loaded straight onto the rail link and taken to Darwin, where two or three new berthing wharves have been constructed in recent times.

We now face the question of genetically modified foods. We also face the question of diseases, because some crops are specifically grown not in countries that are capable of growing them but in countries that specialise in them. For instance, the banana crops of, I think, Paraguay were wiped out one year by a disease called black sigatoka—and I notice that, recently, it has been discovered in the banana growing country of Queensland. We are quite capable of wiping out these diseases, just as we have in respect of potatoes, and so forth.

We are promoting a clean green image, yet when bills have been introduced in this place we have generally ignored mechanisms that could be included that would give us the option to keep pace with the rapidity of change which is now occurring in respect of food preparation, in respect of food growth and in respect of the handling and carriage of foods from place to place. The minister referred to that particular matter in her speech, but not to the degree that I think is necessary. I do not think even the Hon. Mr Holloway's amendment covers the points I am making, but it is better than nothing.

On the basis that half a loaf is better than no bread at all in respect of having a mechanism to fairly rapidly, one would hope, deal with matters that come our way with ever increasing rapidity, I support the Holloway amendment. When they are considering matters such as food, I urge the government, the shadow ministers in this place and the Democrats to give consideration to providing a mechanism in those bills which connects with considerable clarity with respect to addressing certain elements. The fire ant has been introduced one way or another into Queensland, and it can cause damage worth untold billions of dollars to horticulture—and, indeed, it does so in those countries where, in fact, it is almost at infestation levels. We have to have a mechanism in place where matters such as that, at first discovery, can be dealt with effectively and with great rapidity.

So I am inclined, on this occasion, for the reasons I have outlined, and others, to support the Holloway amendment. I do not think it goes as far as I would like to see it go. I understand that the minister has covered some of the points in what I thought was a fairly well thought out response by her to the matter, but, by the same token, the difficulty I have with her proposition is that the mechanism for dealing with matters that could bring our food into ill repute in overseas markets is cumbersome in the extreme.

I think the Hon. Mr Holloway's amendment, if set up in a proper fashion, can deal with matters as we should be doing now—with greater rapidity, given the globalisation of our markets; given the fact that we have the direct connection now, for the first time, with Darwin; and given that we have already had it via the import and export containerisation movement by aircraft. We have to move much more quickly than has hitherto been the case. It is worth repeating that the Hon. Mr Holloway's amendment endeavours to do that. If it is set up properly it will impact, but I do not think even that is sufficient to keep pace with the modern pace of technical change. I support the Holloway amendment, for those reasons.

The Hon. SANDRA KANCK: The Democrats will support this amendment. I am so disappointed with the lack of substance in the whole bill that anything that puts flesh on it has to be an improvement. As things stand, everything seems to be incredibly ad hoc and, at least if we have a committee such as this, there is an anchoring point and somewhere that businesses that are affected will be able to make some contact and have communication, which I think is essential when we are dealing with a bill that is so ephemeral.

The Hon. DIANA LAIDLAW: In his second reading speech, the Hon. Terry Cameron said that the Australian Institute of Environmental Health wanted another committee, which he said he is somewhat concerned about, and he questioned the need for more bureaucracy and more red tape. Is the committee structure in the opposition amendments related to the issues raised by the Australian Institute of Environmental Health? It is not my bill: I am handling it on behalf of another minister, and I am not clear.

The Hon. T.G. CAMERON: My understanding is that the Institute of Environmental Health supports the establishment of a committee.

The Hon. DIANA LAIDLAW: But you questioned the value of it.

The Hon. T.G. CAMERON: I do not support it; that is right. I wish to ask the Hon. Paul Holloway a question. Clause 2 provides that at least one member of the committee must be a woman and at least one member must be a man. It seems that we have a different ratio every time we set up a committee. Sometimes it is two, and sometimes it is three. When Anne Levy was here, if there was a committee of five, two had to be women; and, if it was a committee of seven, three had to be women. I am a bit puzzled that here we have a committee of 10 and only one has to be a woman. Is that the new pro forma that we can expect from the Labor Party?

The Hon. P. HOLLOWAY: No, I do not think it will be the new pro forma. The problem is that this committee is comprised of people nominated from particular bodies and, of course, it is very difficult to guarantee the gender balance on a committee. For example, if there is a committee of 10 and the minister is appointing five people, through those appointments the minister has the capacity to achieve a particular gender balance.

The problem is that, when you have a series of people representing particular groups, it creates problems in how that balance might be achieved, if, for example, each of the bodies nominated a person of the same gender. This composition of the board does not provide the minister with the capacity to do that. However, this is an unusual board, in the sense that we believe that it should be representative of a broad number of groups. It is, after all, a consultative body. Its purpose is to deal with the implementation of the Food Act. We believe that this is one of the occasions when an advisory committee should have representatives from a broad range of groups. I understand that, given that we cannot control the individual

nominations, we would have this provision but, where there is the capacity to have a more even gender balance, I think we would appropriately use that.

The Hon. T.G. CAMERON: If I can understand what the Hon. Paul Holloway is saying to me in summary is that, because only five of the persons sitting on this 10 member committee will be appointed by the government—

The Hon. P. Holloway: It is actually only one—sorry, two.

The Hon. T.G. CAMERON: One will be the presiding member nominated by the minister; one will be an officer of the department of the minister, nominated by the minister; one will be a person, who, in the opinion of the minister—that is three; and paragraph (g) provides:

> two will be persons who, in the opinion of the minister, are suitable persons. . .

On my reading of it that is five. I am not the shadow minister for finance, but that does come to five to me.

The Hon. P. HOLLOWAY: The point is that those people have to represent particular groups. Clearly, there has to be—

The Hon. L.H. Davis interjecting:

The Hon. P. HOLLOWAY: Why don't you just shut up. Really, you are not helpful. It's going to be a long day. This is a serious bill: if you are not interested in food, why don't you go away. You are really contributing nothing, a bit like your record in 20 years in this parliament, so let's just be done with it. I was asked a serious question and I will answer it in a serious way. In this case the minister appoints five members but, for example, they have to be officers of the department. Clearly, the minister would need to appoint an officer from the department who had expertise in this matter. It may be that he does not have the options in terms of gender that the minister might like.

I am quite sure that the minister (whoever it is) administering this act would be well aware of the desirability of having a broad gender balance on the committee and making it as wide as possible. All we are doing is ensuring that there is at least one person on it, but obviously it would be desirable if that balance could be more even.

The Hon. T.G. CAMERON: I thank the Hon. Paul Holloway for outlining the thinking behind the Labor Party's views on this, but it does seem to me that there are 10 people on this committee and five of them are to be appointed by the government. I guess we can only wait to see what happens in the future in relation to the gender balance of these committees. Another concern I have about this committee relates to drafting. Under subclause (2)(c) ' two will be persons nominated by the LGA'; and under paragraph (f) 'one will be a person nominated by the United Trades and Labor Council'. However, if we look at paragraph (d), we see that that person has to be an expert in a discipline relevant to production, composition, safety or nutritional value of food. Paragraph (e) provides:

> two will be persons who, in the opinion of the minister after consultation with Business SA, have wide experience in the production, manufacture or sale of food from a business perspective;

I applaud the wording of that paragraph. Yet when we look at the persons to be nominated by the LGA and the United Trades and Labor Council, we see no requirement whatsoever that they have any knowledge, training or expertise at all in the production, manufacture or sale of food from any perspective. There would be no requirement on the LGA: it could just be a junket. Will the nominees sitting on this committee be paid?

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. CAMERON: Can one assume that, if a food quality advisory committee is set up, there will be fees payable?

The Hon. DIANA LAIDLAW: I think one could assume that, yes.

The Hon. T.G. CAMERON: I think it is a reasonable assumption. Yet for the two people nominated by the LGA and the one person nominated by the United Trades and Labor Council there is no requirement whatsoever. Heavens above, the person nominated by the United Trades and Labor Council does not even have to be a union official or a worker in any way associated with the industry. We could appoint anyone, and the same will apply to the two people from the Local Government Association. If this is carried, I would at least like to send a message to members in the other place that they tidy up the wording of subparagraphs (c) and (f) at least to ensure that the people who are nominated by these bodies have some expertise.

I understand that whomever the Local Government Association nominates under this clause has to be accepted by the government. There is no choice here, is there? The Local Government Association could appoint two persons, none of whom has any experience or expertise whatsoever with food or the food industry, and the government would have to accept their appointment.

The CHAIRMAN: I suggest to the committee that any long discussion about the committee could come at an appropriate time in the bill. I understand Mr Holloway's amendment to the definitions is putting in a definition of 'committee'. Perhaps substantive questioning of this type should take place later when the Hon. Mr Holloway moves his amendment to insert new clause 96A, which deals with the establishment of the committee.

The Hon. DIANA LAIDLAW: I appreciate the chairman's point of view, but I want to commend the Hon. Terry Cameron for raising the matters—

The Hon. P. Holloway interjecting:

The Hon. DIANA LAIDLAW: No, I think he has done his research and thought it through. It would be excellent, in terms of assessing all matters, if all members did the same at all times. The Hon. Mr Cameron has done us a service by raising various questions at this stage, because it does clarify a number of issues which I would like to support later in terms of reasons why the government opposes the establishment of this committee structure, in principle, let alone before we get to the detail which the Hon. Mr Cameron has addressed.

I also would hope that this amendment failed. If I do not appear to have the numbers, we will certainly call for a division, because we object to the principle. If I fail in terms of the division, the government will have more questions in terms of the operations of proposed new clause 96A, which deals with a food quality advisory committee.

The CHAIRMAN: I take the point that, when the committee is talking about a definition, the committee needs to take a substantive argument now about that.

The Hon. P. HOLLOWAY: But nevertheless, you are right, Mr Chairman: if there are any amendments that members would like to make in relation to the composition of the committee, they can be addressed under a later clause. Essentially we are dealing with the principle of the establish-

ment of a food quality advisory committee. It is possible that that could be adjusted later. However—

The Hon. Diana Laidlaw interjecting:

The Hon. P. HOLLOWAY: I want to point out now that there is a provision under the current Food Act 1995 for what is called a Food Quality Committee. That is a committee of 14 persons. Section 11(2) provides:

(a) two shall be members or officers of the department (and one of these shall be appointed by the Governor to be the chairman of the committee); and

(b) two shall be members, officers or employees of a council or councils, selected by the minister from a panel of five such members, officers or employees nominated by the Local Government Association of South Australia.

This is the way in which things were done then, but of course we note that the current government has changed the practices of nominations for most of these committees by removing many of these panels. In a sense, what we are proposing is more in concert with current practices for the composition of committees. The section continues:

(c) one shall be a person nominated by the Minister of Consumer Affairs; and

(d) one shall be a person nominated by the Minister of Agriculture;

(e) three shall be persons respectively qualified as—

(i) a nutritionist; and

(ii) a toxicologist; and

(iii) a microbiologist,

each with experience in his discipline; and

(d) one shall be a person selected by the minister and panel of three persons, nominated by the Chamber of Commerce and Industry Incorporated, being persons who have wide knowledge of, and experience in, food technology; and

(e) one shall be a person selected by the minister from a panel of three persons, nominated by the Chamber of Commerce and Industry Incorporated, being suitable persons to represent the interests of manufacturers and retailers of food; and

(f) one shall be a person selected by the minister from a panel of three persons, nominated by the United Trades and Labor Council, being suitable persons to represent the interests of employees of manufacturers and retailers of food; and

(g) one shall be a person selected by the minister from a panel of three persons, nominated by the Consumers Association of South Australia Incorporated, being suitable persons to represent the interests of consumers; and

(j) one shall be an analyst.

That is the Food Quality Committee that currently exists in the Food Act.

The Hon. Diana Laidlaw: It hasn't met for some years.

The Hon. P. HOLLOWAY: No, it has not, and we have had Garibaldi and a number of other things. Maybe if it had met we might have avoided some of those things.

The Hon. Diana Laidlaw interjecting:

The Hon. P. HOLLOWAY: No, look, don't—

The Hon. Diana Laidlaw: I was doing a Foley, putting words in people's mouth.

The Hon. P. HOLLOWAY: That is not what I said. Given that a number of issues in the food area have arisen, and every member of this committee would agree with that, all I am saying is that, if the Food Quality Committee had been an effective one, these things might not have happened. Perhaps its structure in the act is ineffective, but if a body like it had been reconstituted or in some other way made to work more effectively, perhaps we could have addressed some of these food issues in a better way over the last decade.

I have mentioned the existing provision to highlight that we have tried to simplify it to create a more flexible version of that committee. The way that we have expressed it in drafting terms is similar to that which the government uses for similar bodies. I have already made the point that the Food Quality Advisory Committee as we see it is not like some of the other committees that are established by government. It is not like a board in the sense that we want people to act as a board member. Because the important role of this committee would be to consult widely with the industry and with people involved in the industry, we see that—

The Hon. Diana Laidlaw interjecting:

The Hon. P. HOLLOWAY: A new Food Act is being introduced and the regulations that will be introduced will have wide-ranging consequences for the entire food industry. Opposition members keep hearing from people who are involved in the industry that they are not being consulted, that they do not know what is going on, so we are seeking to create a committee that will have an official role to look at these issues so that people who are contacting us can have some confidence that a broadly represented body is looking after their interests. Without such a body, all they have to rely on is the government. I think that we have probably had enough debate on the principle of this matter. I have outlined the history in some detail and, if there are any more specific questions, I am happy to answer them.

The Hon. DIANA LAIDLAW: Without wishing to extend this debate further, when moving his amendment, the Hon. Paul Holloway has talked about the principle of the committee, to which the government has objected. I want to highlight, too, that this definitions clause is important to the whole principle and substance of the committee structure that has been proposed by the opposition. I was fascinated to hear the last contribution and earlier I recall saying that the function of this committee is to consult. I point out to all members that there is not one reference to that in the functions of the committee in proposed new clause 96C as provided by the opposition. It is to advise and consider, but there is not one reference to consultation. Even in terms of the way in which the opposition sees this committee functioning, it has not provided for those powers under the functions of the committee in later reference to proposed new clause 96C.

The committee divided on the amendment:

AYES (11)

Crothers, T.	Elliott, M. J.
Gilfillan, I.	Holloway, P. (teller)
Kanck, S. M.	Pickles, C. A.
Roberts, R. R.	Roberts, T. G.
Sneath, R. K.	Xenophon, N.
Zollo, C.	

NOES (10)

Cameron, T. G.	Davis, L. H.
Dawkins, J. S. L.	Griffin, K. T.
Laidlaw, D. V. (teller)	Lawson, R. D.
Lucas, R. I.	Redford, A. J.
Schaefer, C. V.	Stefani, J. F.

Majority of 1 for the ayes.

Amendment thus carried; clause as amended passed.

Clauses 5 to 12 passed.

Clause 13.

The Hon. SANDRA KANCK: In my second reading speech I raised the issue of training. I think the need for it is thrown into some sort of objectivity when you look at clause 13, and to some extent clause 14, where it provides:

(1) A person must not handle food intended for sale in a manner that the person knows will render, or is likely to render, the food unsafe.

Subclause (2) is the really important part, because it provides:

A person must not handle food intended for sale in a manner that the person ought reasonably to know is likely to render the food unsafe.

How does a person come to know, and under what circumstances is it reasonable for a person to know? It appears to me that unless the person has had training it might be difficult to argue that the person knows or ought reasonably to know. Can the minister tell me how a person will be able to know or reasonably to know?

The Hon. DIANA LAIDLAW: I understand that Standard 3.2.2 has been adopted nationally relating to food handling. That requires and provides for courses that equip persons with the skills necessary to meet all the provisions that the honourable member has highlighted in terms of the handling and sale of food in a safe manner. One sees even in this place, but generally in delicatessens and lunch bars across the city area, gloves being worn and a whole range of other practices that have been introduced in recent times arising from the implementation of the standards. So it is under way, as I understand.

The Hon. SANDRA KANCK: In fact, those food safety standards on page 8 provide:

A food business must ensure that persons undertaking or supervising food handling operations have—

(a) skills in food safety and food hygiene matters; and

(b) knowledge of food safety and food hygiene matters commensurate with their work activities.

How is that determined? Who will give the training? Will it just be the manager of the business?

The Hon. DIANA LAIDLAW: The honourable member is referring to Division 2—General Requirements, Food Handling Skills and Knowledge, which specifically refers to skills and knowledge commensurate with a person's work activities. There will be various requirements for training at different levels depending on a person's work activities. So at a lunch bar there may be different and lesser requirements than there would be for a person handling hot food in a restaurant or during processing. There will be different standards again in terms of the cool food chain, which I mentioned a moment ago and which is so relevant in the transport industry.

Some of this training, depending on how it relates to the work activities, may be in-house, it may be TAFE training or it could be transport industry training courses. I am advised that under clause 80, Duties of food safety auditors, one of the requirements is to carry out assessments of food businesses to ascertain their compliance with requirements of the food safety standards. So they in turn have to be satisfied that a business is undertaking, and persons generally handling food are undertaking, the appropriate training commensurate with their work activities.

I have just been told that there is another guide—A Guide for Food Safety Standards—and that this includes further comment on training. So, if somebody has time to read it they will know what is going on.

The Hon. Caroline Schaefer interjecting:

The Hon. DIANA LAIDLAW: I have been reminded by the Hon. Caroline Schaefer (and I did highlight this earlier) that there is provision in the budget of the Department of Human Services this and next financial year for $1.8 million to support the implementation of the legislation, and that includes not only support for local government and industry generally but training specifically. I mentioned in summing up the second reading debate that industry will be supported through industry associations and the provision of information to members, development of food safety program templates and training packages.

The Hon. SANDRA KANCK: I think the minister is demonstrating some of the concerns that we have about the bill: whether these small businesses will ever have time to read all this documentation I do not know. In regard to that very thick volume the minister referred to, is that something that will be provided to every food business?

The Hon. DIANA LAIDLAW: I have been advised that a much smaller publication, in fact in pamphlet form, is being prepared for circulation to every business in terms of food handling fundamentals. I would not want it inferred that I am reflecting on another minister's bill because I would be in big trouble, but generally I am anxious. In some of the reform packages in the transport sector you see a good goal and a policy initiative, and then you leave it to the bureaucrats and the National Road Transport Commission and you have volumes and you need a truck to get it to your home or business before you have time to read it.

I think even with the tax policy the fundamentals were right. When it went to the Tax Office it just got out of control, and I think there is a real message to bureaucrats and others to say that you can sit in the safety of your fully air-conditioned office and with your guaranteed full-time employment, no retrenchment; but there are others out there trying to make a living to pay the taxes for your business, and don't make it that hard.

Clause passed.

Clauses 14 to 42 passed.

Clause 43.

The Hon. SANDRA KANCK: I raised in my second reading speech a question regarding both clause 43 and clause 46, and it was in relation to the use of the word 'may'. At the end of clause 43 it provides:

. . . the authorised officer may serve an improvement notice on the proprietor of a food business in accordance with this Part.

Similarly, at the end of 46(1) the word 'may' is used. Why is it only a 'may'? Why is it not mandatory?

The Hon. DIANA LAIDLAW: I am advised that they may not issue the improvement notice. They may determine that they should prosecute. So it is not that they do not do something about it; it is in fact what level of action they take, whether the issue of the notice or whether it is a higher order of response, including prosecution.

Clause passed.

Clause 44.

The Hon. DIANA LAIDLAW: I move:

Page 29—

After line 30—Insert:

or

(f) other action be taken to ensure compliance with the provisions of the Food Standards Code.

After line 36—Insert:

(2a) An improvement notice may include ancillary or incidental directions.

These amendments arise from matters discussed in the other place, in which the minister undertook to assess drafting to improve the relationship between clause 43 and clause 44.

The Hon. P. HOLLOWAY: The opposition supports those amendments.

Amendments carried; clause as amended passed.

Clause 45 passed.

Clause 46.

The Hon. DIANA LAIDLAW: I move:

Page 30—

After line 24—Insert:
or
(e) prohibits other action being taken.
After line 28—Insert:
(2a) A prohibition order may include ancillary or incidental directions.

Again, these involve detail to improve the bill.

The Hon. P. HOLLOWAY: We support the amendments.

Amendments carried; clause as amended passed.

Clauses 47 to 50 passed.

Clause 51.

The Hon. DIANA LAIDLAW: I move:

Page 32, after line 6—Insert:
(2) An application under subsection (1) must be made within 28 days after the day on which notification of the decision is received.

The amendment provides for a person who is aggrieved by a decision to refuse to give a certificate of clearance from the prohibition order to seek a review. So it is all about fair play.

The Hon. P. HOLLOWAY: Yes, we support the amendment.

Amendment carried; clause as amended passed.

Progress reported; committee to sit again.

[Sitting suspended from 1 to 2.15 p.m.]

VOLUNTARY EUTHANASIA

A petition signed by 20 residents of South Australia concerning voluntary euthanasia, and praying that this Council will reject the so called Dignity in Dying (Voluntary Euthanasia) Bill; move to ensure that all medical staff in all hospitals receive proper training in palliative care; and move to ensure adequate funding for palliative care for all terminally ill patients, was presented by the Hon. Carmel Zollo.

Petition received.

PRINTING COMMITTEE

The Hon. A.J. REDFORD: I have the honour to bring up the first report of the Printing Committee 2000-2001 and move:

That the report be adopted.

Motion carried.

ARTS STATEMENT

The Hon. DIANA LAIDLAW (Minister for the Arts): I seek leave to make a short ministerial statement on the subject of the Arts Statement 2000-01.

Leave granted.

The Hon. DIANA LAIDLAW: I seek leave to table the statement.

Leave granted.

The Hon. DIANA LAIDLAW: The Arts Statement 2000-01 is the first of the planned annual surveys, to be tabled in parliament, of the many and varied arts activities happening throughout government. In line with government policy the statement has been supported by the state's Senior Management Council of 10 portfolio chief executives. The Arts Statement 2000-01 is a first for Australia—and outlines more than 50 arts based initiatives undertaken in the past year in areas such as education, planning, health, justice, tourism and transport, and even Treasury. South Australia can take pride in the comment of the immediate past chair of the Australia Council, Dr Margaret Seares, that this is 'a fantastic and rare achievement'.

I have never been content to accept that government support for the arts in South Australia should be confined to the arts portfolio or simply judged by the dollars allocated each year to Arts SA. The Arts Statement 2000-01 identifies how the arts—in all their diversity—enhance the core objectives of government agencies and thereby contribute to the wellbeing of everyone.

The statement kickstarts the commitment to a whole of government arts policy made in Arts+2000-2005, the government's investment strategy for the arts and artists over the next five years. This whole-of-government policy promotes the undertaking of specific arts projects by state government departments, and encourages the formation of comprehensive arts strategies across government. I am confident that this survey (2000-01) will inspire more ideas, galvanise more artists to approach agencies with potential projects, and lead to more agencies embracing arts activities in realising their policy objectives and service delivery goals.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The Hon. J.S.L. DAWKINS: I lay upon the table the interim report of the committee concerning ecotourism.

QUESTION TIME

HINDMARSH SOCCER STADIUM

The Hon. CAROLYN PICKLES (Leader of the Opposition): My questions, which are directed to the Attorney-General on the subject of the draft report of the Auditor-General on the Hindmarsh Soccer Stadium redevelopment project, are as follows:

1. Has the Attorney seen, had read to him or been briefed on any section of the Auditor-General's draft report, including chapters 5 to 10?

2. Which members of parliament, including ministers, is the government indemnifying?

3. What is the cost associated with such a decision, and will the Attorney list the lawyers engaged by those members of parliament?

4. Why has the government failed to issue a direction that no taxpayer money can be used by government members to injunct or sue the Auditor-General in this matter?

The Hon. K.T. GRIFFIN (Attorney-General): I have received several chapters from the Auditor-General for my own comment. I cannot recall the chapter numbers. They are the only chapters that I have seen. No-one, to my recollection, has purported to read chapters to me—I am capable of reading. I am not disabled, and for that reason—

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order!

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order! That is something that the honourable member can take up with other people.

The Hon. K.T. GRIFFIN: Other than the two chapters and one excerpt of the chronology which have been provided to me by the Auditor-General for comment, I have not seen any other parts of the draft report. I know what the honourable member is leading towards, and that is whether any members, members of government or others who may have

seen the report or draft report might have made them available to me. With respect to the inference in the question, I think it is an inappropriate conclusion to draw and I think it reflects adversely on members, public servants and others who have, obviously, signed confidentiality agreements, to suggest that they would in some way or another seek to breach those confidentiality agreements. I am not aware of who has signed or not signed confidentiality agreements in toto.

In respect of members of parliament, including ministers, being indemnified by the government, I do not think there is any secret that there are four members who have been granted legal representation at government expense. They are Mr Ingerson, the Hon. Joan Hall, the Hon. John Oswald and the Hon. Iain Evans. So far as the costs associated with the representation is concerned, I am not aware of the precise amount. In terms of the lawyers who are engaged by members of parliament, they are not represented by the Crown Solicitor: they are represented by private sector lawyers because it would be inappropriate to have them represented by the Crown Solicitor. I make the point that if they—

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: Well, that's all right.

An honourable member: Ask John Cornwall.

The Hon. K.T. GRIFFIN: There are plenty of precedents in Labor governments for the government of the day agreeing to meet legal costs for those who are either ministers or former ministers. The Hon. Barbara Wiese was one of those.

Members interjecting:

The Hon. K.T. GRIFFIN: And their inquiries—

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! This is question time. The Hon. Mr Cameron can ask a question.

Members interjecting:

The PRESIDENT: Thank you, we have heard enough now.

The Hon. K.T. GRIFFIN: It does not matter who conducts an inquiry. If there is a risk that a person—

Members interjecting:

The PRESIDENT: Order!

The Hon. CAROLYN PICKLES: I rise on a point of order. I would like to listen to the answer.

The PRESIDENT: Yes, I have tried that a couple of times.

Members interjecting:

The PRESIDENT: Order! I also ask honourable members not to reflect on a public servant in this place.

The Hon. K.T. GRIFFIN: The representation is quite appropriate. It is consistent with guidelines which the previous Labor government put in place.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: For ministers and former ministers.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: You do have to think about former ministers.

The Hon. R.R. Roberts interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: Of course, Barbara Wiese took legal advice: she was represented at government expense.

Members interjecting:

The PRESIDENT: Order! The honourable member does not need to give the Attorney-General advice.

Members interjecting:

The Hon. K.T. GRIFFIN: No-one has given—

Members interjecting:

The PRESIDENT: If the Attorney-General does not want to answer the question, he will resume his seat.

The Hon. K.T. GRIFFIN: I do want to answer the question.

The PRESIDENT: Well, would you answer the question, please?

The Hon. K.T. GRIFFIN: I am trying to cope with the interjections.

The PRESIDENT: Well, if the pot stopped calling the kettle black, that would help us somewhat.

The Hon. K.T. GRIFFIN: I am a softly spoken person, and obviously I cannot talk over a lot of the interjections. Obviously the issue has raised emotion on the other side. I am being perfectly frank about the position with respect to legal representation. There will also be public servants who will be legally represented. I do not have the details of those, because they will be approved by the Crown Solicitor under the normal rules which have applied for many years under governments of both political persuasions. There is nothing improper in legal representation for ministers and former ministers.

I can remember that there was a former Labor minister, I think it was Mr Virgo, and when we came to office there was a current legal action by Mr Lane, a shearer from the South-East, who was suing him. He had been given an indemnity by the then Labor government. I was asked what should be done. I said, 'We will continue the indemnity', because he was acting as a minister of the Crown—

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: Of course he is. He was acting as a minister of the Crown at the time—

Members interjecting:

The Hon. L.H. Davis: Are you saying people do not have legal rights? Is that what you are saying, Paul?

The PRESIDENT: Order! The Hon. Mr Davis will come to order.

The Hon. P. Holloway interjecting:

The PRESIDENT: Order, the Hon. Paul Holloway!

The Hon. K.T. GRIFFIN: If it is any consolation to some members opposite who are getting themselves in a knot over this, there will be an opportunity to debate the issue when we consider a bill to deal with some of the issues raised by the Auditor-General in his interim report. That will be in the Council today, subject to its passing through the House of Assembly. It is as simple as that. In terms—

Members interjecting:

The Hon. K.T. GRIFFIN: It is obvious that members do not like the frankness with which I am answering the question—

The Hon. Carolyn Pickles interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: It is not setting any precedent at all. The Auditor-General has not conducted this sort of inquiry ever before, as far as I am aware.

The Hon. A.J. Redford: Yes, he has; the State Bank.

The Hon. K.T. GRIFFIN: That was not under section 32, as I recollect it: it was a different provision. I can tell members that, in that case, a wide range of directors, officers and politicians were represented. The then Leader of the

Opposition was granted representation by the then Labor government—

The Hon. R.D. Lawson: And well represented he was!

The Hon. K.T. GRIFFIN: Obviously, my colleague the Hon. Robert Lawson. The moment you get into criticising legal representation where you follow established principles, you are on the slippery slope—

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: The last question is: why has the government failed to issue a direction that no taxpayers' money can be used by government members to injunct or sue the Auditor-General in this matter? The funding for legal representation approved by the cabinet is for legal advice and legal representation in respect of the Auditor-General's inquiry. The position is that, if they wish to take matters to court, ultimately they will have to come back to the cabinet for—if the cabinet so approves—an extension of the approval for legal representation at the expense of the taxpayers. There is no need for the Attorney-General or anyone else to give a direction: it is clear.

If people want to talk about legal challenges, they can talk about them. The question is whether or not they follow up on them. If people want to raise concerns about the scope of an inquiry, they are entitled to do so. No-one is seeking to stop people from exercising their rights, whether they be members of parliament or ordinary members of the public, public servants or anybody else. I think it is perfectly clear what is happening. In my view, no mischief is occurring and there is no mischief that members of the opposition can hope to develop as a result of either my answers or as a result of anything else that is occurring at the present time.

The Hon. P. HOLLOWAY: Has the Treasurer seen, had read to him or been briefed on any sections of the Auditor-General's draft report on the Hindmarsh Soccer Stadium, including chapters 5 to 10? When was the Treasurer first informed that the Auditor-General had requested legislation to allow him to finalise his report, and when did he tell the Premier?

The Hon. R.I. LUCAS (Treasurer): On the second question, if the honourable member reads the Auditor-General's report, he will find that he does not request legislation. The simple answer to the question is that I have not been advised that he has requested legislation, and I do not think the parliament has been, either. All the Auditor-General has done—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: No, the Auditor-General says that there are two options, and he leaves it to the parliament to determine. The Hon. Paul Holloway puts words into the Auditor-General's mouth and says that he has requested legislation.

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: You cannot re-interpret what the Auditor-General's report says. Read the report.

Members interjecting:

The Hon. R.I. LUCAS: You obviously did not understand it. I have answered the question.

Members interjecting:

The PRESIDENT: Order, the Hon. Paul Holloway!

The Hon. R.I. LUCAS: If the honourable member wants to ask questions that make sense, I am happy to answer them, but if he asks questions that do not make sense, he will get answers to the questions he asked.

The Hon. L.H. Davis interjecting:

The Hon. R.I. LUCAS: That might help. I received a letter from the Auditor-General which I saw early Tuesday evening. As the minister responsible for the Public Finance and Audit Act, as the Hon. Mr Holloway will know, it was my responsibility on behalf of the parliament to advise the Auditor-General originally when this Council passed the motion requesting the inquiry. The terms of that motion said something like requesting the Treasurer to take the issue up, and I took it up. The Auditor-General wrote to me and I saw that letter and a copy of the report early on Tuesday evening.

As I said, it is grossly improper, to use a phrase that the Hon. Mr Holloway would understand, to put words into the Auditor-General's mouth and to say that he has requested legislation. In his report, he has indicated to parliament what the options are. I had a very brief telephone conversation with the Premier some time on Tuesday evening indicating that there was an issue that had been raised by the Auditor-General and, given that he was interstate at the time, he asked me, and I then had a discussion some time through that evening with the Deputy Premier, to do as we have been doing, which is urgently to take action to respond to the report of the Auditor-General.

As the Attorney-General has indicated, the speed of the government's response has been demonstrated by the announcement yesterday afternoon that we would legislate, and the speed of the government's and the Attorney's response is such that this afternoon—

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: 'Lightning Griffin' is what he is being called. Very rarely, I suspect, has the parliament seen the option raised of whether or not parliament should legislate, with not only the decision being taken, the legislation being drafted and its being introduced into the House of Assembly (I assume in the not too distant future this afternoon), within the space of 36 hours. That is a fair indication of the speed of the government's response on this issue.

In relation to the first question, I have not been provided with copies of chapters 5 to 10, or had chapters 5 to 10 or indeed chapters 1 to 4 read to me over the phone or whatever. I think that was the precise nature of the member's question. If upon reading *Hansard* I found there was any tricky little bit in it to which I have not responded, I would be happy to add further to the reply if I thought that would be appropriate.

The Hon. T.G. ROBERTS: Does the Attorney-General believe that government members who are the subject of the Auditor-General's Hindmarsh soccer stadium inquiry should absent themselves from the vote on the legislation to protect the Auditor-General, given their obvious personal conflict of interest?

The Hon. K.T. GRIFFIN (Attorney-General): That is really a matter for the House of Assembly under its standing orders. The only way a member of parliament elected by the people of South Australia can be disqualified from voting is in relation to a pecuniary interest. The standing orders of this Council, as I recollect, are much the same as the standing orders of the lower house and there are very limited circumstances in which a member may not be able to vote.

It has to be remembered that they represent a particular electorate, they are entitled to be present and they are entitled to vote. Issues of conflicts of interest are covered by the members of parliament register of interests legislation. Every member has to file a declaration of interests at least once a

year, and if there is a particular pecuniary interest that causes a situation of conflict—

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: Well, it's not. If you have a look at the bill when you get a copy, you will see that no pecuniary interest is at risk in relation to that legislation. The standing orders are quite clear. If one is suggesting that in relation to members of parliament who might have been asked to comment on particular parts of the Auditor-General's draft report or for that matter to have either given evidence or made statements to the Auditor-General, you may well disqualify a lot more people from voting on this and you will deny the citizens of South Australia the right to have their representatives vote on the issue.

There are a lot of circumstances in which the Leader of the Opposition, for example, has from time to time made submissions to inquiries. They have not been, as far as I can recollect, the subject of legislation; but if they had been, should the Leader of the Opposition be prevented from voting on a particular issue? I do not know, in respect of the Hindmarsh stadium, whether there are any members of parliament in the opposition ranks who have made a statement to the Auditor-General, and if they have surely they are faced with the same sort of question that has been raised in relation to government members.

What is law for one is also a law which applies to everybody. It does not matter where you come from: if you have made a statement to the Auditor-General, if the logic which is implied in the question that has been asked of me is to prevail, there may be members of the opposition who should not be voting as well. I come back to the central point that I have made: the standing orders are quite clear—they do not deprive a member elected by his or her electors and representing a particular electorate, or the whole state in the case of the Legislative Council, from voting on this piece of legislation because there is no pecuniary interest involved.

The Hon. T.G. Cameron: Is that an admission?

The Hon. K.T. GRIFFIN: No. I do not see how it can be. As the Treasurer has said, the bill has been drafted, it will be introduced in the House of Assembly at the earliest opportunity after question time, as I understand it, some time during the afternoon at least, and then we will get an opportunity to discuss it if it passes in the House of Assembly. I would hope that it will be supported by both the opposition and the Independents in that house.

The Hon. T.G. CAMERON: As a supplementary question to the Attorney: will the government support the appearance of the Auditor-General before the Council during the debate on his report so that members can have a more comprehensive understanding of the issues involved?

The Hon. K.T. GRIFFIN: I think the difficulty with that proposition is that the Auditor-General, or any other officer, cannot be the subject of questioning in this chamber unless the officer or other person is brought to the bar of the Council. There is, of course, the capacity for questioning before a select committee, before the estimates committees, certainly so far as House of Assembly members are concerned in that context, or by members of standing committees. But there is no possibility that either the Auditor-General or any other officer can be questioned by the Legislative Council except in those circumstances.

WALLIS CINEMAS

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Leader of the Government in the Council and the Treasurer a question about Wallis Cinemas.

Leave granted.

The Hon. L.H. DAVIS: I noticed that in another place the member for Bart—I'm sorry, Hart—on 24 July asked a question of the Premier relating to electricity prices, and in particular in relation to Wallis Cinemas, and the member, Mr Foley, said:

> Wallis Cinemas have 17 screens across Adelaide. In fact, we are now advised that the Wallis group is so concerned about the impact of the Olsen government's rising power prices that the Wallis chain of cinemas is reconsidering its latest project—a new cinema in Mount Barker, in the Premier's own electorate.

That was a damning allegation. Is the Treasurer is in a position to respond to whether or not the serious allegation made by the member for Hart is true or not?

The Hon. R.I. LUCAS (Treasurer): I thank the honourable member for his question. As the honourable member knows, there has been a series of wild and inaccurate allegations made by the shadow treasurer and by the Leader of the Opposition in particular in recent times.

The Hon. Diana Laidlaw: Not only on this matter.

The Hon. R.I. LUCAS: Not only on this matter, that is true.

The Hon. L.H. Davis: He's been able to afford the electricity for the haircut!

The Hon. R.I. LUCAS: Yes, I must say he did look a swarthy, untrustworthy character in the *Advertiser* this morning. Certainly the Minister for Transport and Minister for the Arts looked a much more friendly and amenable—

The Hon. Diana Laidlaw: And accountable.

The Hon. R.I. LUCAS: —and accountable person, I thought—

The Hon. L.H. Davis: He looks like an astronaut who was left on the launch pad!

The Hon. R.I. LUCAS: —than the shadow treasurer, who was sort of slinking out the door.

Members interjecting:

The Hon. R.I. LUCAS: Mr President, we'll move off the member for Hart's new, improved haircut, if I can put it as kindly as I might.

An honourable member interjecting:

The Hon. R.I. LUCAS: He ought to take hair advice from the Hon. Ron Roberts, he of the sleek—

The Hon. L.H. Davis: The silver fox!

The Hon. T.G. Cameron: The silver fox who got caught in his hole yesterday.

The Hon. R.I. LUCAS: He got caught last night. The silver fox lost his temper last night and lost his tongue, and nearly lost his place in this chamber for a brief period.

The Hon. L.H. Davis: He fell for the bait.

