LEGISLATIVE COUNCIL

Thursday 25 October 2001

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

The Hon. K.T. GRIFFIN: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

STANDING ORDERS SUSPENSION

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

FAIR TRADING (PYRAMID SELLING AND DEFENCES) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Fair Trading Act 1987. 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 amends the *Fair Trading Act 1987* by replacing the existing pyramid selling section with new, clearer provisions, and by tightening the defences available to those prosecuted for offences under the Act.

Two separate precipitants have given rise to consideration being given to the need to re-draft the pyramid selling provisions in the *Fair Trading Act 1987*.

A national audit of inconsistencies and deficiencies in consumer protection law initiated in 1996 by the Commonwealth identified the pyramid selling provisions in the *Trade Practices Act 1974* and State fair trading Acts as unclear and difficult to follow.

Accordingly, in December 1999, the Standing Committee of Officials of Consumer Affairs requested the Parliamentary Counsels' Committee to undertake a re-drafting of the prohibition of pyramid selling provisions in the *Trade Practices Act 1974*, with a view to the Commonwealth making amendments and States and Territories following suit in relation to their respective fair trading Acts.

Separately, the decision of the Supreme Court of South Australia in *Gilmore v Poole-Blunden* (1999) 74 SASR 1 identified, in the context of a prosecution under the pyramid selling provisions, the need to amend the general defence provisions under the *Fair Trading Act 1987* (and the *Trade Practices Act 1974* and other State fair trading Acts) if the unintended consequences of those provisions to be avoided in the future. In that case, the defendants successfully relied on the fact that they had received legal advice to the effect that the pyramid scheme in which they were involved was lawful, to avoid conviction.

In October 2000, in light of the decision in *Gilmore v Poole-Blunden*, the Standing Committee of Officials on Consumers Affair extended the brief given to the Parliamentary Counsel's Committee to include a review of the general defence provisions to avoid such an outcome in the future. The Parliamentary Counsel's Committee delegated the task of re-writing the provisions to the ACT Parliamentary Counsel.

The amendments will be introduced into other Fair Trading Acts interstate and the *Trade Practices Act 1975* shortly.

Pyramid selling provisions

The current pyramid selling provisions are contained within section 70 of the *Fair Trading Act 1987*. The proposed amendments simplify the language of section 70 and clarify its application without altering the intent of the section.

The pyramid selling scheme provisions will be amended to clarify the definition of such a scheme, a participant in it and what is meant by a 'payment' made in the context of such a scheme.

The basic elements of a pyramid scheme will be:

- A person makes a payment to a participant in the scheme to participate in the scheme; and
- The payment is substantially or entirely induced by a promise to the new participant; and
- The promise is that the new participant will be entitled under the scheme to receive a payment; and
- The payment is a payment in relation the introduction to the scheme of another participant.

The prohibition will extend to participation in a pyramid scheme and/or inducing or attempting to induce a person to participate in a pyramid scheme and a breach of either of these prohibitions will constitute an offence and attract a penalty.

Defence provisions

Section 88(1) provides a defence to a person charged with an offence under the Act if they can establish that they 'reasonably relied on information supplied by another person'. In *Gilmore v Poole-Blunden*, the court found that 'information' extended to legal advice. Accordingly, the defendants had that defence available to them.

The amendment simply re-words section 88(1) such that the construction upon which the defendants relied can no longer be sustained.

I commend this bill to honourable members.

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: Insertion of heading

This is a consequential amendment.

Clause 4: Repeal of s. 70

The provision of the Act dealing with pyramid selling is to be replaced with a new set of model provisions based on a 'plain English' rewrite (*see* clause 5).

Clause 5: Insertion of new subdivision

It is proposed to enact a new set of provisions relating to pyramid selling. It will continue to be illegal to promote or take part in a pyramid selling scheme. New section 74C provides that a pyramid selling scheme is a scheme by which, in return for a payment by new participants (a participation payment), the prospect is held out to them of obtaining a payment (a recruitment payment) for the recruitment of further participants in the scheme. However, as provided by subsection (1)*(b)*, the participation payments must be 'entirely or substantially induced' by the prospect of the recruitment payments. New section 74D sets out some criteria for determining what is a 'substantial inducement', especially in the context of marketing schemes.

In order to assist in an understanding of these provisions, the following examples describe different schemes so as to illustrate the factors relevant to determining whether a scheme is a pyramid selling scheme. (These examples are not exhaustive illustrations of how these provisions might work.)

Example 1—Non-marketing scheme

Silver dollar scenario

The silver dollar scenario is promoted by SDS Pty Ltd. Frank participates in the *silver dollar scenario* by obtaining a 'silver card' (the *original card*) from Emma.

- The original card has a list of five numbered names on it: (1) Alice; (2) Bruno; (3) Carla; (4) David; (5) Emma.
- Frank must make a total payment of $60 (the *participation payment* for s. 74C(1)*(a)*) to participate in the scheme: $20 to SDS Pty Ltd; $20 to Alice (at no 1); and $20 to Emma (at no 5).
- In return, SDS Pty Ltd gives Frank three silver cards for the recruitment of further participants. The names on the original card obtained from Emma have all been moved up, with Alice's name removed, as follows: (1) Bruno (2) Carla (3) David; (4) Emma; (5) Frank.
- The prospect is thus held out to Frank of obtaining two payments (*recruitment payments* for s. 74C(1)*(b)*) for the introduction of further participants:
  - $60 ($20 x 3) for the introduction of each of three participants directly by Frank himself; and
  - almost $5 000 (potentially) on Frank's name reaching no 1 position (by the chain of further recruitment initiated by Frank's three recruits).
- The silver dollar scenario is a *pyramid selling scheme* if, as indicated by these facts, participation payments by new participants are entirely or substantially induced by the prospect of their receiving recruitment payments.

Example 2—Marketing scheme for personal development workshop

Personal enrichment plan

Georgi is attracted by a scheme (the *personal enrichment plan*) promoted by PEP Pty Ltd. Through the plan, PEP Pty Ltd holds out the prospect that if Georgi joins the plan, he will receive payments for recruiting other members to the personal enrichment plan, and for the recruitment of still further members by those recruits, and so on (*recruitment payments* for s. 74C(1)*(b)*).

- Georgi is told that he must pay $2 000 to attend a 1-day personal development workshop presented by Hui, the author of a popular self-help book.
  - This is the *participation payment* for s. 74C(1)*(a)*.
  - This is also a payment for a service (supplied by Hui) (*see* s. 74D(1)).
- A comparable workshop in personal development with no recruitment aspects, and no connection with the personal enrichment plan, is offered by Raoul, an expert psychologist, for a payment of $500 from each participant.
- The fee required for attendance at Raoul's workshop, compared with the payment for Hui's workshop, indicates that—
  - the fee of $2 000 for participation in the personal enrichment plan may not bear a reasonable relationship to the value of Hui's workshop; and thus
  - the participation payment may be 'entirely or substantially induced' by the prospect of recruitment payments (*see* s. 74D(1)*(a)*).
- The small print of a promotional brochure given to Georgi states that he may attend Hui's workshop (by paying $2 000) without joining the plan).
  - But Georgi is not told this by anyone associated with the plan.
  - The lack of promotional emphasis given to the possibility of paying for attendance at the workshop without joining the plan also indicates that the participation payment may be 'entirely or substantially induced' by the prospect of recruitment payments (*see* s. 74D(1)*(b)*).
- The brochure does make it clear, however, that payment for attendance at the workshop would not of itself entitle Georgi to membership of the personal enrichment plan. There are two further conditions, as follows:
  - Actual attendance at the course and award of a course completion certificate by Hui.
  - Payment of an additional $300 'application fee' to PEP Pty Ltd.
  - Approval at an interview with an officer of PEP Pty Ltd.
- These additional membership conditions do not prevent the plan from being characterised as a pyramid selling scheme (*see* s. 74D(3)*(c)*).
- The personal enrichment plan is a *pyramid selling scheme* if, as indicated by these facts, participation payments by new participants are entirely or substantially induced by the prospect of receiving recruitment payments.

Example 3—Marketing scheme offering discounts

Discount dress club

Sally is given a brochure by a friend inviting her to participate in a scheme (the *discount dress club*) by paying a $200 membership fee to DDC Ltd, the promoter of the scheme (the *participation payment*).