The Hon. R.I. LUCAS: He fell for the bait. Come in spinner. To go back to the important question: an interview this morning, 26 July, on ABC radio with a senior executive of Wallis Cinemas, Mr Bob Parr, addressed, in part, this allegation made by Mr Foley about Wallis Cinemas reviewing its commitment to the new Mount Barker complex because of the cost of power. I think that perhaps the best response is to quote the senior executive of Wallis Cinemas, Bob Parr, who said:

> Yeah, well, Kevin Foley would be better informed if he rang the people who made the decisions. That was never an issue. . .

You could not better summarise the approach of the shadow treasurer. Mr Parr summed it up in one sentence. We saw the unfortunate circumstances in the estimates committee, where the first hour of a relatively limited period of questioning on the state budget was on the issue of first home owner grants. Again, Mr Foley might have been better informed if he had spoken to the people who knew the facts. He pedalled a particular story on that occasion—

The Hon. Diana Laidlaw: Why would he want to be accountable?

The Hon. R.I. LUCAS: Well, exactly right. He pedalled the story on that particular occasion which, as the *Advertiser* reported the next morning, had not even been checked with the source of the story. As we found out in the end, it was somebody hanging around outside the casino who overheard a conversation with somebody else, and that other person was a relative or an acquaintance of that particular person. This evidently—

The Hon. A.J. Redford: Probably a Labor Party policymaker.

The Hon. R.I. LUCAS: Exactly. That is how Labor policy is formed—you lurk around the casino late at night, I presume, and you might pick up a politician—

The Hon. L.H. Davis: That is how they got to add industry.

The Hon. R.I. LUCAS: Exactly. It obviously added industry to its innovation policy in that way. You lurk around the casino late at night and you never know who you might run into and you never know whether you will find a policy—

The Hon. Diana Laidlaw: Or even overhear it.

The Hon. R.I. LUCAS: And you might overhear an actual story that you can discuss for an hour during the estimates committee. At least Senator Buckland, who was evidently about the fourth person who heard this story and passed it on via a few other people, eventually to Kevin Foley, so that he could have his lead question on the state—

The Hon. L.H. Davis: Who of course carefully checked the source by going to the casino himself.

The Hon. R.I. LUCAS: I am sure that when he went there he found no-one there and he said, 'Well, that is good enough. The person is not here any more.' So, we had a situation where at least Senator Buckland who, as I said, was about the fourth or fifth intermediary along the sequence in that particular story, had the good grace to tell the *Advertiser*, 'Well, look I really didn't feel confident enough about raising this in the federal parliament. I really think that I should have checked it a bit more.' What does that say about the shadow treasurer?

An honourable member: They are in the same faction.

The Hon. R.I. LUCAS: The same faction but, even as a lowly federal senator, he had the good sense to say, 'Well, given that this was picked up outside the casino and I have not really had a chance to check its validity, I do not think that I will raise this in the federal parliament with the federal minister, even though he is responsible for it, until I have had a chance to check it.' Of course, the shadow treasurer did not have to worry about those sorts of things.

The Hon. K.T. Griffin: Recklessly indifferent.

The Hon. R.I. LUCAS: Recklessly indifferent, as the Attorney-General says. In summary, Mr Parr described the shadow treasurer very well:

> Yeah well, Kevin Foley would be better informed if he rang the people who made the decisions.

INDUSTRIAL ZONING

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about industrial zoning.

Leave granted.

The Hon. M.J. ELLIOTT: I have received correspondence from C.E. & A. Co Pty Limited, marine industrial engineers and agents at Royal Park. This company has a significant investment in manufacturing equipment which facilitates South Australia in its naval shipbuilding and repair. It has produced equipment for the Australian Submarine Corporation, high speed patrol boats for the Royal Thailand Navy, Hong Kong police boats and New South Wales police boats, amongst others.

A block of land adjacent to this company has been purchased and applications made to develop a waste transfer station. The company is concerned about the potential impact of its business on that operation. I am told that also in the same area there are food processors, one of which employs 50 people in the export of seafoods and also has some concern. I am told that the waste transfer station is likely to have three jobs when it is up and running.

Apparently at one stage the proposal was given approval, but it was found that a mistake had been made in the process, so the consultation process has started again. I think the issue finally comes down to whether or not the zoning (when drawn up) is sufficiently precise to be certain that businesses are appropriately located and there are clear enough signals as to what businesses are acceptable. In a way it is perhaps a bit like the experience that we had at Mount Barker in relation to the foundry. My questions are:

1. Is the minister familiar with this particular case and can she give any information to the parliament about its current status?

2. Would the minister care to give an opinion as to whether or not in creating zones under PARs councils are being sufficiently precise in their wording to ensure that appropriate businesses collocate?

The Hon. A.J. Redford interjecting:

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): As the Hon. Angus Redford interjects, it is interesting that, one day after Premier Gallop has expressed his disappointment with a process because he did not like the outcome, it would appear that South Australia—I think because of our brilliance in engineering skills and application and electronics—has been awarded this work. If it is confirmed that we are to gain the maintenance work for the Submarine Corporation, that would also reflect well on the energy that the government has applied to the federal government in lobbying for this major work.

I am very aware from the background of Perry Engineering and others—and I suspect that it is equally relevant to the company to which the honourable member refers—that the Submarine Corporation applies the strictest of standards in terms of not only precision but cleanliness and controls, because its work is applied to the submarine project which is a defence facility. So, I am not at all surprised that these concerns may have been raised in that context.

I am familiar with the subject, but I have not had an update in terms of any briefing for perhaps a week. Because of the delicacy of planning decisions and the way in which any comment is reflected on for any litigious purpose later, I would be unwise to reflect on this matter from what I recall and I should obtain updated information.

The Hon. M.J. Elliott interjecting:

The Hon. DIANA LAIDLAW: I am prepared to make more general comment not in relation to this one development application but in terms of industry. One of the real issues that South Australia faces, and particularly in the metropolitan area, is a scarcity of industrial zoned land. For that reason, it has been general practice over successive governments to be more general in the definition of what that scarce industrial land can be used for, so that we close off no options in terms of attracting development and assessing it under different criteria. The honourable member asked for a general comment: that is the background of the way in which successive state governments and successive ministers of planning have approached this issue.

I can assure the honourable member that gaining more access to industrial land across Adelaide is difficult because many local councils do not want it because their local residents do not want to be associated with industrial land. People want the jobs—they scream at all of us, collectively, that they want more jobs in this state—but neighbourhoods do not want land zoned for industrial purposes. Many developers or landowners also do not want their land zoned for industrial purposes because they believe that they will get a lower rate of return than they would get for commercial zoned land or residential zoned land. So, there is that issue to deal with as well.

Therefore, the land that is currently zoned industrial—and there is always pressure from the Department of Industry and Trade, state development, the Employers' Federation and the unions for more land to be zoned industrial—is generally defined in terms of its specific purposes, for that reason. That may give rise to other issues such as those that have been raised by the honourable member, but at that point other matters come into account, including EPA issues and the like, but I will get more detailed information for the honourable member on the specific application and the assessment process.

The Hon. M.J. ELLIOTT: I have a supplementary question. Is the minister supportive of having special zones, such as the family zone, to cater for situations like this transfer station, or does she prefer to use other approaches?

The Hon. DIANA LAIDLAW: The question is relevant to the government's approach to clusters. The Minister for Industry and Trade could talk more on this, but, because of the general difficulties that I have outlined, there is a general push across government for the relocation of businesses and clusters to maximise like skills and efficiencies. It depends on the category of assessment, but, in terms of category 3, generally the NIMBY syndrome of nobody wanting various industries in general in their backyard comes into play. There is an absolute distaste for some industries and you can guarantee that there will be an adverse community reaction, no matter how clean and environmentally sound their effort is in establishing a plant. There is a psychological barrier to certain types of industry, yet industry, as we know, through environmental controls and the like, is required to operate in a much cleaner, more responsible manner than it did in the past.

I have not seen any general enthusiasm for waste transfer stations to be clustered, but there will certainly be a much greater focus on waste transfer, waste resource and recycling; and certainly the Wingfield area has been an area which has attracted such business in the past. They are updating their practices. Royal Park has just moved beyond that cluster and has generated some big issues of local concern. As I said earlier, I will have to get more detailed and recent updates on the issues before I reflect further on that particular application.

CONSTRUCTION INDUSTRY

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Workplace Relations some questions about the construction industry royal commission.

Leave granted.

The Hon. J.F. STEFANI: Today the Prime Minister, John Howard, announced a royal commission into the construction industry. It has been reported that a retired New South Wales judge, Mr Terence Cole, will head the royal commission. Earlier this year, the federal Minister for Workplace Relations reported that he had received a report from the employee advocate about the activities of the building unions in New South Wales, Queensland and Western Australia. In September last year, Mr John Sutton, the National Secretary of the CFMEU, called for an NCA inquiry into the construction industry. It was reported that there had been a number of allegations of criminal behaviour within the CFMEU, including money laundering, theft and resale of construction equipment, false invoicing, fraud and the involvement of criminal figures. My questions are:

1. Does the South Australian government support the federal royal commission?

2. Is the minister aware of any evidence of corrupt practices within the construction industry in South Australia?

3. Will the state government cooperate with the royal commission?

The Hon. R.D. LAWSON (Minister for Workplace Relations): I thank the honourable member for his question and I am well aware, as other members would be, of his interest in the construction industry in this state. I was intrigued last year to read comments of John Sutton, National Secretary of the CFMEU, calling for a National Crime Authority inquiry into the construction industry. It was claimed that he was concerned that the activities which were characteristic of the former BLF were creeping into the CFMEU and the construction industry more generally. The federal minister commissioned a report from the federal employment advocate, Mr John Hamberger, earlier this year, and his report on the construction industry raised a number of matters of serious concern.

For example, a senior official of a building union owned 70 per cent of a hotel, while a director of a major construction company owned the rest, even though the unionists had paid only 30 per cent of the trust. An organiser in a union was regularly requesting $2 000 cash payments from head contractors to leave sites alone. Another organiser was collecting money to give to some workers involved in a lockout but instead keeping the money himself, and other similar activities. In light of this, I do welcome the federal royal commission into the building industry.

Many South Australians are concerned by the increase of militancy of unions in both Victoria and Western Australia since Labor governments were returned in those states. We all remember the chaos and cost to South Australia of the BLF activities on the Remm Centre, which the Bannon Labor government failed to control. We do not need to see a revival of the thuggery of the BLF in our state. Corruption, violence and illegal activities are like a cancer. Although the allegations made by Mr Hamberger related to New South Wales,

Western Australia and Queensland, as I say, these practices are like a cancer and they can spread to here if they are not stamped out.

This government has an excellent relationship with unions in our state and all responsible unionists have nothing to fear from an inquiry of this kind. We will certainly support the federal royal commission and, if Commissioner Cole seeks evidence in this state, we will provide such evidence as we have and such cooperation and facilities as he needs. As I say, we have no reason to believe that these practices have yet returned to South Australia but we are anxious to see that they are stamped out elsewhere and do not return.

STATE DEVELOPMENT

The Hon. T. CROTHERS: I seek leave to make a precied explanation prior to directing some questions to the leader of the government in the Council on the future employment of South Australians at the extensions of the Adelaide Airport, the South Australian Submarine Corporation and the building to completion of the Adelaide to Darwin rail link.

Leave granted.

Members interjecting:

The PRESIDENT: Order!

The Hon. T. CROTHERS: I swear that I should be talking about locomotives because some members on the government benches have obviously gone loco. Over the past three or four weeks, pronouncement has been made in respect of these three major industry expansions. From what has been said by the Prime Minister, it would appear that the South Australian Submarine Corporation has locked up the maintenance program for the six Collins class submarines. That program, it is said, will be worth in excess of $2.5 billion. Likewise the extension of Adelaide International Airport with the coming together of Qantas, Ansett and Virgin airlines, and I understand that the value of those extensions is circa $250 million. In addition to the above, the Alice Springs to Darwin rail link has at last got under way. I am aware of other potentially new projects in various stages of development which I understand show a good chance of being developed in this state. However, it is in relation to the first three projects that I wish to direct some questions to the leader of the government, the Hon. Mr Lucas, as follows:

1. How many additional jobs will be created in this state by these three projects when they are up and fully running?

2. How much of the money earmarked for these three projects—and if my arithmetic is correct it will be in the vicinity of some $4.25 billion—will be spent directly in South Australia either from wages paid to South Australians and/or goods and services purchased here for use on the three projects?

3. Finally, but by no means exhaustively, is the leader in a position to give the Council a brief report on the progress of the gold mines in the Gawler Craton region of this state, the magnesium project and how it relates to Port Pirie, the mining exploratory work at Yumbarra on our West Coast, and the offshore diamond mining project, with the recent announcement of the discovery of diamonds on islands off our West Coast, and I understand that Flinders Island is one such island?

The Hon. R.I. LUCAS (Treasurer): It is refreshing to get a constructive question in this chamber from a non-government member. Indeed, it is one of the very few constructive questions from a non-government member that we have heard in the last four years in this chamber. In contrast to the whingeing, whining and destructive and negative criticism, we actually have a member prepared to use question time as indeed it was originally intended—in the interests of South Australia, South Australians and its future development. The honourable member's questions were indeed comprehensive and, although it would be easy to do so, I will not take the remaining 14 minutes of question time to respond. I am happy to take the bulk of them on notice and come back with a more comprehensive reply.

I refer to one of the projects which the honourable member has raised, that is, what would appear to be the very exciting developments in respect of the Submarine Corporation referred to earlier. We need to wait for the final decision or announcement from the Prime Minister in relation to it, but I think the response from Premier Geoff Gallop is a good indicator that the critical decision in relation to this will obviously, and ultimately, come to South Australian industry and to South Australian workers.

The Premier personally has spent a good amount of time working with respective federal ministers for defence and the Prime Minister, and he has worked very hard on behalf of South Australian workers, their families and industry, to try to make sure this critical decision was taken to the advantage of South Australia and South Australian workers. If that is ultimately confirmed—and that appears likely—South Australia will owe an enormous debt of gratitude to the Premier for his personal involvement in this issue.

As I said in response to earlier questions, we had been encouraged by the recent decisions and announcements from the commonwealth on the ownership of the Australian Submarine Corporation. This decision will be another further positive step in the direction that we would wish to take the industry. There are further decisions. The Premier, as the honourable member would know, has talked about—it has varying working titles—a centre of excellence in South Australia centred in, around and on the skills of the Australian Submarine Corporation. We hope to see the centre of naval shipbuilding in Australia, with the significant contracts from that being centred largely in South Australia. We would hope that, as a result of what would appear to be the inevitable rationalisation of shipbuilding in Australia, we will see an expansion of shipbuilding and jobs for South Australian workers in South Australia.

We are targeting new companies, for example, BAE Systems. The reason why we worked so hard on this—and, again, the credit for this must go to the Premier—was to ensure that, in the rationalisation of BAE Systems, internationally and nationally, it would come to Adelaide and South Australia. We think that with DSTO, Tenex, BAE Systems and a number of other companies we have that critical capacity, that critical mass that exists in South Australia, which I believe and which the South Australian government believes will assist the federal government in taking the sorts of decisions it might be taking.

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: Again, another indication there, but I do not want to take the remaining minutes of question time on the most important question that the member has asked. I will take on notice the detail of his questions, in terms of the other areas, and bring back a comprehensive reply for the member.

MURRAY RIVER, FERRY OPERATIONS

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Transport a question on ferry contracts and ferry operations.

Leave granted.

The Hon. R.K. SNEATH: Currently, unfortunately, there is a fair bit of discontent on the river. This is disappointing, after a lot of hard work and harmony for some years following the ferry operations' being contracted out. A number of issues have been raised with me. I would like to quote the minutes of some meetings which were held just before the last round of contracts for the ferry operations across the Murray River at Lyrup, Waikerie, Tailem Bend and Wellington.

The Hon. Diana Laidlaw: What date are the minutes?

The Hon. R.K. SNEATH: It is for contracts in 2000. Unfortunately, the department has not put a date on the minutes but they are surrounded by correspondence from the same period. I am happy to give the minister a copy of the information I have. I refer to the minutes of this meeting under 'Cost adjustment provisions for ferry operators.' A total of 28 potential tenderers were in attendance. The minutes state:

> Mr Graetz advised the attendees that labour calculations were based on the Civil Construction and Maintenance Award but this did not mean that tenderers were constrained to tender to that specific award. This award was merely used as an indication of changes to industrial agreements for calculations to rise and fall in labour costs.

I understood at the time we negotiated the contracting out of the ferries that that award would be used to try to keep things even amongst the tenderers and also to preserve a minimum wage for those people employed by the successful tenderers. On the bottom of these minutes it says:

> Should you be the successful tenderer at one of the above sites you will be required to sign these minutes along with a copy of the minutes from the post tender meeting so they can form part of the contract documentation.

There is also a document that was put out by the Department of Road Transport to the tenderers to give them some idea of what they should consider when they are putting their tenders together. In that document there is a table, and members will not understand this unless they have a copy of the document in front of them, but it says:

> Adjustments for variation in cost of labour shall be based on the formula:
>
> $$AL = P \times 0.86 \times \frac{Rv—Rb}{Rb}$$

Rb is defined as:

> the hourly rate for the Level 5 (second step) South Australian Government Civil Construction and Maintenance Award, applying at the date of closing of tenders.

Why the department did that, I am sure, from what I can remember, was to make sure that that award was adhered to right through the working life, and that had to be a minimum unless those successful tenderers did an enterprise agreement with their employees.

The other concern along the river is in relation to the last few successful tenderers in some places. At a meeting a couple of council representatives raised the fact that at Gawler the new contractor had not employed any of the locals who were employed there previously. Mr Trevor Graetz, in answering those concerns, said that that was a one-off because of the bridge. But since, of course, there have been other contractors successful at Lyrup and Wellington who also have not re-employed the current staff, so local staff are now missing out. My questions are:

1. Is the minister aware of the arrangements made to keep the contractors paying employees, as a minimum, the Level 5 rate of the South Australian Government Civil Construction and Maintenance award?

2. Is not this the reason that the department included the formula that I have stated in the first place?

3. Will the minister check out the reason why Mr Trevor Graetz made the statements that he did to the meeting of potential tenderers?

4. Are the minister and the department still committed to job security for those employed at the time contracts change hands?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I am going to have to get information from Transport SA, and Mr Graetz in particular, on the detail that the honourable member has sought. I am not aware of all the issues. The question requires details which I will obtain.

MEDICAL BOARD PUBLICATION

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Transport, representing the Minister for Human Services, questions regarding a booklet published by the Medical Board of South Australia entitled *Requirements and Procedures for Dealing with Matters of Complaints Concerning Registered Medical Practitioners 1999*.

Leave granted.

The Hon. SANDRA KANCK: According to the Medical Board, the booklet was published in the hope that the information contained will foster a greater understanding of the board's role in dealing with matters of complaint. The booklet outlines current perceptions (that is its word) of the Medical Board, its powers and obligations. It describes the nature of medicine in South Australia and the types of complaints and how they are dealt with. It is considered a useful tool for both doctors and the public to comprehend the role of the board and how complaints are handled.

I have been informed that this book was a collaborative effort between the Medical Board and the Ombudsman's office. I have two booklets, however, both dated in the year 1999. They appear to be the same but one book has an editorial change. On page 16 of one booklet, there is a paragraph under the section dealing with complaints and it states:

> In addition, steps have recently been taken to ensure that factual material provided by a practitioner in response to a complaint will be checked and verified with the complainant and that the complainant has an opportunity to comment thereon as part of the investigative process.

The other book, which appears to be identical, does not have that paragraph and I understand that of the two the most recent edition is the one that does not have the paragraph.

As proof of the need for such information, I have been told by a constituent that they had tried to access material provided by their practitioner in order to verify it as part of the investigative process into the complaint they had launched with the board but their request was denied. The investigation of their complaint was stopped due to insufficient evidence. Despite this, the constituent used FOI legislation to obtain the information and, as a result, the information was considered evidence enough for the investigation to be reopened. My questions to the minister are:

1. On whose authority or direction was the paragraph removed from the booklet?

2. Why was the paragraph removed?

3. Was the Ombudsman's office consulted about this change and, if not, why not?

4. Does the removal of this paragraph affect the transparency and accountability of the board's investigation process?

5. Does the removal of the paragraph mean that there is no obligation to 'ensure that factual material provided by a practitioner in response to a complaint will be checked and verified with the complainant'?

6. If an obligation still exists, will the booklet be reprinted to include that information?

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

YORKE PENINSULA COMMUNITY CARE SERVICE

In reply to **Hon T.G. CAMERON** (25 July).

The Hon. R. D. LAWSON: In addition to the answers given on 25 July 2001, the following information is furnished:

I acknowledge the good work of Yorke Peninsula Community Care (YPCC) in assisting the frail aged and people with disabilities with their transport needs on the Yorke Peninsula. Indeed, in 1999 YPCC received an award from the Office for the Ageing for being the most outstanding consumer-focussed program in South Australia. In recognition of this, Coordinator Kaylene Graham was flown to the Home and Community Care (HACC) national conference and expo in Brisbane to receive the award.

YPCC currently receives recurrent funding of $99 600 through the HACC program. In May 2001 I authorised an additional payment through HACC of $12 056. The *Yorke Peninsula Times* of 17 July 2001 reported that District Council of Yorke Peninsula in its 2001-02 budget had substantially increased its contribution to YPCC by $45 162.

I would expect that any HACC funded organisation that is experiencing increased demand would put in an application for further funds in the annual HACC round. I am advised that YPCC did not put in such an application in the 2000/01 round. I would however urge YPCC to do so for the upcoming round which should be advertised within the next few months.

In respect of the level of reimbursement paid to volunteer drivers, I would repeat that this is a matter to be determined by individual services.

BED AND BREAKFAST ESTABLISHMENTS

In reply to **Hon. T.G. CAMERON** (5 April).

The Hon K.T. GRIFFIN: I have been advised by the Liquor and Gaming Commissioner of the following information:

In South Australia, an operator of bed-and breakfast style accommodation, having accommodation of up to 8 persons is not required to hold a liquor licence to supply complimentary liquor in quantities of up to 2 litres per accommodation booking, delivered to the accommodation and up to 1 litre per accommodated guest, being ancillary to a meal, which is hosted by the operator of the premises in question. Additionally, the operator is authorised to supply up to 1 litre of liquor per accommodated guest, ancillary to a picnic basket. The liquor in each of the above instances must be purchased from a local producer.

As you may already be aware, the Liquor Licensing Act 1997, and the regulations made there under, followed extensive consultation with industry and the community at large and resulted in retention of this exemption, which had existed under the Liquor Licensing Act 1985.

I am of the view that the current South Australian legislation represents an equitable approach whereby smaller operators are able to supply liquor to their accommodated guests, without the requirement of holding any form of liquor licence, whereas the larger bed and breakfast operators are able, (together with other accommodation operators), to obtain a residential licence to meet the needs of their respective operations.

The options are quite clear—if an operator wishes to sell liquor then a licence should be required—why should the legislation distinguish between a bed and breakfast operator with accommodation who wishes to sell liquor to guests and the operator of a hotel who wishes to do so and is required to hold a residential licence.

The whole rationale for exempting bed and breakfast operators was the argument that the supply of liquor was complimentary to the main purpose of the operation, that being bed and breakfast accommodation.

I believe that the current distinction between small bed and breakfast operators supplying complimentary liquor not being required to hold a licence and other premises which sell liquor being required to hold licences is preferable to a licensing regime in which the requirement to hold a licence or not is not determined by whether the operator sells liquor or provides it as complimentary but is determined by some arbitrary level of activity, based either on the level of sales or the nature and scale of the operation.

The current position is consistent with the objects of the Liquor Licensing Act 1997; and in particular:

> 'to further the interests of the liquor industry and industries with which it is closely associated—such as tourism and the hospitality industry within the context of appropriate regulation and controls;

RURAL MOBILE PHONE COVERAGE

In reply to **Hon. CARMEL ZOLLO** (31 May).

The Hon K.T. GRIFFIN: The Deputy Premier, Minister for Primary Industries and Resources, and Minister for Regional Development has provided the following information:

The Commonwealth Government has earmarked an extra $163 million to the improvement of telecommunication services in rural and regional Australia.

These funds have been made available as a response to concerns raised in the independent Telecommunications Service Inquiry Report.

The Commonwealth Government is allocating up to $88.2 million over three years, to improve and extend mobile phone coverage.

Approximately, $37.7 million will be contributed to the capital cost of terrestrial base stations in population centres of 500 or more, subject to community needs and ongoing viability.

The remaining $50.5 million, will be used to support other ways of improving affordable coverage for those communities unable to access terrestrial services.

The $50.5 million may be applied to:

- Extending coverage to other population centres – for example seasonal populations;
- Infill of terrestrial coverage around population centres;
- Extending terrestrial coverage to key State/Territory highways; and
- Subsidising or otherwise supporting the use of satellite handsets

The expenditure of these funds will determine the extent of coverage in those population centres of 500 or less. The process for the expenditure of these funds has yet to be established making difficult to determine the extent of possible coverage in population centres less than 500.

However, the commonwealth intends to consult with the State in order to identify priority areas. Officers of the Department of Industry and Trade are exploring the adoption of a methodology which involves the identification of priority areas through a consultative process with local communities.

In South Australia, a number of mobile phone 'black spots' have already been identified and funding made available through various Commonwealth Government initiatives', such as Networking the Nation and the Mobile Phones on Highways Tender. Sites include;

- Dukes, Sturt and Princess Highway
- Eyre Peninsula (Cleve, Cummins, Kimba, Lock, Minnipa, Port Kenny, Streaky Bay, Tumby Bay, Wudinna, Yalata, Mount Hope & Refuge Rocks)
- Far North (Orroroo, Melrose, Leigh Creek, Carrieton)
- Parndana, Pt Neil, Coffin Bay, Wirrula.

WORKCOVER CORPORATION

In reply to **Hon. IAN GILFILLAN** (7 December 2000).

The Hon K.T. GRIFFIN: The Hon K T GRIFFIN: The Minister for Government Enterprises has provided the following information:

1. In accordance with sections 13 and 26 of the Freedom of Information Act, 1991, written consent is required from the person whom the information relates to when an application is received from a third party.

In this particular case, Mr Moore-McQuillan gave Mr Paul Rodas permission to access documents on his behalf.

2. Yes, it is normal practice to recover costs that are awarded by the District Court in Freedom of Information cases. The Honourable Justice Debelle stated in the Supreme Court decision of Moore-McQuillan v WorkCover Corporation (No 2) No. SCGRG-99 1343 (2000) SASC 68 (24 March 2000):

> Section 40 (2) of the FOI Act invests the District Court with a wide power to make orders as to costs. It may make orders to such costs as the justice of the case may require.

3. They were not transferred, but Mr Moore McQuillan took over the conduct of the appeal to the Supreme Court as outlined in Judgement No. S6570 (1998) SASC 6570 (5 March 1998).

4. Mr Mark Moore McQuillan appealed the decision and the judicial process was not finalised until March 2000.

5. The Accounts for representation by WorkCover Council were not finalised until 10 October 2000. The delay was exacerbated by the lawyers workload.

WATER SUPPLY, CLARE VALLEY

In reply to **Hon. T.G. CAMERON** (29 May).

The Hon K.T. GRIFFIN: The Deputy Premier, Minister for Primary Industries and Resources and Minister for Regional Development and the Minister for Government Enterprises have provided the following information:

1. and 2. The Department of Industry and Trade, through the Mid North Regional Development Board, commissioned a study to investigate the social and economic impact of a reticulated water supply scheme in the Clare region. Based on this, SA Water developed a concept scheme designed to meet the broad projected needs of the region.

Further investigation into the possible environmental implications and the magnitude of the demand, the probable geographic location of the demand and the likely rate of uptake was recently completed. Based on the results of these studies, SA Water is now refining the design and cost estimates and the revenue forecasts to determine the feasibility of a Clare Valley water supply scheme.

COURT PROCEEDINGS

In reply to **Hon. R.K. SNEATH** (4 July).

The Hon K.T. GRIFFIN: As the honourable member has not provided me with information to enable me to identify the matter I am not able to take the matter further.

POLICE TRAINING

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement on the subject of police training made this day by the Minister for Police, Correctional Services and Emergency Services in another place.

Leave granted.

HINDMARSH SOCCER STADIUM

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a brief ministerial statement on the subject of correction of an answer to a question.

Leave granted.

The Hon. K.T. GRIFFIN: Earlier today, in answer to a question about legal representation for ministers and former ministers, I did refer to one occasion when I was Attorney-General and a former Labor minister was being sued by Mr Lane, a shearer, and indicated that he had a government indemnity which we actually continued when we came to office. I did, I think, say that that was Mr Geoff Virgo; it was, in fact, as I recollect, Mr Jack Wright.

STATE TAXATION

In reply to **Hon. L.H. DAVIS** (3 July 2001).

The Hon. R.I. LUCAS: ABS data shows that South Australia was the third lowest of the States in both 1998-99 and 1999-2000 in terms of per capita levels of:

- State taxation
- State taxation and local government rates combined

Per capita taxation as per ABS publication

	1998-99 $	1999-2000 $	Change on 1998-99 %	1990-2000 Adjusted* $	Change on 1998-99 %
State					
NSW	2 188	2 350	7.4	2 350	7.4
Vic	2 928	2 037	5.6	2 037	5.6
Qld	1 327	1 417	6.8	1 417	6.8
SA	1 626	1 808	11.2	1 740	7.0
WA	1 736	1 816	4.6	1 816	4.6
Tas	1 407	1 484	5.4	1 484	5.4
6 State Average	1 846	1 972	6.8	1 967	6.5
State and Local					
NSW	2 252	2 671	5.8	2 671	5.8
Vic	2 235	2 337	4.6	2 337	4.6
Qld	1 670	1 742	4.3	1 742	4.3
SA	1 955	2 149	9.9	2 080	6.4
WA	2 074	2 150	3.7	2 150	3.7
Tas	1 723	1 803	4.6	1 803	4.6
6 State Average	2 151	2 291	6.5	2 286	6.3

* Excludes stamp duty on electricity asset sales.

Source: ABS *Taxation Revenue* (Cat. No. 5506.0), 1999-2000

Although South Australia experienced above average growth in State and Local per capita tax in 1999-2000, that result is mainly due to the impact of large "one off" stamp duty receipts from electricity asset sales in that year. Excluding these "one off" receipts, the growth in 1999-2000 in South Australian per capita taxes (State only and State and Local combined) is slightly above the six state average, reflecting the introduction of the Emergency Services Levy in that year and an increase in stamp duty rates applying to property conveyance values in excess of $500 000.

After adjusting for electricity asset sale effects, state and local per capita taxes in South Australia grew more slowly than State per capita taxes in 1999-2000. Local government rate revenue in South

Australia, in per capita terms, grew by 5.8 per cent in 1999-2000 compared to 7.0 per cent for State per capita tax revenue (excluding electricity asset sale effects). The growth in local government rate revenue reflected the removal of the rate freeze in 1999-2000.

SUPERANNUATION

In reply to **Hon. P. HOLLOWAY** (6 June 2001).

The Hon. R.I. LUCAS:

1. The actuarial review of the South Australian Superannuation Fund was tabled in the Legislative Council on 28 September 1999.

The reduction in the balance of the 'unfunded superannuation liability' was $618.5 million as a result of adoption of the revised actuarial assumptions.

2. It is not possible nor appropriate to predict what the investment returns will be in advance for a short time horizon. I can however advise that Funds SA achieved an investment return of 8.67 per cent on the defined benefits funds over the 12 months to the end of May 2001. The 5 year return to the end of May 2001 was 12.38 per cent. The return for the SA Superannuation Fund and its associated employer funds for the defined benefit schemes over the 12 months to the end of May 2001, was in fact in accordance with the long term actuarial assumptions when the Consumer Price Index is discounted for the effect of the GST. The 12 month return and the 5 year return to the end of May 2001, have been in excess of the benchmark.

In developing an assumption about future investment earnings, the actuary takes numerous matters into account, one of which includes consideration of Funds SA's investment strategy. The investment strategy for the SA Superannuation Fund is based on the long term nature of the defined benefit liabilities. Such a strategy also acknowledges that over any long term period for measuring investment performance, annual returns may be volatile and indeed there is the possibility of low or even negative returns being experienced in perhaps one or two years in every eight years.

The possibility of a negative or low return every now and again simply reflects the reality of the market place.

The objectives of the investment strategy being pursued by Funds SA are in the main long term and hence any evaluation of success against the objectives must occur over a similar long term horizon.

The timing of a fall in investment earnings are never 'expected', but allowed for by the actuary in determining the likely long term investment returns. Accordingly, the decision made on 2 September 2000 was on the basis of accepting the actuary's assessment of the likely long term returns for the funds invested in respect of the defined benefit schemes.

3. I reject the honourable member's assertion that Funds SA's performance will be poor in 2000-01. Whilst it appears likely that the absolute returns achieved for the defined benefit product will be less than in previous years, Funds SA is once again likely to record very strong performance relative to its investment benchmarks. The lower absolute returns of the past year are very much a product of currently prevailing investment market conditions. Low or even negative returns every so often are part of the reality of the investment market place. I remain confident that Funds SA's strategy for the defined benefit funds will achieve sound long term investment performance.

ELECTRICITY, J-METERS

In reply to **Hon. T.G. CAMERON** (30 May 2001).

The Hon. R.I. LUCAS: Officers from Treasury and Finance contacted ETSA Utilities, the owners of the meters, to discuss the issue of J-Meters.

ETSA Utilities does not consider that there is a significant issue associated with J-Meters. J-Meters do not tend to lose a lot of time, even during blackouts, as they have either a reserve spring to keep the clock running if it is a manual meter or they have battery back up if the meter is electronic.

In any event, there is some advantage associated with the clocks slipping a small amount of time as it helps to smooth the spike in demand that occurs when hot water services switch on during the night.

If there is a failure in the meter, it is usually identified by customers through problems with their hot water service, as they tend to run out of hot water, or when the meter is read each quarter.

Accordingly, ETSA Utilities does not think there is a need for an investigation or an information campaign.

ELECTRICITY, SUPPLY

In reply to **Hon. CARMEL ZOLLO** (30 May 2001).

The Hon. R.I. LUCAS: I have reviewed the transcript of *Hansard* and I did refer to the end of 2003 when it should have been the beginning of 2003 because Full Retail Contestability is currently scheduled to commence from 1 January 2003.

The Technical Regulator's 1998-99 annual report indicates that 15 contestable retailers were licensed in South Australia in the period from the commencement of the National Electricity Market on 13 December 1998 and 30 June 1999.

As at 13 July 2001, the licence register on the South Australian Independent Industry Regulator's website had a list of 11 retailers currently licensed to sell electricity to contestable customers in South Australia. The SAIIR is also considering a retail licence application from Australian Energy Service Pty Ltd.

ELECTRICITY TASK FORCE

In reply to **Hon. P. HOLLOWAY** (30 May 2001).

The Hon. R.I. LUCAS:

1. The members of the task force were appointed on the basis of their unique backgrounds and expertise, as members of the electricity supply industry or as representatives of South Australia's electricity consumers. The recommendations contained in the task force's final report, as presented to the Premier on 29 June 2001, were the result of extensive investigation and consideration by the task force, in accordance with its terms of reference.

The task force's final report has been made public, as foreshadowed by the Premier. It contains recommendations for both the short to medium term, as well as in the longer term.

2. The government has welcomed the recent announcements of new generation capacity in South Australia. As with all investment decisions involving substantial capital outlay, each proponent will consider the viability of the project in view of the regulatory and commercial environment.

In its report, the task force concluded that "*the government must continue to facilitate new supply as this is fundamental to both maintaining reliability and increasing retail competition*". The government acknowledges this, and will continue to provide assistance where possible.

ELECTRICITY, SUPPLY

In reply to **Hon. SANDRA KANCK** (7 December 2000).

The Hon. R.I. LUCAS:

1. Towards late 1998 the Government commenced the process for seeking the construction of a new power station at Pelican Point. The NEMMCO Summer Outlook for the Interconnected Power System of Victoria, South Australia and New South Wales (the forerunner to NEMMCO's annual Statement of Opportunities) as at June 1998, indicated 500MW interconnector capacity from Victoria to South Australia. As you will be aware the more recent NEMMCO statement of Opportunities (2000 and 2001) have indicated that at coincident extreme peak demand periods in South Australia and Victoria, SA will not be able to expect to receive 500MW across the interconnection.

The Heywood interconnector between Victoria and South Australia has a capacity of 500MW. The actual flow over the interconnector would be determined by generator offers into the market and demand in Victoria and South Australia. Of course, the actual flows over the interconnector would be quite different to the estimated flows for planning purposes.

2. The methodology adopted by NEMMCO in estimating reserve margins is quite sophisticated and relies on a number of planning assumptions.

In its annual Statement of Opportunities (SOO), NEMMCO compares forecasts of the next 10 years of supply and demand in each region and then compares the available reserves with the reserve limits established by the Reliability Panel under the National Electricity Code. The supply forecasts are based on known existing and committed generation and interconnectors. Demand forecasts assume a medium economic growth scenario and a 10 per cent probability of exceedence peak demand forecast. Whilst other economic growth scenarios are modelled for sensitivity purposes, the medium economic growth scenario has generally been adopted for planning purposes in the NEM.

Further, NEMMCO assesses the South Australian and Victorian regions as a combined region, given the sharing of reserves between the regions. It is therefore no longer assumed by NEMMCO that

South Australia has access to the full 500MW from the Heywood interconnect for planning purposes. For planning purposes, transfer levels across the interconnect are assumed at a level that maximises the period that both Victoria and South Australia remain at or above their minimum reserve levels. In other words, the notional availability of the interconnect is apportioned according to the forecast reserve level of each region.

It should be remembered that the reserve forecasts, while based on a sophisticated methodology, are, of course, dependent on the assumptions used in the modelling.

Also, given the sharing of reserves between South Australia and Victoria, the usefulness for practical purposes of identifying reserve margins in South Australia, in isolation from Victoria, seems questionable.

It would be more useful to note the combined region reserve margins. The annual SOO of 30 March 2001 indicated a 2001-02 summer combined South Australia and Victoria region reserve deficit of 81MW. In other words, actual reserves were projected to fall 81MW below the joint reserve "trigger" level of 760MW adopted for planning purposes.

However, since publication of the SOO on 30 March 2001, a number of private-sector parties have indicated their intention to establish new electricity generation capacity in South Australia and Victoria prior to summer 2001-02. Some of these projects have been taken into account in a brief Addendum to the SOO issued by NEMMCO on 28 June 2001.

Two South Australian new generation projects are included in the June Addendum to the SOO. Both of these projects are stated to provide new generation capacity during this forthcoming summer, viz ;

- Australian National Power peaking plant at various existing generation locations in South Australia—up to 65MW: and
- Origin Energy peaking plant at Torrens Island—95MW—100MW.

Additionally, AGL is expected to commission up to 100MW of new peaking generation plant at Hallett in South Australia during this forthcoming summer although this was not included in the June Addendum to the SOO.

Other announcements have been made to establish new generation capacity in Victoria and have been included in the SOO Addendum, viz;

- AGL at Somerton, 150MW by December 2001;
- Valley Power at Loy Yang B 300MW by February 2002;
- Duke Energy at Bairnsdale 43MW by February 2002;
- AES Golden Plains 370MW—500MW, of which 129MW may be commissioned by February 2002.

Accordingly, there has also been an upward revision in the allowance across the interconnect from 177MW (annual SOO March 2001) to 346MW (Electricity Supply Industry Planning Council based on the June Addendum to the SOO) with these new projects on days of coincident extreme peak demand.

The Electricity Supply Industry Planning Council (ESIPC) estimates as at 2 July 2001 (which are consistent with June Addendum to the SOO) show a combined South Australia—Victoria reserve surplus for this forthcoming summer, with new projects, of 497MW. This is a positive turnaround from the March 2001 estimate of a small combined region reserve deficit.

While all the announced new projects might not eventuate in time for this summer, the planning estimates suggest that the pricing signals from the actual tight demand-supply situation are working by attracting new electricity investment and supply to South Australia and Victoria.

To answer the specific question, the ESIPC estimates of summer reserve surplus for South Australia for 2001-02, assuming coincident peak periods in South Australia and Victoria, and new projects, are;

- 155MW summer reserve surplus, including 346MW notionally available across the interconnect;
- 191MW summer reserve deficit without the interconnect, ie, assumed at zero flow. It should be noted that in these circumstances, supply would be greater than demand by 69MW.

The reserve estimates for South Australia for the past 2000-01 summer are now redundant but are provided for completeness of response. Based on the NEMMCO SOO of 31 March 2000, the summer reserve margins for South Australia for 2000-01, assuming coincident peak periods in South Australia and Victoria, for planning purposes were;

- 420MW capacity, including 325MW notionally available across the interconnect;
- 95MW capacity without the interconnect.

The SOO of 31 March 2000 indicated a 2000-01 summer combined South Australia and Victoria region reserve surplus of 160MW.

3. As indicated in my answer to Question 2, it is more useful to note the planning analysis in the SOO of a combined South Australia and Victoria region. The estimates are also subject to the limitations of the modelling and the assumptions made and the status of known capacity developments prior to publication, as noted previously. In the response above, the latest estimates by ESIPC indicate a combined South Australia—Victoria reserve surplus of 497MW for this forthcoming summer.

Nevertheless to answer the specific question, based upon the NEMMCO estimates in the SOO of 30 March 2001, the summer reserve margins for Victoria for 2001-02 for planning purposes are;

- 447MW capacity plus 177MW notionally available for export to SA across the interconnect;
- 624MW capacity without the interconnect (ie assumed at zero flow).

Updates of these Victorian figures from March 2001 are not available.

The reserve estimates for Victoria for the past 2000-01 summer are now redundant but are also provided for completeness of response. Based on the NEMMCO SOO of 31 March 2000, the summer reserve margins for Victoria for 2000-01 for planning purposes were;

- 500MW capacity plus 325MW notionally available for export to SA across the interconnect;
- 825MW capacity without the interconnect (ie assumed at zero flow).

4. The NEMMCO and ESIPC assumptions and estimates are based on the best information that is available to them. While actual outcomes can be substantially different to planning estimates, their work on matters ranging from potential demand, supply to appropriate reserve margins nevertheless provides a guide to electricity industry participants and to the government.

However, no guarantees can ever be made that there will be no occasions of failure of the electricity system. The causes of system failure can range from generation outages, to interconnection failures caused by unpredictable events such as lightening strikes or strike action by Victorian trade unionists. This is the case whether electricity assets are in government or private-sector ownership and whether or not there is a National Electricity Market.

ELECTRICITY REGULATOR

In reply to **Hon. T.G. ROBERTS** (17 November 2000).

The Hon. R.I. LUCAS: I have reviewed the transcript of the radio interview and the Regulator did not refer to an anomaly in the legislation. He indicated that the Grace Period customers are the 3000 biggest consumers of electricity and it was assumed that they could look after themselves and negotiate prices and contracts with the retailers and that he had received legal advice that he had no power to set prices or terms and conditions.

However, it is worth noting that the Regulator recently changed the Retail Code to enable the Regulator to notify AGL of terms and conditions that are required to be included in a default contract. These terms and conditions are associated with basic consumer protections, such as connection and disconnection procedures, and do not extend to prices or price fixing factors. AGL must not sell electricity to each affected customer other than on the published terms and conditions.

FOOD BILL

In committee (resumed on motion).

(Continued from page 2105.)

Clauses 52 to 77 passed.

Clause 78.

The Hon. SANDRA KANCK: Clause 78 deals with food safety programs and auditing requirements. Again, I refer to what I said in my second reading speech. There is nothing in this clause which states which businesses will have to have food safety programs.

The Hon. DIANA LAIDLAW: Nothing has been defined at this stage.

The Hon. Sandra Kanck: As expected.

The Hon. DIANA LAIDLAW: Well, the difficulty with what we are all addressing is that, essentially, this bill is the framework to be supported by regulation which, in turn, will bring in a national code. Those are the circumstances with which we are dealing in clause 78, which provides:

> The proprietor of a food business must ensure that any requirement imposed by the regulations. . .

So, the requirement must come in by regulation. The regulations have not yet been prepared because they will refer to the national code which has not yet been finalised.

The Hon. SANDRA KANCK: I use this clause again to express my concern about this whole process. We are dealing with an empty shell. It appears to me that a food business will have to have a copy of this act when it is passed, a copy of the regulations associated with this act, a copy of the model food provisions (of which we already have copies), a copy of the code, a copy of the Food Safety Priority Classification System, and a copy of the Food Safety Standards, and there was another document that the minister showed us before lunch. I am concerned with the amount of paperwork that will be there for, in many cases, small business proprietors such as the manager of the local deli. I think the government is probably asking too much of these people. I ask these questions because I want to throw this into relief. I refer to page 7 of the Food Safety Standards booklet, which states:

> 'Food safety program' means a program set out in a written document retained at the food premises of the food business, including records of compliance and other related action. . .

It is clear that it is a written document and that it is to be retained at the food premises, but I want to know how it relates to anything else. For example, I am a deli owner and I prepare a food safety program as per the legislation and the regulations. Does anyone ever look at it or does it sit at my deli on the off-chance that an environmental health officer from the local council might come around and look at it?

The Hon. DIANA LAIDLAW: The honourable member answered her own question.

The Hon. SANDRA KANCK: That tends to make what we are doing look like it has no teeth at all. In my second reading speech, I cited the example of a nursing home which, back in 1995 at the time of the HUS outbreak, had a visit from the local environmental health officer but has not seen one since. This probably means that, if this legislation comes into effect and action occurs, as it has in the past, for the most part, the small deli owner can probably get away with not preparing a food safety program.

The Hon. DIANA LAIDLAW: A deli or a nursing home owner could do that, just as a motorist can defy the law and drive over the maximum speed limit. However, there are penalties if a deli or a nursing home owner takes that risk and does not prepare a plan. I am advised that, under clause 79 (headed 'Priority classification system and frequency of auditing'), depending on the classification (small, medium or high), an appropriate frequency of audit will be established.

The Hon. Sandra Kanck interjecting:

The Hon. DIANA LAIDLAW: This is not my bill, I remind you, and I have advice coming in one ear and I am trying to listen to you with the other. I am advised that we have low, medium and high, and according to that there is a frequency of audit established: according to practice, that frequency of audit can be reassessed and changed. For example, it could be determined that there are some concerns and audits must be undertaken more often and then other penalty approaches pursued, or it could be dropped back because the standards are high. So, while everybody is looking for more detail, there is also flexibility to reward those who do well, and the effort of audit is concentrated on those of concern.

The Hon. SANDRA KANCK: I am not picking on the minister: I understand that the minister is carrying the bill for the human services minister. I am simply using this opportunity to get answers to these questions on the record because of the lack of information and the potential for possible abuse or things not being followed through because of the lack of detail in this bill and the complexity with the number of documents. So, that is my purpose in raising this. In many cases, I really do not expect you, as the minister handling this bill here, to have all the answers.

The Hon. DIANA LAIDLAW: I think I have done very well, in the circumstances. In reference to the honourable member's concerns about the amount of material that everybody in the food business will be required to have on their premises or at their fingertips, it is true that what will be relevant to their business is the act, the regulations and these various codes. It is just as we went through the performance with the national road law: the documentation was almost two feet high in terms of changes and not every driver has to have that road law. It is condensed into something that is user friendly for daily use and, if reference is sought beyond that, it can be made to this vast amount of paperwork that has been produced for our benefit. And remember that it is meant to be for our benefit in terms of high standards of food hygiene, preparation and safety. It is, ultimately, for our welfare and the welfare of our children.

Clause passed.

Clause 79.

The Hon. T.G. CAMERON: The application of this system worries me a little. Clause 79(3) provides:

> The appropriate enforcement agency must provide written notification to the proprietor of a food business of—
>
> (a) the priority classification it has determined for the food business.

Do I understand that local government, as the enforcement agency, will be the body determining the priority classification of the food business—whether it be 1, 2 or 3?

The Hon. DIANA LAIDLAW: In most cases, yes, the enforcement agency will be local government. I am advised that there may be some cases, however, where the appropriate agency is the Department of Human Services. There may be exceptional circumstances such as food chains that carry on business across council boundaries where it seems inappropriate for each council to be making a separate assessment and, therefore, the department would come into the picture in terms of making that assessment.

I have also received some advice from my learned colleague the Hon. Caroline Schaefer in her role as chair of Food for the Future. She reminds me, and all honourable members, that we are talking about not just delicatessens or nursing homes but food handling for export, and there are some really tricky high standards to be met before we can break into various markets. Therefore, there will be a different classification system for that type of business. So, this bill attempts to deal with all circumstances and some measures may be absolutely inappropriate for a small business but may be entirely appropriate for a big export operation.

The Hon. T.G. CAMERON: Who will be doing the priority classifications for those businesses?

The Hon. DIANA LAIDLAW: AQIS (the quarantine service) will be doing it in most cases.

The Hon. T.G. CAMERON: Clause 79(3)(b) talks about 'the frequency of auditing of any food safety programs required to be prepared by the regulations in relation to the food business'. As I understand it, the local government body, as the enforcement agency, will determine not only the priority but the frequency of auditing. Is that correct?

The Hon. DIANA LAIDLAW: The frequency, as the honourable member suggested, will be determined by the appropriate enforcement agency, which will take into account the priority classification and practice of that particular establishment.

The Hon. T.G. CAMERON: That was my next question. What criteria will the local government body, the council, use to determine the frequency of auditing of any food safety programs, and can we be assured that there will be a consistent standard across the state? In other words, if you are in the XYZ business and you get a priority 2 classification at the Marion council, does that mean that you will get a priority 2 classification at the Woodville council and will you be required to undertake the same number of audits? I am concerned that we will have the enforcement agencies and, unless there is a lot of work done by the LGA and the councils to ensure that they have uniform standards and uniform criteria, we could end up with a very ad hoc, haphazard approach, and the losers will be the small business food operators.

The Hon. DIANA LAIDLAW: I think it is important, in reflecting on the honourable member's concerns, to put some perspective to this legislation. We have had a Food Act in this state for some years. Councils already have a lot of responsibilities in terms of enforcement of public health food standards and inspection of premises. It is envisaged that, under this nationwide package, a national standard for practice that has been ongoing for some time will be developed. So they are lifting the bar in that sense.

The Hon. T.G. Cameron: I have no problem with that.

The Hon. DIANA LAIDLAW: I understand you have no problem. I was trying to put some perspective on it. The issues that the honourable member raised about different standards being applied by different councils are real now. We are seeking to provide more money for training through this legislation—and I am one of those who has been rather critical of all the paperwork involved—and to have a more consistent standard set out in the code which councils can apply.

I hark back to my own area of responsibilities with which I am familiar—the planning system. We put out the planning strategy and we have the Development Act. We ask councils to assess applications on a consistent basis. However, that does not always happen. With the system improvement bill passed last year, we are now undertaking a lot of open workshops, discussions and training with councils to deal with the very issue that the honourable member has mentioned concerns him with this Food Bill. I think that councils are starting to understand that not only government but society generally, business in particular, is demanding greater consistency of application and decision making, whether it is the building industry, or the food industry in this instance. The guidelines, the code and the extra money for training should address some of the issues that the honourable member has raised. They are concerns now, but we hope to alleviate some of those concerns in the future.

The Hon. T.G. CAMERON: The minister said in her answer that this bill is about getting more money for training, and she again made the statement that the government is about getting more money for training. Will the minister, on behalf of the minister who introduced the bill, outline to the committee, first, what provisions, if any, the government has made to assist small business with the compliance costs in relation to the introduction of this bill and, secondly, what funds have been provided for additional training for not only local government but also small business?

The Hon. DIANA LAIDLAW: An amount of $1.8 million has been provided in the Department of Human Services' budget for this year and next financial year to support the implementation of the legislation. That will be of help to local councils and business in terms of training. The issues that the member raises are important and they are sensitive, because, after all, for small business this comes on top of the GST and the implementation of the compliance costs. The advice I have is that industry will be further supported, in addition to that money, through industry associations and the provision of information to members for the development of food safety program templates—in other words, they will not have to start each business from scratch, because they can lock into these templates—plus the development of the training packages for which there is the additional funding, which I have mentioned before. Local government, in turn, will be supported through the provision of resource materials, the training of council staff and the development of systems, for instance, computer systems for the notification database.

The Hon. T.G. CAMERON: In my second reading contribution I outlined some concerns that I had, if you like, about the outsourcing of the food auditing from local government. However, I am in two minds about all this. It is the Local Government Association's request to be given the enforcement and the auditing powers. I understand that it is strenuously opposed to the outsourcing of the food auditing to private operators. I would be interested in a comment from the minister on this matter. I for one know how greedy some councils are becoming when it comes to the collection of fees and fines, and what have you, particularly the Adelaide City Council which turns its parking inspectors onto motorists in the city like a plague of locusts.

I had a bad experience recently. I am still waiting for the Adelaide City Council to take me to court on a parking fine. I hope it does: it will give me the opportunity to seek further information from it about some of its current practices with its parking inspectors as it attempts to harvest money from city motorists. I do have some problem with the idea of outsourcing the auditing process to private auditors, but, on the other hand, I do not trust local government these days very much either. I used to, but I do not these days. What concerns me is, if local government will be doing the priority classification and it will be determining the frequency of auditing, it is basically in a position to determine what revenue outcomes it wants to achieve.

We have been advised that in relation to the auditing of the food safety programs—that is, whenever councils inspect—they will be paid a fee, and I see the potential here for revenue raising by local government. In other words, they could deem that it would be in their interests to determine that a particular business received a certain classification; and then again that it would be in their interest to determine that

this particular business will be audited X number of times per year. As I understand clause 79, it will still be able to do that, but at least it will not be able to order the instruction for the audit and then send the invoice along two days later: someone else will be getting paid other than the person responsible for determining the frequency of auditing. I would be interested in a comment from the minister on that.

The Hon. DIANA LAIDLAW: As I understood not only the strength of feeling but also the argument presented by the honourable member, he was most effectively opposing the amendment to be moved by the Labor Party on the auditor provisions, which puts it back to councils, contrary to what is provided for in the bill.

The Hon. T.G. Cameron: I am in two minds about what I am going to do on this.

The Hon. DIANA LAIDLAW: Yes. I am saying that I thought the honourable member spoke with strength, feeling and conviction against the Labor Party's amendment. I thought the honourable member had made up his mind, but he helped me make up my mine in terms of opposition.

The Hon. Sandra Kanck interjecting:

The Hon. DIANA LAIDLAW: No, this is the audit provision not the committee. We are talking about the auditors, not the committee. The honourable member is declaring his hand for the first time on the audit, having expressed some reservations in the second reading. I think that the honourable member is absolutely right to have those concerns, and that is why we as a government will oppose in this place (as we did in the other place) the amendment moved by the Labor Party to insert new clause 79A in terms of the assignment of food safety auditors to councils.

An honourable member interjecting:

The Hon. DIANA LAIDLAW: Because there is a conflict of interest, in addition to all the issues that the honourable member has very effectively outlined.

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: In the event that we do have food auditors, could the government outline what that would entail, because it is not set out in the bill and it is supposed to come later in the regulations? I guess that, when you do not know quite what you will do, you do not put it in the bill and you say that you will do it later in the regulations. I am concerned about what the level of qualifications will be for these food auditors, and what criteria will be used in determining who will become a food auditor. Can the minister outline what criteria will be used and what qualifications will be required of these food auditors in order that, if we are to walk down that path, we can be satisfied that they will be appropriately qualified with appropriate experience and so on to perform their job?

The Hon. DIANA LAIDLAW: I have a subtle correction to the honourable member's claim that there is so little detail in the bill because we do not know what we are doing. The difficulty for us is that we do not yet have the national code on these matters. The minister and the government could have determined not to progress the framework while waiting for the national code to be signed off at some stage or we could have determined to put in the framework as it is now, which was seen as the best option, or put in the framework with a lot more detail, second-guessing what the national code will have in it, and then we would have to come back to parliament to amend it. That is the dilemma the government has had in preparing this, and we readily acknowledge that it has not been easy for anybody, in particular members seeking community opinion on the bill.

In terms of qualifications of food auditors, this state already has environmental health officers who are paid for by councils, and they will probably be the authorised officers for general purposes under the bill, but there will also be cases where we will need specialised officers or officers with specialty in specific businesses and how the type of food is manufactured and prepared. Our code is modelled on the international system for auditors for membership of the Quality Society of Australia and Asia and, specifically, membership of that society requires tertiary qualifications, appropriate experience, audit training and quality assurance training.

The Hon. SANDRA KANCK: I follow up on the question that the Hon. Terry Cameron asked by referring to my second reading speech in which I gave an example of an auditor in Adelaide who is not qualified, for instance, to go into a fishmonger and do an audit there. I understand that there is only one food auditor in Australia who is qualified to audit chocolate manufacturing. My concern is that we are using the right auditors for the right purposes. How will that be ensured?

The Hon. DIANA LAIDLAW: The approval of the auditor by the minister as the relevant authority could be for a particular category of food business.

The Hon. T.G. CAMERON: The minister mentioned that some of the details in relation to qualifications, criteria, etc., will be determined when the national code is developed. Can the minister tell us where we are with the development of that national code, when it is expected to be handed down and whether she will make a copy of that national code available to members when she is in receipt of it?

The Hon. DIANA LAIDLAW: I will convey the honourable member's question to the minister and I am confident that he will say yes. My advice from officers is that the expectation is that the program will be adopted by the end of this year or early next year. I think that the honourable member is entitled to receive it but I will certainly clarify that with the minister.

Clause passed.

New clause 79A.

The Hon. P. HOLLOWAY: I move:

Page 43, after line 9—Insert:

Assignment of food safety auditors

79A (1) A food safety auditor who acts in relation to a particular food business under this part must be—

(a) a person who is assigned to be the food safety auditor for that business by the appropriate enforcement agency; or

(b) in relation to a business of a prescribed class—a person who is approved as the food safety auditor for that business—

(i) by the appropriate enforcement agency; or

(ii) by the minister.

(2) The assignment or approval of a person as a food safety auditor for a particular business must be made in a manner approved by the relevant authority.

(3) An appropriate enforcement agency may, in acting under this section, assign or approve a food safety auditor who is employed or engaged by the enforcement agency (but, in such a case, the enforcement agency must then take reasonable steps to ensure that there is no conflict between the activities of the food safety auditor and the enforcement or other regulatory activities of the enforcement agency under this act)[1].

[1.] In the case of an enforcement agency that is a council, section 36(3) of the Local Government Act 1999 also provides that the council should, in the arrangement of its affairs, take reasonable steps to separate its regulatory activities from its other activities.

(4) The appropriate enforcement agency or the minister may, of its or his or her own initiative, or on the application of the proprietor of the relevant food business, if the enforcement agency or the minister thinks fit, revoke an assignment or approval previously

given by the enforcement agency or minister, as the case may be, under this section and make or give a new assignment or approval.

(5) No liability attaches to an enforcement agency by virtue of the fact that it has assigned or approved a particular person as a food safety auditor under this section.

This relates to the auditing of food businesses and auditing is a new function that will be created under this bill. Under the current act, a food business can choose its own auditor. This seeks to provide the food enforcement agency, which in most cases is local government, with an option, so it can either take direct responsibility with its own officers for food auditing in its area or it can opt for the third party auditing model preferred by the government if it so wishes. It essentially gives agencies some choice.

The opposition has some concerns, as do many in the community, that there could be problems with conflict of interest if a food business can choose its own auditor. That could occur with the auditor giving a fair and reasonable audit, with a possible conflict of interest of getting the business offside and therefore losing the business in the future. Proposed new subclause (1)(a) provides:

A person who is assigned to be the food safety auditor for that business [must be assigned] by the appropriate enforcement agency; or

That is one option. Proposed new subclause (1)(b) provides:

in relation to a prescribed class—a person who is approved as the food safety auditor for that business—

(i) by the appropriate enforcement agency; or

(ii) by the minister.

Proposed new paragraph (b) is to apply to large food chains such as supermarkets or other franchise businesses, for example Coles or Woolworths stores or a set of stores. That business may naturally prefer to have one auditor rather than a set of auditors. We have allowed for commonsense. We have taken a commonsense approach to enable the minister to classify a group of businesses in that prescribed class to allow them to have the one auditor. Proposed new subclauses (2) and (3) cover local government's own health people who are currently doing the work. Currently, under the act, food inspection is a function of local government. There is no private food auditing market at the moment and that is one of the issues that arises in relation to this clause: no-one is a ready-made food auditor whereas councils have some expertise internally to their organisation. If this proposed new clause is passed, the local government authority, which in most cases will be at the front line of the food safety debate, will be able to assign its own food auditors.

The minister has raised the question of conflict of interest. In relation to that matter, the opposition has slightly amended our amendment in relation to that which was moved in the lower house. I am referring to clause 3. There is an addendum to the clause that was moved in the lower house that provides that in such a case the enforcement agency must then take reasonable steps to ensure that there is no conflict between the activities of the food safety auditor and the enforcement or other regulatory activities of the enforcement agency under this act. There is a footnote to the amendment which notes that in the case of an enforcement agency (a council) section 36 part 3 of the Local Government Act 1999 also provides that the council should in the arrangement of its affairs take reasonable steps to separate its regulatory activities from its other activities.

In relation to this issue of third party auditing in the food area, I would like to read a press release that has come out in the past few days from the Australian Institute of Environmental Health, because I believe it covers eloquently many of the issues involved.

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: It has a vested interest, as everyone does. We all have a vested in trying to see food safety—

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: The only problem with the logic of the Hon. Terry Cameron is that local government is a level of government and it is responsible for food safety. If there is some catastrophe in the food area, who will we blame? At the moment we expect local government as the enforcement agency to police it. If things go wrong, we expect to blame that agency; just as if something went wrong in an area for which the state government was responsible, such as building safety standards or builders' warranties, perhaps electricity—no, we have not got that any more, have we?—explosives and workers' safety where we expect the state government to be the responsible authority as the enforcement agency. We do not see any problem with conflict of interest. The government is responsible to its electors for the work force areas. It has a department that employs inspectors to ensure that work is being undertaken. No-one has suggested there is a conflict of interest in relation to that.

The Australian Institute of Environmental Health has put out a media release entitled 'Food safety privatisation fears' which states:

Placing food safety monitoring in private hands is likely to reduce community confidence and food standards, while increasing business costs—according to Environmental Health Officers. The Australian Institute of Environmental Health (SA Division) remains concerned that a Bill currently before parliament will erode food safety standards. Institute President Michael Livori indicated that the public had good reason to be concerned about the introduction of a system whereby food businesses would be left to arrange and control their own food safety auditing, including the appointment of private third party auditors.

'In essence, we may find ourselves with a system which is akin to the private certification of building work, where an observed decline in building safety standards as a result of similar privatisation has led to Councils now being required to increase their surveillance of building practices by establishing building inspection policies. As it stands, a food business will be able to enter into a paid arrangement with a private auditor to have their business assessed. This would be prearranged, unlike the current situation where unannounced inspections are carried out by qualified Environmental Health Officers employed by councils. The auditor would have to report any problems to the Enforcement Agency (Council) for follow up. It is not hard to see how such private arrangements could be prejudicial to food safety standards. The Government has clearly not listened to our request that any system of auditing should be conducted under the discretion and control of Councils rather than the business.

It is also highly likely that many Councils would opt out of conducting any random inspections of food businesses, other than where a food complaint is received, because the Act currently contains no provision requiring them to do so. The entire future role of Government in relation to food safety monitoring is still no clearer. We believe that the public deserves better than this.'

The release concludes by stating that the institute will continue to lobby state MPs for changes to this and other aspects of the food bill. I think that goes to the heart of the issue. I would also like to repeat some comments made by my colleague the shadow minister for health in another place when this clause was being debated there in June. She quoted Mayor Brian Hurn who is President of the Local Government Association. He said:

The LGA has significant concerns about the approach in the bill, many of which arise from our experience in relation to Private Certification in the Building Safety area. It is not fixed opposition

to third party auditing, but rather generated by two issues: the special nature of functions related to the safety of the community (it has far more severe repercussions than financial auditing, for example), and, secondly the transitional issues involved in introducing a system assuming a competitive market of food auditors, when there is currently no such market beyond high-end manufacturing or national or export business.

It is our view that in an area such as this a more appropriate approach in the first instance would be to allow private auditors along with Council auditors, but leave discretion as to who audits a particular business with a Council, rather than with a food business being subjected to the audit. This would retain greater public sector control over the process. It would be managed by Councils along with other functions in which they have discretion as to whether or not they use external contractors and all auditors, Council or private would need to be accredited by the Minister/Department. At minimum this sort of approach would allow for development of private sector audit skills, a level of competition, and allow for further review of the model after an appropriate period.

In conclusion, in moving this amendment we believe that there are some issues to be addressed, particularly transitional issues, in relation to the introduction of the new food auditing system. Councils are the appropriate enforcement agency. They are the ones who ultimately will be held responsible by the public for how well this system operates. They have asked for the choice. They can go fully with the third party auditing or they can assign the qualified auditors that they wish. Given the fact that local government will have very important responsibilities under this act, that they will be at the front-line of it, I would ask the committee to seriously consider this amendment so that those bodies that will be responsible and answerable to the public for what happens in food safety have the option of which particular route they want to go down as far as the choice of food auditors is concerned.

The Hon. DIANA LAIDLAW: As I indicated earlier, the government strongly opposes this amendment. The bill provides for food businesses to engage the food safety auditor. This reflects the principle of it being the responsibility of businesses to assess their food safety risks, develop a plan appropriate to their business or industry and deal with these risks and engage an auditor with skills appropriate to their industry to assess their food safety plan. In a number of cases businesses will already have established food safety programs and auditing arrangements will be in place.

It is also likely that some industry associations, for example the Australian Hotels Association, will develop generic food safety programs for their industry sector and will engage a food safety auditor with expertise appropriate to their industry on behalf of their members across the state. Local council staff will be approved food safety auditors—I mentioned earlier the environmental health officers, or public health officers. If councils have the power to determine who is to be assigned as the auditor for a food business a conflict of interest is created, a matter that the honourable member explored earlier.

The Hon. Sandra Kanck: Where is the conflict created?

The Hon. DIANA LAIDLAW: If the local council is the enforcement agency and also the auditor—which is provided for in the amendments by the Labor Party, which the government oppose. We are, in part, encouraging the industries to be much more responsible, and I have outlined a number of instances where, for instance, the Australian Hotels Association could be developing generic food safety programs for that industry sector and engaging a food safety auditor with expertise appropriate for looking at that. That is just one example.

Under the bill, food safety auditors must be approved by the minister. This approval will be on the basis of the person's competence, taking into account their skills and experience. The approval can be revoked if they do not competently carry out their duty or they have an interest in the food business that could affect their performance. So third party auditing will occur only by formerly approved competent auditors, with no direct or indirect interest in the business, to maintain standards and impartiality. I repeat: the government strongly opposes the amendment, and will divide—if I call it properly.

The Hon. SANDRA KANCK: In the Hon. Paul Holloway's new clause 79A there is a bracketed section in subclause (3) which provides:

> but, in such a case, the enforcement agency must then take reasonable steps to ensure that there is no conflict. . .

Does that not cover the problem?

The Hon. Diana Laidlaw: Which problem?

The Hon. SANDRA KANCK: The problem that you are talking about, about their being a conflict.

The Hon. Diana Laidlaw: No.

The Hon. SANDRA KANCK: Why not?

The Hon. DIANA LAIDLAW: I appreciate the honourable member's question because what it has done is highlight that the amendment moved in this place by the Hon. Mr Holloway is different from the Labor Party amendments moved in the other place. The minister in the other place has indicated this conflict of interest concern in opposing the amendment, and the Labor Party has sought to address it in terms of the activities of the food safety auditor and the enforcement activities.

The Hon. T.G. Cameron: That doesn't remove conflict of interest.

The Hon. DIANA LAIDLAW: No, that's right. It addresses one issue but it does not go to the heart of our concerns, because it still leaves with the councils the decision making between a private auditor or a council auditor in terms of who the company will engage to do the auditing process, and we believe that it is inappropriate for the council still to have that decision making role when it also is empowered under this act to be the enforcement agency.

The Hon. Sandra Kanck: Both decide and enforce is the problem?

The Hon. DIANA LAIDLAW: You would say that to me in transport matters or planning. We have different layers for just that reason, in terms of the checks and balances, and the integrity of the process.

The Hon. T.G. CAMERON: I thank the minister for her answer to the Hon. Sandra Kanck's question. I had a similar question. I am a little bit concerned about the potential for conflict of interest, and I am also concerned about the potential for an incestuous relationship to develop between the council, which is responsible for the enforcement, and I guess that would be undertaken by their environmental health officer or health officer, and the fact that they have the power of life and death over the food safety auditor. One could imagine that, if the council did not like the food safety auditor or they fell out, they could be removed by the council.

I also think that the prospect of having local government appoint a food safety auditor for its area has some drawbacks. I think that this system, whilst I am not necessarily comfortable with it, would be better served by having a number of safety auditors. In fact, under the current system, as I understand it, it would be nothing for a business to engage food safety auditor A this year and then change to food safety auditor B next year.

I am a little bit concerned that, by giving local government this power, as I have said, it creates the potential for an unsavoury, incestuous relationship between the council and the food safety auditor to the detriment of small business. I have a fairly clear idea in my mind what local government is on about here: what it is looking for is registration and fees. When it gets to the question of looking at the fees to be prescribed by regulations, I urge the government to remember that there are food operators like the Woolworths chain store, for example—

The Hon. Diana Laidlaw: We think that you have read it exceedingly well.

The Hon. T.G. CAMERON: —thank you—compared to a small restaurant that might have a turnover of $25 500 per year. Will they have to pay the same fee? Woolworths will not mind paying a fee that runs into hundreds of dollars but, when you are running a small business and every month or so you are being required to pay some new government or local government fee, it gets a bit wearing. Of course, what we are looking at here is the potential for a fee to be prescribed or charged every time a food safety auditor walks into the establishment. It might not necessarily be the case that fees will be restricted to between $50 and $100 per year. The act itself is unclear and I look forward to more clarity from the minister when the regulations are handed down.

If you are running a small business, for example a restaurant—and I have had some experience with the restaurant and food business, having been responsible for 1 200 people who worked in the food and restaurant industry, and being responsible for 40 restaurants and food outlets—the thing that most terrifies the management or owner of a food outlet is the prospect of being deemed to be unclean, and that food is unfit for human consumption, etc. It is tantamount to a death sentence: it is just like being hanged. There is no way out for them. So I am beginning to see merit in the separation of the auditing from the enforcement, although I was not originally of that view. The reason for that is that at the end of the day it will result in a fairer deal for small business: a more open deal and a more transparent arrangement; and it should stop local government, which could, in my opinion, if it had the responsibility for both appointing the food safety auditor and the enforcement process, from treating this as another way of raising revenue—

The Hon. Diana Laidlaw: Or harassing an owner.

The Hon. T.G. CAMERON: Or harassing an owner. I have seen plenty of examples during my 30 or 40 years in politics—

The Hon. T.G. Roberts: You've been a victim yourself.

The Hon. T.G. CAMERON: —yes, I have been a victim myself—where individuals, just because they have the temerity to stand up to a government or a local government inspector, are then harassed and given unnecessary attention. Sometimes if you give a person a uniform and call them an inspector you turn them into something comparable to a jail warden; they go overboard.

This bill should be about improving the quality of food for human consumption; it should not open up opportunities for bureaucrats from either local or state government to go out there and harass and hound small business people in the food I still have a concern—and I ask the minister to have a look at this—about how any comments that are made by either the auditor or the enforcement agency would then be available for public release. If there is any imminent threat whatsoever to human beings, they have the power to close down the establishment right then and there on the spot—and they should be encouraged to do so—but to be able to go back to their local government office and write a nasty report and have that leaked into the media or here would be soul destroying for that business, and it would have no come-back and no way of addressing the situation.industry.

So, whilst originally I had real concerns about the separation of these two and the opportunities that that presents for a little bit more bureaucracy, etc., in the end I will support the government's position. I will not support the Hon. Paul Holloway's amendment because, at the end of the day, I believe that his amendment will not advantage small business—and that is who I am principally interested in here. I oppose the amendment standing in the name of the Hon. Paul Holloway.

The Hon. NICK XENOPHON: My reservations regarding the amendments proposed by the Hon. Paul Holloway are that, in the case of a business that may have a dozen outlets in a dozen different council areas, they may pose an undue burden in respect of the councils. It is arguable that the various councils could appoint different auditors in each area.

The Hon. P. Holloway interjecting:

The Hon. NICK XENOPHON: The Hon. Paul Holloway has cleared up that query, but my general concern is whether the regime proposed by the government will achieve the intent of the legislation. I take on board the concern of the Hon. Terry Cameron that it is subject to one thing, that is, for the minister to outline what protocols will be in place for the auditors to be checked for effectiveness to ensure that they are doing a good job. In other words, once an auditor gets across the initial threshold of being appointed as an auditor or having those qualifications, what is there to ensure that the auditors are kept on their toes? In other words, who watches the watchdog; what protocols will be in place; and what mechanisms will there be to ensure that the auditors are undertaking their duties responsibly? For instance, will there be spot checks of auditors? How can we ensure that a particular auditor, who relies for a significant portion of their income on one or two major clients, is not in any way compromising that relationship?

I think it is axiomatic to say that, if an auditor gets it wrong and does not do their job properly, and if that leads to the public health being endangered, they will be finished in this business. I think it is important for the government to outline what protocols will be in place to ensure that auditors are kept on their toes and that there are mechanisms in place to ensure that the auditing process is effective on an ongoing basis.

The Hon. P. HOLLOWAY: Clearly, as the debate has just shown, I do not have the numbers to carry the amendment, so I will not call for a division and waste the time of the parliament given the volume of work that we have to do this afternoon. However, I wish to make one final point in relation to the argument, and that is that the very fact that section 36(3) of the Local Government Act requires councils, in the arrangement of their affairs, to take reasonable steps to separate regulatory activities from their other activities shows that these are the sorts of things that occur in local government all the time. We are talking about local government rather than a commercial operation. These are the sorts of issues that crop up in local government from time to time, and I think that is inevitable.

I concede that, in many ways, it is a difficult issue in relation to these sorts of matters. We expect local government as a separate, genuine level of government in its own right to

be responsible for these matters, and I guess there are some difficulties in that regard. As I have said, I will not call for a division on this matter: it was not successful in the lower house, so there is not much point in pursuing it as I do not have the numbers here. We will just have to wait and see over the next couple of years how effectively the food auditing system works and, in particular, how local government is able to cope with the responsibilities that we place on it. We as an opposition—and perhaps as the next government—will have to observe this in the future and make our choices from there.

The Hon. DIANA LAIDLAW: Before voting on this, I would like to follow up the issues raised by the Hon. Nick Xenophon and his concern about who is auditing the auditor. I refer the honourable member to clause 76, which provides:

(1) The relevant authority may vary the conditions of, or suspend or cancel, an approval under this part.

(2) An approval of a person may be suspended or cancelled on one or more of the following grounds—

and six grounds are mentioned. From those grounds it must be understood that a proactive mechanism to maintain standards must be introduced.

The Hon. Nick Xenophon interjecting:

The Hon. DIANA LAIDLAW: I do not have the exact nature of that. All I can do is give an undertaking to the honourable member that such a proactive mechanism must be introduced to maintain the standards to meet the provisions of this bill. I can only go on my own experience in planning and transport where random auditing of auditors is undertaken. We certainly do it for driving instructors, in planning and in terms of bus services. There is a whole range of random audit programs. Having given an undertaking that some proactive mechanism will be put in place, in order not to hold up the bill at this stage, I will ask the minister to write to or telephone the honourable member and explain how he is going to do it, because I have given an undertaking that he will.

The Hon. NICK XENOPHON: I have discussed this matter briefly with the Minister for Human Services. I understand the government's intent in this regard: it wants the system to work—and to work effectively. I simply ask that there be an undertaking that at some stage in the next, say, three months there be an indication by the minister to the parliament of what those mechanisms will be so that they are on the record and so that auditors in the food industry are aware that, in a sense, they will be watched and that mechanisms will be in place to ensure that this bill works as it is intended. That is all that I ask.

The Hon. DIANA LAIDLAW: I respect that. What the honourable member is seeking is a statement from the minister in another place for me to provide here when the parliament returns.

The Hon. Nick Xenophon: That's fine.

New clause negatived.

Clauses 80 to 96 passed.

New clause 96A.

The Hon. P. HOLLOWAY: I move:

(1) The Food Quality Advisory Committee is established.

(2) The Committee will consist of ten members appointed by the Governor, of whom—

(a) one will be the presiding member, nominated by the Minister:
(b) one will be an officer of the Department of the Minister, nominated by the Minister;
(c) two will be persons nominated by the LGA;
(d) one will be a person who, in the opinion of the Minister, is an expert in a discipline relevant to production, composition, safety or nutritional value of food;
(e) two will be persons who, in the opinion of the Minister after consultation with Business SA, have wide experience in the production, manufacture or sale of food from a business perspective;
(f) one will be a person nominated by the United Trades and Labor Council;
(g) two will be persons who, in the opinion of the Minister, are suitable persons to represent the interests of consumers of food.