- The brochure states that if Sally joins the discount dress club, DDC Ltd would pay her commissions if she recruits four further members of the club, and for further recruitment by each of those members, and so on. These are *recruitment payments*.
  - The commissions are partly in cash (financial benefits) and partly in the form of reinvestment in the discount club (non-financial benefits, potentially entitling Sally to further commissions). Both are *payments* for s. 74A
- The $200 payment would also entitle Sally to a 1 per cent discount on purchases from a small chain of five dress shops.
- The $200 is a *participation payment* for s. 74C(1)*(a)*.
- The $200 is also a payment for a service (the discount) (*see* s. 74D(1)).
- There are no directly comparable discount schemes currently operating with which to compare the discount dress club scheme. But the fact that the discount is small, and limited to a small chain of shops, indicates that—
  - the payment of $200 for participation in the discount dress club may not bear a reasonable relationship to the value of the discount; and thus
  - the participation payment may be 'entirely or substantially induced' by the prospect of recruitment payments (*see* s. 74D(1)*(a)*).
- Sally joins the discount dress club. As a member, Sally is entitled to the discounts, whether or not she recruits further members.
- But when she attends a workshop for new recruits, run for DDC Ltd by a company known as DDC Training Ltd, it is indicated that in trying to recruit members to the discount dress club, Sally should mention this only if the prospective member specifically asks.
  - DDC Training Ltd recommends that the response to such a question should emphasise the prospects of recruitment payments rather than the benefit of the discounts.
  - The lack of promotional emphasis given to the possibility of participating without recruiting further members also indicates that the participation payment may be 'entirely or substantially induced' by the prospect of recruitment payments (*see* s. 74D(1)*(b)*).
- The discount dress club is a *pyramid selling scheme* if, as indicated by these facts, participation payments by new participants are entirely or substantially induced by the prospect of receiving recruitment payments.

Example 4—Marketing scheme for garden products

Green fingers foundation

Graham becomes a member of a scheme (the *green fingers foundation*) that requires the purchase of garden products from the promoters, GFF Ltd, to a minimum value every three months.

- Graham becomes a member by agreeing to buy garden products from GFF Ltd to a required minimum value of $50 each quarter from the catalogue (a supply of goods for s. 74D(1)) (the $50 per quarter is the *participation payment*).
- As a member of the foundation, Graham is entitled to a small commission on the sale of garden products by the foundation to other foundation members whom he recruits. This is a *recruitment payment*.
- The prices of the garden products are on the high side, but comparable to the retail price of similar products of comparable quality available elsewhere. In addition, special deals are offered to members to allow them to obtain some products more cheaply than through retail outlets. These facts indicate that—
  - the participation payment may bear a reasonable relationship to the value of the garden products; and thus
  - the participation payment may not be 'entirely or substantially induced' by the prospect of the commissions (the recruitment payments).
- The green fingers foundation is promoted with most emphasis on the garden products available through the scheme, and the special deals available. The entitlement to the commissions is presented as an additional, but not essential, benefit from membership.
  - The promotional emphasis given to the marketing of garden products also indicates that the participation payment may not be 'entirely or substantially induced' by the prospect of recruitment payments (*see* s. 74D(1)*(b)*).
- The green fingers foundation is not a *pyramid selling scheme* if, as indicated by these facts, participation payments by new participants are not entirely or substantially induced by the prospect of receiving recruitment payments.

Clause 6: Amendment of s. 88—Defence

This amendment addresses the decision of the Supreme Court in *Gilmore v Poole-Blunden*. In particular, the majority of judges in that decision found that the reference to 'information' in section 88(1)*(b)* of the Act extended to legal opinions. In order to exclude this interpretation, the relevant paragraph is to be combined with paragraph *(a)*, and to refer to 'a mistake of fact caused by reasonable reliance on information supplied by another person'.

Clause 7: Corporations Law amendments

Schedule

The opportunity is to be taken to revise references to the *Corporations Law*.

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

STATUTES AMENDMENT (ROAD SAFETY INITIATIVES) BILL

In committee.

(Continued from 23 October. Page 2417.)

Clause 8.

The Hon. SANDRA KANCK: I move:

Page 6, line 7—Leave out paragraph (b) and insert—

(b) the driver of a motor vehicle in a prescribed area between prescribed times for that area,

I move this amendment although the substantive part of my amendments follows. This will be a test clause on the other amendments. What I am attempting to do in the substantive amendment is to further restrict the application of mobile random breath testing. The way that I would see it operating is, first, notification in a statewide circulation newspaper at least 48 hours before the mobile random breath testing would be instituted. In that notification in the newspaper, the police would have to describe the area in which they intended to apply the testing. I am, of course, aware of the possibility that that could be done in such a way as to bring in all of the state at one time, but it would certainly make it a little bit more restrictive. The police would have to be very determined to get around what we are trying to achieve here in terms of civil liberties.

The Hon. T.G. Cameron interjecting:

The Hon. SANDRA KANCK: Civil liberties—I do not know that the Labor Party even understands it, and it certainly seems that the Liberal Party does not. I put on the record in my second reading speech that I believe that this power will allow the police to discriminate against young P-plate drivers and against people of Aboriginal descent. I remain convinced that is the case and the reason that I am moving this is to restrict those police powers.

The Hon. DIANA LAIDLAW: I indicate to the honourable member that, although one of her 'powerful' arguments in moving this amendment is that the measure would discriminate against young P-plate drivers, the honourable member would be aware that, for a P-plate driver, no blood alcohol level is to be detected at any time. If there was any detected alcohol, they would automatically lose their P-plates, gain demerit points and lose the ability to drive. They should be very conscious at all times that there is no drink driving tolerated on an L-plate or a P-plate. Therefore, I do not see that one could argue that this would discriminate against young P-plate drivers. If they were picked up and tested positively to alcohol, they would, very obviously, be breaking the law. My view is that that should not be tolerated and it should not be described as an instance of discrimination.

I oppose the amendment and, while I have enormous regard for the Hon. Sandra Kanck on most occasions for the passion of the argument and the reasoning behind that argument, I think it is a cheap shot to say that the government does not have regard for civil liberties. The way in which we have deliberately structured this amendment highlights that we have focused it on the objective that we have stated, and that is road safety. In doing so we have had regard to the civil liberty concerns which I hold, which my party holds and which I knew would be expressed in this place.

Every road safety measure that we have ever introduced over the last decade has been, and in every instance in the future will be, a trade off between road safety and civil liberties. All road safety measures will be a trade off with civil liberties in some form, at some stage, and members of parliament have to understand that, whether it is lives, injury and the well-being of people generally, or whether we balance the issues of lives, injury, health-related costs and human trauma with those of civil liberties. I would argue very strongly that what we have done here with these amendments to the act that the government has introduced gives a fair and reasonable balance between the issues of road safety and saving lives, and the issues of informing the wider public at times when we know it is most dangerous on the roads, that is, when many people are on the roads, such as during school holidays, public holiday periods and four other periods nominated by the Police Commissioner and the minister.

This is not open slather mobile random breath tests, where at any time people can be picked up and breath analysed. This is at prescribed periods, and I highlight that no other state has the restrictions that we are suggesting be introduced in this measure. We have restricted this measure, notwithstanding the fact that no other state or any administration, whether Liberal, Labor or Coalition, has identified one issue in relation to civil liberties. No minister or shadow minister for transport in any other state has raised the issue of civil liberties and yet they provide for open slather for mobile random breath tests, and they have done so for years. What we are doing in this state is catching up to what has been regarded in other states as very important not only as an educative measure but also as an enforcement measure. We are simply catching up, but we are doing it in a limited fashion, which is—

The Hon. T.G. Cameron: Blindly following.

The Hon. DIANA LAIDLAW: That is a silly comment. If we were blindly following, we would have had open slather, as in every other state. We have tailored this measure to what I regard as an important consideration, and that is civil liberties. As I said, I knew that it would be an issue in this place, but it is also an issue for me and the government. What is important about road safety in future is not necessarily to have open slather measures that apply every day of the week, and an enforcement regime. It is important that we educate the community so that there is a community groundswell against the high cost and personal tragedy of road deaths and injury. That is what this is about—educating the public in relation to drink driving as well as enforcement.