(3) At least one member of the Committee must be a woman and at least one member must be a man.

(4) The Governor may appoint a suitable person to be the deputy of a member of the Committee during any period of absence of the member.

We have essentially had this debate on the test clause, which I think was clause 4 so, unless there are any issues that come up, I formally move the clause which I spoke to earlier.

The Hon. T.G. CAMERON: I move to amend the proposed new clause as follows:

(2)(c)—After 'LGA' insert:
who, in the opinion of the Minister, have wide experience in—
(i) the inspection or auditing of food businesses: or
(ii) the production, manufacture or sale of food

(2)(f)—After 'Council' insert:
who, in the opinion of the Minister, has wide experience in—
(i) the inspection or auditing of food businesses; or
(ii) in the production, manufacture or sale of food

(3)—Leave out this subclause and insert new subclause as follows:
(3) At least two members of the Committee must be women and at least two members must be men.

By way of brief explanation, I have attempted to use the same wording that applies to SA Business to apply to the Local Government Association and to the nominee from the Trades and Labor Council. If it is good enough for the person from business to have had some experience in the production, manufacture or sale of food, certainly it should be good enough for the nominee of the Local Government Association to have wide experience in the inspection or auditing of food businesses or the production, manufacture or sale of food.

The same explanation also applies to the nominee of the Trades and Labor Council. It is easy to see that the clause was developed by the Australian Labor Party, because there are requirements for the person who is going to represent SA Business, but the person who is going to be the nominee of the Trades and Labor Council does not need any experience in either the inspection or auditing of food businesses or in the production, manufacture or sale of food. Heavens above, you could appoint the current secretary of the AWU, who may never have had any experience in a food business.

The Hon. R.K. Sneath interjecting:

The Hon. T.G. CAMERON: I have seen the size he is so, if that is any indication of the way he eats, he would not be bad on the tooth. But, quite simply, if this committee is so important and so essential, despite the government's assertions that we do not need a committee and that the committee has not met for a number of years, if those arguments are to be swept aside and we are going to have a committee, let us at least ensure that the people placed on the committee have some experience in the food industry.

In respect of proposed new clause 96A(3), and notwithstanding the eloquent justification outlined by the Hon. Paul Holloway for the clause as it was originally drafted by the Australian Labor Party, having always been a strong supporter of affirmative action, it gives me pleasure to move to amend the proposed new clause to ensure that at least two members of the committee are women and at least two members are men. Realistically, we all know what these clauses are about: they are about trying to ensure that a

sufficient number of women are appointed to these committees. We all know that 'and at least two members must be men' is put in there more to provide a bit of balance. I think, from memory, that I probably developed that original idea in the Australian Labor Party—it did not receive a lot of support, initially, but it got up on the basis that everybody should be treated equally.

Quite frankly, in a business such as a food business, whether it be the production, manufacture or sale of food, the majority of people these days are women, and one has only to look at the restaurant business, the delicatessen business and the take-away food business to see that. So, to support a clause where the majority of people working in the industry are women, which would mean that only one woman would end up on the committee, I think is a sad reflection on the 40 per cent affirmative action rule that the Australian Labor Party insists on in its own organisation, notwithstanding the argument outlined by the Hon. Paul Holloway. However, with respect, it was a very thin argument; it was almost clutching at straws. I know it was not his amendment and that he was defending it to the best of his ability, but for a female shadow minister of the Australian Labor Party to put up a clause to this place that only one member of a 10 person committee must be a woman, I think, is a bit of a disgrace. So I seek support to double it to at least two.

The Hon. DIANA LAIDLAW: The Hon. Paul Holloway's new amendment will pass because the facilitating interpretation in the definition clause has already passed. I just put on the record again that the government sees no need for this committee in this form—in fact, there is no value at all in progressing this way. But, because we have to have it because we do not have the numbers in this place, I fully support the amendment moved by the Hon. Terry Cameron to the proposed new clause of the Hon. Paul Holloway.

The Hon. P. HOLLOWAY: There are three parts to the Hon. Terry Cameron's amendment to my proposed new clause. I support the last part whereby two members of the committee must be women and at least two members must be men. We had debate on that earlier. One would hope, in fact, as I said then, that there would be a more even balance than that. But so be it. However, I oppose the other two parts of the Hon. Mr Cameron's amendment. Part of the reason that the amendment comes to us in this form is that we are essentially trying to adopt, in terms of modern drafting practice, what was the old food advisory committee.

The Hon. Diana Laidlaw interjecting:

The Hon. P. HOLLOWAY: Yes, it is old fashioned, and I will say something about that in a moment. I can understand the Hon. Terry Cameron's point in relation to some consistency but, if you take, for example, the LGA clause, because the LGA is the enforcement authority, we are saying that if you have an advisory board you should have representatives chosen by the LGA who can raise the issues that come up through the various councils, the employees of the councils and the various committees of those councils. All those issues that bubble to the top level of the LGA can then be carried by the representatives of the LGA into the advisory council so that they can bring them forward.

Similarly, in relation to the representative of the Trades and Labor Council, one would expect that, obviously, the TLC would appoint someone from one of the unions such as the Shop Assistants Union, the Liquor Trades Union or the Manufacturing Workers Union, which has a large number of employees working in that area. But, I see the role of that union representative to be to bring forward the issues that are raised out in the real world on the shop floor.

The important thing is that the representatives on the board should have the confidence of the organisations that they are representing the interests of the vast majority of the work force. It is not so much that they themselves should have to have personal experience in the area—great if they do. It is better if you have someone who has come up from the shop floor, as indeed most union officials do, anyway: they come up from some part of the industry. It is quite likely that your TLC representative would be someone who had come up through the shop floor and who had experience in one of those areas. The point is that what we are looking at is expertise in terms of being a conduit for the information coming up from the shop floor, and so I think that they would probably have a slightly different role.

I suppose that one could make the same argument in relation to Business SA, and maybe to be consistent we should have let Business SA have its two representatives. The difference with Business SA is that it has a broad range of industries in its portfolio. We are not so much looking for business expertise as for someone who has expertise in a business that is involved in the food processing industry. But, anyway—

The Hon. Diana Laidlaw interjecting:

The Hon. P. HOLLOWAY: I guess you could. The point is that perhaps a more modern act, if we were to use it as a model, would have been the Meat Hygiene Act 1994, which, after all, is an act in a related field—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: It was actually, yes. There is a meat hygiene advisory council. It is interesting that it was considered necessary in relation to meat hygiene issues. Section 9 provides:

> (1) The advisory council must include the following members appointed by the minister:
> (a) a person appointed to chair the council;
> (b) a person appointed to represent the interests of meat processors who operate small slaughtering works supplying meat to the South Australian market—

and a couple of other various sectors of the meat industry are represented. Section 9(1) further provides:

> (e) a person appointed to represent the interests of processors of chicken meat;
> (f) a person appointed to represent the interests of processors of meat from wild game;. . .
> (g) a person nominated by the Meat and Allied Trades Federation (SA Division) to represent the interests of persons engaged in the production of smallgoods or the wholesale or retail sale of meat;
> (i) a person nominated by the South Australian Farmers Federation—

Interestingly, that person is not required to have experience but again one would assume that that would be the case. Paragraph (k) provides:

> an authorised officer appointed by a council under the Food Act 1995 nominated by the Local Government Association of South Australia.

In relation to the union representative, paragraph (j) provides:

> a person nominated by the appropriate registered association of employees to represent the interests of employees in the meat processing industry;

I use that as perhaps an approach. Rather than spending hours on it now, given that it has to go back to the other house, perhaps it would be possible for the minister and the shadow

minister in the other place to revisit the names, and they may come up with something that is a little more attractive.

I have had indications from people that the numbers are here for this amendment to be carried, but, as I say, maybe when it gets to the other place we can revisit this issue and come up with something that might be more acceptable to all parties.

The committee divided on the Hon. T.G. Cameron's amendment to proposed new clause 96A(2)(c)):

AYES (14)

Cameron, T. G. (teller)	Crothers, T.
Davis, L. H.	Dawkins, J. S. L.
Elliott, M. J.	Gilfillan, I.
Kanck, S. M.	Laidlaw, D. V.
Lawson, R. D.	Lucas, R. I.
Redford, A. J.	Schaefer, C. V.
Stefani, J. F.	Xenophon, N.

NOES (5)

Holloway, P. (teller)	Pickles, C. A.
Roberts, R. R.	Roberts, T. G.
Sneath, R. K.	

PAIR(S)

Griffin, K. T.	Zollo, C.

Majority of 9 for the ayes.

Amendment thus carried.

The committee divided on the Hon. T.G. Cameron's amendment to proposed new clause 96A(2)(f):

AYES (11)

Cameron, T. G. (teller)	Crothers, T.
Davis, L. H.	Dawkins, J. S. L.
Laidlaw, D. V.	Lawson, R. D.
Lucas, R. I.	Redford, A. J.
Schaefer, C. V.	Stefani, J. F.
Xenophon, N.	

NOES (8)

Elliott, M. J.	Gilfillan, I.
Holloway, P. (teller)	Kanck, S. M.
Pickles, C. A.	Roberts, R. R.
Roberts, T. G.	Sneath, R. K.

PAIR(S)

Griffin, K. T.	Zollo, C.

Majority of 3 for the ayes.

Amendment thus carried.

The Hon. T.G. Cameron's amendment to proposed new clause 96A(3) carried; new clause as amended inserted.

Remaining clauses (97 to 115) and title passed.

Bill read a third time and passed.

POLICE MINISTER'S COMMENTS

The Hon. IAN GILFILLAN: I seek leave to make a personal explanation on a statement made in another place by the Minister for Police, Correctional Services and Emergency Services.

Leave granted.

The Hon. IAN GILFILLAN: The Hon. Robert Brokenshire made a ministerial statement in the other place today about my remarks following the tragic events surrounding the fatal shooting of a man who allegedly attempted to stab a police officer some months ago. He stated:

> These events are tragic for all concerned, Mr Speaker—so with that in mind I was horrified to see only days after the incident, the Democrat Police Spokesman in another House, the Hon. Ian Gilfillan MLC, issued a press release headed, 'Police training. How many more to die?'
>
> Mr Speaker, the comments of the Democrats are, in my view, nothing less than reckless and irresponsible.
>
> They are not only attacks on the integrity of the Police Force, but they pre-judge an incident of which they have no first hand knowledge.

In the final part of his statement he said:

> Unfortunately, Mr Speaker, the comments of the Democrats clearly demonstrate that they will take any opportunity—even a tragic death—to bad mouth the Police in the vain hope that they can boost their own political profile.

The media release that I issued on 28 February was in response to the shooting of a man, as the minister indicated, but I use this occasion to explain to the Council what I was referring to, and I quote my own release, as follows:

> Warnings of such a tragedy have previously been given to the Commissioner and the Minister by myself, the Police Association and lately, by a serving officer writing in the Police Association journal. . .

I quoted from that letter, in which the officer listed several areas of concern in training, stating:

> Pinned to the notice board in front of me is a 'tactical-options model', which lists options a police officer can use when faced with an incident.
>
> One of these is empty-handed tactics. What are empty-handed tactics? If you attended the IMOST course, you would leave none the wiser. . .

He pointed out further in the letter:

> The complete absence of any hands-on tactics is, however, a serious problem. What is the first thing an officer does in any situation that turns violent? Spray the offender? Baton him? Maybe shoot him? No, the FIRST option once verbal control is lost is physical control of the offender.

He points out that training is not provided for that, saying:

> SAPOL's training in this area is deficient and may be a significant contributor to officer and offender injuries.

From that quote and my media release, it is quite clear that in no way did I impugn the integrity or behaviour of police officers or the police force.

The Hon. L.H. Davis: What was the headline on your media release, though?

The Hon. IAN GILFILLAN: 'Police training'. The substance of the media release was to emphasise that there is a deficiency in police training and therefore I regard the statement by the minister as being wrong, bordering on irresponsibly inaccurate, and reflects not so much the contents of my statement but the nervousness of the minister at losing political support in what are sensitive electorates.

FREEDOM OF INFORMATION BILL

Adjourned debate on second reading.

(Continued from 11 April. Page 1342.)

The Hon. R.D. LAWSON (Minister for Disability Services): There are presently before the Council three bills relating to the subject of freedom of information: the one to which I am speaking and which was introduced by the Hon. Ian Gilfillan; another bill in almost identical terms introduced at the same time by the Hon. Nick Xenophon; and also a bill for an act to amend the Freedom of Information Act that was introduced yesterday in this place by me on behalf of the government.

In speaking to the Hon. Mr Gilfillan's bill, I will outline very briefly to the Council some of the background. This is a complex matter. It arises from a report of a parliamentary committee which took some years to compile. The government has, as it said it would, introduced a bill to amend the

Freedom of Information Act, and the purpose of my introducing that legislation yesterday, as stated in the second reading explanation, is to enable consultation over the recess with interested persons, government agencies, and the like, as well as the community, with a view to concluding the matter when parliament returns from the recess.

I believe that in these circumstances it is inappropriate to vote upon the bill of the Hon. Mr Ian Gilfillan for various reasons. I think it is also fair to say that the government opposes this bill because it seeks to replace an existing regime, not long established, which is, as the government acknowledges, in need of refinement. However, it would not be appropriate, as it were, to throw out the baby with the bath water and completely abandon the model recently adopted by this parliament.

Some of the history of this matter is worth putting on the record. The Legislative Review Committee undertook an examination of the Freedom of Information Act, and its report was tabled in the Legislative Council on 4 October last year. That committee, of which the Hon. Mr Gilfillan is a member, appended to its report a draft bill which the members of the committee, for various reasons stated in the report, considered might be appropriate. The report of the Legislative Review Committee was the first comprehensive parliamentary examination of the Freedom of Information Act in South Australia which came into force on 1 January 1992. The report contained a number of observations, and I will not go into great detail about all the observations made in the report about the existing regime, but it was critical, for example, of what it called 'a Public Service culture of antipathy and even antagonism to the concept of open government'.

As I observed in the government's formal response to the report of the Legislative Review Committee, that assertion was not substantiated by evidence, but I do acknowledge that it is a widely held view, especially in academic circles, that freedom of information does not meet the objectives of some of the FOI enthusiasts, of which there are a few.

I think it is also worth recording that the freedom of information regime in this state introduced at the beginning of 1992 has been successful. That is reflected in the large and increasing number of applications that are made under the legislation. The latest annual report on the operations of the act reveals that 7 598 applications were received during the year ended 30 June 2000—an increase of 17 per cent over the previous year. Almost three-quarters of all applications made under the act are for information held by a government department or agency and relate to personal affairs, that is, information about a person's financial affairs, criminal record, marital or other personal relationships and employment. About 94 per cent of those applications were accepted and duly processed. The Legislative Review Committee acknowledged that this aspect of the act works well and that the process is relatively straightforward. The government certainly agrees with that assessment.

When it is considered that the bulk of the applications under the current system are being processed quickly and appropriately, the committee acknowledged that that part of the system, which is, after all, the major part of the system, is working well, so why then would you, as is proposed by the Hon. Mr Gilfillan, abandon the legislation altogether and come up with an entirely new method of handling freedom of information? Why not, as the government suggests, improve the model and the legislation?

The Legislative Review Committee considered that the process of accessing non-personal information, such as policy documents, was less than satisfactory, and it was that perceived deficiency in relation to one-quarter of the applications which apparently drove most of the recommendations of the Legislative Review Committee, whose arguments were adopted by the Hon. Mr Gilfillan.

The Hon. Ian Gilfillan interjecting:

The Hon. R.D. LAWSON: It is a committee with an illustrious history, I can certainly say that. I think it is also worth saying that freedom of information is a relatively costly practice. The cost of processing FOI applications is not less than $1 million a year. That is a significant public resource being devoted to this particular issue. In addition, there are the costs of the Ombudsman, as well as management time spent on FOI matters. The community has a significant investment in freedom of information. It is of course appropriate that there be acknowledgment, and I do not think there is sufficient acknowledgment, certainly among some of the academic enthusiasts for freedom of information, that there are interests to be balanced. There is of course the public interest in citizens being informed about the process of government, but no less important is the public interest in protecting the efficient and proper workings of government, as well as preserving the rights of citizens to privacy. Striking an appropriate balance between those competing interests can be difficult but, nonetheless, it is important that we recognise that there is a balance to be struck.

Legislation, how ever well intentioned, cannot govern all aspects of freedom of information. Effective administrative and training mechanisms must exist, and the Legislative Review Committee certainly acknowledged that fact and made recommendations about training and accreditation, and those recommendations have been taken up by the government and are incorporated in the bill that I introduced yesterday insofar as legislative amendment is required, but more important undertakings are given by the government that the necessary resources and administrative mechanisms will be put in place to ensure that that training and management has the back-up or the oil to make the cogs of that part of the machinery efficient.

The principle recommendation of the Legislative Review Committee was taken up by the Hon. Mr Gilfillan in introducing his bill, as he acknowledged. It is almost, but not quite precisely, identical to the terms of the bill which was appended to the Legislative Review Committee report, that that bill replace the existing legislation. The government does not favour the repeal of the current Freedom of Information Act and the wholesale replacement of its provisions with the bill that is being proposed. We certainly support, as I said, amendments to the FOI Act, which will, in the government's submission, achieve the objectives which were sought by the Legislative Review Committee, namely: less complexity, quicker finalisation of applications, greater transparency in the process and greater emphasis on the public interest in making information available.

It is, as I have said in slightly different words, important that very cogent grounds be demonstrated for incurring the expense and the administrative inconvenience of abandoning one system of FOI introduced as recently as 1992 and substituting it with an entirely new model of legislation. I think it is worth noting that, during the time when the Legislative Review Committee was undertaking its examination, the United Kingdom government had issued a white paper on freedom of information in that country. The Legislative Review Committee reported prior to the passage

of legislation in the United Kingdom, which adopted the proposals in the white paper.

That legislation was assented to on 30 November 2000, and I think it is worth noting, and I think it is significant also, that the structure and central provisions of the new United Kingdom legislation, which had been in the pipeline for some time, which had been the subject of very extensive consultation in the United Kingdom, is very similar to the structure of the existing South Australian legislation and other Australian freedom of information acts of parliament, not only in the states and territories but also in the commonwealth. The Legislative Review Committee mentioned in some detail the New Zealand legislation and it mentioned that legislation in very favourable terms. That legislation is the Official Information Act, which is the legislation upon which I think it is fair to say the Hon. Mr Gilfillan's bill is based.

It should not be thought by anybody that what is proposed in the bill introduced by the honourable member is an immediately simpler system. Indeed, the proposed bill is itself a complex piece of legislation. It covers some 30 pages, only a few pages shorter than the current legislation. It embraces entirely new principles, and to adopt it in this state would involve considerable administrative inconvenience and costs.

The New Zealand Official Information Bill was introduced in that country in a somewhat different legislative and administrative arrangement. In New Zealand there is a high level information authority, which had the oversight of the implementation of the Official Information Act during its five years of operation, and I am talking about the resources required to implement a system such as that which was adopted in New Zealand and the resources that would be required to manage that. No comparable information authority is proposed in this legislation. Moreover, the situation in New Zealand with regard to personal information is quite different. In that country a Privacy Act was enacted to cover both the private and the public sectors. Applications for personal information by the person to whom the information related are dealt with under the Privacy Act. No similar legislation exists in this state.

So the situation in New Zealand is a quite different one to that which we have here. New Zealand went down one route when it introduced freedom of information legislation. All of the Australian states went down another route. We followed the Australian model, and I do not believe either the Legislative Review Committee or the Hon. Ian Gilfillan in support of his bill have identified reasons why we should abandon what I would term the Australian model.

The major justification for the proposed new bill is the belief that it will lead to readier access to information regarding so-called policy matters. In fact, most of the publicity about freedom of information applications, and there has been a good deal of publicity, is easily generated by journalists, who find that their FOI applications are, in their mind, frustrated. There has been a good deal of publicity about that. But what the journalists inevitably are seeking is not policy documents, is not documents about high level details of how policies were developed, what options were before government and which options were selected, but, rather, information about administration, about the credit card records of some member of parliament or a public official.

So, although the proponents of a new style of freedom of information legislation talk constantly about the need to enable a citizen to access material about high levels of policy, really when you get down to most of the cases where there has been publicity it is about journalists or members of parliament seeking information which will make a good story about administration or maladministration.

For example, there is one application which was very widely publicised by a particular journalist. It was a request for details of every staff development exercise and conference attended by staff in every department, across the whole of government. Just one page: 'Give us all the details of every staff development exercise and conference attended by staff in every department.' Now, that is in the nature of a fishing expedition, rather than any inquiry about policy. It is looking for something to create a story, and the freedom of information was not devised nor has it ever been justified on the basis of supporting every inquiry that anybody might want to make about government. There does need to be an appropriate mechanism for declining to process applications which unnecessarily divert the resources of government.

The Australian Law Reform Commission undertook a comprehensive review of the federal freedom of information act and its report into this matter was referred to by the Legislative Review Committee. It dealt with the question of whether cabinet documents should be exempt from freedom of information. The New Zealand legislation does not exempt from the FOI regime cabinet documents. In other words, in New Zealand there is no specific exemption for cabinet documents. That is reflected, I think, in the Hon. Mr Gilfillan's bill and the reason it arises there is that all documents, according to the formula adopted in the Gilfillan legislation and that supported by the Legislative Review Committee, should be available unless it is in the public interest that they be not made available. But the Australian Law Reform Commission concluded that that would not be appropriate and I quote from the report of that committee:

> It is not in the public interest to expose cabinet documents to the balancing process contained in most other exemptions or to a risk undermining the process of collective decision making. To breach the 'Cabinet oyster' would alter our system of government quite fundamentally.

The very notion that we have a collective responsibility for decisions of cabinet, the closing of cabinet in our system of government in an oyster like fashion, is a very important principle. Yet what is proposed is that documents like that that have been traditionally excluded from public gaze for 30 years, or whatever might be the period, after which time historians and the like can look at them, is an important part of our government to ensure that collective decision making is not undermined. This bill would put at risk that important principle.

The government accepts the view of the Australian Law Reform Commission and we do not support the removing of the exemption which currently exists for cabinet documents. I think it is worth saying that in all other Australian jurisdictions and in the new United Kingdom legislation, that exemption continues. The fundamental change wrought by the bill before the Council is one that is strongly opposed.

The government also believes that consultation with agencies and with government departments is very important if any FOI regime is to work satisfactorily. Indeed, one of the reasons given for the successful introduction in New Zealand of this type of legislation arose from the fact that it was developed within the public sector and not imposed upon the public sector from above. Similar processes should be undertaken here. It is very important that the culture within the public sector be one that is inclined towards the disclosure of information, rather than the reverse.

The imposition from above of a regime of the type proposed is one that would be fraught with difficulty. That is why we seek to have better education, more training, a higher level of decision-making and the requirement that the principal information officer in each government agency be a person not only well trained and with approved accreditation but also reasonably high up the ladder because, as the Legislative Review Committee correctly identified, to date, in our system—I think this is regrettable—the persons deputed in most agencies to undertake the important responsibilities of FOI officers are people well down the management or executive level.

The Legislative Review Committee made a number of recommendations, which are most commendable. The government has indicated that those recommendations will be supported, and they have, in fact, been supported and given effect to in the bill which was introduced in the Council yesterday and which will lie on the table for consultation during the recess. I acknowledge that some of those elements appear in the bill proposed by the Hon. Mr Gilfillan, but those matters can be dealt with appropriately by amending the existing legislation rather than repealing entirely the system that we have had in place for the past 10 years.

The government opposes the passage of this legislation in its current form. I believe that its essential elements, which are embodied in the existing legislation, coupled with the proposed amendments will give us a regime that will provide better transparency and greater emphasis on public interest by making information available, reduce complexity and, most importantly, provide quicker finalisation of applications, because the bill reduces from 45 days to 30 the time during which an FOI application must be dealt with. I think that is an important improvement and one which should receive widespread support. For those reasons, I suggest that, just as the government's bill will lie on the table for consultation during the recess, it is appropriate that the Hon. Mr Gilfillan's model does likewise.

The Hon. NICK XENOPHON: I rise to indicate support for the Hon. Ian Gilfillan's bill. I introduced a bill identical to the Hon. Ian Gilfillan's bill based on the model bill in the Legislative Review Committee's report. I have not proceeded with my bill because the Hon. Ian Gilfillan introduced his bill in an identical form—and, of course, I support it. I pay tribute to the Legislative Review Committee's comprehensive report in relation to this bill. I read the committee's comprehensive report which sets out the need for reform and the efficiencies in the current freedom of information legislation. The model bill that is appended to its report is, I think, a template for the way forward. That is why I wholeheartedly support the provisions of this bill.

I note that the government is now introducing its own bill to amend the Freedom of Information Act. Obviously, that bill is an improvement on the current legislation, but I believe that it does not go far enough. The Hon. Ian Gilfillan has dealt with the policy reasons why this bill ought to be supported. Again, it is disappointing that the government has not picked up to a greater extent on the findings in the comprehensive report of the Legislative Review Committee and the work of its Chair, the Hon. Angus Redford, the Hon. Ron Roberts and the Hon. Ian Gilfillan, as well as members of the other place. I still believe that the bill that has been introduced by the Hon. Ian Gilfillan is a template for reform. I think it is a standard by which other bills will be judged. I urge members to support the bill.

The Hon. P. HOLLOWAY: On behalf of the opposition, I indicate that we are pleased that a couple of models are available to us on how we should proceed in relation to freedom of information legislation. The government tabled its bill yesterday in response to the report of the standing committee. We have the bill that was put forward by the standing committee in the form which the Hon. Ian Gilfillan has introduced it. We look forward to reviewing those models during the forthcoming break, as has been suggested, and hopefully at the end of that process in September or October we will come up with some legislation that will be a worthwhile advance in this area.

The Hon. IAN GILFILLAN: In concluding the second reading debate, I thank members for their contributions, particularly those of my colleagues the Hon. Mike Elliott and the Hon. Sandra Kanck, the Hon. Nick Xenophon, the Hon. Robert Lawson and the Hon. Paul Holloway. It is rare that any committee that does as much work on a controversial subject (as is freedom of information) should come to a unanimous view, but that was the case with the Legislative Review Committee. I enjoyed being on the committee and was proud to be involved in this work. It was a hallmark of the achievements of the committee system in this place that, as a tripartisan committee, we were able to recommend legislation to the parliament.

The legislation may not be—as legislation rarely is—perfect in every detail, but it sets down a template or a benchmark upon which any freedom of information legislation which may evolve from parliament should be measured. I do not resile from any of the initiatives in the legislation, most of which were supported by not only the Legislative Review Committee but the Ombudsman, the Australian Law Commission, the Administrative Review Council, and academics who gave evidence. Not only were these initiatives supported by the South Australian Ombudsman but also by ombudsmen from the commonwealth, Queensland and Western Australia all of whom, in their own way, showed support for this initiative.

It is essential that we have a more effective freedom of information structure working within our community to give the public more confidence in the system. The minister indicated a cost of $1 million. That is a lot of money but, when you compare it with making up the deficit of the Festival and preserving for the community of South Australia a sense of access to information and the value that a freedom of information structure will give, I believe that we have got our priorities right in arguing that we should have an extensive and accessible freedom of information system.

The Hon. A.J. Redford interjecting:

The Hon. IAN GILFILLAN: Yes. I think it is probably worth observing that the work that we did—which went on for, I am guessing, but it must have been close to a year—was at minimal cost to this parliament and the community at large. Again, with some modesty I take some pride and a lot of pleasure in having achieved such a useful and worthwhile product at the end of it.

In conclusion, I am pleased that the government has shown some initiative, but I would like to be more confident that it took that initiative willingly. The timing is worth comparing. I issued a media release in October last year in relation to FOI. At that time, the minister appeared reluctant to follow the lead for substantial FOI reform. Better late than never, one might say. I do not want to be ungracious enough to impugn the government's motives for introducing it at this

stage. Let us say that it is an initiative that now has some momentum, thanks to the work of the Legislative Review Committee. It is called my bill, but I want to share with the other members of the committee the fact that we were all involved in the effort to achieve reform, and my bill is the culmination of that. I urge members to support the second reading.

Bill read a second time.

MEDICAL PRACTICE BILL

Adjourned debate on second reading.

(Continued from 25 July. Page 2081.)

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I wish to thank honourable members for the attention that they have given to this bill. Some amendments have been foreshadowed and filed, and I think at this point of time it would be expeditious if I dealt with those amendments and related issues in the committee stage.

However, I will touch on one issue raised by the Hon. Sandra Kanck. While she rightly acknowledged that this bill was not the venue for dealing with the following matter, she was seeking some commitment from the government in relation to the issue of capping medical malpractice payouts. I am advised by the Minister for Human Services that the area of medical indemnity and a number of related matters have been the subject, and will continue to be the subject, of consideration at the national level.

The Australian Health Ministers Advisory Council, which is a council of senior officers who advise the Australian health ministers conference, earlier this year established a medical indemnity jurisdictional working party. Subcommittees of the working party have been formed, assisted by a consultant, and they have been considering areas such as sustainable solutions to long-term care costs in health care litigation; medical indemnity industry standards; reduction in legal and administrative costs associated with health care litigation; and national data collection on health care litigation. Health ministers at their meeting—to be held next week—will be considering the progress of the work of the working party and the proposals for broader consultation, which will probably be undertaken later this year.

While I am, therefore, not in a position to give the range of commitments or the sorts of commitments that the honourable member is seeking, I can assure her that the whole area is receiving a great deal of consideration. That consideration is being undertaken at a national level and the matter will be considered by health ministers again next week.

Bill read a second time.

In committee.

Clauses 1 and 2 passed.

Progress reported; committee to sit again.

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

CRIMINAL LAW (SENTENCING) (SENTENCING PROCEDURES) AMENDMENT BILL

Consideration in committee of the House of Assembly's amendments.

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

That the amendments be agreed to.

This bill deals with the sentencing process and also with victim impact statements. The first amendment is to clause 2 of the bill. Clause 2 deals with making available to victims who seek to give their impact statements verbally the opportunity to do so with the use of one-way screens or closed-circuit television, in effect, as a vulnerable witness. My attention has been drawn to the fact that it is not appropriate for the court to encourage a victim to read out a victim impact statement. That should be a matter for the victim, so the words 'encourage or' are to be deleted from proposed section 3A, so that the focus is upon the assistance to the victim in reading out the victim impact statement.

Amendment No. 2 is of a drafting nature. Amendment No. 3 puts beyond doubt that the amendments relating to the requirement that a defendant should be present during the sentencing process at all stages, unless falling within fairly limited exceptions, should be considered as a procedural issue rather than as a substantive issue. All that means is that it will apply to all current cases as a matter of procedure. If it were substantive, then we would have to give consideration as to whether or not it was retrospective. That issue is not relevant in relation to an issue of procedure, and it puts that issue beyond doubt by declaring what is in fact the position on all the advice I have; that is, the defendant's being present during the sentencing process is a matter of procedure and not a substantive right.

The Hon. CAROLYN PICKLES: The opposition indicates support for the amendments moved in the House of Assembly. Amendments Nos 1 and 2 are self-evident and I think amendment No. 3 is an improvement to the bill.

Motion carried.

RETAIL AND COMMERCIAL LEASES (GST) AMENDMENT BILL

In committee.

(Continued from 30 November. Page 748.)

New clause 8.

The Hon. NICK XENOPHON: This matter has a long history. A number of months ago, I believe it was at the end of last year, I moved amendments to this bill relating to casual mall leasing. Those amendments would have required certain disclosure statements to be provided in relation to casual leases. It would also have required that the income received by landlords in relation to casual mall leasing be offset as against the outgoings of permanent or long-term tenants. There is a significant degree of passion amongst retailers, particularly those in large shopping centres, who feel that they are being hard done by because of the practices of some landlords in the context of casual mall leasing. I have already outlined the extent of those problems.

I have had numerous discussions with interested parties, in particular the Australian Retailers Association, the State Retailers Association and also the Newsagents Association of South Australia. The Attorney has convened the Retail Shop Leases Advisory Committee to meet on this issue on a number of occasions and, whilst progress was made on the issue of assignments with respect to an amendment moved by the Hon. Carmel Zollo, the issue of casual mall leasing still needs to be resolved, and I am sure that the Attorney will put his position on that in due course.

As a result of the discussions that I have had with retailers on this issue over a number of months, I propose to do the following: to withdraw the amendments that were previously

passed by this committee and, in due course, but not in the course of this bill, have the amendments that I have circulated be the subject of further debate. I will refer to those amendments shortly, but it is unfortunate that this process has taken so long, over a number of months. I do not blame the Attorney or his officers or the Office of Consumer and Business Affairs in any way whatsoever, but it does seem that the Property Council of Australia and the Shopping Centre Council of Australia have been recalcitrant in their dealings on this issue.

To put this in the context of casual mall leasing, the Property Council and the Shopping Centre Council are now speaking about having a code of conduct. The Retailers Association, both at a national and a state level, have been banging members' heads against a brick wall with the Shopping Centre Council and the Property Council of Australia in the context of casual mall leasing. On 8 January 1999 a letter written by Duncan Fairweather, the Executive Director of the Shopping Centre Council of Australia, to the Chief Executive Officer of the Australian Retailers Association, Mr Phil Naylor, in relation to the issue of casual mall leasing, stated:

> The council took the view that mall merchandising is part of the normal commercial business of shopping centres, in line with the competitive strategies of individual companies, and it is not necessary nor appropriate for mall merchandising to be subject to an industry code.

In other words, it ignored the concerns of thousands of retailers on this issue. The Australian Retailers Association wrote back on 1 February to Mr Duncan Fairweather, stating:

> Naturally ARA is extremely disappointed with SCCA's newsletter of 8 January 1999 rejecting the development of a Code of Practice to deal with casual leasing in shopping centres. The fact that it took 9 months for SCCA to respond is bad enough. That SCCA now does not want to enter into a code, which was its own (or at least the ACSC's) idea in the first place, is even more disturbing.

The response of the Retailers Association at a national level and at a state level has been one of absolute despair in terms of the conduct of the Shopping Centre Council of Australia, and there is an enormous amount of frustration on the part of retailers in relation to this.

There has been recent correspondence at a national and state level with the Shopping Centre Council. I understand that some progress has been made in that there have been continuing discussions but the information that I have from the Retailers Association and the Newsagents Association from discussions that I have had today with their executive officers is that there is still a long way to go. The process is continuing and they are very frustrated, not with the Attorney-General or his office but with the Property Council of Australia and the Shopping Centre Council of Australia.

The amendments which I have circulated and which I will move in due course relate to a formula for ascertaining the extent of contributions by a tenant in a shopping centre where casual mall leasing space is in use, and the formula used refers to the ratio of lettable area. If a certain proportion of the shopping centre is being used for casual tenancies, the extent of that area is used as part of the formula to reduce the amount that is being paid by the long-term tenants of that shopping centre. That seems to be an equitable solution on the basis of discussions that I have had with retailers. It also seeks to ensure that there is appropriate disclosure of casual leases and that a copy of the casual lease plan is given to a lessee as well as regular disclosure on the part of landlords with respect to their plans for casual lease space.

It also seeks to strike out subsection (2) of section 38 of the principal act, because it is the view of retailers that that clause simply does not afford them protection. It in fact provides a defence to landlords engaging in conduct that some would consider to be unreasonable, indeed unconscionable, in that if a landlord can point to that conduct being part of an accepted retail practice that is a defence for the purposes of section 38. I have had discussions with the Attorney in relation to this in the last day. I have indicated to him that I will withdraw the amendments that were previously passed, on the basis that these new amendments that have been circulated yesterday will be in the form in which I will be pursuing reform in this area. I have discussed with the Attorney the issue of this matter being given some priority, and obviously that is for the Attorney to elaborate on.

However, it is my intention that members of this chamber, and indeed of the other place, will have an opportunity to view these amendments to consider them and for there to be further discussions with respect to these new amendments during the winter break and that when we come back in the spring session there ought to be a robust debate to deal with these issues once and for all, because the retail sector in this state, and indeed nationally, has been fed up with the attitude of the Property Council of Australia and the Shopping Centre Council of Australia in terms of their whole attitude to casual mall leasing and bringing about some sensible reforms that will ameliorate some of the practices of some landlords that have caused a great deal of economic hardship and distress to many tenants in this state and, indeed, the rest of the country.

I appreciate that there has been a breakthrough in relation to the issue of assignments and I congratulate the Attorney for bringing the parties together in relation to that, but, unfortunately, in relation to the issue of casual mall leasing there has not been a breakthrough as I understand it. The parties are still talking, but I can tell you from the discussions I have had with the Retailers Association and the Newsagents Association today that they are very frustrated at the lack of progress, what they see as the recalcitrance on the part of the Property Council of Australia and the Shopping Centre Council of Australia, at both state and federal levels.

The Hon. K.T. GRIFFIN: As already has been indicated, it is intended to recommit the whole of the bill. When the bill was introduced it was at a time when it was believed that there were difficulties in relation to the GST faced by both landlords and tenants, and the object of the bill was to endeavour to ensure that the issue of the GST could be fairly dealt with. My information now is that all the parties believe that the GST issues have been satisfactorily resolved and there is now no need to pass those provisions that relate to the GST.

But it is fortuitous that the bill is still on the *Notice Paper*, because when we were last considering the issues in committee there were two matters raised by honourable members. The first was by the Hon. Carmel Zollo in relation to assignments of leases and the issue of continuing liability. The second was in relation to casual mall licensing as I prefer to call it, as opposed to casual mall leasing as the Hon. Nick Xenophon describes it. I indicated that in relation to both areas of amendment I preferred not to have those sorts of amendments made on the run and without appropriate consultation between all of the relevant and interested parties. I indicated that I had a Retail Shop Leases Advisory Committee. It did have broad representation from retailers, property owners, shopping centre managers, and that that had proved

to be a productive forum for debating issues relating to retail leases.

We know that there are some contentious issues that we have to address from time to time in relation to retail shop leases, and my experience has been that if it is at all possible to reach a conclusion by agreement, rather than by confrontation or by one party seeking to steal a march on the other, that is in the longer term interests of the retailing industry and in the management of shopping centres. I indicated also that in relation to those two issues of assignments and casual mall licensing I would refer those matters to my Retail Shop Leases Advisory Committee and endeavour to gain a resolution, or at least to narrow the areas of disagreement. I know that there has been some frustration on the part of retailers that the matters have not been resolved. I was concerned about that, so some months ago I took control of the process and chaired the meetings myself, and in the last few weeks resolution has been achieved on the issue of assignments. It is a quite reasonable and sensible outcome to what could have been a very controversial issue and, in relation to casual mall licensing, substantial progress has been made.

A draft code of practice has been developed. That has been the subject of comment at the most recent meeting of the Retail Shop Leases Advisory Committee several weeks ago and is being further refined, particularly in relation to issues about which there might be some disagreement, and also to deal with drafting issues. At the last meeting of the Retail Shop Leases Advisory Committee several weeks ago I did indicate to all of the group that, in relation to assignments, it was possible if they agreed, as they did, with the drafting that could be incorporated in the bill now before us and we could have it passed before we got up at the end of this week.

Casual mall licensing, on the other hand, was still not resolved but very substantial progress had been made towards an agreement. What was agreed at the meeting by all who were present was that that issue would be further developed at a meeting in mid August, which I again would chair, with a view to resolving the issue by the start of the next session at the end of August.

There was some debate as to whether the code should be a legislated code or a voluntary code, and that issue has not been resolved. The retailers prefer a legislated code; the shopping centre owners and managers prefer a voluntary code. I have indicated that if in the end that cannot be agreed I will make a decision and make a recommendation to the government, and it may be that that will ultimately end up in legislative form.

It is interesting that this is an issue also at the federal level. As a result of some discussions with the peak national bodies of retailers and shopping centre managers, I learnt that the Australian Competition and Consumer Commission was taking an interest in the issue and that the peak bodies of the two groups were also beginning to become involved in discussions which would have a national impact.

I took the initiative to invite the ACCC representative, and there is a commissioner of the ACCC now attending the meeting, or a representative of that commissioner, together with representatives of the peak Australian retailers association and the shopping centres council. I have done that because I did not believe that we could afford to wait for the outcome of talks at a national level and that we could probably be leaders in respect of the resolution of this issue.

It should also be remembered that new provisions of the Trade Practices Act have only recently come into operation. They deal with partial and unconscionable conduct, not just in relation to shopping centre leases but in relation to contracts generally. That will have an impact on the way in which casual mall licensing, for example, may well be dealt with at some time in the future. But at the recent meeting of the Retail Shop Leases Advisory Committee, where representatives of all interest groups were present, it was agreed that we would not introduce any legislation in relation to casual mall licensing if and until the issues have been resolved later this month. It was recognised that this would mean that the bill before us would deal only with assignments and that the other issue would be, hopefully, completed later in September, if not earlier.

There may well have been some misunderstanding. I personally do not believe that it could have been any clearer as to what the process was and it could not be any clearer as to what the agreement was from all those who were present about the process that we would follow and the timing that would also be followed. So, it was with some concern that I saw the Hon. Mr Xenophon's amendments on the *Notice Paper*. I appreciate that after some consultation with him and now his expression of views he will not proceed with those amendments.

I can indicate that, from my point of view, I do not particularly want to chair too many more meetings if we cannot reach resolution but I am prepared to chair those meetings to ensure that, as much as it is possible to do so, we resolve the issue of casual mall licensing and have it resolved by some time in September. It is in everybody's interests to ensure that that objective is achieved. It is a high priority for the government. We do not want landlords and tenants in shopping centres to be at odds. It is unproductive; it is certainly unrewarding; and it is not conducive to the sorts of relationships which I believe need to occur in a shopping centre environment.

So, that is the background to it; in due course, we will recommit the bill and I would hope that honourable members will see the good sense in the way in which I have indicated I think we should proceed. It is the way which the Retail Shop Leases Advisory Committee actually agreed to at its recent meeting and I can indicate a commitment to endeavour to get the issue of casual mall licensing resolved in the next two months.

The Hon. NICK XENOPHON: For the reasons that I have already given, I can indicate that I do not resile from the position; the retailers do not resile from their position. We are going to have one last crack at trying to resolve all these issues. I will be moving these amendments, either in the context of any government bill on casual mall leasing—as I call it—or licensing, as the Attorney calls it, or in the context of the private member's bill that I have introduced. But, against that background, I seek leave to withdraw the amendments in question.

Leave granted; amendments withdrawn.

Bill recommitted.

Clauses 1 and 2 passed.

Clause 3 negatived.

New clause 3A negatived.

Clauses 4 and 5 negatived.

New clause 5A negatived.

Clause 6 negatived.

New clause 6A.

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

Insert new clause as follows:

6A. Section 45 of the principal act is amended by inserting in paragraph (a) 'the use to which the proposed assignee proposes to put the shop and' after 'about'.

The amendments to insert new clause 6A and new clause 7 deal with the issue of assignment. The Retail and Commercial Leases Act sets out the process to be followed by a lessee who wishes to secure an assignment of his or her interest in the lease, but it has never been made clear what the effect of that assignment would be. At common law, some of the obligations imposed on a licensee by the lease continued after the assignment even though the lessee had ceased to have any practical connection with the leased premises. That carried forward the personal covenants of the lease. Similarly, a guarantor who had provided a guarantee for the lessee could be faced with ongoing obligations after an assignment had taken place.

There is widespread support for changing this position to remove a considerable burden of commercial uncertainty from the shoulders of the outgoing lessee and any relevant guarantor. In some states, the commercial tenancies legislation has already been amended to make the change. Following the Hon. Carmel Zollo's amendment where she first raised the issue, a considerable amount of work has been done by the Retail Shop Leases Advisory Committee to reach an agreement on the proposed new clause which is now before us. All of the parties to that Retail Shop Leases Advisory Committee have agreed to the amendment.

These two clauses will result in a situation (where a lease is assigned) whereby the lessee and any guarantor will be discharged from any liability under the lease on or after (whichever first occurs) the second anniversary of the assignment, the date on which the lease expires or, if the lease is renewed or extended following the assignment, the date on which the renewal or extension commences. Where the lease relates to a retail shop but will continue as an ongoing business, the lessee must also provide a disclosure statement about matters listed in the clause to both the lessor and the proposed assignee.

These matters are: whether the proposed assignee has been given a copy of the lessor's disclosure statement; whether there are any outstanding notices in respect of the lease; whether there are any outstanding notices from any authority in respect of the retail shop to which the lease relates; whether there are any encumbrances on the lease and, if so, details of those; and whether there are any encumbrances on, or third party interest in, the fixtures and fittings in the shop and, if so, the details of those.

The statement must be given to the lessor at the time the request for consent to the assignment is made, and it must be given to the proposed assignee before the request for consent is made to the lessor. As I have indicated, the amendments do not deal with the issue of casual mall licensing in respect of which I have already outlined both the process and the timetable for endeavouring to have the issue resolved between competing interests.

Notwithstanding some of the concerns which have been expressed by the Hon. Mr Xenophon, there is a measure of goodwill and, in due course, I am confident that, in relation to casual mall licensing, we will have a satisfactory outcome. I suppose that I always regard myself as something of an optimist, but I am quietly confident that that issue will be resolved and that, with some hard work and that goodwill, when we resume I will be able to report to the Council that an agreement has been reached on this complex question.

The Hon. CARMEL ZOLLO: The amendments before us have been discussed by the opposition and a decision has been made to support them. I will speak to them all now. The opposition's previous amendments to the Retail and Commercial Leases (GST) Amendment Bill sought to obtain a fairer deal for the small business community when existing leases are assigned to an assignee. The Attorney is suggesting a compromise to the opposition's amendments. The compromise would still see the lessee and any guarantor liable for a period of two years after the assignment or the date on which the lease expires or, if the lease is renewed or extended following the assignment, the date on which the renewal or extension commences. We do not see the Attorney's amendments as being the best protection for lessees. However, we recognise that they are a compromise against the liabilities that lessees can now experience upon the sale of a business and the transfer of a lease on assignment.

I note that these amendments have the approval of the Retail Shop Leases Advisory Committee. I have also received a letter from Mr Milton Cockburn, the executive director of the Shopping Centre Council of Australia, seeking the opposition's support for the amendments before us. I indicate on behalf of the opposition that we have withdrawn our successful amendments. It is interesting that two other states (both New South Wales and Western Australia) void the provisions in the lease upon assignment and both appear to be operating successfully. The proposed amendments of the opposition sought to do the same thing. In those two states the automatic release of tenants and guarantors who assign their leases when they sell their businesses has not caused the end of civilisation as we know it. Notwithstanding the disappointment that the lessee still bears the responsibility until the prescribed periods, I note the other protections for all the other parties, which are sensible and most of which the opposition's previous amendments also tried to address.

It is disappointing that, after all this time these issues have been discussed by the Retail Leases Advisory Committee, the issue of casual mall licensing is still not resolved. I note that the Attorney-General has indicated that there is substantial agreement among committee members on the majority of the principles to be incorporated in the code and that he is confident that, subject to the resolution of several matters, it will be possible to introduce a code in the manner to be decided in the future.

The opposition is on record as supporting the amendments of the Hon. Nick Xenophon as previously presented. We consider them to provide a greater equity and fairness in recognition of the significant commitment made by lessees, and I note that the Hon. Nick Xenophon will be introducing further amendments to be debated in the spring session.

I also note on behalf of the opposition that the government is no longer proceeding with the GST component of this bill. At the time we indicated our support in an effort to facilitate the administrative aspect of that proposed legislation. The Labor Party is pleased that we have at least been able to bring about this compromise in relation to assignments and provide small business with this protection.

New clause inserted.

Clause 7.

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

Leave out this clause and insert new clause as follows:

Insertion of s. 45A

7. The following section is inserted after section 45 of the principal Act:

Liability of lessee of following assignment of lease

45A. (1) Subject to subsection (4), notwithstanding the provisions of a retail shop lease or of any other agreement (whether being a lease or agreement made before or after the commencement of this section), if the lessee assigns the retail shop lease, the lessee, and any guarantor of the lessee, will not be subject to any obligations or liabilities under the lease on or after the relevant date.

(2) Nothing in subsection (1) relieves the lessee, or a guarantor of the lessee, of any obligations or liabilities accrued in respect of the retail shop lease prior to the relevant date.

(3) In this section—

'relevant date' means—

(a) the second anniversary of the date on which the lease was assigned or;

(b) the date on which the lease expires; or

(c) if the lease is renewed or extended after the assignment, the date on which the renewal or extension commences,

whichever first occurs.

(4) Subsection (1) does not apply to the assignment of a retail shop lease in respect of a retail shop that is to continue as an ongoing business if—

(a) the assignor did not provide a disclosure statement (an 'assignor's disclosure statement') containing the information referred to in subsection (5)—

(i) to the proposed assignee, before requesting the consent of the lessor to the proposed assignment of the lease; and

(ii) to the lessor, at the time the request for consent to the proposed assignment is made by the lessee; or

(b) an assignor's disclosure statement provided to the proposed assignee and the lessor contained information that at the time it was provided was materially false or misleading.

(5) The assignor's disclosure statement is a written document (in the form prescribed by the regulations) stating—

(a) whether the assignor has provided the assignee with the lessor's disclosure statement in respect of the lease (together with details of any changes to the information contained in the disclosure statement since the statement was given); and

(b) whether there are any outstanding notices in respect of the lease and, if so, the details of any such notices; and

(c) whether there are any outstanding notices from any authority in respect of the retail shop and, if so, the details of any such notices; and

(d) whether there are any encumbrances on the lease and, if so, the details of any such encumbrances; and

(e) whether there are any encumbrances on, or whether any third party has an interest in, any fixtures and fittings within the retail shop and, if so, the details of any such encumbrances or interest; and

(f) whether the lessor has conferred any rent concessions or other benefits on the assignor during the term of the lease and, if so, the details of any such concessions or benefits; and

(g) the total (aggregate) annual sales figures in respect of the retail shop for the past three years, or such lesser period as the lease has been in operation; and

(h) details of any other information the assignor has provided to the assignee as to the trading performance of the retail shop during the past three years or for such lesser period as the lease has been in operation; and

(i) any other matters prescribed by the regulations.

As I have already indicated, this is an agreed position between members of the Retail Shop Leases Advisory Committee and will put this contentious issue to rest, hopefully once and for all.

The Hon. CARMEL ZOLLO: The opposition supports the amendment.

Amendment carried.

Title passed.

Bill read a third time and passed.

MEDICAL PRACTICE BILL

In committee (resumed on motion).

(Continued from page 2129.)

Clause 3.

The Hon. SANDRA KANCK: I move:

Page 6, line 7—Leave out 'HIV or any other' and insert:

I will use this clause as a test clause, as we are attempting to deal with a particular problem and I know that the minister has an amendment on file that attempts to deal with the same problem. When I made my second reading speech on Tuesday, I said that it was an improvement on the 1983 act, but in the last 36 hours I have had to begin revising my position.

A deputation from the AMA came to see me on Monday, and as part of the conversation they made mention of the intrusion that this bill makes into the private lives of medical practitioners. At that stage I was still prepared to consider that those sorts of intrusions were necessary because of the power that doctors have. We had two non-sitting weeks after the bill was introduced into this chamber, and during that time I talked to and met with a number of people in relation to my Dignity in Dying Bill, the Food Bill and the Equal Opportunity (Miscellaneous) Amendment Bill, and there was no attempt made by anyone, apart from the AMA on Monday, to meet with me or talk to me about the bill.

In fact, as I said in my speech, I received only one other item of correspondence up until the time I made the speech. So, when you are dealing with a number of things, when you have a number of balls that you are juggling at the same time and there is no noise, you assume that everything is okay. But on Wednesday morning things started to change. I received an urgent phone call from the AIDS Council about the provision for mandatory reporting of communicable diseases that exists in the bill. Last night I met with the AIDS Council and other people and groups who had similar concerns. Yesterday I also received a letter from the AMA, as follows:

Dear Ms Kanck

Further discussion with our members has resulted in our belief that modifications need to be made to the tabled Medical Practice Bill 2001. The bill, as it currently stands, requires medical practitioners and medical students to advise the Medical Board if they are aware that they have a prescribed communicable infection. Medical practitioners also must report other doctors and medical students who they treat, who they become aware has a prescribed communicable infection.

The AMA(SA) understands the needs for some degree of notification to protect patients. This can be in conflict with the privacy concerns and rights of individual doctors which would not be accepted by other members of the community. We recognise that the notification to the Medical Board allows for appropriate counselling of infected doctors, allowing them to continue to practice, if necessary, within a constricted environment if the safety of the community is jeopardised.

The AMA(SA), however, believes that the current clauses within the bill are too broad and require even doctors who will not place patients at risk to self report or be reported. We would ask that the clause be changed so that only doctors involved in invasive procedures need to report or be reported. We ask that this matter be addressed as a matter of urgency. Yours sincerely, Brian Whitford, Chief Executive Officer.

I do not consider that to be an unreasonable request. It is asking that only those doctors who are involved in invasive procedures should be required to report. When you think

about it, if you are a psychiatrist you are not going to be involved in any invasive procedures; and if you are a pathologist you are dealing with tissue and you are certainly not dealing with people and you are not going to be involved in invasive procedures and so on. There are various categories of medical practitioners who are simply not involved.

I think members would know that when I am given a choice between supporting the powerful or those less powerful I always come down on the side of those who are less powerful. So, when Sandra Kanck starts supporting the AMA, members ought to take notice because it means that something unusual is happening.

I have received a number of items of correspondence over the past 36 hours about this, including one from a member of the Executive of the South Australian Medical Women's Society. She says:

> I am writing to you to express my deep concern about potential changes to legislation regarding the requirement by a medical practitioner (or medical student) to disclose a positive hep B, C or HIV status to a Medical Board. I believe that this could have detrimental consequences for the medical profession as a whole, and it is discriminatory. If disclosure becomes a legal requirement—

and I ask members to listen to this carefully—

> a medical practitioner with a blood borne infection will be listed on the medical register as being precluded from practising certain high risk procedures. This will invite assumptions from the public (and other doctors) about that practitioner's lifestyle and HIV positivity status, which could be extremely damaging. It is a strong disincentive for a practitioner at risk to be screened, and will discourage a practitioner who has acquired an infection from seeking treatment locally. By forcing a medical practitioner to take their infection status 'underground', risk to the public, from that practitioner, is surely increased.

The *Medical Observer*, which comes out each week, has as its headline this week 'Law "singles out" GPs in attack on privacy rights'. It quotes the Australian Council for Civil Liberties Secretary, Mr Cameron Murphy, who has a similar comment. The article states:

> 'If they don't know—

that is, if they do not know they have an illness—

> they don't have to report', Mr Murphy said. Why would they, when there is the risk they could be struck off or limited in the way they work?

It has an editorial, MO Comment, written by Dr Brian Nolan, a Tasmanian GP with a special interest in medical ethics. It states:

> All medical practitioners and students are at risk of losing their right to privacy under legislation being debated in the South Australian parliament this week—not just a few who test positive for HIV or hep C. Once the legislation is accepted, there will be little to prevent further requirements for registration, perhaps making it mandatory for GPs to declare other factors that 'might' impact on their ability to perform their duties—such as a history of mental or physical illness, relationship breakdown, or financial hardship . . . Hard evidence ought to be marshalled before law-makers [that's us] consider limiting the rights of individuals or of a particular group. A uniform and scientific approach has not been applied.
>
> It also raises other issues: if GPs must declare their HIV and hepatitis C status, shouldn't serious consideration be given to the rights of surgeons, and the need for their patients to declare their HIV and hep C status? We should remember there are several non-medical professions and occupations where the risk of viral transmission is probably similar or higher.

The facts that interested me the most however were from the South Australian Advisory Committee on HIV, HCV and Related Diseases. Effectively this is the minister's committee: it advises the Department of Human Services. This letter reveals that that committee was never consulted about this legislation or this provision. I think the minister has something to answer for. There are a number of aspects that it comments on in the copy of the letter which I received and which it sent yesterday to Christine Charles, the Chief Executive of the Department of Human Services.

It refers to current policy, which it has reviewed in all Australian states and territories, the United Kingdom, the United States and Canada, and it found that none of these jurisdictions require mandatory reporting of all health care workers infected with blood borne diseases. I ask: why is it then that we in South Australia are stepping out on this dangerous path on our own?

The Hon. T.G. Cameron interjecting:

The Hon. SANDRA KANCK: I think that it will be a very interesting part of the debate to find why we are doing this on our own. It is interesting to note also in this letter that no case of transmission of HIV from an infected health care worker to a patient has ever been recorded in Australia, and very few properly documented cases have occurred overseas. They say that medical practitioners and medical students, in common with other South Australians, have a right to absolute privacy of their confidential medical information, which should only be overridden where there is significant risk to the welfare of others. There is no evidence in the context of this bill that what the government proposes is as a result of significant risk to the welfare of others.

I am very concerned about what the government proposes here, hence my amendment. The amendment, which I am moving at this particular time, is a definition of 'exposure prone procedure'. What I intend at a later stage—

The Hon. T.G. Cameron interjecting:

The Hon. SANDRA KANCK: I will explain that in a second. What I intend at a later stage—if this amendment is supported by a majority of members—is to further amend the bill so that only those medical practitioners and students who are involved in exposure prone procedures and invasive procedures would be required to report in the way in which this bill requires. The definition 'exposure prone procedure' comes from a New South Wales health department circular: 'Health Care Workers Infected With HIV, Hepatitis B or Hepatitis C 1999'. The wording that it uses is almost identical to the wording I have used. As I have indicated—and I guess that we will probably be involved in a little bit of debate at this point—I will use this as a test clause for the substantial part of my amendments, and I await to hear what the government has to say on this.

The Hon. DIANA LAIDLAW: Having sought some guidance from the chair, at this stage I will simply vigorously oppose the honourable member's amendment to insert a new definition of 'exposure prone procedure' and refer to the fact that I seek to address this same issue but more comprehensively and more effectively, we would argue, in a later amendment that I would wish the opportunity to move. I would like to outline, and then give more detail of, the reasons for the government's opposition to this amendment. Broadly, the responsibility for the reporting of infectious status has been assigned by the honourable member to proceduralists, yet the government would argue that anyone on the register as a registered medical practitioner can be asked to undertake an invasive practice, and therefore we should have a broader approach to dealing with this issue, because there may be instances where a person would not now be involved in invasive procedures but may well contemplate or be so involved at a later time.

We agree with the honourable member that we must address the issue. It is then how to address it—whether we do

so in a more restricted form, as the honourable member has moved, or in a more comprehensive form that the government has suggested with my amendment on file yet to be moved. I should highlight that the amendment moved by the honourable member is proposed to be a forerunner of later amendments that place limitations on the circumstances under which treating practitioners must report to the board in relation to practitioners diagnosed with a prescribed communicable infection. There are deficiencies both in the definitions as moved by the honourable member and in the manner in which it is proposed to be applied to amendments which follow, particularly to clause 49.

It is important that we do not lose site of the fact that we are talking about the protection of the public. Under the bill as it stands, if a medical practitioner is treating a patient who is another medical practitioner or a medical student, and the medical practitioner diagnoses that the practitioner or student has a prescribed communicable infection, the medical practitioner must submit a written report of the diagnosis to the board. The honourable member will have noted government amendments which seek to have the same reports received and dealt with by a committee of the board consisting of the prescribing member and the registrar.

The government in moving that amendment is sensitive to the concerns of confidentiality. In fact, last night I was part of discussions between the shadow minister for human services and the Minister for Human Services when the basis for confining the reports to the prescribing member and the registrar were canvassed and agreed. At all times, there must be the ability for the board to deal with these situations on a case by case basis.

The government would argue very strongly—and I believe it is the opposition's perspective also—that it is not sufficient to leave the discretion with the treating practitioner to report to the board if he or she is aware, or has reason to believe, that the practitioner or student carries out exposure prone procedures. In some cases, it may be obvious to the treating practitioner by virtue of the practitioner's specialty as to what they do but, in other cases, it may not. It is the board that has the ability to ascertain precisely what work the practitioner is involved in and it can obtain undertakings from the practitioner about carrying out certain procedures or adopting certain safety measures.

Any practitioner may be called upon to assist in, for example, an emergency situation, and that is the point I made earlier, that they may not now be doing such work but that does not mean that they will not do so in the future or that they will not be called on to act in an emergency situation. The honourable member's amendment does not provide for such circumstances. For all the reasons that I have outlined, I specifically oppose the honourable member's amendment. The same arguments in part will be used by me in moving my amendment at a later stage in this clause.

I add that, in respect of the honourable member's concerns, the South Australian Advisory Committee, specifically established for HIV related purposes, was not consulted. I am told that the Director of Communicable Diseases, Dr Robert Hall, was consulted. However, the committee itself was not. The committee was not consulted because it deals with the specific issue of HIV where the issues that we are dealing with here are much broader than just the HIV issue. I wanted to put on record why the consultation involved Dr Robert Hall but not more broadly the South Australian Advisory Committee, and that is because the matters were broader than the ambit of the committee's terms of reference.

The Hon. P. HOLLOWAY: My colleague in another place, Lea Stevens, has been handling this bill for the opposition. We, as the opposition, were contacted by a number of medical groups or special committees dealing with infectious diseases who were very concerned about what they saw in the bill. There have been some last minute consultations, which I must say has been fairly difficult given the great variety of other things that we have been dealing with in the last 24 hours. As the minister said, my colleague in another place was involved in some negotiations and, as a result of that, the government has come up with some amendments that we believe strike a more satisfactory balance between, on the one hand, the interests and the rights to privacy of a medical practitioner and, on the other hand, the rights of consumers.

I am sure that all of us would agree that it is a very difficult balance to strike because of the nature of medical practice. Clearly, the nature of a doctor's work is such that the potential risk to a patient from the contracting of any infection is greater than it would be in most other professions. This is a fairly difficult situation. On the one hand, we have to do what we can to protect the rights of medical practitioners to ensure that they have as many rights to privacy as possible, given the nature of the profession, and on the other hand we have to ensure that there is sufficient protection in the Medical Practice Bill so consumers can be reassured that their interests are protected.

The amendments that the government has had drafted, which arose from some urging of the minister by my colleague, are a considerable improvement. From our point of view, we believe they strike a better balance. The approach that the Hon. Sandra Kanck uses is, in our view, one that will create as many problems as it solves. Basically, the minister's approach would be to have a subcommittee of the board that would involve the presiding member of the board, plus the registrar, in dealing with reports about the condition of a medical practitioner or medical student. We believe that having a small committee rather than a board as a whole would give some greater degree of confidence amongst medical practitioners that their privacy would be protected, and that is the approach that we will be supporting.

Essentially we have to choose between the approach of the Hon. Sandra Kanck, which is a fairly prescriptive approach through a series of amendments, and that of the government, which, as I said, strikes a better balance between the two interests we have to weigh up. For that reason, I indicate that the opposition will not be supporting the Hon. Sandra Kanck's amendments, but we accept many of the things that she has said about the need to be very careful in this area. After all, this country's track record in relation to infectious diseases such as HIV is very good. When one looks at what has happened in Africa and other parts of the world—

The Hon. T.G. Cameron: Even America.

The Hon. P. HOLLOWAY: Yes, anywhere else in the world, the policies that have been adopted by successive governments over the last 15 years have been very successful in dealing with that problem in our midst. That means that we must be very careful that, when dealing with this sensitive issue in relation to medical practitioners, we get the balance right. No solution is perfect but, in our view, the approach that the government has now come up with in response to the concerns that have been raised with it is the preferable one.

The Hon. T. CROTHERS: I will say briefly why I support the Kanck amendment. Sexually transmitted diseases are much more readily transmitted today than hitherto was the

case. When our troops went to Vietnam, they saw different strains of sexually transmitted diseases that doctor friends of mine have told me are very difficult to find the proper antibiotic to treat. Because of globalisation, we are more exposed to this type of disease than hitherto has been the case. HIV is another case in point and we now know that viruses will, can and do mutate. No-one knows the source of the AIDS virus. It is suspected it transmuted itself from members of the great ape family such as Terry Roberts.

The Hon. T.G. Cameron: How?

The Hon. T. CROTHERS: I don't know. If I knew that I would be making a fortune. There was also the case of a horse trainer who had been handling flying foxes and the virus had transmuted to such an extent that it infected him and ultimately killed him. I believe it is a sensible precaution. I understand that it is dealt with in part in the Kanck amendment, and I believe that common sense and logic dictates that, if we are to show a caring face to the citizens of this state, with this job comes the responsibility of acting, and this I believe is such a time, so I call on all members, along with me, to support the amendment.

The Hon. NICK XENOPHON: This amendment of the Hon. Sandra Kanck and the government's alternative amendment pose a terrible dilemma. It is not a black and white issue; there are shades of grey. I believe that the proponents, both the government and the Hon. Sandra Kanck, are trying to achieve the same result in the context of reducing the risk to public health. I am concerned that the South Australian Advisory Committee on HIV, Hepatitis C and Related Diseases has some very grave concerns about this clause. I am concerned, based on the information provided by that committee, that, in all Australian states and territories, the UK, the US and Canada, none of these jurisdictions require mandatory reporting of all health care workers infected with blood borne diseases. I am concerned that, because this is, in a sense, a ground-breaking approach on the part of the government, it may have some unintended consequences. I note the position of the opposition in this regard. I am not criticising the AMA, but it is less than satisfactory that the AMA has suddenly become involved in this debate in the last few days.

The Hon. Sandra Kanck interjecting:

The Hon. NICK XENOPHON: Yes, and I think it is less than satisfactory. I do have a couple of questions for the minister. I should indicate that I have had a brief discussion with the Minister for Human Services on this issue, and I can understand his sincerity in dealing with this issue, from his point of view, to deal responsibly with public health matters, but I also think there are some huge ethical and very significant public health issues that have been raised by the Hon. Sandra Kanck, particularly in the context of the AMA's position and the position of the South Australian advisory committee.

My questions to the minister are, in terms of the government's amendment with respect to the whole issue of notification, what happens with that information once notification has been given? What protocols will there be in place to deal with that information? What powers will the board have to restrict the practice of a medical practitioner with a communicable disease? What mechanisms will there be to enforce that in terms of ensuring that those restrictions are in place? The other factor that I would like the minister to deal with is—

The Hon. Diana Laidlaw: If the honourable member could ask one at a time; my problem is that I do not do shorthand.

The Hon. NICK XENOPHON: The first issue is: what will happen with that information? In terms of the government's proposed amendment, how will that information be dealt with? Once the board receives that information, the two individuals on the board, the registrar and I think the chairperson, how will that information be dealt with?

The Hon. DIANA LAIDLAW: The honourable member's first question—of a series, and we will take them one by one, please—related to the powers of the board in terms of the mechanisms to advance any notice that has been provided to the board in relation to the communicable diseases that we are addressing here and requiring to be reported. I am advised that, if somebody does report, that report must go to the proposed committee. The committee, in turn, will ask the individual to attend a meeting of the committee. At such an occasion the committee would seek to ascertain the type of practice that is undertaken by the person who is the subject of the report, who has the communicable disease. If it is determined by the committee that the person does have a communicable disease and is a proceduralist, the committee would seek to determine the conditions under which that person would operate or continue. So that is the outline of the steps arising from the report.

The Hon. NICK XENOPHON: I thank the minister for her comprehensive response. The AMA and the South Australian Advisory Committee on HIV, HCV and Related Diseases seems to be saying that there has not been sufficient consultation with the government, with the minister's office in this regard. Can the minister elaborate on that, because that seems to be a fairly serious issue that has been raised? I am just concerned that, with respect to at least the advisory committee, which has a specialist role in dealing with these sorts of communicable diseases, if there has not been sufficient consultation that is an area of concern.

The Hon. DIANA LAIDLAW: I appreciate the concerns that have been relayed recently by both the AMA and the advisory committee to all honourable members, and those concerns have been responded to by the minister in the amendments that I have now placed on file. The Hon. Sandra Kanck has responded in a different way and, we would argue, in a more limited and, in the long term, confined way than the minister has in his amendments. I sought earlier to address this issue of consultation, because it was also raised by the Hon. Sandra Kanck. I have been advised by those responsible on behalf of the minister for undertaking consultations that the Director of Communicable Diseases, Dr Robert Hall, was consulted. What I do not know is what Dr Hall said and whether those consulting him or, belatedly, the minister took those views into account and whether Dr Hall's views differ from what is in the bill before us.

So in naming Dr Hall I am very conscious in my own right that I may be doing him an injustice, because he may well have communicated the same issues that have been belatedly communicated through the AMA and the advisory committee. He may not have, however, and the bill may reflect his view as Director of Communicable Diseases. What I did indicate on the decision to consult him and not go more broadly to the committee is that his practice and responsibilities reflect the whole realm of communicable diseases, beyond that of just HIV, whereas the advisory committee deals just with HIV, and so it should be expected that Dr Hall—and I am not

reflecting on the advisory committee—should have a broader perspective because his role would demand that. So that is why the consultation involved Dr Hall as Director of Communicable Diseases.

There was never any intent in terms of overlooking the HIV advisory committee. It was simply that the issue being addressed by the government was broader than its focus. What I do not know is what Dr Hall reported and whether the bill reflects it at all or in part.

The Hon. SANDRA KANCK: I point out that at the present time there are departmental guidelines regarding communicable diseases for medical practitioners, and they do not involve mandatory reporting. I would like an example of what it is that has occurred in recent times that shows a breakdown in the current system. What is it that is driving the South Australian government to go down this path when no other state or territory in Australia is doing it? In fact, the United Kingdom, Canada and the Unites States are not doing it, either. This provision does not fit in with the guidelines of the US Communicable Disease Control Centre. Why are we doing it differently?

The Hon. DIANA LAIDLAW: Well, South Australia over its history has done things differently and has been a leader in terms of—

The Hon. Sandra Kanck interjecting:

The Hon. DIANA LAIDLAW: No, that is a different perspective on the issue. Mandatory reporting in terms of good patient care, in terms of child protection, or whatever has been a practice that South Australia has adopted in a range of human services or health practices and legislation over many years. We have been leaders in child protection. There is a whole range of areas where South Australia has led the way in terms of mandatory reporting.

In representing the government's views in this area, in terms of public health, advice to the public, and public well-being, the minister is taking responsible action in terms of the mandatory reporting of any communicable disease that relates to medical practitioners. However, we recognise that perhaps South Australians and the medical profession are not prepared to go with this at this late stage, even though we have consulted with the AMA on this matter for several months.

The AMA seems to have been quite relaxed about taking this path but, belatedly, we have heard from it and it appears to have had a change of heart. This is the last week of parliament, so we do not have much time. Either we drop the bill at this stage on this issue, or we seek to progress it and compromise. I do not think that the government intention or conviction is any less that there should be mandatory reporting but, because of this belated action from the AMA and because it is the last week of parliament, we will make some compromises to advance the bill and not lose all of the important provisions that are incorporated in the bill before us.

The Hon. SANDRA KANCK: I ask honourable members to consider which country in the world has led the way in reducing the rate of HIV/AIDS. It is Australia—

The Hon. T.G. Cameron interjecting:

The Hon. SANDRA KANCK: No, it is about communicable diseases and the way that Australia—because the answer to that question was obviously Australia—has led the way in reducing HIV/AIDS and in making sure that, for the past 20 years, people do seek treatment. That has occurred not as a result of mandatory reporting but through education. If we go down the path that this government is taking, however small a group these people will be reporting to, we will increase the risk to public health because it will be a disincentive for doctors who think that they may have a communicable disease to even have it tested in the first place. They will decide not to be tested because, if they are not tested, they will not know and they will not have to report. If the government does this, inadvertently it will increase—not decrease—the risk to public health.

The Hon. DIANA LAIDLAW: That is an interesting and passionate argument, but it would be interesting to see the honourable member apply the same argument and logic to other measures in South Australian legislation which require mandatory reporting. We have led this country in the mandatory reporting of child abuse and domestic violence and a whole range of abuses for the purpose of child protection, but mandatory reporting has been particularly important as the tool that is used to address those issues openly and effectively.

I think the honourable member needs to be careful with the way in which she addresses her comments to this bill not to dismiss the issue of mandatory reporting that is before us. As I say, she is reacting to an issue that has been belatedly presented to her after the bill has been out for public consultation for some time. If the honourable member used the same logic in terms of South Australia not being a pacesetter in reform, whether it be in respect of medical practice or patient care, we would not have our proud history in a whole range of fields that have a legislative base. I am fearful of people becoming overly emotional about this issue when responding to belated representations when the bill has been out there for some considerable time—and I refer particularly to the AMA.

Notwithstanding those belated representations, as I have said, for the reasons I have outlined, the government has compromised in a way which it believes will ensure that the people to whom these reports must be made will be limited. I believe that compromise, whilst not necessarily as effective, will work to address the issue. Again, I put before us that this bill is about protection of the public. We have just been through a food bill where protection of the public seemed to be a focus. However, when it comes to medical practice, the focus seems to be on the interests of medical practitioners and not the public. This is an interesting dilemma for this parliament to consider but not necessarily debate tonight. We will move on. I oppose the Democrats' amendments. The Labor Party has indicated that it will support an amendment that I have on file but have not yet moved, so we may be able to move on.

The Hon. T. CROTHERS: I do not wish to waste the time of the committee—

The Hon. R.R. Roberts interjecting:

The Hon. T. CROTHERS: It's the first time I've seen you. I really do not wish to waste the time of the committee on this matter, but I want to say that that is a very specious argument that the minister has put forward to try to reinforce the government's position. This is not about belated representations or anything else; it is about doing the best we can—no matter how late we try to do it—to maximise the protection that we give to our citizens relative to some sexually transmitted diseases, at least two of which we know can have fatal consequences for the people who carry those diseases if they are not treated.

I have known doctors who have told me of soldiers who have returned from World War I infected with syphilis, yet they have reared families of four and five children and neither their wife nor their children have been infected. This is the sort of disease that needs the best medical treatment to ensure

that people are properly treated. The position is not that which has been put forward in the minister's argument. Normally she espouses pretty cogent logic, but not, I fear, on this occasion.

The problem is that we are confronted with a series of communicable diseases such as syphilis and HIV which can affect the consequences and be readily and easily passed from one member of the public to another. You cannot compare those requirements to report with the requirement to report child abuse. People may say that that is terrible. I detest—

The Hon. R.K. Sneath interjecting:

The Hon. T. CROTHERS: What would one expect. I detest paedophiles and people who abuse children, but you cannot make a comparison between the necessity for reporting that and the necessity for reporting contained in the Kanck amendment because, in general terms, if they are not treated, syphilis and HIV can very often be fatal. The analogy used by the minister is not a very good one. In fact, it does a disservice in respect of reporting child abuse, and it certainly does an enormous disservice in respect to the reportage of sexually transmittable diseases, particularly when we know that a number of viruses have now developed resistance to many of the antibiotics: they have mutated in response to our use of antibiotics such as erythromycin, penicillin, etc.

The Hon. T.G. Cameron: Sexually transmitted diseases?

The Hon. T. CROTHERS: Yes.

The Hon. T.G. Cameron: Name them.

The Hon. T. CROTHERS: I do not have to name them. If you don't know them, don't even speak to the bill. I can certainly name a lot of them that were brought back from Vietnam by some of our troops who served there.

The Hon. T.G. Cameron: Medicine has moved on since then.

The Hon. T. CROTHERS: Yes, medicine has moved on, but unfortunately some of the more archaic members of this chamber have not.

The Hon. T.G. Cameron: Exactly—and one is on his feet.

The Hon. T. CROTHERS: Yes, and one is sitting beside me. The point is—

The Hon. T.G. Cameron interjecting:

The Hon. T. CROTHERS: The honourable member is making light of something that has absolutely serious consequences. We are talking about fatality from diseases which can be controlled if they are known about and treated properly. We are talking about a whole host of things. For instance, we are talking about putting antibiotics into the stuff that we feed to pigs and chickens to such an extent that that, too, assisted in the consequent development of the inability of antibiotics to do the work that they were initially doing when first they were uncovered and developed.

So, I think the minister makes a poor argument. If that is the best that she can do relative to defending the government's position, there is only one way to go and that is to vote for the Kanck amendment. What is it going to cost to vote for the Kanck amendment as opposed to the government amendment? Nothing.

The Hon. T.G. Cameron: It could cost lives.

The Hon. T. CROTHERS: It could cost lives if you do not vote for it.

The Hon. T.G. Cameron: No, it could cost lives if you do.

The Hon. T. CROTHERS: No, if you don't—

The Hon. T.G. Cameron: You've got the wrong handle on this.

The Hon. T.G. Roberts: How different is it?