What all honourable members have said in this debate, as I recall, is that a very large issue in the education of the public is the understanding that there is an effective deterrent. We know, from past records of death and injury on our roads, that certain periods are much more dangerous than any others, and we are focusing our deterrence—

The Hon. T.G. Cameron: Where is the evidence of that?

The Hon. DIANA LAIDLAW: Where is the evidence?

The Hon. T.G. Cameron: You have not put it forward.

The Hon. DIANA LAIDLAW: The member was a shadow minister of transport, and I assumed that he would have been informed—

The Hon. T.G. Cameron: Where is the evidence?

The Hon. DIANA LAIDLAW: The member did not ask for the evidence during the second reading, but I can provide—

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: I will provide that. I highlight that it is a known fact, and I can obtain the information, if the member needs it, in terms of Easter, Christmas and holiday periods. It is true, and that is why today we have the major public relations campaigns focused on these days, and it is why we are limiting the application of mobile breath tests to the periods of highest risk in terms of road death and injury. In addition, we are nominating four other times of the year.

I have an amendment on file (about which honourable members have been advised; it was circulated some time ago), which will require that those four additional periods are

publicly advertised, at least two days before the commencement of each prescribed period, in a newspaper circulating generally throughout the state. As all honourable members would know, anything to do with road safety is generally taken up by the media—radio, television and newspapers. I have no doubt that the interest in road safety generally taken by the media will ensure that the stipulation that the prescribed periods must be advertised will, in fact, have a very strong ripple effect in terms of education across the community. I have moved that amendment in the light of comments that were made during the second reading debate.

The Hon. T.G. Cameron: Do we have that on file?

The Hon. DIANA LAIDLAW: Yes, that was put on file about two weeks ago. I have also added a further amendment that was placed on file yesterday, because another matter came to my attention.

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: No, in my summing up of the second reading I mentioned that I had the amendment on file at that stage. That is generally what I want to indicate in terms of the government's consideration of this amendment: first, its road safety focus; and, secondly, its balance of issues relating to civil liberties.

I mentioned in my second reading explanation that, when rural road safety issues were generally considered by the Environment, Resources and Development Committee of the parliament some time ago, the committee considered the issue of mobile random breath tests and was conscious then that they should be advanced, as long as the parliament took account of civil liberty protections. This measure does as the committee recommended. In speaking to the tabling of that ERD Committee report on 9 December 1998, the Hon. Mike Elliott, who was a member of that committee, said:

> As long as there are proper civil liberty protections, mobile random breath testing is really a necessity if we are to tackle drink driving in country areas.

To that I say, 'Hear, hear!' I strongly endorse that sentiment, and that is why we have given proper regard to civil liberty protections. First, we have limited the number of periods where it applies—it will not apply 365 days of the year, 24 hours of each day. Also, we are publicly advertising the periods. As I said, that is far—

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: Yes, we do. It is in the bill. Of course I know how many days it will apply.

The Hon. T.G. Cameron: For how many days in the year will the prescribed period apply?

The Hon. DIANA LAIDLAW: There are four other periods in which it will apply—

The Hon. T.G. Cameron: Just the number will do.

The Hon. DIANA LAIDLAW: With the public holidays and the school holidays in the prescribed periods, probably about a quarter of the year, at the most.

The Hon. T.G. Cameron: You don't know, do you?

The Hon. DIANA LAIDLAW: Not every year has the same number of school holidays. I cannot indicate that.

The Hon. M.J. Elliott interjecting:

The Hon. DIANA LAIDLAW: Yes, so it may be an extra period. My hope is that it is at least 50—that is what I was aiming for each year—and we have structured it about that—

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: I just wonder whether the member cares about road safety at all, rather than just taking a very cheap—

The Hon. T.G. Cameron: Don't get testy.

The Hon. DIANA LAIDLAW: I am not getting testy. I am asking the member—

The Hon. T.G. Cameron: Don't get angry because you didn't know the answer to a question.

The Hon. DIANA LAIDLAW: I am asking the member to have regard to his responsibilities in terms of road safety, and to acknowledge that the government has had regard to civil liberties. The member may not think that we have had sufficient regard, but that is his move. As I said, we have limited it to what applies, and what has applied for many years, in all other states.

We have support for this measure from the AMA Road Safety Committee, and we have support from Jack McLean and the Road Accident Research Unit. Although we have support from the RAA, it highlighted the need to advertise the prescribed days, and we have accommodated that. We have strong support from the Motor Accident Commission—and that is a big issue, as all honourable members would know, in terms of premiums. We have support from the Law Society of South Australia—and it would always be interested in the civil liberties issue. We have support from People Against Drink Driving and, generally, from all other ministers of transport and shadow ministers of transport across the nation. I am confident that we are taking the right course of action in this measure. I oppose the amendments being moved by the Hon. Sandra Kanck in terms of prescribing the area in terms of the number of days when this measure will apply.

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: It is hard to actually reach Mr Cameron to listen to the grounds for an amendment, or opposition, because he will not stop talking to himself. What I would say is that we do not prescribe where random breath test stations are to operate and we do not have grounds for reasonable belief that a person has been drink driving when we pull someone over to a random breath test station. I do not think that in this instance we need to actually—

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: Yes, I have been through a random breath test station and I find that, when people see them, they generally go straight in there and breath test. If they are not drinking and driving there never seems to be an issue.

The Hon. T.G. Cameron: Your driver is the one who gets tested, not you.

The Hon. DIANA LAIDLAW: That is a cheap comment. I drive myself many times and I always have, and I see that the reaction to random breath test stations is almost unanimous support across this nation, and it certainly has been across this parliament until today's comments by the Hon. Mr Cameron. He may have had experience and he may want to explain to us why he is adopting this attitude, but I would say that we do not apply to random breath test stations, which have operated for some 25 years in this state, what we are now seeking to apply to mobile breath test stations in terms of prescribing the area of operation.

In fact, for the breath test stations we do not even prescribe the number of days on which they can operate: they can operate 365 days of the year. With mobile random breath testing we as a government, in the amendments before you, at least sought to prescribe the number of days, but I would not go as far as also prescribing the number of areas. That is an operational issue and would be restricted, anyway, by the number of police available for these tasks. We would not wish to pull them all off burglary and other crime investigat-

ions. This will be just one function that they will undertake among their many responsibilities in our community.

The Hon. CAROLYN PICKLES: I support the minister's amendment to this clause. In relation to the issue with civil liberties, I would like to refer to an organisation that has been to see me on a couple of occasions. People Against Drink Driving are people who have had family members killed by drunken drivers, and the issue of civil liberties is raised quite starkly by these people: what about the civil liberties of the people who are on the road when drunken drivers kill and maim people on the roads?

The Hon. Sandra Kanck interjecting:

The Hon. CAROLYN PICKLES: I think about the civil liberties of the police officers who have to go to the scene of a crash, and there was a particularly terrible one in the media last night. The images we get are of mangled cars, but what the police have to do is take the mangled bodies of men, women and children (and, as I understand it, children particularly upset them) out of cars. Believe you me, having worked for a period of time at the Road Accident Research Unit and having seen many photographs of the scenes of many crashes, I can tell members that it is not a pretty sight.

The people who work in the hospitals also have to deal with these mangled, broken bodies caused by people who are drunk and on the roads, and it makes me sick to think that we would want to curtail anything that would try to get the public more used to the fact that they should not drink and drive. The measure that this government has taken in initiating this mobile random breath testing is, as I have said over and over again until I am blue in the face, not something new for Australia. It is something that is enacted in every single state of Australia and has been for many years.

I have tried by discussions with ministers or ministers' staff to elicit any kinds of problems that have arisen out of that. Yesterday we passed an amendment that I moved that will cause a report to be brought back to the parliament, and that will go some way towards alleviating some people's reservations about it. But it is not an easy thing for the police. I keep hearing the denigration of our police force in relation to road safety measures, and I think of those police officers who have to go and knock on a door and tell some poor person that their husband, wife or kids have been killed in a road smash.

They need to have trauma counselling after some of these things. It is an indictment on members of parliament that they would denigrate the police who work in this area. They do a marvellous job, and I have actually had to sit down on many occasions and listen to some of the things they have to do—

The Hon. T.G. Cameron interjecting:

The Hon. CAROLYN PICKLES: Let's go into it. Let's realise what happens at a crash.

The Hon. T.G. Cameron interjecting:

The Hon. CAROLYN PICKLES: You are still alive, aren't you? You were not in bits and pieces, having to be scraped off the road by members of the emergency services. And then you have some drunken person staggering around who says, 'I didn't even know what I was doing.' It makes you quite ill to think about it. Quite frankly, I think that this is a minimalist measure. It is nowhere near as stringent as the measures in every other state of Australia, and I believe that the educative advertising that the government has already agreed to will also help to get that message through to people.

I remind members that by compliance with the National Road Safety Strategy we have to reduce the road toll quite dramatically in Australia. We always talk in terms of crashes, in terms of road deaths. We very rarely talk in terms of injury causation. I had a discussion with people from the Motor Accident Commission the other day and said that I would like to see far more statistics out there of the kind of accident causation that occurs, the kind of injury that occurs in terms of hospitalisation and economic loss, and try to analyse those sorts of effects on families, on their loss of work—

The Hon. T.G. Cameron interjecting:

The Hon. CAROLYN PICKLES: Quadriplegics, I heard the Hon. Terry Cameron interject. Many of them become quadriplegics. It is a very sad thing to see. A crash is caused by carelessness, in most instances. It is not an accident: it is a crash, and many times there are innocent victims. I know that the Insurance Commission takes the view that if you are actually on the road you are partly responsible. I have great admiration for the police who work at the scene of a crash, and the police who have to extricate broken bodies from cars where idiots—drunk, driving idiots—have caused terrible accidents that will cause pain forever to family members.

In the past I have talked to police officers who had tears in their eyes and trembling hands when they actually described what they had to deal with. We should think about those people when we think in terms of what the government is trying to do here. In my view, it is not perfect legislation, but I believe that the government has put in measures to answer some of the fears of people who think that the police will be overzealous. The amendment I put in last night will cause a report to come back to parliament. I do not think that this amendment adds anything to the legislation and I will be supporting the minister's amendment to the clause.

The Hon. T.G. CAMERON: I have some questions that I would like to put to the Hon. Sandra Kanck in relation to her amendment before I address some of the comments of the Hons Diana Laidlaw and Carolyn Pickles. In the Hon. Sandra Kanck's amendment to clause 8, page 6, line 7—and this is the difference between her amendment and the one being supported by the government and the opposition—it provides for 'between prescribed times' for the area. What does the Hon. Sandra Kanck have in mind in relation to those prescribed times, and does she intend that they go in the regulations or what?

The Hon. SANDRA KANCK: I will respond to some of what I have heard so far from the Hon. Diana Laidlaw and the Hon. Carolyn Pickles before I respond to the Hon. Mr Cameron's question. My amendment attempts to restrict the arbitrary nature of the application of this new law. The argument I have heard advanced against my amendment is of the George W. type, namely, if you do not support what the government is doing here you are in favour of drink driving. That is an absolute nonsense. I am as strongly against drink driving as the next person, and throughout the debate I have been advocating that we let the police get on with the job of policing the existing laws. If they were out there on a Saturday night pulling over all people driving erratically, they would be using their time far better than what this legislation attempts to do.

I believe that this will put police out on the roads using up valuable time for something that will produce minimal results. We have already seen how few people are found to have blood alcohol readings when they are pulled up at metropolitan RBT stations. I do not see the value of it in terms of the time that the police will be spending on this when they could be out policing the existing laws. There has to be some logic applied to this.

In terms of what the Hon. Terry Cameron has asked, by using the word 'prescribed' I am taking that to mean the sort of thing you would have in regulations. I am trying to limit the areas to force the police to advertise and say that they will be applying mobile random breath testing in a particular area bound by the following roads, or maybe a particular township or a local government boundary. It is an attempt to get the police to specify where they will operate the mobile random breath testing and also to place limits on the time that they can operate. At the moment, as it is currently worded, the whole of the school holiday period from when school finishes just before Christmas to when school goes back at the end of January is covered. I am attempting to place restrictions on that so it does not operate throughout that whole time. The minister could set times and say that over this 48 hour period is when it will apply.

The Hon. T.G. Cameron interjecting:

The Hon. SANDRA KANCK: I will listen to that, but whether there is much point in debating that is problematic because it is clear that I will lose on this regardless of how well we word it.

The Hon. M.J. ELLIOTT: I bought into this briefly during the second reading stage because I was a member of the ERD Committee and was quoted in this place. I certainly expressed the view as a member of the committee and in this place when the committee reported that there is difficulty with the current random breath testing process, particularly in country areas. There is no evidence that there is a problem in the city.

The Hon. Carolyn Pickles interjecting:

The Hon. M.J. ELLIOTT: Let me speak for myself, without interruption.

The Hon. Carolyn Pickles: You interrupted me.

The Hon. M.J. ELLIOTT: I do not believe I did. The committee qualified its report and I also qualified my statements in this place, so if somebody wants to use my arguments, mention the qualifications and then say that they feel that they have fulfilled them, I am the only one who can say whether or not the qualifications I made have been adequately fulfilled. We have always been very careful in relation to policing not to grant arbitrary powers. The very reason random breath testing at present works by taking a fixed position and stopping everyone who comes past is that it is then not arbitrary but genuinely random, and as such it is not the arbitrary application of power.

The ability to stop anybody without reasonable cause is totally arbitrary and is therefore capable of misuse. I suggest that 97 per cent of the police force would not misuse it, but from time to time a significant but small minority would do so. They may have feelings about race or perhaps they want to stop a good looking girl who is driving past or whatever. It does happen—even now, unfortunately. An arbitrary power capable of misuse will be misused. We are trying to say, 'How can we tackle this problem of drunken driving, particularly in country areas, and how do we weigh that and the deaths and injuries that result against the granting of arbitrary power?' It does not have to be an either/or situation. When the committee reported and I spoke I said that I would be supportive as long as there were genuine reasonable attempts to control its arbitrary nature.

What we have before us in this parliament at the moment does not control the arbitrary nature of what is there. If it is 365 days or 80 days, does that really contain the arbitrary power? Not in any real sense. So far as we are trying to weigh up the times of higher accidents against lower accidents, we are saying that outside those 80 days the misuse of the arbitrary power is too great a risk, but during those 80 days the risk of accidents is too great. It is almost like we have scales we are tipping in and out of the 80 days.

Even the amendments we have put forward have a similar problem, but we are reducing it so there are fewer days. We are going to those days when we know that there are a lot of people on the road and, unfortunately, a lot of drunk people. Christmas Day, Boxing Day and so on—it is not too hard to pick the days. That reduces it to about 15 or 20 days. It has the same sort of difficulties, but in tackling the problem about death and injury you are trying to focus on the areas where the problem is most significant as you seek to achieve a balance. There could have been other mechanisms, and when I spoke in the second reading I suggested that personally I am not fussed about whether or not it is advertised so much as it is registered. The fact that you know it will apply for two days means that you might react by not drinking during those two days.

The Hon. Carolyn Pickles: Not drinking and driving.

The Hon. M.J. ELLIOTT: Yes, but there could be an internal mechanism that registered in advance that in a particular district for a particular day there would be random breath testing of the sort proposed. That is happening on a limited number of days and under carefully prescribed conditions, which is more effective because people do not know on which days it will occur. When you know that something will happen, it has some effect but a lesser effect than when you do not know.

The Hon. Diana Laidlaw: The Democrat amendment seeks to publicise the area, which is contrary to what you are saying.

The Hon. M.J. ELLIOTT: I am afraid that you did not listen to everything I said. You have tuned in and out and I will not go through all that territory again. It will all be there in *Hansard*.

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: You have to be careful not to avoid the qualification. The qualification I talked about was that you really need a set of conditions, almost standing orders, that relate to it, and frankly those standing orders that relate to the application of those discretionary arbitrary powers should be subject to parliamentary approval. I have seen the arbitrary use of powers, and at the moment it is very difficult to do.