The Hon. T. CROTHERS: I will ignore the ignoramuses on my right and in front of me and carry on with my erudite explanation of this matter.

An honourable member: We are going to hear a bit more twaddle!

The Hon. T. CROTHERS: Levity is the lowest form of wit in this case, because it is a disease that can be absolutely fatal to the population—male and female, young and old alike. Again, I call on honourable members to exercise commonsense—which I admit is not all that common these days amongst some people—and to support the Kanck amendment. For heaven's sake, support it.

The Hon. T.G. CAMERON: I feel as if I should make a contribution after a few of the erroneous statements made by the previous speaker. The minister's amendment proposes to leave out 'infection with HIV or any viral or bacterial infection' and insert 'any viral, bacterial or other infection capable of being transmitted from person to person'. We have dwelt at some length on sexually transmitted diseases. I wonder what category, for example, chlamydia would come into, or herpes, or NSU, and I could list another dozen or so sexually transmitted diseases.

An honourable member interjecting:

The Hon. T.G. CAMERON: Yes, I do know a bit about this subject. I sat on the committee with Sandra Kanck when we heard all the evidence. I am not a doctor, so I ask: is herpes viral or bacterial, or is it just an infection? It seems to me that the term 'or other infection' is all encompassing.

An honourable member interjecting:

The Hon. T.G. CAMERON: You have left out HIV but you have expanded the definition to include the words 'or other infection'. Does that include a common cold, the measles, or mumps?

The Hon. DIANA LAIDLAW: Chlamydia is a bacteria. This bill provides for the board to prescribe the communicable diseases, and it is hardly going to be measles or the common cold. The diseases prescribed will be serious infectious diseases.

The Hon. SANDRA KANCK: The minister, a short time ago, had a little bit of a sledge, I think, at various groups that have become involved in this issue in the past 48 hours, which I think was unfair. Here I go again—and members should consider this—defending the AMA. When representatives of the AMA came to see me on Monday they left a copy of a letter that they had sent to the Minister for Human Services dated 17 May 2001. They refer to clause 30, and I will read the first and the last sentences of this paragraph, as follows:

> The AMA (SA) believes that the information being required from each medical practitioner for publishing in the register is too extensive. . . We strongly reject the wording of 32(c) and (d) as it currently stands.

That was 17 May when they wrote to the minister. So, the fact that we are dealing with this now, and it appears to have come out of thin air, is possibly a reflection on the way the Minister for Human Services has failed to respond to the AMA.

It is fairly clear that in terms of my amendment I am going to lose, because the opposition has already indicated its opposition to my amendment and support for the impending government amendment. I indicate that, when we get to that point, of course, I will support the government amendment, but reluctantly so because I think it is half baked and second rate and we deserve better in South Australia.

The Hon. DIANA LAIDLAW: I hardly wish to drag this out a moment longer, but I have been advised that I can provide more precise information to the Hon. Mr Cameron than I gave earlier in terms of measles and the common cold. It is the board's duty to specifically prescribe risky to serious infections likely to be transmitted during procedures.

The Hon. T.G. CAMERON: I thank the minister for her definition but, in light of that definition, does that include HIV?

The Hon. DIANA LAIDLAW: Yes.

The Hon. T.G. CAMERON: Then my question is: why? Because, according to your definition, the likelihood of HIV being transmitted through normal medical practice is negligible to non-existent.

The Hon. DIANA LAIDLAW: I am told that you may well be right and the risk is low, but it is cold comfort to the person to whom it is transmitted—and that is the public, so it could be any of us. It is that public perspective that the government is considering in the way it has developed this bill and in the way it is considering the amendments.

The Hon. NICK XENOPHON: I think we should be grateful to the Hon. Sandra Kanck for raising this issue, because it points out a number of the ethical dilemmas involved in this clause. I note that the minister has said that Dr Robert Hall, who is the director of the Communicable Diseases Unit of the Department of Human Services, has prepared a report in relation to this. Can the minister indicate two things: first, will the report of Dr Hall—either a full report or a precis of the report—in terms of his views with respect to this issue be released in due course to either the Hon. Sandra Kanck or to this parliament and, indeed, to any other members who have an interest in this? Secondly, because I am concerned about the government's approach as a result of matters raised by the Hon. Sandra Kanck, I ask the following question: are we going in a direction that could have unintended consequences?

I understand the government's position that it wants to have a regime in place that will improve public health and safety, but a number of concerns have been raised by advisory councils and by the AMA and I am concerned that there are unintended consequences that could have the opposite effect of what is intended. To what extent will the minister undertake to monitor this requirement of mandatory reporting—and it will succeed, because it has the support of the major parties? To what extent will there be monitoring or reporting to parliament of this issue? The last thing we want is an unintended consequence that leads to greater public health problems.

The Hon. DIANA LAIDLAW: I accept the basis of the honourable member's concern and advise that the Medical Board must report annually to parliament, so this matter should be addressed. I am quite sure, from the questions and the nature of the debate tonight and also the length of debate on this provision—and I respect the importance of the issue we are discussing—that the board will take note and will duly report, knowing the parliament's interest in this matter.

The Hon. P. HOLLOWAY: I am sorry at this late stage to debate again, but given the nature of the debate there is one matter I wish the minister to clear up for us. Perhaps the minister could explain to us what mandatory reporting conditions exist generally within the medical profession? For example, if a person goes to a doctor with a disease, what do those mandatory reporting requirements on medical practitioners require?

The Hon. DIANA LAIDLAW: I do not have them all at hand, but I can say from my experience of medical practitioners in terms of the Motor Vehicles Act that when a person suspects that they should report the driving there are a host of—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: But there are mandatory requirements—

The Hon. Carolyn Pickles: Child abuse?

The Hon. DIANA LAIDLAW: And child abuse, and child protection as I mentioned before. This is not an uncommon requirement for medical practitioners: it is just that this time it requires them to notify, on a mandatory basis, if they have a disease that they could transmit through procedures to a patient—a harmless, defenceless patient who could be your brother, sister, cousin or grandfather.

It is interesting that when it comes to the medical profession themselves they are not prepared to entertain the same standards. This is my assessment and I do not know whether it is the minister's view: I just mention the different standards that apply for mandatory reporting when it affects the medical practitioner or their patient.

I refer the honourable member to the Public and Environmental Health Act 1987 (Part 4, Notifiable Diseases and the Prevention of Infection, Division 1—Notification of Diseases), which, in clause 30 (Notification) provides:

> (1) Where a medical practitioner or a person of a class prescribed by regulation suspects that a person is suffering from or has died from a notifiable disease, the medical practitioner or person of a prescribed class—
>
> (a) shall as soon as possible and, in any event, within three days of forming that suspicion, report the case to the department; and
>
> (b) shall furnish the department with such further information as the department may require.

There is a penalty associated for not doing so, and then clause 30 continues to describe in what form that report must be provided.

The Hon. P. HOLLOWAY: If a medical practitioner is treating any individual—a medical practitioner or otherwise—are they required to report anyway for the sort of diseases we are talking about? Are they already required to do so under that act?

The Hon. DIANA LAIDLAW: You picked it up in one: exactly—but not when it comes to them.

The Hon. T.G. Cameron: Is that the case?

The Hon. DIANA LAIDLAW: You are absolutely spot on. The difference in the bill before us is that that mandatory report must be made to the board, and then they feel threatened in terms of their livelihood, I suspect, and this is where the terrors set in and the late minute response. The board—and many of us would be critical from time to time—has not been nearly harsh or diligent enough on medical practitioners in terms of practice.

So the board is more than likely, I would have thought, to work through the issue—and these are the undertakings the minister has received from the registrar—with the medical practitioner. As the Hon. Sandra Kanck knows, and as we all know, it will not be an easy issue for that person. Not only do they have this disease but it affects their livelihood, as it would any such person. However, we have a duty of care, as does the medical practitioner, to make sure that they do not transmit that communicable disease through undertaking their profession.

So we ask that on a mandatory basis they report and work through this issue with the registrar to see what other practice

they could be involved in in the medical world that is not intrusive, and we do that in the public interest. It is just like a person who must report for a driving test and gets as scared as hell because they think they will have the test and lose their licence—and they do not always do so. I suspect that what we are dealing with here is more the fear of losing practice than the issue that the parliament must deal with in the public interest—the transmitting of a communicable disease.

The Hon. T.G. CAMERON: Did I understand the minister correctly—and I am not sure you said it—that it is mandatory to report doctors who are picked up with communicable diseases? I did not think it was.

The Hon. Diana Laidlaw: I'm sorry, I didn't hear it.

The Hon. T.G. CAMERON: I got the impression from your answer that you said that patients who have communicable diseases are reported. You say you did not say that?

The Hon. Diana Laidlaw: Yes, that's under the act now.

The Hon. T.G. CAMERON: Is that the case?

The Hon. Diana Laidlaw: Yes.

The Hon. T.G. CAMERON: Well, if a doctor picks up a patient who is HIV positive, is he mandatorily required to report that to somebody?

The Hon. DIANA LAIDLAW: Under the Public and Environmental Health Act, yes, and this is what we are trying to do: we are saying that what is required as a mandatory practice if you are seeing someone should be required in terms of your own self if you have this disease, and as a medical practitioner involved in invasive procedures, as there is a fear because of that work that you will transmit it, we would ask you to mandatorily report. The bill provides that you report to the board. The amendments that I have on file—which some two hours ago the opposition said it would support—require that report to go to the registrar and the president of the board to confine the report.

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: Yes. Nevertheless, we still ask for the report to be made.

The Hon. T.G. CAMERON: If an individual goes to a doctor, requests a blood test and it comes back as HIV positive, to whom is the doctor required to provide that information? I think you are helping me to resolve my problem with this one now.

The Hon. Diana Laidlaw: To the department.

The Hon. T.G. CAMERON: But to whom?

The Hon. DIANA LAIDLAW: The bill just provides to the department, and within the department there is the Communicable Diseases Unit, and Dr Hall, with whom the minister consulted on this, heads that unit where the report would be made. I understand that he has supported the practice that we have adopted in the bill but are now prepared to modify with the amendment.

The Hon. T.G. CAMERON: I guess everyone is getting a little bit sick of this, but these are a couple of comments I would like to make because I have only just made up my mind. I was not of the understanding that if you were picked up as being HIV positive, or I guess hep B or hep C like the other diseases that fall into the category, it was mandatory for the doctor to report that to the department of public health. One can only assume that some follow-up action is taken by the department of health.

I would like to acknowledge a couple of things that Sandra Kanck said when she commented that our efforts here in Australia in combating HIV and AIDS have been excellent. I would go even further than that and say that Australia's record in combating HIV and AIDS is probably the best in the world—right up there in the top category.

Infections in the United States at the moment are running at 300 per 100 000, yet in Australia they are either 50 or 60 per 100 000. Much of the credit for our excellent record in dealing with this disease has a lot to do with the initial actions that were taken by Neal Blewett when he was federal health minister. Whilst I thought that the original ads bordered on scaremongering and created an erroneous impression in the community, they worked. They frightened the hell out of everyone, whatever they were doing, and human sexual behaviour was modified fairly quickly. The whole approach of the then Australian government was remarkable, and the federal Liberal government has continued with the excellent work.

However, in view of the fact that it is mandatory for patients who have a communicable disease, such as hepatitis B or C, HIV and/or AIDS, to be reported to the Health Commission, the argument would follow that, if that was the case, that would prevent people from having a blood test for HIV. We have a few contradictions. If that is the case, why do we have such an excellent record in combating the disease? I refer to the old saying: what is good for the goose is good for the gander. If it is mandatory for a medical practitioner who discovers that a patient is HIV positive to report that infection to the Health Commission, it is only reasonable to assume that, if a doctor is found to be HIV positive, that that notification—

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. CAMERON: Yes, but I am dealing with HIV at the moment, and I am dealing with HIV because of the terribly long incubation period in that someone could have it for 10 or 15 years and not be aware of it. In other words, a doctor could be practising for 10 or 15 years with HIV and not be aware that he has it. Whereas, it is most unlikely, for example, with hepatitis B or hepatitis C that he will be running around with it for 10 or 15 years. So there is that danger. If the names of all persons who are found to be HIV positive are forwarded to the Health Commission, one could assume that the Health Commission would be notified of any doctor who is infected with HIV.

Of course, a doctor is in a different position to a patient. A doctor would be able to put his own blood into a phial and put 'Fred Bloggs' on it. Gribbles would not know, and no-one else would know. It would come back, the doctor would look at it and he would know. It begs the question: if a doctor suspected that they were HIV positive, would they go ahead and submit a blood test in their own name? What sways me at the end of this argument is the long incubation period with a disease such as HIV. I accept many of the sound arguments put forward by the Hon. Sandra Kanck. I do accept the risk of the disease, or any communicable disease, but I am dealing mainly with HIV being transmitted from a doctor to a patient. However, we already know that the risk of that happening is pretty minor—

The Hon. T. Crothers interjecting:

The Hon. T.G. CAMERON: That was through a blood test. Notwithstanding that, the balance of argument has to fall on the side of the patient rather than the medical profession. Whilst I have sympathy for the points outlined by the Hon. Sandra Kanck, I indicate that I will be supporting the amendment standing in the name of the Minister for Transport and Urban Planning.

The Hon. NICK XENOPHON: I have had an opportunity to speak to Mrs Pat Dean, who has been a registered nurse

practitioner for a number of years. She also heads a group called the Centre for Patients' Rights in the northern suburbs, which does a lot of advocacy work for patients having difficulties with hospitals and the medical profession. As I understand it, a number of years ago Mrs Dean also worked for the Health Commission in relation to a complaints unit or a risk assessment unit—

The Hon. Diana Laidlaw interjecting:

The Hon. NICK XENOPHON: She is, and the honourable member will be pleased to hear this. The advice I have had from Pat Dean is that the Centre for Patients' Rights supports the government's view in relation to this. The points made by the Hon. Sandra Kanck are very valid; they are points of significant concern. It is important that we monitor this. It is important that we ensure that there are not any unintended consequences. On balance, I support the government's position, although with some reservation. I believe that we ought to be grateful for the Hon. Sandra Kanck's raising this matter and I do not think it is the last time we will be hearing of it, given the important issues involved.

The Hon. P. HOLLOWAY: I indicated earlier that we would be supporting the government's approach vis-a-vis the Hon. Sandra Kanck's approach, but I should have indicated then that one of the later amendments of the Hon. Sandra Kanck seeks a review of this matter after two years. I indicate that we will be supporting that. I think that, if problems emerge, that is a way in which we can address this matter as well.

The committee divided on the amendment:

AYES (4)

Crothers, T.	Elliott, M. J.
Gilfillan, I.	Kanck, S. M. (teller)

NOES (17)

Cameron, T. G.	Davis, L. H.
Dawkins, J. S. L.	Griffin, K. T.
Holloway, P.	Laidlaw, D. V. (teller)
Lawson, R. D.	Lucas, R. I.
Pickles, C. A.	Redford, A. J.
Roberts, R. R.	Roberts, T. G.
Schaefer, C. V.	Sneath, R. K.
Stefani, J. F.	Xenophon, N.
Zollo, C.	

Majority of 13 for the noes.

Amendment thus negatived.

The Hon. DIANA LAIDLAW: I move:

Page 6, lines 7 and line 8—Leave out 'infection with HIV or any other viral or bacterial infection' and insert:

any viral, bacterial or other infection capable of being transmitted from person to person and

I have exhausted myself and everybody else in explaining what this is about so, unless members want further explanation, I will not delay the committee.

The Hon. SANDRA KANCK: I had an amendment that was something along the same lines but I decided not to move it because I thought that the minister's was preferable. Certainly anything was preferable to what we had, which specifically mentioned HIV. It was very inappropriate to mention HIV, and again I refer to the letter that the advisory committee sent to the Chief Executive of the Department of Human Services. It mentions the fact that, of the three most commonly known blood-borne viruses that people are concerned about, namely, HIV, hepatitis B and hepatitis C, HIV is the least likely to be transmitted by a factor of at least 10 and more probably a hundredfold compared with hepatitis B. It really was very inappropriate to have listed that particular virus and no other.

The amendment that the minister has moved removes the reference to HIV and goes further than mine would have because it refers to any viral, bacterial or other infection capable of being transmitted from person to person. There are other forms such as prions, and new infectious and communicable diseases seem to be popping up almost all the time. Having this wider definition is a much better way to go.

Amendment carried: clause as amended passed.

Clause 4.

The Hon. SANDRA KANCK: I move:

Page 8, lines 10 and 11—Leave out all the words in these lines.

This deals with the issue of medical practitioners who have a prescribed communicable infection and I intend to remove the last two lines of this clause, which would then read:

A person or body must, in making a determination under this act as to a person's medical fitness to provide medical treatment, have regard to the question of whether the person is able to provide medical treatment personally to a patient without endangering the patient's health or safety.

It does not require any mention or consideration of a prescribed communicable infection. We have just decided by the vote which knocked out my amendment that communicable infections will be advised to the board in one form or another, or to a two-member committee of that board, but we do not need the particular requirement in this clause.

The Hon. DIANA LAIDLAW: The government opposes the amendment. We see no reason why the words should be deleted. We in this place are talking about patient safety and the government believes that, as was reflected in the debate on the definitions clause, we should be up-front about this matter. I would strongly urge support for the retention of the words as provided in the bill.

The Hon. P. HOLLOWAY: The opposition does not support the amendment, for the reasons that the minister has just indicated.

Amendment negatived; clause passed.

Clause 5 passed.

Clause 6.

The Hon. P. HOLLOWAY: I move:

Page 9—

Lines 25 and 26—Leave out subparagraph (iv).

Line 27—Leave out '1' and insert:

2

These are amendments to the composition of the Medical Board. Some changes were made in the House of Assembly to the composition of the board but we wish to go a little bit further than the amendments that were made there. In the bill that has come to us from the House of Assembly, the board compises 12 members. Seven are medical practitioners of whom one is to be nominated by the South Australian Branch of the Australian Medical Association and one is to be chosen at an election conducted in accordance with the regulations. The first two amendments would achieve that. The opposition believes that we should keep the number of members the same but have two members chosen at an election conducted in accordance with the regulations. That would be consistent with what is in the Dental Practice Act and the Nurses Act.

The opposition is not trying to suggest that the Australian Medical Association is not an important organisation as far as the medical profession is concerned. We are not even trying to suggest that it is not the pre-eminent body, but there are a number of other bodies within the medical profession. One of them, for example, is the South Australian Salaried

Medical Officers Association (SASMOA), which represents the interests of many doctors who work in the public sector. A number of colleges and groups also have an interest in the medical profession and by no means does the AMA entirely represent the interests of the medical profession. However, it is not our intention here to denigrate the AMA.

All we are saying is that, look, if we are to have a number of medical practitioners representing the profession at large, why not have two who are chosen in accordance with an election? Given the AMA's position within the medical profession it is quite likely that one of those members, perhaps both, would be members of the AMA, anyway.

The Hon. Diana Laidlaw interjecting:

The Hon. P. HOLLOWAY: There was consistency with the Nurses Act, and that is the point we are making, that in that case nurses were elected, but here there are a number of organisations, and I mentioned SASMOA and the AMA. There are various bodies. Effectively, there are—and we are really talking trade unions, in a sense, anyway—a number of bodies that are the unions, if you like, representing the medical profession. So, rather than saying that one in particular will be chosen, we will enable the medical profession at large to elect their representatives. I ask the committee to support the two amendments that would achieve that.

The Hon. DIANA LAIDLAW: The government opposes the amendments. I did interject as the honourable member was speaking, asking whether the same process of election for representation would be applied not only to the profession such as the doctors' but in terms of all representation in the future, whether it be local government or unions. I suspect that it is such a cumbersome approach for us to impose it, without being able to impose it with some sort of consistency and integrity, we should not be entertaining it at this time with this provision.

I urge honourable members not to support the amendments moved by the Hon. Paul Holloway and just wait until we get some guidance from the Labor Party in terms of its policy overall, of how it wishes to proceed in terms of the representations of group interests or industry interests—or even an interest, an individual interest, on boards in the future. We have had an earlier debate on the Food Bill and the Hon. Terry Cameron picked up inconsistencies in the way the Labor Party was seeking to approach representation from the business sector, compared to the trade union sector and the local government sector. We now see, again, a different set of standards and some inconsistencies being introduced here. I urge honourable members to oppose it until we get some perspective on how the Labor Party would wish to approach membership on the boards that did not seem to be so hit and miss.

The Hon. SANDRA KANCK: When I gave my second reading speech I mentioned that the British General Medical Council has a majority of its members elected, and that is enshrined in its Medical Act 1983, and I said at the time that I thought that this ought to be the way we should be moving. Therefore I am quite comfortable with the opposition amendment, and certainly at some stage in the future if the minister wants to amend legislation that has union representatives in bills, to have them elected, she will have my support.

The Hon. DIANA LAIDLAW: I noted the honourable member's contribution.

The committee divided on the amendments:

AYES (12)

Cameron, T. G.	Crothers, T.
Elliott, M. J.	Gilfillan, I.
Holloway, P. (teller)	Kanck, S. M.
Pickles, C. A.	Roberts, R. R.
Roberts, T. G.	Sneath, R. K.
Xenophon, N.	Zollo, C.

NOES (9)

Davis, L. H.	Dawkins, J. S. L.
Griffin, K. T.	Laidlaw, D. V. (teller)
Lawson, R. D.	Lucas, R. I.
Redford, A. J.	Schaefer, C. V.
Stefani, J. F.	

Majority of 3 for the ayes.

Amendments thus carried.

Progress reported; committee to sit again.

DAIRY INDUSTRY

The House of Assembly informed the Legislative Council that it concurred with the resolution of the Legislative Council for the appointment of a Joint Committee on Dairy Deregulation and that the House of Assembly will be represented on the committee by three members, of whom two shall form the quorum necessary to be present at all sittings of the committee.

The House of Assembly also suspended its standing orders to permit the joint committee to authorise the disclosure or publication, as it thinks fit, of any evidence or documents presented to the committee prior to such evidence being reported to the Assembly.

The Hon. IAN GILFILLAN: I move:

That the members of the Legislative Council on the committee be the Hons I Gilfillan, R.R. Roberts and T.G. Roberts.

Motion carried.

SUMMARY OFFENCES (PIERCING OF CHILDREN) AMENDMENT BILL

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

The Hon. NICK XENOPHON: 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 relates to body piercing and was introduced in the other place by the Hon. Dr Bob Such, who deserves to be congratulated for introducing this bill. Earlier this year the member for Fisher was approached by a constituent who was most concerned that her 12 year old daughter was supposedly going to have an earring fitted. Her mother was horrified to discover that she did not have an earring fitted, as was understood, but that she had other parts of her body pierced with other attachments. The people who did the body piercing said, 'Well, there is no control; we can pierce any part of a child's body without reference to the parent even knowing, let alone approving.'

On making some further inquiries, the member for Fisher spoke to a local youth worker, who said that a 10 year old in the southern area had three body piercings to three different parts of the body. It is ironical that a medical practitioner is not permitted to do what is being done to these young people, who are mainly young females. The Hon. Dr Such says that he does not know whether members realise that if a medical practitioner did what this body piercer did to someone under 16 years they would be liable to be taken to the Medical Board and, indeed, to be prosecuted. They are not allowed to carry out a surgical procedure on someone under 16 years without parental permission unless it is an emergency or there is another doctor who also signs off.

However, a young child can have any part of his or her body pierced. The Attorney-General wrote to the Hon. Dr Such recently saying that he did not believe that is the case and that the police could be involved. The Hon Dr Such asks: if the police are being involved and it is working, why are parents approaching him and other members, and saying that their youngsters are having their bodies pierced?

This bill does not seek to stop body piercing of children but that the parents or guardian should give written consent and accompany the young person when that consent form is handed over. The reason is obvious: knowing the ability of young people, it would not be hard to forge the signature of a parent. So, it would require that the parent or guardian accompany the youngster to the salon. I think that is wise, anyway, because the law is lacking in respect of the health care provisions. The Hon. Dr Such has spoken to the Minister for Human Services, who shares his concern.

It is not alleged that most body piercing salons do not maintain hygiene and keep instruments clean. Like the Hon. Dr Bob Such, I am not in a position to know, and I am not qualified to make that assessment. I am concerned that (and I believe members will have this confirmed by the AMA) there is a risk of Hepatitis C, which is probably the greatest risk in respect of body piercing, and AIDS, which is a lesser risk unless the tongue or part of the mouth is pierced.

One potentially dangerous risk is piercing around the eyes. The Hon. Dr Such has spoken to a health professional who said that the risk of nerve damage is quite real in that respect. Another aspect of which I was not aware is the risk of nickel allergy—something of which I have never heard—with a lot of cheap jewellery. I know for children the jewellery often has a high nickel content. The dentist has told the Hon. Dr Such that often the nickel produces a nickel reaction and, when dental treatment is required later in life, a lot of procedures or applications are rendered useless or inappropriate because of the clash between that nickel allergy and what dentists and dental technicians use.

The position of the member for Fisher, which I fully endorse, is that, if a young person under the age of 16 wants body piercing, he or she must get permission from their parent or guardian who then accompanies them when the form is handed over. I should point out to members that tattooing of minors is illegal, so we have had this anomaly for a while. I suppose that it has come to the surface only because, as members would know, particularly with young girls, body piercing is very fashionable at the moment, especially piercing the navel with rings, and so on. I think it is appropriate that we take action.

I support the view of the Hon. Dr Such that we do owe a duty of care to young people. I would not like to see us sitting idle if some young person lost the sight of an eye or contracted hepatitis C or AIDS as a result of what I think is an inadequate system at the moment. I commend this bill to the Council and I trust that members will be supportive of it.

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

HINDMARSH SOCCER STADIUM (AUDITOR-GENERAL'S REPORT) BILL

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

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

That this bill be now read a second time.

This measure is intended to ensure that the Auditor-General's report into the Hindmarsh Soccer Stadium will be delivered to the Speaker no later than 31 October 2001. At the same time it will preserve the legal rights of persons who may be affected by the report to the extent possible to permit the achievement of that reporting date.

Obviously this requires a balancing of the various interests, and the bill achieves an appropriate balance. The Auditor-General has been consulted at some length and is satisfied with the bill and agrees with the balance that has been achieved.

Explanation of clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will be taken to have come into operation on 17 November 1999 (the date on which the Legislative Council passed a resolution requesting the Treasurer to request that the Auditor-General examine and report on certain dealings relating to the Hindmarsh Soccer Stadium Redevelopment Project).

Clause 3: Interpretation

This clause sets out a definition of the 'inquiry' for the purposes of the measure.

Clause 4: Authorisation and nature of inquiry

The Auditor-General is authorised to undertake the inquiry. It is to be expressly declared that the Auditor-General has the power to examine, investigate, inquire into and report on any matter considered by the Auditor-General to be relevant to the inquiry. It is also to be made clear that the inquiry will be taken to be an examination under section 32 of the Public Finance and Audit Act 1987, and that the Auditor-General may exercise or perform any power or function that the Auditor-General may have under the Public Finance and Audit Act 1987 in relation to an examination under section 32 of that act, including the power to make findings of fact and law. The Auditor-General will be able to conduct the inquiry as the Auditor-General thinks fit and to exercise various powers. However, this provision does not exclude the rules of natural justice.

Clause 5: Report of inquiry

The Auditor-General will be required to prepare a report on the inquiry by 31 October 2001. Copies of the report will be delivered to the Treasurer, the President and the Speaker.

Clause 6: Judicial proceedings

Any proceedings relating to an act or omission of the Auditor-General in connection, or purported connection, with the inquiry must be commenced within time limits set by the measure. No proceedings may be brought to prevent the Auditor-General from preparing or from continuing to prepare, or from delivering, the report required by this measure, or any report prepared in purported compliance with this measure.

It will also be provided that no proceedings may be brought to question the bona fides or impartiality of the Auditor-General in the conduct of the inquiry. If any proceedings are brought in connection with the inquiry, the court must take into account the intention of parliament that a report be provided by 31 October 2001 and the desire of parliament that the report be as comprehensive and complete as may be possible in the circumstances.

The Hon. P. HOLLOWAY: Obviously, the opposition will support this bill to enable the Auditor-General to complete his report into the Hindmarsh Soccer Stadium. As I said yesterday regarding another matter, it is incredible that it should be necessary to introduce such a bill into this parliament because senior members of the Olsen government could use legal assistance paid for by the taxpayers of this state to try to delay the report of the Auditor-General that was requested by this parliament—in fact, by this Council.

In November 1999, the Council moved a motion calling on the Auditor-General to investigate the circumstances surrounding the issues associated with the Hindmarsh Soccer Stadium. This parliament called for that action to be taken and for the Auditor-General to make a report. I think those

of us in this parliament accept that there has to be natural justice for the people involved, but it is quite clear from the interim report that the Auditor-General brought down yesterday when he suggested that parliament, if it wanted a report, would have to take some action that the obstruction which the Auditor-General has had to put up with has been way above and beyond what is reasonable or necessary to satisfy natural justice.

This bill has been debated at great length in the House of Assembly, so perhaps there is no need for us to spend quite as much time debating it in this chamber. The fact that it was an exhaustive debate would be an under-statement, given that the House has been debating this bill since just after question time today. Nevertheless, I think we should at least point out that it is a completely unsatisfactory situation—a ludicrous situation—where ministers of the Olsen government, who are getting legal support paid for by the taxpayer, should be able to use those resources to try to delay a report that this parliament has requested the Auditor-General to make on behalf of the parliament.

It was back in November 1999 that this Council first requested that the Auditor-General prepare the report. The Auditor-General told us in his report yesterday that, in fact, he had a draft report ready, I think, in February this year. On 19 February this year the Auditor-General distributed, for purposes of procedural fairness, portions of his draft report. Since March this year, he had received the written comments of some recipients of the draft. He considered those comments but, as he points out, one person—and we can only speculate as to who that might be, but I think there is little doubt that it is a senior member of the Olsen government—has provided submissions on a rolling basis since 5 July 2001. The Auditor-General says that, so far, he has received 10 separate submissions from that person specifically addressing less than half of the draft report. The Auditor-General says:

> I have made repeated requests for a final submission. I have received no commitment as to when that will be provided.

The Auditor-General then tells us that another person—who, again, we can suspect is another senior member of the Olsen government—has not made any written submissions or adduced any further evidence on the substance of the draft chapters 5 to 10 and says:

> Instead, that person has challenged the scope of my examination and my draft report.

The Auditor-General then tells us that the finalisation of his draft report depends on when he is able to complete the natural justice process. He says:

> If litigation is commenced against me, it is very unlikely that I will be able to finalise my draft report in order to table it in the spring sitting of parliament.

Thus, we have this legislation before us today and, obviously, the opposition will support it. The point that needs to be made over and over again is how sad it is that it is necessary to do so—how sad it is that it has come to this: when this parliament requires the Auditor-General to go out and report on a matter of public importance and public interest, how incredible it is that this parliament has to legislate to protect the Auditor-General from having his work thwarted by legal actions that are funded by the taxpayer. One would have thought that the obvious way that could have been stopped would be for the Premier to say, 'We need this report released: it is important for the public that this be released and we are not going to provide you with unlimited legal resources so that you can delay that report.'

It is incredible that we should be in the situation where the report into the Hindmarsh stadium has been delayed because of taxpayer-funded legal advice taken by members of the Olsen government who have sought to stall the process. It is really no different from the sordid tactics that we saw during the 1980s by people such as Alan Bond who were using the legal system—using their wealth to fund the legal system—to try to avoid justice, not to achieve justice. Really, one would have thought that the best way to have resolution some time ago was for the Premier—who, in my view, had the responsibility—to say to these ministers, 'By all means, take reasonable steps to protect your reputation, but to string this out over more than six months by taking legal advice paid for by the taxpayer is unacceptable.' If that had been done, none of this action would have been necessary.

So, as I said, there has been a massive debate in the other house. I am sure there is nothing that I can say that will not have been said by somebody there, even though I have not heard any of the debate myself. However, I am sure it has all been said. We welcome the passage of this bill and we hope that, at long last, the truth about the Hindmarsh stadium can be made available to the public of South Australia.

The Hon. M.J. ELLIOTT: On behalf of the Democrats, I support the second reading of the bill. On reading the Auditor-General's report yesterday, it was immediately apparent that legislation was necessary and I instructed parliamentary counsel accordingly and gave notice of a private member's bill myself. I am glad that the government has come forward with a bill, in any case.

It is quite clear that delays were happening long before the Auditor-General gave us a report. We did not know the nature of the causes, exactly, but I think that there were reasonable expectations that we would see a report late last year, and certainly reasonable expectations that we were going to see it in late January or February. When it continued not to appear, it was a pretty reasonable guess that there was some delay. The question of intent, I suppose, is not provable but, on reading the Auditor-General's report, it was further confirmed in my mind at least that the delays were becoming somewhat unreasonable and that we really needed to set about a process to guarantee that the report would come into this place in reasonable time.

On seeing the government's bill, I had two concerns. One concern was that the original bill as presented in the other place simply required that the report be given to the Speaker and the President. But, as it was not a report under the Government Finance and Audit Act, there was no guarantee that it would have actually become a public document: that would have then relied upon some other action of the parliament. I think that there should be no question that it is going to be a public document once it is delivered to the President and the Speaker. I understand that the opposition moved an amendment in the other place to address that issue and that that amendment was supported. The opposition had a couple of amendments: that is one that I had already asked parliamentary counsel to draft in any event, but the Labor Party successfully moved it in another place.

I also thought that the date of 31 October, in the circumstances, was pretty generous and I would have liked an earlier date—even a month earlier—but I have had discussions with representatives of the Labor Party and they are not going to offer support for that amendment. So, I will not waste the time of this Council pursuing it further, even though, as I said, the extra month, in my view, is extremely generous and

will probably mean more taxpayers' money will be spent in the process.

There was another amendment that I think the Labor Party moved in the other place. I understand it is not moving it in this chamber and I will not, therefore, address that issue further. The Democrats support the second reading.

The Hon. T.G. CAMERON: I will be very brief. If one is to read the document that was just handed to us with an explanation of the clauses, the last sentence in the second paragraph says it all for me:

> The Auditor-General has been consulted at some length and is satisfied with the bill and agrees with the balance that has been achieved.

If the Auditor-General is satisfied and he agrees that a balance has been achieved, then that is nothing short of a miracle. SA First will be supporting the bill.

The Hon. J.F. STEFANI: I support the measure. There has been a great deal of debate on the subject of the Hindmarsh stadium, and honourable members would know that I have taken a very active interest in the whole saga. I am somewhat concerned that there is the possibility still that legal action will be taken and that court proceedings will be commenced to deflect in some way the attention of the Auditor-General in terms of his inquiry.

We have now fixed a firm date for him to report. I would assume that, if the Auditor-General had not completed his inquiry by that stage because of the events that may eventuate through a court action or because of the delay that has been caused so far which would bring further information to the Auditor-General, once that information was given to him by the parties that have delayed the process he would obviously have to refer to other people to test the veracity of the information that he has received to ensure that there is a balance in his findings and to ensure that natural justice is given to the people who have been investigated or who have given the information.

I therefore say that 31 October is probably a reasonable date, but it may not necessarily be a date that is sufficiently adequate for all the facts to be gathered. I hope that that will not be the case, but I am very much mindful of the fact that the Auditor-General has told parliament that one party has not responded at all to his inquiry, and that is a concern. As I mentioned, if information comes from that response then the Auditor-General has to test it.

Having said that, I have had some ideas that might assist in the process to bring the matter to a put up or shut up situation. My simple thought process was that, if the people who were willing to take their rights to the court should do so, they should do so out of their own pocket, and I have instructed Parliamentary Counsel to prepare such an amendment. It may not get anywhere, but if people want to take their rights to the court—and I have no doubt that if they feel strongly enough they will do so—then it should not be at taxpayers' expense. With those few words, I indicate support for the bill and indicate also that I propose to move a small amendment in that direction.

The Hon. NICK XENOPHON: I, too, support the bill. I share the sentiments of the Hon. Julian Stefani in relation to this matter. I am concerned about the use of taxpayers' funds with respect to representation of some of the parties involved. I am satisfied that the bill in the form that we have received it will ensure that a report is provided to the parliament by 31 October, and that there are sufficient safeguards in the context of the bill to ensure that come what may there will be a report to the parliament, at the very least in a draft form, so that there is no question that the parliament will not at least be adequately informed as to the progress of the Auditor-General's investigations.

The sooner the report is tabled the sooner we can deal with the important issues that I believe have been raised by this inquiry being called and all the surrounding issues. For those reasons, I wholeheartedly support the bill and I hope that it is passed speedily.

The Hon. A.J. REDFORD: The bill seeks to extend the powers of the Auditor-General and the scope of his inquiry in relation to a motion that was passed in this place back on 17 November 1999. Yesterday we received a report with a somewhat glossy cover setting out some cursory details of the process of that report since the passage of that motion, and that has been the first information that we as a parliament have received in any public sense, putting aside the scuttlebutt that might have been said in the corridors of parliament, from the Auditor-General.

It is interesting to note, when one analyses the timetable closely, that some of the hysterical statements made by members on the opposite side do not bear a great deal of scrutiny. First, the motion was passed on 17 November 1999. The next event reported by the Auditor-General was the distribution of tentative findings on 19 February 2001—close to 15 months after the matter was first referred to him. Given the $9 million budget and the extraordinary resources that the Auditor-General has available to him—and I remind members that the total cost of the Legislative Council is $4.5 million and the total cost of the Auditor-General's office is $9.6 million—it has taken him that amount of time to distribute some tentative findings.

In March 2001 he reports that he received some written comments in relation to some tentative comments that took him some 15 months to produce, but he does not say which date in March that that occurred.

The Hon. R.R. Roberts interjecting:

The Hon. A.J. REDFORD: If you have a point of order you raise it or shut your mouth.

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! I suggest to the Hon. Mr Redford—

Members interjecting:

The ACTING PRESIDENT: Order! I suggest to the Hon. Mr Redford that he ignore the interjections and continue with his contribution, and I advise those interjecting that they are out of order.

The Hon. A.J. REDFORD: I hope that I will be dealt with, in terms of the absence of interjections, in the same way I treated other contributors to this debate—which was without interjection. In March 2001 he reports that he received written comments from some of the recipients of the draft, and that he revised those findings. He does not say when he revised those findings.

On 28 May this year, some two months ago and 18 months after the matter was first referred to him, he distributed his draft full report. So, he has had some 18 months, with all his resources, to put together a tentative and draft report. He sought a response from those affected by that report within a bit over two weeks of the distribution of a report which, on the basis of the report that was tabled yesterday, compromises some 10 chapters.