But we are moving away from the past where police needed reasonable cause to act to having no cause whatsoever other than the possibility that anyone at any one time may or may not be over the limit and where the police can, on the spot, simply say, 'I'm going to stop that person'. On what basis will they decide to stop that person? We cannot call it random because it will not be random.

The Hon. T.G. Cameron interjecting:

The Hon. M.J. ELLIOTT: What thought process? The process is: 'I will stop that person.' For what reason will they choose to stop people? If they are under instruction—

The Hon. T.G. Cameron: We were to have guidelines to help them with who they should and should not stop, apparently.

The Hon. M.J. ELLIOTT: But these guidelines should be subject to parliamentary approval. If, having stopped one person, the moment that that person went, they immediately stopped another person, as distinct from saying, 'During these 80 days, I will stop a person for no obvious reason other than that I have the power to do so', the arbitrary nature of that is

open to abuse, and it is something to avoid. This parliament was asked to do something similar for a different reason: we debated the random stopping of cars to check for fruit.

Members interjecting:

The Hon. M.J. ELLIOTT: It could be said, 'If you are not prepared to support this, then you obviously want fruit fly to decimate South Australia's fruit industry'—to use the same sort of arguments that are now being used about people being injured. No. We are saying that we should apply the current powers properly. If we had 24 hour checkpoints, rather than doing it for just eight hours a day—

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: She cannot help herself. We saw then a pursuit of random testing, largely because the other processes were failing, and that was because we were not doing them properly. This parliament quite rightly said that we would not agree to something that is so arbitrary in its application. It would be inconsistent—

The Hon. Carolyn Pickles interjecting:

The Hon. M.J. ELLIOTT: Five years, and all things have changed since then. The arguments are, essentially, the same style of arguments that we had then, but some people do not have long enough memories to remember what was a good argument then and what remains a good argument.

Members interjecting:

The Hon. M.J. ELLIOTT: But it is not arbitrary. That is the point I make. If you go to a border checkpoint, when fruit is involved, it is not arbitrary because—

Members interjecting:

The CHAIRMAN: This is no way for a committee to proceed.

The Hon. M.J. ELLIOTT: I agree, Mr Chair.

Members interjecting:

The CHAIRMAN: Order!

The Hon. M.J. ELLIOTT: Given the interjections, I will have to reiterate. The point you could make, whether you are talking about searching for fruit at the border or roadside random breath testing, as it now applies, is that everybody who arrives at that point is likely to be pulled over and checked without any arbitrary decision being made. To that extent it is genuine random testing and not capable of arbitrary abuse. However, if you go to just stopping anybody, without any cause other than that you have the power to do so and you simply chose to do it with this particular person, that is an arbitrary application of power which is capable of abuse. That cannot be denied.

What we must do in this debate is justify the granting of an arbitrary power, which is capable of being abused, against the concern about death and injury in accidents, which is a legitimate concern: we have two legitimate concerns we are trying to weigh up. In the committee report, and in earlier comments, I said I believed that they could be compatible. I never for a moment suggested it would be easy but I believe they could be compatible. However, I do not believe the model before us at this stage adequately addresses the issue of the random use of power. Perhaps if we had before us the operating guidelines, and things like that, and they had to be ratified—

The Hon. T.G. Cameron: Where are the regulations?

The Hon. M.J. ELLIOTT: —we might be able to address that. If there are regulations we should see them first. So, it is not necessarily an argument against what the government is trying to achieve: it is an argument against the mechanism that it is currently seeking to use. I do not want to be in a position in later years of saying, 'I remember when we opened Pandora's box in relation to the arbitrary granting of powers'. Once you do, it becomes a further excuse to do more and more in a whole range of areas. We know with phone taps, for instance, that, if police could just tap anyone, any time, without getting a warrant, they would probably catch more people with drugs than they do now. Yet we have been very careful about the granting of those sorts of powers.

Once you have an arbitrary power you know it is incapable of being misused as well. So, when we talked about phone tapping, and things like that, with good and legitimate reasons for granting those powers, we always sought to make sure that there were proper checks and balances. Like that record that keeps repeating itself, I am saying the proper checks and balances are not here. It is quite different from talking about the motivation of the minister and what the minister is seeking to achieve, which is reasonable. I would have to ask—and I raised this by way of interjection earlier—whether or not we really are working hard enough in other areas.

We know that there are laws about the serving of drunk people in hotels, and I would be really interested if the minister could tell us how many hotels have been prosecuted for serving people who are drunk. While some of them might catch a taxi or a bus, or walk home, we know that most of them do not; they still go and get in a car. I am sorry, but it has to be a reasonable guess that a fair number of people who are out drunk on the roads and not getting caught by RBT have left a licensed premises. So if the government is serious about this, I would like to see evidence that they have actually been pursuing these other paths and I would ask the minister to tell us in this place how many prosecutions have ever taken place in relation to serving alcohol to people under the influence.

The Hon. T.G. CAMERON: I wish to go back to the Hon. Sandra Kanck's amendment because I am making up my mind as to whether I should support it over and above the government clause, which I think has some deficiencies, which I think the Hon. Sandra Kanck is attempting to pick up. If I can go back to a question I earlier put to the minister by way of interjection, and she, correctly, chose to follow the standing orders and to not answer my interjection: which was how many days of the year will be caught by paragraphs (a) and (b)? It says:

> . . . a period commencing at 5 p.m. on the day immediately preceding the start of a long weekend and finishing at the end of the long weekend;

Are we to assume that at the end of a long weekend means 12 p.m. on the Sunday night, or would it mean 12 p.m. on the Monday night?

The Hon. Diana Laidlaw: Sunday night.

The Hon. T.G. CAMERON: Okay. And the same would apply, would it not, to paragraph (b):

> . . . a period commencing at 5 p.m. on the last day of a school term and finishing at the end of the day immediately preceding the first day. . .

That would still be 12 o'clock at night?

The Hon. Diana Laidlaw: I will answer your questions in bulk when you have concluded.

The Hon. T.G. CAMERON: Right, okay. If I go to paragraph (c), that one seems to be quite different to paragraphs (a) and (b). It says:

> . . . a period commencing at a time determined by the minister and finishing 48 hours later (provided that there can be no more than four such periods in any calendar year);

My interpretation of that is that that would be for four two-day periods. I mean, it might be for a one-day period, but that is the maximum that that would be for. However, I cannot see in paragraph (c) a clear definition of the starting and finishing times for those periods. It would seem to me to make a great deal of commonsense to have that, if the minister is going to set down these periods. We will not know when they are coming, I guess, but that will be picked up perhaps by advertising. I would be interested to hear from the minister whether there is an intention to ensure that any of these other periods have the same time frame as those covered by paragraphs (a) and (b).

In relation to the amendment moved by the Hon. Sandra Kanck, I address myself specifically to clause 8, page 6, and paragraph (b). I would have thought that this amendment provides the government with more flexibility in terms of being able to use more of a bullet approach to drink driving, and that is, target the offenders where the offences are occurring. If one was to contrast the approach by the Hon. Sandra Kanck with that of the government, the government's approach seems to be saying, well, when we prescribe these periods it will be for 24 hours a day until we pull them off and they will operate in a blanket fashion right across the state.

To me, and the minister should know this information more accurately than myself, I would not have thought that drink driving offences are occurring equally across the state, and that there may well be some merit in giving the police the capacity, for example, in certain areas. This is not a slight against the good citizens of any area that we might refer to, but evidence may be coming back that for a given period drink driving offences are occurring with more frequency than in other areas. However, it would seem to me that the wording of the government's bill means that we would not be able to specifically target a problem area.

For example, if you were to invoke paragraph (b), and you wanted to deal with a specific drink driving problem in a certain area, you have tied your hands, because when you do invoke paragraph (b) it has to be across the state and it has to be 24 hours per day. One would have thought that an opportunity may arise where you want to use a bullet approach to deal with a specific problem in a specific area. That is what I think the Hon. Sandra Kanck is talking about. Why invoke a sanction for everybody across the state when what you are really trying to deal with is a localised problem?

If we again go back to the amendment standing in the name of the Hon. Sandra Kanck, she also provides flexibility for the government by giving it more flexibility in relation to prescribed times. I do not have the figures in front of me, but I would perhaps request that the minister provide the parliament with a matrix of what times of the day drink driving offences are occurring. I think if she looked at that she would find that we are not catching very many people perhaps between the hours of 5 o'clock in the morning and 12 o'clock during the day and that the number of offences probably increases after a boozy lunch; and probably jumps again at about 8 o'clock or 9 o'clock, when people are either heading home from a dinner or they have been out enjoying themselves; and they may well spurt up again after 12 o'clock through to about 2 o'clock as a few people leave nightclubs, etc.

That raises the question: if the police have difficulty with the proprietors of a nightclub or restaurant or whatever, could they soon bring them to heel by perhaps discriminating against their patrons by concentrating on that establishment? I use that as a further example of some of the inherent dangers in this legislation. I will be interested to hear the minister's response to paragraph (b). I will come to the rest of the Hon. Sandra Kanck's amendment after I have heard that.

The Hon. DIANA LAIDLAW: I thank the Hon. Sandra Kanck and the Hon. Terry Cameron for their most recent contributions and for confirmation of their commitment and the redefining of what I had perhaps misunderstood as their position. I acknowledge that the Hon. Sandra Kanck is not moving to oppose this clause; she is moving to use the basis of the government's amendments as a ground for her further amendments to restrict the application of mobile random breath tests. As I read it—and I say this so that I understand her position—she is not fundamentally opposed but is seeking a further restriction to those that the government has already provided in this measure and, certainly, restrictions over and above those that apply in every other state across Australia.

The Hon. Terry Cameron, in earlier interjections when I was speaking, asked on how many days this will apply. I said initially that it will be about 70 days, but it is my wish to have at least 50 days. The clarification I have received from the Minister for Education and Children's Services is that the official school holidays in 2001 comprise 19 days in January, nine days in April, 10 days in July, 10 days in October and 11 days in December. Of course, in any given year this may vary.

The Hon. Carolyn Pickles: Some of those coincide with public holidays as well.

The Hon. DIANA LAIDLAW: They can, yes. That is right, because over Easter, for instance, there would be public holidays. There are 10 public holidays in South Australia each year. So, there are 59 official holidays when people do not attend school this year, plus 10 public holidays, which is a total of 69 days. In addition, the government has provided in new subsection (8)(c) that there are no more than four additional prescribed periods with a total length of 48 hours. So that is a total of 73 days based on school holidays this year.

The Hon. T.G. Cameron: Wouldn't it make sense to have a prescribed period operate for the same hours because of the way you have drafted it?

The Hon. DIANA LAIDLAW: It may well be that the minister does that, yes.

The Hon. T.G. Cameron: You are the minister.

The Hon. DIANA LAIDLAW: No, it is the Minister for Emergency Services in charge of police operations. It is not me.

The Hon. T.G. Cameron: I would like to put a question to him to find out what is in his mind.

The Hon. DIANA LAIDLAW: I can convey that, unless you wish to speak to him directly. I cannot speak for him at the moment. What I have from the minister is that it was always intended that the prescribed periods be publicised, and we have made that very clear in the amendment that I have on file.

In relation to some of the other issues, I do not represent the hotel and liquor trade in this state but the Attorney-General's bill in regard to the Liquor Licensing Act is before us at present and the Hon. Mike Elliott might use that occasion, or I will ask the Attorney about the number of people under the influence of alcohol in hotels who have been prosecuted. I do not know that figure.

The Hon. Terry Cameron talked about a bullet approach whereby the government could target problem areas.

Essentially, by introducing this measure of random breath tests, we are targeting by a bullet approach, that is, we are targeting an area that we know is a problem. I agree with the bullet approach in principle and we seek to do that by this measure because we know that, principally, we cannot operate random mobile breath tests in country areas because of operational issues. I am aware from earlier discussions with the Hon. Carolyn Pickles that the New South Wales experience is that there are seven to nine—

The Hon. Carolyn Pickles: Seven to 10 times more drunk drivers picked up.

The Hon. DIANA LAIDLAW: —times more drunk drivers picked up by mobile random breath tests. Of course, mobile random breath tests in New South Wales operate 365 days of the year and we are limiting ours to about 73 days a year, so it is a very different proposition that we are introducing. But, we are taking the bullet approach, or the targeted approach, by nominating the days of greatest risk of road crash, death and injury which are known from road profiles and experience.

I say to the Hon. Mr Cameron that under the prescribed periods proclaimed by the minister we can deal operationally with an issue such as, let's say, the South-East or the Mid North or whatever. We do not need the amendment suggested by the Hon. Sandra Kanck which enables us to just prescribe an area. Operationally, we can focus on that area and, in fact, I understand that, from time to time, the police take the whole random mobile breath paraphernalia to focus on an area. We know that the Sturt Highway is such an area at the present time.

In relation to the matrix of drink driving offences throughout any 24-hour period, as I understand it, the decision of the police to operate random breath test stations at certain locations and times uncovers the most surprising results. For instance, I recently came back from Melbourne on an early morning flight and the random breath test station was in King William Street at just after 6 o'clock in the morning. The police reportedly that day caught more people drink driving coming out of the city than they would wish. That is not an hour that the honourable member nominated as one when he would have suspected—and nor would I—a high number of people would be caught.

Members interjecting:

The Hon. DIANA LAIDLAW: Well, when I was younger I was probably leaving nightclubs at 6 o'clock as well. Anyway, it was not one of the periods that the Hon. Terry Cameron nominated, but I indicate a certain effective period in the country and metropolitan area to address this area of drink driving. I think I have answered the questions of the honourable member which have been put to me to date.

The Hon. SANDRA KANCK: I am glad that the minister is now actually recognising that I am attempting to stop the arbitrary application of this testing. Given that it is quite clear that my amendments are not going to succeed, if, in the application of this legislation proof emerges of arbitrary application and discrimination against particular groups in the community, would the minister be prepared to either introduce regulations based along the lines of the wording that I have here or bring the act back to parliament for further amendment along these lines?

The Hon. DIANA LAIDLAW: It has been good, in the course of this debate, to clear up some misunderstandings of various people's positions. I hope, based on the last remarks by the honourable member, that she will recognise that, at heart, I am a civil libertarian, but I am trying to balance the various issues. I indicate, as has the Hon. Carolyn Pickles via her amendment that we passed a couple of days ago, that there will be a report back to the parliament in two years. I undertake to obtain a commitment from the Minister for Emergency Services in the other place when the bill is there to outline the way in which he believes that the Commissioner will order the operation of such mobile random breath test operations, because this is an operational issue that neither the Minister for Emergency Services nor the Minister for Transport would be involved in. It is an operational issue in this state and, very definitely, that is the province, whether we like it or not, of the Commissioner. This is stated very specifically and the police are very conscious of it. I know that because I have had some bright ideas about how they might be able to operate differently!

I will ask the Minister for Emergency Services to ask the Commissioner about the operation of this provision. People may have various views about the police, but they have to work within our community and they must work with members of parliament generally and with parliament as a whole. I have no doubt that they will read this debate and become aware of the sensitivity of the issues that all members of parliament have expressed and seek to accommodate those sensitivities, as well as the responsibilities with which we are empowering them to undertake.

While the bill is transmitted to the House of Assembly I will speak to the Minister for Emergency Services and reinforce those sensitivities and ask for those matters to be addressed. Those sensitivities and matters can be addressed in the report that must come back. Those measures and matters must be considered by the police in reporting back on this issue.

The Hon. R.R. ROBERTS: I have listened to this debate for some time and I am comfortable with the position that has been taken by the Labor Party. The Labor Party has agreed to what we are trying to do here. What I am interested in now, as I think my colleagues would be, is the 'how'. Even the Democrats have agreed with what the government is trying to do, as has the Hon. Terry Cameron. But what we are all interested in is how you are going to do it: by that I mean, as with every other one of these operations, if we look at the random breath testing regulations now, they are quite complex. Indeed, on a number of occasions this parliament has had to reconsider those regulations against legislation and the application of those regulations.