He then makes an assertion that submissions had been received on a rolling basis since 5 July this year—in other words, he is suggesting that in the 21 days between the commencement of those submissions and the tabling of his report he has received a number of submissions.

Indeed, I would be grateful—and I do not expect this question to be answered prior to our voting—if the Treasurer could ascertain from the Auditor-General how many submissions (and the date of those submissions) were made in that 21 day period in which the opposition has given the appearance has been a significant period. He then goes on in his report and says that he considers that these people have had sufficient opportunity to comment. Obviously, based upon the information that we have been given in this report, we are in no position to judge whether or not that is the case. He then goes on and says that on 4 July he received a detailed submission from one person's solicitors on the proper scope of his examination and his draft report. In that respect, I would ask this question: was 4 July 2001 the first time the issue of whether or not the proper scope of his examination and his draft report was raised? In other words, when was that issue first raised with the Auditor-General? Secondly, was it raised on subsequent occasions and, if so, on how many occasions?

I am concerned that the Auditor-General, with the respect and the profile that he has in this state, can come into this parliament on the second last day of its scheduled sitting with a report such as this and suggest legislation, that he did not do so at an earlier time, thereby poisoning, to some extent, the political climate. He goes on and he says in his report that he is confident, even without these amendments, that he would be successful in the court but, notwithstanding that, he seeks this legislation if this report is to be tabled in time. Members who have spoken to me would know that I am a great believer in open government, and I think that it would be in the government's and everyone's best interest to have the report tabled as quickly as possible, and that is why I support this legislation.

However, I would be grateful if the Auditor-General could confirm that his legal advice is that he would be successful in such proceedings, and whether or not that information was conveyed to those who suggested that the scope of his report was not authorised by section 32. Indeed, I would also be grateful if he could tell us whether some of the people who raised this issue chose or actually threatened to take this matter to court. There has been considerable debate in another place—and I know that members are anxious to get home at this late stage, but it was not me who tabled the report of the Auditor-General at this last minute. I would be grateful if the Auditor-General could confirm that he is of the view that, in terms of raising these issues, no-one has acted improperly in any way, shape or form. The opposition has made great play on the fact that these people (whoever they may be) have sought to exercise their legal rights—

The Hon. T.G. Roberts interjecting:

The Hon. A.J. REDFORD: The opposition has—

An honourable member interjecting:

The Hon. A.J. REDFORD: Yes, I know he says that. The opposition has misrepresented this report continuously over the last 36 hours. It has said that this is a scandal, that these people have acted improperly and that these people have acted disgracefully, yet the Auditor-General has said in his report that they have not. I would be hopeful that the Auditor-General, when given the opportunity, might suggest to the opposition that it has misinterpreted his report and sought to use this report for base political purposes.

The Hon. R.R. Roberts interjecting:

The Hon. A.J. REDFORD: This has a lot to do with the legislation, because it was the other place which spent some six to seven hours debating this particular issue and, based on the Hon. Ron Roberts' narrow interpretation of this legislation, none of the comments had any relevance to the point. The fact is that this report—and I will read it for the benefit of the member—states:

> I recognise that it is important that I accord procedural fairness and that at all times I act within my lawful authority. By distributing my tentative findings and requesting responses, I have sought to discharge my responsibilities regarding procedural fairness. On the matter of my lawful authority, I have sought independent legal advice including the advice of Senior Counsel. Notwithstanding these steps that have been taken by me to maintain the lawfulness of the arrangements associated with this examination, individuals may still not consider those steps adequate.

He then goes on—and this is the important bit—and says:

> Any party, through their solicitors, can test my right to report in accordance with the Terms of Reference requested of me by the Treasurer. This is clearly their right. There can be no criticism if a party pursues legitimate concerns.

The opposition in speech after speech in the other place sought to criticise people for pursuing their legitimate concern—the very concerns that the Auditor-General was seeking to protect by issuing a draft report.

That is what is so disappointing about this debate. I must say what is also disappointing about this debate is that we have to deal with quite fundamental rights of people to protect their reputations into the future in such a short time frame, and I would be very disappointed if the answers to my questions revealed that these issues were raised with the Auditor-General some significant time ago and that this legislation could not have been dealt with some time ago rather than on the last scheduled night of sitting in this parliament. It is unfortunate that we have had to deal with an issue that takes people's rights away from them—albeit no-one is arguing about it—in such a short space of time. Because I know that, at some stage in the future when some government, which perhaps might even control both houses of parliament, seeks to take people's rights away from them, it will probably use this as a precedent, and that will be unfortunate.

I must say I am disappointed that we have had to deal with this piece of legislation in this fashion—and I am not suggesting who is at fault, but I am disappointed that that is the case. This is not the first time that the parliament has visited issues about terms of reference available to the Auditor-General in terms of an inquiry. We did it with the ETSA legislation, and my recollection—and I was not here at the time—is that it also occurred during the State Bank inquiry—there were legislative amendments to fix a concern that he had. One would think that, with an office that has such experience, we would not have to deal with this sort of legislation in this environment.

What the Auditor-General has done, whether deliberately or innocently, is create a poisonous political climate. He has created a situation where members in the other place—it has not happened in this place—have misrepresented what this report is all about. That is wrong and that is unfair. That is not the way in which we should pass legislation, and that is not the way in which we should seek to obviate people's rights, particularly their rights to natural justice. I say that in this context and I would hope that, if such an event should occur

in the future, whether I be on this side of the chamber or on the other, we can consider some of these issues, particularly when it comes to people's rights, in a more considered and sober fashion. It is disappointing that we have to consider this sort of legislation in such a short, sharp time frame, particularly when it has regard to people's rights.

The Hon. K.T. GRIFFIN (Attorney-General): I share the Hon. Mr Redford's view that it is unfortunate that we have to deal with this issue at such short notice in a pressure cooker environment in a manner which can reflect adversely on members of parliament, particularly because they are part of the political environment in which we operate. It does not have so much bearing directly on others who might have been giving evidence to the inquiry, particularly those who might be public servants. It certainly impacts upon those who are members of parliament. In the houses of parliament, speculative debate about who did what and when or who did not do what when they should have will unfortunately create its own sense of injustice in relation to this inquiry.

I would certainly much have preferred not to deal with this issue in such haste but, as the Hon. Angus Redford has reflected, we are in the last sitting week, now the last sitting day, and, if the issues raised by the Auditor-General are to be properly addressed, we have no option but to deal quickly with this sort of legislation. For those of us who have had to bring the legislation together, it has involved quite a significant level of resources in time and energy to the detriment of other important duties and acts.

That having been said, we had no option but to deal with it. It is, as I said, a highly political environment in which we now work and operate and the issue raised by the Auditor-General has the capacity to affect adversely a number of people. One can only speculate that, quite likely, some if not all of that speculation might ultimately be found not to be soundly based.

I deal with some of the issues raised by honourable members. The Hon. Paul Holloway suggested that it is incredible that this bill is necessary at all. I would suggest that it is not incredible. The Auditor-General has now identified that there are some issues. The government has chosen to indicate that it would respond by way of legislation, which does, as some members have reflected, reduce individual rights, but there are rights which remain, particularly those rights to contest issues on the basis that the principles of natural justice have not been appropriately afforded to them.

I suggest that the use of taxpayers' funds for the purpose of representation is not inappropriate, that it has been done on many occasions by governments of both political persuasions, and I think quite properly. There are guidelines which have been established and which are followed and, as I said in answer to questions earlier today, there is nothing improper in funding those who might be under some questioning, possibly with the prospect of adverse findings, from a government inquiry for those persons to be funded by the government of the day.

One has only to look at what is happening in the ambulance inquiry in Victoria, which is an extraordinarily expensive exercise as well as an extraordinarily lengthy inquiry. There, former ministers of the Crown are being represented at taxpayers' expense, and I would suggest that is perfectly proper because it is the actions of those former ministers, while acting as ministers, that is coming under scrutiny. It was done in relation to the State Bank, and both government and opposition were represented, but also individuals, the directors in particular, as well as others, particularly employees of the bank. They were represented at taxpayers' expense. There are any number of examples where that has occurred. In some of those cases, there have been challenges to the way in which an inquiry has been conducted and, as far as I am aware, those challenges have been undertaken with the benefit of support from the taxpayers of the state.

The other point that needs to be made, and I do not think that anybody can underestimate this, is that this is a serious inquiry that can have particularly serious consequences for individuals, and it is for that reason that the inquirer, whether it is the Auditor-General or anybody else, has to be particularly careful about ensuring that the principles of natural justice have been appropriately afforded to those who might be the subject of findings in that inquiry. As the Auditor-General has indicated, he has provided draft chapters to certain persons and one should not presume that they either are or are not members of parliament or that they may or may not be public servants or even those outside the public sector, because I would expect that there would be a range of persons who would be requested to provide information to this inquiry.

There is a lot at risk and, if one looks at this objectively, one can appreciate that there will be sensitivities on the part of those who might feel that they are under some threat to want to ensure that their rights have been properly addressed. That is a fair and appropriate principle that has to be recognised. Anybody in this chamber who would suggest that, if they were in this position they would not want to have their rights properly protected, is falsely representing their position.

In relation to the Hon. Mr Elliott's position, he has noted two concerns, and one of those has already been resolved, and that is the delivery of the report to the Speaker and the President. The government accepted one of the opposition amendments which addressed that issue in the House of Assembly. There was never any intention of the government not to ensure that the report was made public, and the bill reflected a process which has been followed on previous occasions, which relied upon a resolution of each of the houses to enable the reports to be published appropriately without any risk for any action for defamatory material being taken. As it turns out, the amendment which was proposed by the honourable member in the other house was clear and the government was prepared, for the purposes of this inquiry, to accept that amendment, and so that is now part of the bill.

The Hon. Mr Elliott also said that he thought 31 October was a pretty generous time frame. I suggest that three months will go very quickly. If what the Auditor-General says in his interim report is any indication, chapters 5 to 10 suggest a quite voluminous draft report, if not a final report, and one could well see that if it is as extensive as the interim report suggests there may be three months needed to ensure that the principles of natural justice are appropriately offered and met and that sufficient time is given to those who may be required to respond to do so, and, of course, it is a matter of choice for those who might be provided with material upon which to comment, whether or not they in fact do comment.

The other point is that when there is comment on a draft it may be that it implicates others who may not have been given the opportunity to respond, and that has to be taken into account in determining the time frame within which a response might be required and a report prepared and

delivered. I appreciated the brevity of the Hon. Terry Cameron's observation and I do not think I need to comment on that.

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: I should say also: not only the brevity of his contribution but the substance of it.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: I took the Hon. Mr Cameron's remarks at face value, and I take it as a compliment to me as well, because I have had quite extensive discussions with the Auditor-General, and for him to indicate that he is satisfied with the bill and that it has achieved an appropriate balance is, I think, a commendation which is appropriate to be reflected by the Hon. Mr Cameron.

The Hon. Mr Stefani indicates that he supports the bill and, as I interpret it, takes a slightly different view from that of the Hon. Mr Elliott in relation to the date, suggesting that it may not be adequate to get all the facts. The Auditor-General is comfortable with that date and in those circumstances the government is prepared to support, and obviously has supported, that date in the bill. But the Hon. Mr Stefani indicates that he is proposing an amendment, and there will be an opportunity to debate it. However, I want to respond to what he and the Hon. Mr Xenophon have said about the use of taxpayers' money for litigation purposes.

I indicated in answer to a question today that, in relation to those who are members of parliament, ministers and former ministers, who are receiving government funding, to ensure that they are properly advised and are enabled to make representations on issues raised with the Auditor-General and by the Auditor-General, before they can take any steps to challenge in court any aspect of what the Auditor-General is doing or has done they will have to come back to cabinet. There is not a blank cheque, and the legal fees which are made available are made available on the same terms and conditions and at the same rates as the Crown Solicitor pays to private sector lawyers, and the accounts have to be certified by the Crown Solicitor as appropriate and meeting the guidelines. In terms of the funding for any litigation, as I say, that has to come back to the cabinet before that can occur.

I want to make this observation about the Hon. Mr Stefani's amendment, and that is that it is not okay for those who might be under threat to challenge, now on much more limited grounds than previously, what the Auditor-General is doing or has done, yet the funds which the Auditor-General is using, taxpayers' funds, are not limited. That can hardly be an even-handed approach.

The Hon. R.K. Sneath interjecting:

The Hon. K.T. GRIFFIN: My initial point, though, is that this means that the Auditor-General is entitled to continue to engage legal resources for the purposes of any legal proceedings yet the person who wishes to protect his or her interests at law, which is a right which is preserved by this bill, will have to do it at his or her own expense. I just find that that represents a significant imbalance and I think an essential unfairness in the way the system may operate, taking into account that ultimately if there is to be taxpayers' money spent on a challenge, on proper advice, then that has to come to the cabinet before any taxpayers' funds can be used for that purpose. I suppose one might somewhat facetiously ask that if the limitation is to be placed on individuals, of whatever status and of whatever occupation, who may wish to take legal action that they should meet their own legal costs, should we require the Auditor-General in those same proceedings to meet his own costs?

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: The honourable member mistakes what the parliament has done. The Council made a request to the Treasurer. It was a request, and the Treasurer then made the request.

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: The Hon. Angus Redford's observations I think I have addressed, except I should add that, when he makes a statement that persons in the other house have misrepresented the report, I would agree with that. I think it is unfortunate, but one can expect that in a hotbed of political manoeuvring as has occurred in the context of this bill. If there are other issues, we can deal with those in committee. I thank honourable members for their indications of support for the second reading and hope that the bill will pass unamended, notwithstanding the amendment that the Hon. Julian Stefani has foreshadowed.

Bill read a second time.

In committee.

Clause 1.

The Hon. A.J. REDFORD: I have some general questions. I will preface my comments by saying that I have no wish to delay the passage of this bill. This bill ought to go through quickly as it is everybody's desire to have a report before the parliament, but I would like these questions answered. I suspect that they can be answered only by the Auditor-General and I know that it would be inappropriate for either the Attorney or someone from the Crown to answer these questions. I will quickly go through them, as follows:

1. How much has the Auditor-General spent on this inquiry to date?

2. What consultants have been engaged?

3. What were the terms of the consultancy and, in particular, how much are they being paid per hour?

4. What was the Auditor-General's original estimate of the cost of the inquiry?

5. Did the contract for services go to tender and, if not, why not?

6. On what basis were the consultants engaged, i.e. why were they picked: was it a matter of price or was there some other basis upon which they were picked?

7. Who is the counsel referred to in the report?

8. In relation to the person's submissions since 5 July referred to in this report, how many have there been and on what dates were they made?

9. The Auditor-General refers to 10 chapters: how many pages does the draft report comprise?

10. When was the ultra vires issue first raised with the Auditor-General; who raised it and, if there was more than one, who were they; and was this issue raised on more than one occasion and, if so, upon what dates was it raised?

11. What was the Auditor-General's initial timetable—and I go back to November 1999—in relation to dealing with this matter?

12. Has the Auditor-General spoken to the Hon. Julian Stefani and obtained documents that he has referred to in a series of questions asked in this place and, if he has not, why has he not spoken to him?

13. Can the Auditor-General assure us that all persons who have been the subject of criticism in his draft report have been accorded natural justice; have all persons who are

subject to that criticism been given the opportunity to seek advice?

14. Does the Auditor-General think it appropriate that some members or persons who have been the subject of criticism by the opposition over the past 48 hours may well be unable to comment or respond because of the terms or conditions imposed by him on them in relation to the release of the draft findings to them; and, if he does think that it is inappropriate, what would he suggest in relation to amendments to enable them to fairly participate in a political debate such as that that might have occurred over the past 48 hours?

15. Finally, if those members had responded (and this may happen in the future), under the current legislation what would be the potential consequences to them; in other words, what is the total potential fine, term of incarceration or the like?

The Hon. K.T. GRIFFIN: Obviously, I cannot answer those questions.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: No—

The Hon. R.R. Roberts interjecting:

The CHAIRMAN: Order! There should be no reflection on the Auditor-General.

The Hon. K.T. GRIFFIN: I am certainly not making any criticism of the Auditor-General.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: The honourable member is entitled to ask questions. They are the sorts of questions which—

The Hon. R.K. Sneath interjecting:

The Hon. K.T. GRIFFIN: I am not making any comment about any observation: all I am saying is that any member is entitled to ask questions about the way in which public money is expended. If one looks objectively at this away from the political heat, they are the sorts of questions which I will be happy to refer to the Auditor-General to ask him whether he is able to provide us with that information. The Auditor-General has legal advice—my understanding is that there are several lawyers involved—but the real detail I am not able to identify because I just do not know. I will refer the honourable member's question to the Auditor-General and ask him whether he is able to provide that information. Hopefully, at the appropriate time, there will be an opportunity for me to indicate the Auditor-General's response.

In terms of the issues upon which I reflected in my second reading reply, particularly about the timing, they are only observations about the pressure cooker way in which we have had to deal with this. Again, that is not intended as a reflection on anyone: it is a fact of life, we have dealt with it promptly and, as the Auditor-General said, we have dealt with it in a way which has achieved appropriate balance.

The Hon. P. HOLLOWAY: This morning during question time the Attorney named the four ministers who are indemnified by the government in relation to their legal fees. I ask the Attorney which other individuals have received legal indemnity from the government.

The Hon. K.T. GRIFFIN: I do not know who they are. There is a protocol which enables the Crown Solicitor—

The Hon. P. Holloway interjecting:

The Hon. K.T. GRIFFIN: I don't know. I will find out, but I cannot do it tonight. The honourable member has asked the question and I will endeavour to get a response. The Crown Solicitor has a protocol under which he can determine who within the public sector may be entitled to legal assistance.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: Yes, public servants who may receive legal assistance. I do not involve myself in that. There are occasions when the Crown Solicitor may draw my attention to a particular request, but I will have to take on notice the detail of that question.

The Hon. J.F. STEFANI: Following the questions asked by the Hon. Angus Redford, I would like to ask a number of questions. Will the Attorney advise whether anyone else has applied for legal indemnity and whether that legal indemnity was denied? Will the Attorney indicate whether the former minister, the Hon. Scott Ashenden, was covered by legal indemnity and for legal costs if he so applied? Will the Attorney indicate the costs of the inquiry so far? I know that it is difficult, but my specific question is about when the Auditor-General advised the solicitors acting for the various parties in this inquiry of the time frame for the information that was transmitted. We know from the Auditor-General's report that one particular party has not responded at all. My question—

The Hon. A.J. Redford: They may agree with him; what's wrong with that?

The Hon. J.F. STEFANI: Then I would suspect that they would just indicate that they agree with his findings.

The Hon. A.J. Redford: Maybe they don't have to. They don't have to respond.

The Hon. J.F. STEFANI: Well—

The Hon. A.J. Redford interjecting:

The Hon. J.F. STEFANI: I think the Auditor-General would—

The Hon. A.J. Redford: This is not a star chamber—

The CHAIRMAN: Order, the Hon. Angus Redford!

The Hon. J.F. STEFANI: Will the Attorney ascertain the time frame of the responses—the specific delays that the Auditor-General has experienced that he considers to be the problem that has caused this inquiry to drag on?

The Hon. K.T. GRIFFIN: Regarding the last questions, I am not prepared to ask the Auditor-General for that information. I think that is a matter for the Auditor-General in relation to the inquiry. It is akin to being an operational matter, and I think it is not proper for me as Attorney-General to begin to inquire—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: No, they weren't. What I have said—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: The Hon. Ron Roberts does not understand the difference between, on the one hand, asking him details about who has done what and why and what the consequences are and, on the other hand, whether the Auditor-General has engaged consultants and what is the mechanism for the engaging of consultants. This is not about the detail of those operational issues which may tend to identify the party who has actually been involved.

Regarding the issue of what time frames were given, again, in my view, that gets into the day-to-day operational issues which the Auditor-General ultimately will have to take into account and balance in making his final report. It may be that he will make some reference to it in his final report, but he may not: I do not know. That is a matter for him. I think we must be careful to distinguish between those things which are inherently part of his inquiry and those which are in the nature of administration. That is the distinction that I draw.

In terms of the cost of the inquiry, there has been information about the costs of the Auditor-General so far being in

excess of $1 million. I am not the minister responsible for that, so I can only indicate that that is the information which I think is being referred to in this chamber and in the media.

In terms of the costs that have been incurred by the government in respect of legal representation for ministers, former ministers, public servants and others, I do not have all of that detail. I am not required by law to bring that information together. Different agencies provide the funding, and the Crown Solicitor is required to certify. That information is not required to be channelled through me to the Crown Solicitor under the Treasurer's instructions.

In respect of who else might have received legal assistance, again, I will need to give consideration as to whether or not it is proper to identify the public servants by name, because that in itself will tend to disclose information which to this stage has been confidential. And it may be that those people who are receiving legal representation at government expense ultimately will not even be mentioned, and to suggest that we should identify them at this stage might cast them in an unfavourable light, and unfairly so.

In terms of Mr Scott Ashenden, I am not aware of his circumstances. I will endeavour to ascertain the information and then make a determination whether or not it is proper to disclose that information.

Clause passed.

Clauses 2 to 5 passed.

Clause 6.

The Hon. J.F. STEFANI: I move:

Page 4, after line 34—Insert new subclause as follows:

(5a) No public funds may be applied for the purpose of any proceedings relating to an act or omission of the Auditor-General in connection, or purported connection, with the inquiry brought before a court, other than funds applied by the Auditor-General or by the court itself.

In speaking to the amendment, I again reiterate that the taxpayer has provided substantial sums of money, so far, to fund the legal representation for the parties involved in this inquiry. I have no difficulty in saying that this right was provided under precedent set in the past. I ask the Attorney for the total amount of the legal costs that the government has paid for the representation of the various parties. I do not wish to have the names of the parties: I wish to have the total amount.

I move this amendment on the basis that any party that feels compelled to pursue his or her rights should fund the action out of their own pocket. Obviously, if they are successful in the proceedings they will be reimbursed for their costs, and that is a reasonable process that occurs in the courts. If, in fact, the proceedings taken against the Auditor-General are not successful, they would be up for the costs incurred by the government.

There is also another important aspect to this, and one that I believe would ring very clearly in the minds of every taxpayer: that is, we could have the ludicrous position that substantial sums of taxpayers' money are expended by one, two or three parties in a court proceeding against an inquiry that was established by parliament and conducted by the Auditor-General, and these court proceedings are defended by the Auditor-General—again, funded by the taxpayer—who, in the past, has always presented fair and balanced reports to this parliament and has not been subjected to the personal attacks that he has had to endure in this chamber, over a number of months now, and over a number of issues.

The Auditor-General has always served this parliament with the integrity that parliament has expected of him, and I think he has done an exceptional job. He has been thorough and he has delivered to the satisfaction of the parliament according to the stringent legal requirements that he has had to meet. So, with those sentiments, I move the amendment standing in my name, for the reasons that I have given and that I feel every taxpayer would respect.

The Hon. IAN GILFILLAN: I indicate support for the amendment. I believe that it is very difficult, in the emotional heat of a situation such as this, to be objective. However, the Auditor-General is the servant of this parliament and of the people of South Australia. He or she at any time is given a specific task through the responsibility of the Auditor-General's job. That task is taken on on behalf of the community at large: he or she is not a vested officer of any particular partisan group.

In this particular case, there has been ample opportunity, ample time and ample resources for the people involved to present their case to the Auditor-General. It is my opinion that the people of South Australia deserve an expeditious conclusion to this report and that it should be done as thoroughly as it can be done by the date prescribed. If there is any issue that any citizen (whether a member of the public or a member of this parliament) feels that they, either individually or jointly, wish to have tested before a court of the state, then I believe that it is their right to do so, and there is no restraint in this bill or in any other area that I can think of that would restrict that.

Whenever I have had a legal challenge during the course of my duty, I have not had any public assistance offering me a guarantee of my court costs: neither have others in this place who have been in similar circumstances. I think it is reasonable that this amendment be passed. By supporting this amendment, I am not making any allegation that it would occur, but I believe the amendment is a preventative measure against the possibility that the report of the Auditor-General could be frustrated by a publicly funded, extended court action; and, on that basis, I believe that this amendment is worthy of support.

The Hon. A.J. REDFORD: Does this have any retrospective effect in relation to any fees that might already have been incurred if this clause is carried?

The Hon. K.T. GRIFFIN: It does have retrospective effect, because it goes back to 17 November 1999. The people who are receiving legal representation at government expense are involved only because of official duties: they are not there for any other reason. Because they are involved only because of official duties, it seems quite appropriate to the government that, in appropriate circumstances, their legal costs should be met.

It is all very well for the Hon. Mr Stefani to say, 'Well, they can take their legal action. If they win they'll get their costs back.' The fact is that they will not get all their costs back: they will be severely discounted because they will get only party and party costs and not solicitor and client costs. I think it is taking a very dangerous step backwards to legislate to prevent this sort of representation from being provided.

I can tell you that there will be others—ministers, police officers and other officers of the Crown—who will from time to time be funded by the government at taxpayers' expense in litigation. What distinguishes that from this inquiry? Nothing—not in terms of principle and only in terms of the fact that several of these people who might have this right but still have to go to the government to confirm it happen to be politicians. We have to try to act on the basis of principle, and

that is what has driven this piece of legislation. I do not think it is appropriate to be legislating in the way in which the Hon. Mr Stefani is proposing.

The other point is that the Auditor-General has not asked for this. In his report he has said:

> Any party through their solicitors can test my right to report in accordance with the terms of reference requested of me by the Treasurer. This is clearly their right. There can be no criticism if a party pursues legitimate concerns. It would then be for a court to rule on the matter.

He does not say, 'Let them do it but do not subsidise them if it is an appropriate case.'

The Hon. P. Holloway interjecting:

The Hon. K.T. GRIFFIN: Well, he hasn't requested legislation: he has just said that in certain circumstances it would be necessary to legislate. He did not request legislation: the government volunteered it.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: Well, it did. The government was working well before the opposition ever decided that it was going to push for legislation. I will go back to the issue of retrospectivity. I did make the statement that it is retrospective to 17 November 1999. My advice is—and I would wish to correct it—that, where there are proceedings brought before a court, if they have already been issued—and I am not aware that any have—then it would have retrospective effect. However, whilst it applies from 17 November 1999, it does not have any effect at law because, as far as I am aware, no proceedings have been issued.

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: I suppose that is possible. It provides:

> No public funds may be applied for the purpose of any proceedings—

and it does not say proceedings in contemplation, but it may be—

> relating to an act or omission of the Auditor-General in connection or purported connection with the inquiry brought before a court other than funds applied by the Auditor-General or by the court itself.

It is a curious amendment that may have some impact upon those who might already have taken legal advice about whether or not they had a right—

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: That's right: it may be we have to go back and check all that out. The way in which the Crown Solicitor certifies costs, he looks to see whether or not—

Members interjecting:

The CHAIRMAN: Order!

The Hon. K.T. GRIFFIN: The Crown Solicitor looks at the account—I am not sure that they have been separately identified—and this was to give some advice in relation to whether or not the Auditor-General was acting outside his power. I think it is just generally: for the sake of convenience it is so many hours, such and such days, and we rely on the integrity of legal advisers. Of course, at the moment they have not had to distinguish but under this clause (if it is passed) they may well have to, and we may have to go back and dissect the accounts. For all those reasons, I think it is unfair and does not only apply to politicians but applies to others who are not politicians. I think it is an inappropriate provision that sets a dangerous precedent.

The Hon. P. HOLLOWAY: I move to amend the Hon. Julian Stefani's amendment as follows:

> Insert the words 'after 27 July 2001' after the word 'applied'.

If my amendment is carried, the amendment will provide:

> No public funds may be applied after 27 July 2001 for the purpose of any proceedings. . .

The Hon. A.J. Redford: You're still changing the rules half way through.

The Hon. P. HOLLOWAY: We'll come to that right now.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: I would have thought that if ever there was a bastard act it was an act of using taxpayers' money to try to avoid a report coming in.

The Hon. A.J. Redford interjecting:

The CHAIRMAN: Order, the Hon. Angus Redford!

The Hon. P. HOLLOWAY: Well, do remember it, Angus; please do.

The Hon. A.J. Redford interjecting:

The CHAIRMAN: Order! The Hon. Angus Redford half an hour ago gave this chamber advice on not interjecting on him. I suggest he take his own advice.

The Hon. P. HOLLOWAY: When this bill was before another place my colleagues moved an amendment that was identical to one that was moved to the State Bank of South Australia (Investigations) Amendment Bill. Members will recall that the Auditor-General, as well as a royal commission, investigated matters relating to the collapse of the State Bank. As I understand it, a number of directors and others had sought to use legal avenues to delay those reports and, as a consequence of that, the parliament, with the support of the then Liberal opposition, supported the following clause which I will read to the chamber—and this was moved unsuccessfully in another place. This amendment would have deleted clause 6 in its entirety and replaced it with the following clause.

The Hon. K.T. Griffin: No judicial review, full stop.

The Hon. P. HOLLOWAY: That's right. It provides:

> No decision, determination or other act or proceeding of the Auditor-General or act or omission or proposed act or omission by the Auditor-General in connection or purported connection with the inquiry may in any manner whatsoever be questioned or reviewed or be restrained or removed by proceedings for judicial review or by prohibition, injunction, declaration, writ, order or other manner whatsoever.

So much for there being no precedent! That is what was removed—

The Hon. A.J. Redford: Just for the record, which way did you vote on it?

The Hon. P. HOLLOWAY: I'm sure I would have supported it. I will have more to say in a moment about what others have said. That was the amendment that was moved today in the other place by the opposition. We did not originally intend to proceed with that as it had been unsuccessful. However, what the Hon. Julian Stefani has moved here is sort of a half way position between what the impact of the opposition's amendment would have been and what is now in the bill. Under the government's bill, any person who is affected by this inquiry has 14 days from the day the bill receives assent by the Governor to take legal action, and therefore to draw upon their legal indemnity from the government.

The Hon. Julian Stefani's amendment would still allow those persons to take that legal action—but they would have to pay for it themselves. Had the opposition's amendment in another place been carried, that 14 day period would not have applied with or without government funding. To be consistent

with the position that we took in the other house, the opposition will support the amendment.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, I mentioned how the origins of the amendment moved in another place came from the State Bank Bill that was passed in 1992, and it was interesting to read some comments of the member for Bragg. Unfortunately, the member for Bragg had to leave. I was hoping he would be present when I read it out. I do not know whether or not he recalls saying it. On 12 March 1991 the member for Bragg made the following comment in relation to the establishment of the inquiry:

> I am also concerned about the fact that the Auditor-General's reporting will be in a very confined way. I believe that the Auditor-General's investigation should be far more public. I know that the government has said in the second reading explanation that it is important to protect the rights of those who deal with the bank. I accept that, but we are not talking only about the rights of those who deal with the bank, we are also talking about the rights of the taxpayers.

I do not think I could sum up the arguments any better than to quote the argument put by the member for Bragg 10 years ago when we were discussing this original amendment.

The Hon. T. CROTHERS: I rise to make some casual observations given that, I suppose of all the people in this committee who have spoken, I have no axe whatsoever to grind. The only axe I would grind is the axe of commonality and commonsense. I think that this amendment standing in the name of the Hon. Mr Stefani is an act of spite and political bastardry of a pretty high order relative to the way in which it is couched. I am very well aware of the impending election, and I am very well aware of the tawdry political gains and elements people with certain philosophical outlooks in common have in respect of using this as a grab bag for more electoral support in the forthcoming electoral fiesta not that far away.

We will rue the day if we go down this path in respect of people being able to be covered whilst acting as MPs in relation to a matter of public importance, because they will be sued at the whimsy of every person with money to burn—

The Hon. P. Holloway interjecting:

The Hon. T. CROTHERS: You shut up and you listen. Honestly, you never listen. What were you like at school? Terrible, I would have thought—a terrible pupil. Someone with a lot of money could take on any MP, or any senior public servant for that matter, if this goes through, in the knowledge that their money will ensure that they break the person who has to take a defensive action relative to the way in which they are being pursued, and that, to me, is a blow against democracy. One of the reasons why MPs, senior people and the police are covered with respect to indemnification for legal costs is the very point that I make; that is, everyone will stand equal who has the responsibility of giving effect to the law, putting it into practice or carrying it in such a manner as we do everyday of our working lives in this place.

We will rue the day if, for an act of short-term political gain, we impose future pain on all those people currently enjoying some form of indemnification through having legal costs paid. I have been here long enough to know that the payment of legal costs has flowed right across the spectrum when it comes to this particular matter that is now being reviewed as a consequence of the Hon. Mr Stefani's amendment. It is wrong. As I said, in my view it is an act of spite of some magnitude, but it will be damaging in the longer term to the people of this state, because it will put some handcuffs on the capacity of the legislators of this state to be able to do things that are beneficial to the people of this state, even if we have to move against big money interests.

That is the viewpoint I put forward. As I say, I am the one person in this committee who has no axe to grind whatsoever in respect of this matter. I make the observations, and they are observations honestly held by me and believed by me to the fullest extent that my beliefs will enable me to carry them forever marked in my mind as to what I have witnessed here this night. I have seen all sorts of things done here, and under the guise of many aims, and I have seen all parties here do things, Hydra headed things, purportedly in the interests of the people of this state and purportedly to defend the taxpayers of this state, but, in real terms, to give them some advantage electorally or politically within the confines of the parameters of this state's political framework.

Other people may stand up—and probably will—and use the usual arguments to show how wrong I am, but I am not wrong. History will record that I have made a truthful observation tonight in respect of this matter. I will be supporting the government, but I do not believe the government has the numbers to get up, because there are too many people with vested self interests and there are too many people who have myopia at this point in time in this parliament—at this great hour of night, I might add. For those reasons, and probably for just as many more that I do not want to take up the time of parliament in putting onto the record, I will be supporting the proposition put forward by the Attorney-General on behalf of the government.

The Hon. R.D. LAWSON: Very briefly, I do agree with the perceptive and principled comments of the Hon. Trevor Crothers, and I would remind members that this inquiry has very broad terms of reference and I urge members to look at those terms of reference. It requires the Auditor-General to look at the planning stages of the project, the tendering processes, the letting of contracts and so on. I have no knowledge at all of what the Auditor-General has been undertaking, other than I know the terms of reference. I do not know who he has inquired into or who he has examined, but certainly a large number of people in the public service would have been involved in some of these processes which may require examination.

Some of those persons are in the department for which I now have portfolio responsibilities. Some of them may, for all I know, wish to assert rights; and they like every other citizen should be entitled to assert those rights. This amendment limits their opportunity to do so. They are entitled, in accordance with the very well established principle outlined by the Attorney-General, to be indemnified in respect of the performance of their duties. That is a very important principle, and I believe that the amendment moved by the Hon. Julian Stefani is wrong in principle and very unfair, because it would take away from such persons (if there be such persons) a right which they have and they should be entitled to receive, and they have done absolutely nothing on any evidence before this parliament to have taken away from them some right that they have. I believe that this is a very unfair amendment and I do urge the committee to reject it.

The Hon. P. HOLLOWAY: I seek leave to withdraw the amendment that I have already moved so that I can substitute a different one.

Leave granted.

The Hon. P. HOLLOWAY: I move to amend the Hon. Julian Stefani's amendment as follows:

Leave out the words 'for the purpose of' and insert the following words, 'in relation to any legal costs incurred after 27 July 2001 in connection with'.

In other words, the new clause would read:

No public funds may be applied in relation to any legal costs incurred after 27 July 2001 in connection with any proceedings relating to an act or omission.

That would ensure that, if any costs had been incurred up to that date, there would be no retrospectivity in relation to that matter.

The Hon. K.T. GRIFFIN: I point out that, in whatever form this amendment is proposed, it is unacceptable to the government. Clause 6 stops delays. It only permits legitimate challenges if there are any. As I said earlier, it affects people who are not ministers or former ministers as much as it affects ministers and former ministers. It is patently unjust and, if the opposition wants to sponsor this, along with the Hon. Mr Xenophon and the Hon. Mr Gilfillan, they are on a slippery slide because they will come to realise one day that governments do act with propriety and, when it comes to representing the interests of those whom it employs, it ensures that as much as it is possible to do so they are given support, whether it is in court or otherwise, to defend their rights. This sets a precedent for a government to say no, and I think that is dangerous.

The Hon. R.R. ROBERTS: I am a supporter of giving support to a minister who, while acting within his duties, suffers legal action. An example that I am fully aware of is that of the Hon. John Cornwall, who was sued by a member of the public for making statements, it now turns out, in the course of his ministerial duties. Another example in this very chamber is that of the Treasurer, who faced a legal situation in respect of matters which cabinet has determined were in respect of his duties as Treasurer. Some people want to argue about that but this is not the time or place to do that. Clearly when the cabinet determined that he was defending himself against legal action as a consequence of actions he had taken within the course of his ministerial duties, he was given legal support. In John Cornwall's case what actually occurred was—

The Hon. K.T. Griffin: It is in the High Court in 2½ weeks.

The Hon. R.R. ROBERTS: Not John Cornwall's, I hope. We are not scouring over that again, are we? In John Cornwall's case, the litigation took place, unfortunately John Cornwall lost, and substantial legal costs and payments had to be made.

The Hon. K.T. Griffin: He defamed someone.

The Hon. R.R. ROBERTS: The cabinet had negotiations with the shadow attorney-general for some 12 months about the guidelines in respect of paying ministers—and I have to report that he had not responded in those 12 months—and an argument ensued which is all in the *Hansard* record. There was some lengthy debate between the present Attorney-General and the then Attorney-General (Mr Sumner). The guidelines were laid down there and then that, if a minister acting in the course of his duties is sued or faces legal costs, he will receive some support. Those criteria have been bent a little bit since members opposite have been in government, but I will not go into the detail of that now. Clearly it is fair enough that a minister acting in the course of his official duties who is sued or faces legal costs has some support. Here we have an officer of this parliament—

The Hon. K.T. Griffin: He is not an officer of the parliament.

The Hon. R.R. ROBERTS: He is an officer of the government. He is independent and is not controlled by the government but he has been directed—

The Hon. K.T. Griffin: He hasn't.

The Hon. R.R. ROBERTS: Again we have this legal ballyhoo that goes on from time to time. Let us get down to the practicalities of it. What Auditor-General faced with a decision of the Legislative Council to conduct an inquiry has any choice but to say yes? The fact of the matter is that we have asked/ordered the Auditor-General to undertake this inquiry. He has proceeded within the bounds of the act that controls his activities to do that.

Now four ministers or former ministers of the Crown are seeking not to defend themselves against legal action but to proactively use the legal system to frustrate the inquiries of the Auditor-General, and the member opposite says that is a good thing. The Hon. Julian Stefani has made the point that, if they want to undertake legal action themselves, so be it. When the Auditor-General reports (and I am confident that his report will be fair and balanced), we can make a judgment and the cabinet can make a judgment whether, based on the evidence in the report, that was reasonable legal action as a consequence of their duties as ministers, and then they can do it.

What is happening in the community generally is that, if people want to stop something from happening, they take legal action, which inhibits the process. It is no good the Hon. Angus Redford saying that he voted against it, because I vote against a lot of things, as do other members, but at the end of the day a decision is made and that becomes binding upon us all. We collectively asked the Auditor-General to undertake this serious inquiry. He has proceeded in accordance with his act. Some people have said, 'Hang on, I do not really want this to happen,' and I suspect that the Hon. Trevor Crothers is right in his assertion that people are playing political games. I do not know that I agree that his version of the political games is the same as mine. I think there is a strategy to stretch this out beyond the election. That is my view, but that is not really the point.

The fact is that, because the people involved are ministers, we are saying, 'Hang on, this report might be bad.' It might not be bad. If the Auditor-General can get on and give his report he may find that there is no case to answer. I suspect that these are the actions of the guilty saying, 'Let's stop it, let's not actually look at it.' We are saying that, because these people are ministers, we ought to provide them—

The Hon. K.T. Griffin: No, we are not saying that. It is not limited to ministers and former ministers. Get it into your head.

The Hon. R.R. ROBERTS: It just actually happens that these four people are. You are going tell me that was just a coincidence. What has happened here is that we asked for this to take place. The ministers are now saying, 'Well, we want to proactively take legal action to stop the Auditor-General from getting to the point.' Let us look at the facts of the last few weeks. The Attorney-General brought in some legislation in respect of the Dietrich defence. He says that that is not good enough, because if you do not have the funds to conduct a proper legal defence or do your own legal action, what you proposed, and what has been passed, I believe unfortunately, is that if you want to take that action, and it has to be provided by the government, we go around and collect up the assets of the spouses and friends to pay for it, but because these people are ministers we say, 'No, the taxpayer will pick

it up.' That is what you are saying to the committee. So what the Hon. Julian Stefani is saying has some basis.

I admit freely that I come from the point of view that I believe that if we are going to get ministers acting courageously and responsibly within their duties as ministers they need to have some protection. That does not appear to be the case. We asked the Auditor-General to proceed. He is proceeding under the procedures in the acts available to him. He is acting legally and people are trying to frustrate that inquiry. These people who have to go before the Attorney-General should be in the same position as anybody who goes before the criminal courts. They are told, 'Go before the courts, tell the truth, the whole truth and nothing but the truth and you will be judged by your peers.' It is very easy for these people. They can go along to the Auditor-General, providing that he is undertaking the orders that we have given him, and I will stick with the fact that I say 'order', and at the end of the day he makes his findings. If someone feels that they have a legal problem or they have incurred legal expenses, which reasonably should be incurred because of actions of their ministerial duties, then we should make a decision, as we did with the Cornwall case, and say, 'Yes the government recognises that that was purely in the course of his duties and we should pay.'

So the point held by the Hon. Julian Stefani is not a vindictive one. It has a sensible and reasonable basis in the eyes of the average person out there, because they do not get the same advantages. If they have to turn up to an inquiry they are expected to turn up, and if they do not turn up we drag them there, and they put their case. If they cannot afford a lawyer we do not say that the government will pick it up, you just go for your life. It is a question of equity and it is a question of justice. I believe that the one person who does deserve a little bit of justice and a bit of support from the Legislative Council is the Auditor-General, who this state trusts to do this because of his honesty and integrity and his skills. There are some people in this committee here tonight and on other occasions who have got some axe to grind with the Auditor-General who actually if they were game enough to say it outside would be defamed. But they are cowardly enough to come in here and attack an officer of the state.

The Hon. T.G. Cameron interjecting:

The ACTING CHAIRMAN (Hon. T. Crothers): Order!

The Hon. R.R. ROBERTS: On numerous occasions the Hon. Terry Cameron has launched attacks on the Auditor-General, and Angus Redford tonight has done the same thing. It is about time we showed a bit of support and a bit of respect for our own procedures and supported the Auditor-General and not seek, because of political advantage or political embarrassment, to inhibit his inquiries and provide sustenance to those who would inhibit his genuine inquiries on behalf of this Legislative Council.

For that reason I am prepared to support the amendment as proposed by the Hon. Julian Stefani to support ministers who, as a consequence of their proper duties, have been sued or suffer legal expenses in pursuit of that. But I am not going to support people who seek to frustrate the work of this Council and the Auditor-General for no better reason than to frustrate those inquiries, in my belief to stop the truth from coming out. I want the truth out and I want justice to prevail and I want some respect for the procedures of this parliament and the operations of the Auditor-General.

The Hon. K.T. GRIFFIN: I do not want to prolong the debate, but I will just make several observations. I think the Hon. Ron Roberts just goes over the top. We have not attacked the Auditor-General. If you talk to the Auditor-General he will tell you that in all of my dealings and the government's dealings with him we have acted with propriety. Go and ask him. We are not putting him under the hammer here. He has agreed with the bill. He said to me in relation to this bill that he is satisfied.

Members interjecting:

The Hon. K.T. GRIFFIN: Of course he hasn't asked for it.

Members interjecting:

The Hon. K.T. GRIFFIN: The Auditor-General said that he is satisfied with the bill and with the balance that has been achieved, and that is what it is about. Clause 4 and clause 6 together seriously curtail the rights of persons to challenge what the Auditor-General is doing, but there is the underlying principle of natural justice which remains, and that can be the basis for any particular challenge, but it is limited. Why should not a minister or former minister or a public servant or a former public servant who is under threat protect himself or herself against an unlawful executive action? I am not saying that the Auditor-General is acting unlawfully. I am not saying that it will ever be established, even if persons want to challenge it, but they have the right to do that, and if they are ministers or former ministers or public servants or former public servants they are there because of their official duties. They are there and they are entitled to protect themselves against what they might assert to be unlawful executive action.

I am just amazed that the honourable members who support this amendment can ever think that the public servants out there who serve the people of South Australia should be denied the opportunity at government expense to protect themselves against executive action against themselves which they might dispute. It is crazy. You are setting new boundaries and one day it will come back to bite you. I will not be here when it comes back to bite you, but let me say I put it on the record that I warned you that you are going down a slippery slope.

The Hon. P. Holloway interjecting:

The Hon. K.T. GRIFFIN: The Hon. Paul Holloway talks about the State Bank—four legal proceedings in the Supreme Court, after three years and other acts of intimidation and frustration. Quite different. No action has been threatened. There may have been discussion about whether or not it was possible but nothing has been threatened.

The Hon. P. Holloway interjecting:

The Hon. K.T. GRIFFIN: It is not irrelevant. I do not know what will or will not happen in relation to it. I have not seen what is in the drafts. So, as you, Mr Acting Chairman, put it so colourfully and also succinctly, I think this is unjust.

The committee divided on the Hon. Mr Holloway's amendment:

AYES (11)

Elliott, M. J.	Gilfillan, I.
Holloway, P. (teller)	Kanck, S. M.
Pickles, C. A.	Roberts, R. R.
Roberts, T. G.	Sneath, R. K.
Stefani, J. F.	Xenophon, N.
Zollo, C.	

NOES (10)

Cameron, T. G.	Crothers, T.
Davis, L. H.	Dawkins, J. S. L.
Griffin, K. T. (teller)	Laidlaw, D. V.
Lawson, R. D.	Lucas, R. I.
Redford, A. J.	Schaefer, C. V.

Majority of 1 for the ayes.

The Hon. Mr Holloway's amendment thus carried.

The committee divided on the Hon. Mr Stefani's amendment as amended:

AYES (11)

Elliott, M. J.	Gilfillan, I.
Holloway, P.	Kanck, S. M.
Pickles, C. A.	Roberts, R. R.
Roberts, T. G.	Sneath, R. K.
Stefani, J. F. (teller)	Xenophon, N.
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NOES (10)

Cameron, T. G.	Crothers, T.
Davis, L. H.	Dawkins, J. S. L.
Griffin, K. T. (teller)	Laidlaw, D. V.
Lawson, R. D.	Lucas, R. I.
Redford, A. J.	Schaefer, C. V.

Majority of 1 for the ayes.

The Hon. Mr Stefani's amendment as amended thus carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

WATER RESOURCES (RESERVATION OF WATER) AMENDMENT BILL

The House of Assembly agreed to the Legislative Council's amendments without any amendment.

SOUTHERN STATE SUPERANNUATION (INVALIDITY/DEATH INSURANCE) AMENDMENT BILL

The House of Assembly agreed to the bill without any amendment.

STATUTES AMENDMENT (INDEXATION OF SUPERANNUATION PENSIONS) BILL

The House of Assembly agreed to the bill without any amendment.

FOOD BILL

The House of Assembly agreed to amendments Nos 2 and 6 made by the Legislative Council without any amendment and disagreed to amendments Nos 1 and 7.

Consideration in committee.

The Hon. DIANA LAIDLAW: I move:

That the Council do not insist on its amendments.

In this place earlier tonight, a number of amendments were passed in relation to a food advisory committee. I understand that those amendments have not been accepted by the House of Assembly. There was debate in the Council about the need for such an advisory committee. The government argued that the system of advisory committees and task forces, as proposed, would be more suitable to meet the very broad range of demands and interests that would have to be accommodated arising from this Food Bill.

I understand that those arguments have been given further consideration in the other place and it has determined that it will not support the amendments that we have made in this place on the basis of the strength of the argument that the concerns expressed by the majority of members in this place when they supported a structured food advisory committee will be met by the government's proposed structure of advisory and task force committees. Accordingly, in the light of the hour, I ask that we not insist on our amendments and facilitate the passage of this legislation rather than proceed to a conference.

The Hon. P. HOLLOWAY: I indicate that the opposition will accept the proposition that we do not proceed with the amendment. We do not resile from the fact that some sort of advisory committee is necessary in the transition period of the new Food Act, but it was my understanding that the minister in another place gave an indication that, since the passage of the bill from that place—and, unfortunately, I am getting this second-hand—he had established or was in the process of establishing—

The Hon. Diana Laidlaw interjecting:

The Hon. P. HOLLOWAY: Yes, I gathered that he was either in the process of establishing or had established a committee that would deal with the sorts of issues that we are talking about here and oversee the operation of the new Food Act. So, in those circumstances, we do not believe we should proceed to push the amendments and force a conference at this late stage.

Motion carried.

MOTOROLA

Adjourned debate on motion of Hon P. Holloway:

That, upon presentation to the Attorney-General of a copy of the report of Mr D. Clayton QC into issues surrounding Mr J.M.A. Cramond's inquiry regarding Motorola, the Attorney-General shall, that same day, pass the report to the President of the Legislative Council who shall, within one day of receipt, table the report or, if the Council is not sitting or the Parliament has been prorogued, publish and distribute such a report.

(Continued from 25 July. Page 2048.)

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

Line 3—Leave out 'that same day, pass the report' and insert 'as soon as is reasonably practicable, deliver it'.

Line 4—Leave out 'one day' and insert 'three sitting days'.

Line 5—Leave out 'a'.

Line 6—After 'report' insert 'within three business days of its receipt by the President'.

I indicate support for the motion: my amendments have been circulated. The amendments give a little more flexibility. The time frames within the original motion are unrealistic and, therefore, some flexibility is appropriate.

The Hon. P. HOLLOWAY: I thank the Attorney-General for his indication of support. I indicate that we will support the amendments that he has moved—they have been agreed between the government and the opposition. We look forward to the production of the Clayton report in due course.

Amendments carried; motion as amended carried.

GENETICALLY MODIFIED MATERIAL (TEMPORARY PROHIBITION) BILL

In committee.

Clause 1.

The Hon. IAN GILFILLAN: I take this opportunity to read into *Hansard* an article which I think we debated during the second reading debate and which the committee should find relevant. The *Stock Journal* of 26 July 2001, in an article entitled 'Food industry not prepared for GM crops', states:

Australia's agri-food industries are not prepared for the arrival of commercial genetically modified crops, according to a preliminary review of potential crop segregation costs. The extra cost of

segregating GM crops from non GM food could be as high as $35/t, well above the initial benefits. Logistics costs have come under the spotlight as part of a three year, federal government study into the feasibility of keeping GM and non GM products separate.

The study for the project has revealed agriculture and food industries are generally unprepared for the increased logistical demands, and face a potential blowout and segregation costs as a result. Co-author of this study Peter Flottmann, an agri-food industry consultant, said the GM issue was being treated in isolation by most supply chain players, and industry had yet to adopt a long-term view.

An ABARE cost study on GM canola segregation has revealed the introduction of herbicide tolerant varieties due in 2003 will not be justified if elaborate segregation or identity preservation systems are required. It found handling and marketing could be expected to increase by about 10 per cent, offsetting much of the agronomic gain.

Mr Flottmann said based on overseas experience, the costs of identity preservation for the grains industry was about 10-12 per cent of the sale price. 'If we equate that back to Australia, which is very difficult to do, it is probably an additional $25-$35/t', he said. 'In the short term there is a chance the benefits of this technology could get blown out the back door due to the costs.'

But he said costs could be lowered from those theoretical levels, because the Australian bulk handling network (for the grains industry) was world class and capable of handling the increased product differential. Unveiling the project plans, Agriculture Minister Warren Truss said Australian agriculture and food industries had to decide whether they would supply markets with GM, non GM, or a combination of the two.

The segregation issue was brought to the fore globally on the back of the Starlink corn case in the US last year, where GM feed corn contaminated non GM corn for human consumption in Japan. The failure of the segregation system cost the industry an estimated $US1 billion.

I read that into the record because it emphasises yet again the appropriateness for this legislation to be passed by the parliament so that we can avoid, what is at this time and possibly for some years ahead, the inappropriate step of accepting GM crops in South Australia.

Clause passed.

Clause 2.

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

Page 3, line 6—Insert new definition:

'council' means a municipal or district council and includes any body corporate that is, by virtue of any act, deemed to be, or vested with the powers of, a municipal or district council;

The amendment draws the bill into line with the federal position. In relation to my amendment to clause 3(1), it requires the minister to consult with local government and primary producers in the area proposed for prohibition. This allows for primary producers, local government and the state to consult so that, if there is a decision to be made for prohibition, it allows that process to occur.

My proposed amendment replacing clause 3(2) allows councils alone to declare part or a whole of its area a prohibited area. That, too, is in line with what the community and local government want, particularly local government councils on the West Coast, which are the ones asking for that sort of declaration to be made. I apologise for the amendments not being available 24 hours ago.

The Hon. J.S.L. DAWKINS: I indicate that the government will be supporting the amendments standing in the name of the Hon. Terry Roberts on behalf of the opposition.

The Hon. IAN GILFILLAN: I indicate support for the amendments. They are well and appropriately designed to reflect a deficiency in my original bill as a consequence of the passage of the federal legislation. The federal legislation does not envisage nor allow the possibility of a council (or councils) applying for a designated GM free area: it has to be through the power of legislation of the state government. Therefore, this is an appropriate series of amendments because they are consequential, and the emphasis on the consultation puts in statute the worthy motive that any minister, or representative of the state government, will be obliged to consult with the council of the area that is contemplated as being a GM free area.

Amendment carried; clause as amended passed.

Clause 3.

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

Page 3—

Line 18—Before 'The minister' insert:

Subject to subsection (2),

Lines 21 to 23—Leave out subclause (2) and insert:

(2) Before making, varying, or revoking a declaration under subsection (1), the minister must consult with the council that is constituted for the area in which the prohibited area will be or is located.

Amendments carried; clause as amended passed.

Remaining clauses (4 to 7) and title passed.

Bill read a third time and passed.

CRIMINAL LAW (LEGAL REPRESENTATION) BILL

The House of Assembly agreed to the bill with the amendment indicated by the following schedule, to which amendment the House of Assembly desires the concurrence of the Legislative Council:

No. 1 New clause 18, page 13, after line 28—Insert new clause as follows:

Reimbursement of commission

18.(1) The commission is entitled to be reimbursed by the Treasurer an amount by which the net cost of providing legal assistance for an assisted person exceeds the funding cap.

(2) However, the commission's right to reimbursement is contingent on—

(a) the Attorney-General's approval of a case management plan in relation to the relevant trial under the expensive criminal cases funding agreement; and

(b) compliance by the commission with the approved plan.

(3) If a case management plan complies with the criteria for approval fixed in the expensive criminal cases funding agreement, the Attorney-General must approve the case management plan.

(4) If the commission, after making reasonable attempts to reach agreement with the Attorney-General on a case management plan for the trial of an assisted person, fails to obtain the Attorney-General's approval, the commission may, by notice in writing to the assisted person, withdraw legal assistance.

(5) The commission must, in each of its annual reports, publish the text of the expensive criminal cases funding agreement as in force at the end of the year to which the report relates.

(6) In this section—

'Expensive criminal cases funding agreement' means the agreement to be made between the commission and the Attorney-General governing the approval of management plans for cases to which this section applies, and includes that agreement as amended from time to time;

'funding cap' means an amount fixed as the funding cap for criminal cases by the commission for a particular financial year;

'net cost' of providing legal assistance means the gross cost of providing the legal assistance less the amount of the contribution the commission has received or has a reasonable prospect of recovering from the assisted person or a financially associated person.

Consideration in committee.

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

That the House of Assembly's amendment be agreed to.

This is a money clause necessary to the structure and implementation of the legislation.

Motion carried.

STATUTES AMENDMENT (DUST-RELATED CONDITIONS) BILL

In committee.

Clauses 1 and 2 passed.

Clause 3.

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

Page 3, line 14—After 'dies' insert:
as a result of that condition

This amendment would bring the bill into line with the Victorian and New South Wales legislation. In those states, damages for non-economic loss survive the death of a person who is claiming damages for a dust-related disease only if the claimant died from that disease. This amendment would have the same effect. Unless this amendment is passed, damages for non-economic loss would survive the claimant's death whatever the cause of the death. There would not need to be any connection at all between the dust-related condition and the death.

In this context, members should note the very wide definition in the bill of a dust-related condition. It includes:

any other pathological condition of the lungs, pleura or peritoneum that is attributable to dust.

This would include conditions that are not terminal, incurable or even seriously disabling. For example, unless this amendment is passed, clause 6 would apply to a case in which a person who has a pleural plaque claimed damages for minor loss of respiratory function and the anxiety that he or she is suffering as a result of the knowledge of being at risk of developing a serious disease and then died in a car crash that had nothing to do with the condition. Unless this amendment is passed, it would apply to a case in which a person suffered a dust-related condition that caused some pain or suffering at the time but which had been cured before he or she died.

The Hon. NICK XENOPHON: I note that the Attorney opposes this bill but I appreciate that he has moved this amendment. It fulfils the original intent of the bill and it is a fair and reasonable amendment. It brings the legislation into line with the position in New South Wales and Victoria and I have no problems with the amendment and I will be supporting it.

The Hon. T.G. ROBERTS: To facilitate the carriage of the bill and to indicate support so it can go into another place, we will support the Attorney's amendment.

Amendment carried; clause as amended passed.

Clause 4 passed.

New clause 4A.

The Hon. NICK XENOPHON: I move:

Page 1, after line 39—Insert:
Transitional provision
4A. The amendments made to the principal act by this part extend to actions commenced before the commencement of this act, other than any action that has been finalised by a judgment of a court (whether or not the judgment is subject to an appeal), or settled or withdrawn, before the commencement of the act.

If there is a claim currently before the courts that has not been finalised and the plaintiff has died, the claim for non-economic loss continues to survive, as is the intent of this bill. The New South Wales act has a similar provision and it is consistent with that. It was the subject of consideration by the New South Wales parliament in 1998 and my understanding is that there are five claims currently before the courts where the plaintiffs have died of asbestos-related disease, and I understand that all of them relate to mesothelioma. This clause is a transitional provision to ensure that, if there are proceedings on foot and the plaintiff has died, the victim's family are entitled to claim non-economic loss because their claim will survive in accordance with the provisions of this bill.

The Hon. K.T. GRIFFIN: I indicate opposition to the amendment. I will gauge the response in the chamber and, if the numbers are against me, I will not divide. As has been indicated, this would mean that changes to the Survival of Causes of Action Act would apply to proceedings for damages for non-economic loss that have been commenced before the act resulting from the bill comes into force. Of course, the amendment would not affect proceedings that have been finalised or withdrawn, and that is confined to claims for damages for dust-related diseases.

If the amendment is not passed, changes to the Survival of Causes of Action Act would apply only to proceedings for damages that are commenced after the act comes into force. That is the fairer position. To apply the new provisions in accordance with the transitional provisions would to some extent be discriminatory. Certainly there would be an inconsistency about the way those who have settled their claims are dealt with on the one hand and those who have claims still on foot on the other, even if they had arisen at the same time—one settled before the legislation comes into effect, the other current at that time. I think that is an undesirable outcome.

The Hon. T.G. ROBERTS: We will be supporting the amendment moved by the Hon. Nick Xenophon. There will always be difficulties with a commencement clause in an application like this. There will always be cases that are not treated equally, but I suspect that there will be a number of very relieved families who will be satisfied by this clause, and we support it.

The Hon. M.J. ELLIOTT: I indicate Democrat support for the amendment.

New clause inserted.

Clause 5.

The Hon. NICK XENOPHON: I can indicate that I will not be proceeding with Part 3 of the bill, which relates to amendment of the Workers Rehabilitation and Compensation Act. I have had discussions with colleagues who are supportive of the first two parts of the bill which amend the Survival of Causes of Action Act but they do express concerns that amending the Workers Rehabilitation and Compensation Act may go further than the legislation interstate, for instance the recent legislative changes in Victoria. I appreciate that particularly there are concerns about its ramifications with respect to the workers compensation legislation, and the point has been made, and it is a valid point, that, in relation to the Workers Rehabilitation and Compensation Act, that applies for injuries that occurred or arose out of or in the course of employment subsequent to 30 June 1986.

We know in relation to dust diseases with respect to the exposure to asbestos that the number of cases where there has been exposure to a worker subsequent to 30 June 1986 would be negligible, on the basis that there were a number of mechanisms in place with respect to workplace safety. This is an issue that we could perhaps revisit at a later stage, but I am content to withdraw this part of the bill, given the concerns of some honourable members with respect to its

ramifications going beyond the reforms that have been moved in New South Wales and Victoria.

Clause negatived.

Remaining clauses (6 to 8) negatived.

Title.

The Hon. NICK XENOPHON: I move:

That the long title of the bill be amended by leaving out 'the Workers Rehabilitation and Compensation Act 1986'.

Amendment carried; title as amended passed.

Clause 1—reconsidered.

The Hon. NICK XENOPHON: I move:

Page 3, line 4—Leave out:

Statutes Amendment (Dust-Related Conditions) Act

and insert in lieu thereof:

Statutes Amendment (Survival of Causes of Action) (Dust-Related Conditions) Amendment Act.

Amendment carried; clause as amended passed.

The Hon. NICK XENOPHON: I move:

That this bill be now be read a third time.

The Hon. K.T. GRIFFIN (Attorney-General): The government does not support the third reading of this bill, but I can identify that the numbers are against me. The bill would operate to make damages for non-economic loss suffered by persons who suffer from a dust related condition payable after a person's death to that person's estate. As I said in my second reading contribution on the bill, the government disagrees with the policy of the bill and, as honourable members know, we have on this sitting day introduced our own legislation for further consultation, which the government believes will be fairer and will have a more general beneficial effect. Obviously, if this bill introduced by the Hon. Nick Xenophon is passed, the government bill and its policy position will have to be reconsidered.

We have two major policy objections to this bill: first, it is contrary to long-established legal and policy principles concerning the compensatory nature of the rationale for damages; and, secondly, it is discriminatory. The purpose of awarding damages is to compensate the person who has been injured for the losses that he or she has suffered or will suffer as a result of the wrongful act or omission of another person—or, obviously, as the result of a work injury.

The person I refer to as the claimant is the person who is entitled to damages. Damages for non-economic or non-pecuniary loss are awarded to the claimant as some sort of solace for pain and suffering, bodily or mental harm and curtailment of expectation of life that the claimant has suffered or will suffer, difficult as that is to measure in money terms. Although the right to damages for economic loss has survived the death of the claimant since 1940, damages for non-economic loss do not—and for good reason.

Sir Owen Dixon, a former Chief Justice of the High Court, in his article entitled 'The Survival of Causes of Action' (published in (1951) 1 University of Queensland Law Journal at page 1) said of the English act of 1934 which does allow for payment of damages for pain and suffering of the deceased to his or her estate:

> The death of a human being cannot in reason be made a subject of compensation to his estate. But it produces a profound effect upon the circle of people with whom he lives and among whom he moves. The question by which the law is really faced is whether survivors interested in his life should be compensated for the loss and injury they sustain from the wrongful acts causing his death and, if so, in respect of what interests. The common law answers the question by a flat and unqualified negative. Lord Campbell's Act—

and I interpolate that this is the same as part 2 of our Wrongs Act—

> answers the question by taking dependency as the test of interest, by forming a limited category of dependence and by giving them a qualified right to compensation. The Law Reform (Miscellaneous Provisions) Act 1934—

and I interpolate that this is the forerunner of our Survival of Causes of Action Act 1940—

> or more correctly the operation given to it, answers the question by giving to the persons who in a due course of administration of the estate of the deceased, creditors, legatees and next-of-kin, such amount as may be assessed on the footing of a just compensation to the deceased, as at the moment of his death for the pain and suffering undergone by him and for the loss of his expectation of life. Could anything be more absurd?

Sir Owen Dixon suggested in his article that consideration might be given by law reformers to whether, when the death of a person is caused by a civil wrong against the deceased, a person who had an interest in the continuance of the deceased person's life should be entitled to compensation from the wrongdoer in his or her own right. If the answer is yes, he suggested that the amount might be assessed by reference to the survivor's interest in the continuance of the life of the deceased and its destruction. In other words, the amount would not be measured by the amount of the deceased's pain and suffering and so on, which Sir Owen Dixon described as absurd, but by the relatives' own suffering and grief. Interestingly, this has been taken up to a limited extent by South Australia but not by some other Australian jurisdictions in allowing for awards of solatium for grief suffered on the death of a close relative.

The rationale for the rule that damages for non-economic loss do not survive death is also supported by the most highly regarded Australian texts in this area of the law. For example, Harold Luntz, an eminent author on the topic of damages, wrote in the third edition of his work 'Assessment of Damages for Personal Injury and Death' at page 381:

> No money can compensate a person who is dead for the pain and suffering previously undergone. Damages awarded under the heads of non-pecuniary loss merely constitute a windfall for the beneficiaries of the estate.

In relation to the English law, Luntz says:

> In England, if the beneficiaries of the estate are also entitled to damages under Lord Campbell's Act, the damages for non-pecuniary loss awarded to the estate are set off against their recovery, so the windfall is short-lived. However, if they are not entitled to damages under Lord Campbell's Act, the beneficiaries of the estate reap the benefit of the deceased's suffering. This would occur when the beneficiaries of the estate, whether by will or on intestacy, are not within the class of persons for whose benefit an action may be brought under Lord Campbell's Act or, even if within that class, had no reasonable expectation of pecuniary benefit from the deceased. It might be thought that such persons would be the least deserving of the law's solicitude.

In Australia, generally damages for non-economic loss do not survive the death of the claimant. An exception is that in some states and territories the right to these damages survives if the claimant dies from clauses unrelated to the claim for damages. If a claimant dies from the disease or injury that gives rise to an entitlement to damages, then the entitlement to damages for non-economic loss does not survive. Another exception to the general rule has been made in New South Wales and Victoria for the estates of people who die from a dust-related disease. The editors of *Laws of Australia* say at volume 33.10 paragraph 49:

> The Queensland, South Australian and Western Australian legislation bars the recovery of any form of non-pecuniary loss by the estate. This absolute bar to recovery makes good sense. To

permit recovery to the estate of damages for this most personal aspect of loss lacks a compensatory rationale and represents a windfall.

They also point out the incongruity of allowing loss of expectation of life as a head of loss in a survival action. Relatives and close friends who love and care for people who suffer from terminal illnesses suffer in their own way. Their suffering is different in nature and extent from that of the person who suffers the illness. Even if the law were changed to require employers and tortfeasors to compensate relatives as well as the victim, damages assessed according to the extent of the pain and suffering of the ill person would not be an appropriate measure of damages or compensation for the relatives.

The government is of the opinion that the changes proposed in the Hon. Nick Xenophon's bill are without any sound legal and conceptual basis. It would set a most unfortunate precedent in the law of this state. Although the government bill could result in some cases in a similar amount being paid to dependants of the deceased, it is grounded on a sound conceptual basis that is different from the Hon. Nick Xenophon's bill.

The second major concern of the government is that the Hon. Nick Xenophon's bill will differentiate between people in comparable situations purely on the basis of the nature of the illness suffered by the deceased person. The people who would be treated more favourably are the creditors and beneficiaries under the will or, in the case of intestacy, the creditors and next-of-kin of deceased persons who suffered from dust-related conditions. Those who would be treated less favourably are those who are liable to pay damages or workers' compensation in respect of dust-related conditions. Although it is recognised that some asbestos related illnesses are particularly unpleasant, that is not, in itself, a sufficient reason to enact a law that would treat their estates differently from all other Terminal illness caused by some other substances, process or traumas are also extremely unpleasant and distressing cases.

The government bill would address an unsatisfactory aspect of the law that was discussed by the Hon. Nick Xenophon, namely, that the law encourages defendants who believe that there is a fair chance that the claimant will die soon to delay resolving the claim, because the claimant's death will relieve them of a significant financial liability. The government bill targets that type of unconscionable conduct and it should provide an incentive for defendants and those who stand behind them to deal with the claims of people who suffer from mesothelioma, and any other illness or injury that puts them at risk of imminent death, as expeditiously as possible. The government bill would not discriminate on the basis of the nature of the illness or injury.

It might be possible to enact some other changes in the law that would assist in the quicker resolution of claims by people who have a very short life expectancy, particularly when their claim is for an illness that has a very long period of latency. These cases cause difficulties for both the claimant and the person who is alleged to be responsible for the illness. It is not easy to devise ways of expediting these cases in a manner that is fair to all parties. Any changes should apply to these cases generally and not just to those that are caused by inhalation of dust. Staff at the Attorney-General's Department are still examining possibilities for improvement in the law.

Some members of the public have been urging us to pass this bill on the basis that it would make the law the same as the law in Victoria and New South Wales and, although this bill has a similar motivation, it is not the same, but modifications which have now been made during the committee stage certainly improve it. I regret that I have to oppose the third reading of this bill, but it is on the basis of the concepts and the principles to which I have referred which, in the long run, I think ought to underpin our law so that it is fair and balanced and applies evenly.

The Hon. NICK XENOPHON: Whilst it is not correct to say that if a victim dies before a claim for compensation is finalised the estate or the family will get nothing, the claim is worth considerably less and, in most cases, very little. For most victims suffering from asbestos-related conditions, there is no claim for loss of earnings or loss of earning incapacity. This means that a claim is for damages, for pain and suffering, loss of expectation of life, past and future out of pocket expenses and past and future Griffiths v Kirkemeyer damages only. Awards for pain and suffering in relation to people who have contracted malignant asbestos-related diseases in the Dust Diseases Tribunal of New South Wales have been between $150 000 and $200 000. Awards for loss of expectation of life have been between $15 000 and $25 000. This means that, if a person dies before their claim is finalised, the estate will not recover between $150 000 and $225 000. All they will recover is damages for past out of pocket expenses and past care.

In relation to past out of pocket expenses, most of the award is made up of repayments to the Health Insurance Commission and health funds. It is highly unlikely that a claim consisting of out of pocket expenses and health care would result in an estate, once Medicare and the health funds are repaid, receiving more than $50 000 to $100 000. A claim finishing in the victim's lifetime would result in between $250 000 and $450 000 without any claim for economic loss. Even if there is a claim for economic loss, if the victim dies before proceedings are finalised then a claim must be brought by a dependent. In the victim's claim the award for economic loss is made regardless of dependency.

In relation to claims that the bill has selected one much publicised group of people, namely, those who have suffered from asbestos diseases, the Attorney seems to be saying that this group is no different from any other group of injured workers. This is not true. First, there is a significant amount of research as to the incidence of asbestos-related disease. The estimates as to the future cases in Australia exceed 50 000. This is just for malignancies. This is not a small number of people. At least three to four asbestos-related malignancies are diagnosed in South Australia each week.

Secondly, victims of asbestos-related diseases are exposed to material that the manufacturers and suppliers, large employers and the government knew or should have known was dangerous from at least the 1930s. Victims were not provided with any precautions that could have prevented their injuries or warned of the dangers to which they were exposed. The federal government was aware of the dangers of asbestos-related diseases from at least the 1940s. This is confirmed in correspondence discovered in proceedings before the courts. The federal and state governments, as employers, failed to do anything to protect their workers from inhaling asbestos dust and fibre.

Thirdly, the victims of asbestos-related disease bring claims in relation to exposures to asbestos 20 years to 40 years ago. The claims are difficult claims and require large amounts of investigation work by both plaintiffs and defend-

ants. This takes time. This is to be juxtaposed to the very serious nature of the victim's conditions. Their average life expectancy is between six and 12 months from diagnosis in relation to the condition of mesothelioma. There is no other large group of claimants that faces these difficulties and no other large group of claimants which has been exposed to a substance that governments—state and federal—and employers knew or ought to have known was dangerous and deadly since the 1930s and, at the very latest, the 1940s.

If the Attorney wants to ensure that there is no discrimination, as he puts it, between victims of asbestos-related diseases and victims of other diseases, then he should have proposed amendments to the bill that would have allowed damages for pain and suffering and loss of expectation of life to survive in any common law case. This is the case in the United Kingdom and has been the case since legislation was introduced by the Thatcher government in 1980. It is the case in many states of the United States of America.

In terms of the cost to the community, the Attorney has referred to that. The cost to the community is inconsequential. This has been seen by the New South Wales legislative changes and the recent Victorian legislative changes. The amendments will apply only in the event that proceedings were commenced prior to the victim's death. There could be five to 10 cases each year which would fit into this category. Since this bill was introduced last year I understand there have been five cases in relation to residents of South Australia where proceedings have been commenced and the person died prior to the proceedings being finalised.

In relation to the Attorney's statements that he is not protecting the James Hardies of the world, I think it is important to point out that a spokesman for James Hardie, Greg Baxter, told Bronwyn Hurrell in an article in the Adelaide *Advertiser* of Tuesday 6 March 2001:

> James Hardie supports the end of death bed hearings everywhere and lends its support to legislative changes.

It seems inconceivable that a major defendant to these proceedings appears to support the bill before the parliament and the government does not. But, obviously, that is something for James Hardie to take up further if it wishes to.

In relation to the bill that has been introduced by the Attorney, my concerns are many but these are just some of them. First, it seems that the bill would operate only if it can be shown that a claim was not finalised in the victim's lifetime because the defendant delayed unreasonably or unconscionably. The defendant will be able to argue that they are entitled to fully investigate their claim which, as it involves exposures to asbestos dust 20 years to 40 years ago, involves a considerable period of time. This places the onus on the victim's estate to prove that the defendants delayed unreasonably. It is a discretionary decision of the judge. Even if you are able to establish that the defendant delayed unreasonably or unconscionably, there is no indication as to the award of damages to be made pursuant to the statutory right to exemplary damages.

It must be remembered that the non-economic loss component will be between $150 000 to $225 000. Is it proposed that the statutory award for exemplary damages would be for sums of this amount? That seems to be entirely uncertain. I appreciate the work that the Attorney has done on this in relation to this bill but, in terms of the principles with respect to the bill that I have introduced, it is consistent with bills in New South Wales and Victoria and it is consistent with the concerns about the unique case affecting a large number of victims of asbestos-related exposure in this country. About 50 000 future cases have been estimated for Australia and, for that reason, I urge honourable members to support the third reading of this bill.

Bill read a third time and passed.

SELECT COMMITTEE ON CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (MISCELLANEOUS) AMENDMENT BILL (No. 2)

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

That the time for bringing up the committee's report be extended until Tuesday 25 September 2001.

Motion carried.

SELECT COMMITTEE ON OUTSOURCING OF STATE GOVERNMENT SERVICES

The Hon. R.D. LAWSON (Minister for Disability Services): I move:

That the time for bringing up the committee's report be extended until Wednesday 26 September 2001.

Motion carried.

SELECT COMMITTEE ON WILD DOG ISSUES IN THE STATE OF SOUTH AUSTRALIA

The Hon. IAN GILFILLAN: I move:

That the time for bringing up the committee's report be extended until Wednesday 26 September 2001.

Motion carried.

SELECT COMMITTEE ON INTERNET AND INTERACTIVE HOME GAMBLING AND GAMBLING BY OTHER MEANS OF TELECOMMUNICATION IN SOUTH AUSTRALIA

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

That the time for bringing up the committee's report be extended until Wednesday 26 September 2001.

Motion carried.

SELECT COMMITTEE ON THE FUTURE OF THE QUEEN ELIZABETH HOSPITAL

The Hon. J.F. STEFANI: I move:

That the time for bringing up the committee's report be extended until Wednesday 26 September 2001.

Motion carried.

SELECT COMMITTEE ON WEST BEACH RECREATION RESERVE (REVIEW) AMENDMENT BILL

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

That standing orders be so far suspended as to enable me to move that the resolution made on Friday 6 July 2001 for the committee to have leave to sit during the recess and to report on the first day of next session be rescinded, and the time for the committee to bring up its report be Tuesday 25 September 2001.

Motion carried.

The Hon. R.I. LUCAS: I move:

That the resolution made on Friday 6 July 2001 for the committee to have leave to sit during the recess and to report on the first day of the next session be rescinded, and the time for the committee to bring up its report be Tuesday 25 September 2001.

Motion carried.

RETAIL AND COMMERCIAL LEASES (GST) AMENDMENT BILL

The House of Assembly agreed to the bill without any amendment.

HINDMARSH SOCCER STADIUM (AUDITOR-GENERAL'S REPORT) BILL

The House of Assembly agreed to the amendment made by the Legislative Council without amendment.

ADJOURNMENT

At 2.14 a.m. the Council adjourned until Tuesday 25 September at 2.15 p.m.