The Hon. T. Crothers interjecting:

The Hon. R.R. ROBERTS: Indeed, this minister has had to change those regulations to make them appropriate. What we are doing now is extending the random breath testing legislation to make it 'random' rather than 'organised'—I suppose that is the shorthand way of saying that. Regardless of the arguments of individuals, that principle has basically been agreed to and, listening to the debate today, I think there is consensus on that. What I am concerned about is some of the things that the Hon. Mike Elliott has raised about how it will happen, the times and whether it ought to be advertised. I think that is a genuine argument, but how will this be implemented in the regulations?

Will these regulations be drawn up and put forward under a 10AA(2)? In other words, if this legislation is passed by the end of this session, will a 10AA(2) be lodged and the regulations implemented straightaway, or will it be worked under the intention of the existing subordinate legislation provisions in that the regulations are brought forward for scrutiny either by the parliament or by proper time being

given for consultation and comment by the general public or interested groups? I do not want to get into a debate about how it will start. I want to know, if this legislation is passed—and I would like to see the regulations—will the regulations come in under 10AA(2), or is it the intention of the government to allow the legislative review provisions to be enacted in the way they are written?

The Hon. DIANA LAIDLAW: Most pieces of legislation require regulation. I have just clarified this matter with parliamentary counsel: no regulations are required to implement this measure. It is simply proclaimed. We can have staggered proclamation dates in relation to relative provisions. So, I indicate that the measure does not need regulations.

The Hon. R.R. ROBERTS: Are you saying that all the other regulations that are in place for random breath testing—the requirement to explain, the explanation of options and blood testing kits—will still be necessary under this legislation? I think the answer should be yes.

The Hon. DIANA Laidlaw: Yes.

The Hon. R.R. ROBERTS: What you are saying is that there is no need for any further regulation in respect of this matter?

The Hon. DIANA LAIDLAW: No further regulations are required to implement this measure.

The Hon. T.G. CAMERON: In relation to new subsection (8)(c), 'a period commencing at a time determined by the minister', can the minister indicate when these periods will occur during the year? Will they be of one or two days duration? Will they be subject to the same timeframe as clauses 8(a) and 8(b)? What criteria will the government be using to determine when it does announce one of these prescribed periods under clause 8(c)?

The Hon. DIANA LAIDLAW: I am not the minister responsible for the implementation of this measure. The honourable member will see that, under new subsection (8), the definition of 'minister' is 'the minister responsible for the administration of the Police Act 1998'. I am advised that the minister must follow what is defined in terms of new subsection (8)(c), which provides:

> a period commencing at a time determined by the minister—

so, there is discretion in terms of any 24 hour period on any given day—

> and finishing 48 hours later—

he (or she at another time) may wish that it be 24 or 36 hours, but it cannot be longer than 48 hours—

> . . . (provided that there can be no more than four such periods in any calendar year);

So, the time of triggering the proclamation and the duration up to a maximum of 48 hours on any given day for four such periods in any calendar year is at the discretion of the Minister for Police. But, as I have indicated in my amendment that is on file, that must be advertised publicly at least 48 hours beforehand so that the general public and visitors to the state are informed of the proclaimed period that the Minister for Police has determined.

The Hon. CAROLYN PICKLES: Did I hear the minister correctly that she would ask the Minister for Emergency Services in another place to outline (in general terms, without divulging any difficulties) how the police will go about their business with respect to this application, since there are regulations to set out any details? How the police conduct an RBT is certainly in the regulations. Because of concerns expressed in this place, can the minister ask the Minister for Emergency Services to put on the public record how the police will be asked to go about this procedure?

The Hon. DIANA LAIDLAW: I certainly indicated that I would speak to the Minister for Police, Emergency Services and Correctional Services. In turn, he will have to speak to the Commissioner of Police. If this bill is passed today, my request will be that, before debate commences in the lower house, every member of the Legislative Council receive a copy of the Minister for Emergency Services' reply to these questions. Debate will not commence in the lower house. If members have further concerns, they can either alert me or the Hon. Michael Armitage, who now represents me in the other house. Certainly, the opposition and others can alert the Minister for Police about their further concerns. As I said, this is seen as important reform. We want it to work well and, in road safety terms, we recognise that it is a balance with civil liberties, and we want to get it right.

The Hon. T.G. CAMERON: Again, with respect to paragraph (c), I am not aware offhand (but I am sure that the minister would know the answer to this question) whether any public holidays occur during the year that do not comprise a long weekend.

The Hon. DIANA LAIDLAW: Anzac Day would be one.

The Hon. T.G. CAMERON: If that is the case, those holidays are not covered by this subsection, are they? Is that because the government is aware that, on those holidays that occur during the week, people do not drink and drink driving offences are not occurring, and the reason why the government has decided to restrict it to school holidays and long weekends is that it has the evidence to support its view that that is when drink driving offences are occurring, so they are the times of the year that we need to target?

The Hon. DIANA LAIDLAW: I have never suggested that Anzac Day, for instance, which may not necessarily be part of a long weekend, is a time when people do not drink and drinking does not occur. I am sure the member does not live in a different world from me in terms of activities on Anzac Day after all the formalities are over. It may well be that the Minister for Police will proclaim that, over a 24 hour period (but not necessarily every Anzac Day), that the Anzac Day holiday plus some hours both sides of it is a prescribed period—one of the four in the year. That may be possible.

An honourable member interjecting:

The Hon. DIANA LAIDLAW: Proclamation Day is, generally, for convenience, cobbled together with other days. I do know that people want to see it stand separately, but it is not my understanding that it does stand separately. I think it is only Anzac Day that is always held on the 25th, irrespective of whether it is a weekend or a week day.

I indicated in my second reading explanation that, thinking through the measures now before us, we took periods of high activity on the road, not just periods of high drinking in the community. That is why we have looked at school holidays, because that is generally when more people are on the road, and more people on the road means more potential for trouble.

The Hon. T.G. CAMERON: I thank the minister for her answer. She has pre-empted, to a degree, my next question. Paragraph (b) provides:

> a period commencing at 5 p.m. on the last day of a school term and finishing at the end of the day immediately preceding the first day of the following school term;

I have been listening very carefully to what the minister has been saying as to the reasons why this legislation is necessary. There have been some excellent contributions in this

place today, I guess, on both sides of the argument—how do we tackle this problem of drink driving while, at the same time, ensuring that we protect the rights of the individual and protect peoples' civil liberties? One of my concerns is that this parliament, when it carries this bill, will once again require the police to carry out a task that may well make them unpopular with the public. The first question that will be asked by an individual who is stopped and given one of these mobile random tests will be, 'Why me? Why, of the vehicles on the road, was I pulled over?'

The first question that an individual driver will want to know when he is pulled over by a police officer is, 'What have I been doing to warrant being pulled over?' When the police officer informs him that he was not doing anything wrong but that the police officer just decided that he wanted to conduct a mobile random breath test, one can imagine the conversation that will take place. I would certainly be wanting to know, 'Why did you decide to pull me over? Was it my car or was it me?', or what have you. Inevitably, different police officers will give the public different reasons as to why they pulled them over—unless, of course, they say, 'We now have the power to pull you over for no reason whatsoever, and I have exercised that power. I did not have any reason for pulling you over: I am just doing my job.'

It is a little like the invidious position in which we place the police force in relation to the laws on prostitution. We basically set the police up for a fall: we ask them to police and administer something which, for all practical purposes, we do not give them the appropriate power to do. Whilst I do not draw a direct analogy between prostitution and this issue, I do envisage quite serious verbal altercations between motorists and the police.

If the police pull someone over to give them a mobile random breath test, I presume that, if that police officer, in the course of giving the test, has reasonable grounds to suspect that there might be stolen goods, drugs or a kidnap victim in the boot of the car, he has the power then and there to search the car. Will the minister clarify that or, if she does not know the answer, could we hear from the Minister for Police?

I have had brought to my attention situations in which police officers have asked to enter someone's home, for example, on the basis that they are looking for a dangerous person who is loose in the area and who has been threatening people. As soon as the police were inside and had checked a couple of rooms—and this is one true example—they then decided to 'bust' one of the inhabitants because there was a joint of marijuana sitting on the table. Again, it is not a proper analogy, but one would have thought that, if the police were seeking your permission, with no warrant, to enter your property because they are looking for a dangerous person and then conduct other business whilst there, a similar thing could occur here. Could we have situations where someone is pulled over—

The Hon. Sandra Kanck: That is the power the police have been wanting for so long.

The Hon. T.G. CAMERON: I thank the Hon. Sandra Kanck for her interjection, but I am interested in what the minister thinks and, in particular, what the police minister is thinking. Are the police going to be encouraged or will it just be an accepted part of their job that, when they pull people over on one of these mobile tests, they can search your car? I have personally experienced the situation where I was pulled over by the police—and I am going back to my own examples here—in an unmarked car for allegedly running a red light, a charge that was subsequently withdrawn, and I and the police car were nearly involved in a head-on accident because they were trying to force me to the side of the road. I just thought that they were some people trying to overtake me.

The Hon. Carolyn Pickles interjecting:

The Hon. T.G. CAMERON: No, they didn't know who I was. Not that that would have meant much. It was only when they found out who I was that they decided that they were not going to forcibly enter my car and search it. It might have been because they did not like my attitude or did not like me; I do not know what it was.

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. CAMERON: Take it from me, minister: anyone who threatens a police officer is automatically arrested, irrespective of who they are. I learned the hard way as a young lad. If there is one group of people in this world you do not argue with when they pull you over, it is the police.

The Hon. R.R. Roberts: Who else has pulled you over?

The Hon. T.G. CAMERON: Many people have pulled me over. Not that I have ever had to face a jury on a matter involving the police but, according to the Hon. Angus Redford, Pat Conlon and a few other members of each house, the jury will nearly always believe the police over an individual who is claiming to the contrary. And perhaps that is right. But I am concerned here about what will happen at the coal face. I will get to proposed new subsection (7a) shortly when we talk about what advertising we are going to do.

Members interjecting:

The Hon. T.G. CAMERON: But if the notice to be published in the paper is placed in the public notices, that means about .1 per cent of the population will read it, and there must be an education campaign in relation to this to let the public know that their civil liberties are being stripped and for what reasons. I do not have a problem with this if the Labor Party and the Liberal Party go out there into the community and explain to people. The minister may well be correct on this, and I am not arguing against an attack on drink driving. What I am arguing against, I guess, is the attack against people's civil liberties.

The Hon. T. Crothers interjecting:

The Hon. T.G. CAMERON: You stripped yourself of your civil liberties many years ago, Trevor.

The Hon. T. Crothers: Don't start me!

The Hon. T.G. CAMERON: We wouldn't want to do that. But I am concerned. I know that the minister was a little bit testy earlier but it is good to see that she now appreciates that the people expressing a concern about this are doing so because they are honestly motivated and for no other reason. Had she not put that on the record, I would have been moved to give a reply similar to that of the Hon. Mike Elliott, only I doubt whether I would have injected the same passion into it that he did. Anyway, I asked the minister a couple of questions, if she wants to respond now before we go on to advertising.

The Hon. DIANA LAIDLAW: I am prepared to acknowledge the good intentions of the Hon. Sandra Kanck and the Hon. Terry Cameron, but that is on the understanding that they do not again accuse the Hon. Carolyn Pickles or me, the government or the opposition, of not taking account of civil liberties. I took exception to those remarks because there is no basis for making such statements.

As I have indicated before, I do not represent the police in this place: I am not the police minister. I doubt that the term the Hon. Terry Cameron used, that the police will be 'encouraged' to do other activities, will apply. What I understand, as I indicated in my second reading explanation, is that the mobile random breath test proposition introduced by the government will overcome the difficulties that are encountered now whereby random breath test stations are not suitable for all locations in terms of breath test practices. We will overcome those difficulties and enable testing to be undertaken in conjunction with normal police patrol duties.

Essentially, what we are talking about here is the one and sometimes two car operation, so the police on all such occasions have patrol responsibilities and this matter can be added to that range of duties. At random breath test stations now the police do not need reasonable grounds for pulling over a person to breathalyse them, so what we are proposing is an extension of that. The Hon. Terry Cameron, I think it was, asked in relation to this proposal how people will respond if they are or are not picked up on a random basis.

I can indicate to the honourable member that even today, with a random breath test station, not everyone who uses the roadway where a station is operating is pulled over for testing. The police call in some and let others move on. They cannot accommodate testing for everyone using that road at the present time. People today ask 'Why me?' Or 'Why not me?' That happens today at the breath testing stations. It will not be a new question that arises during the operation of mobile random breath test stations.

The Hon. T. CROTHERS: I welcome the amendment of the minister in respect of advertising and the 48 hours notice. It is a massive improvement on where we were. The point I simply make is that we are a one newspaper state now with the *Advertiser* and there may well be areas of the state that the *Advertiser* does not reach or does not reach in time to comply with the 48 hours. I am aware that we have local papers like the *Border Watch* or the *Bunyip* up the Hon. Mr Dawkins's way—

The Hon. T.G. Cameron: The *Port Pirie Courier*.

The Hon. T. CROTHERS: Yes, the *Port Pirie Courier*. I am very happy with the amendment, but what happens if there is a place where, because of lack of service by a newspaper, you cannot give effect to that 48-hour prescription you have so wisely put in as an amendment?

The Hon. DIANA LAIDLAW: This is the standard procedure for triggering such formal advice. We have certainly not just said that it should be in the *Gazette*. But I am quite relaxed if it is a notice—and I just need to understand whether the formal meaning of 'notice' is not just a press release, but whether the definition of notice covers a press release—published in the newspaper, that is, a paid advertisement, and we also may need to make sure that something is delivered to radio stations. Generally, unless you pay for it, you cannot guarantee you will get it in. I will check that. The honourable member may be happy to have it addressed in the other place in terms of wider circulation. However, I understand that any campaign ever undertaken by the police on road safety is such that the media smell it before it is even announced. Sometimes it is even leaked to them to make sure they can get a bigger run. The media, road safety and the police feed off—

The Hon. T.G. Cameron: They still don't understand school crossing stuff out in the real world. I am not blaming anyone.

The Hon. DIANA LAIDLAW: I understand that.

Members interjecting:

The Hon. DIANA LAIDLAW: I will ask the minister to sensationalise it in his press release so that the media is definitely interested in this. There will be public education beforehand. Between this place and the next perhaps we can clarify it further.

The Hon. T.G. CAMERON: The Hon. Sandra Kanck suggested to me—and it is sensible—that we vote on her amendment now and if I have any questions to put in relation to advertising I will do that when we deal with the minister's amendment. I have no further questions at this stage.

The committee divided on the amendment:

AYES (3)

Cameron, T. G.	Elliott, M. J.
Kanck, S. M. (teller)	

NOES (12)

Crothers, T.	Dawkins, J. S. L.
Griffin, K. T.	Laidlaw, D. V. (teller)
Lawson, R. D.	Pickles, C. A.
Redford, A. J.	Roberts, R. R.
Roberts, T. G.	Schaefer, C. V.
Stefani, J. F.	Zollo, C.

PAIR(S)

Gilfillan, I.	Xenophon, N.

Majority of 9 for the noes.

Amendment thus negatived.

Progress reported; committee to sit again.

[Sitting suspended from 12.57 to 2.15 p.m.]

VOLUNTARY EUTHANASIA

A petition signed by 86 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. J.S.L. Dawkins.

Petition received.

GOVERNMENT ADVERTISING (OBJECTIVITY, FAIRNESS AND ACCOUNTABILITY) BILL

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement on the subject of the Government Advertising (Objectivity, Fairness and Accountability) Bill.

Leave granted.

The Hon. K.T. GRIFFIN: I refer to the Government Advertising (Objectivity, Fairness and Accountability) Bill, introduced by the Hon. N. Xenophon MLC in this place as a private member's bill. His Honour Chief Justice Doyle has written to me with respect to this bill and asked that I bring his letter to the attention of the parliament when the bill is debated. As I have already spoken on the bill, I am not able to do as the Chief Justice has suggested other than by a ministerial statement.

By letter dated 18 July 2001, the Chief Justice wrote to me and said:

> Dear Mr Attorney,
>
> I have received a copy of the Government Advertising (Objectivity, Fairness and Accountability) Bill 2001. I understand that this bill has been introduced by the Hon. N. Xenophon MLC.

The judges of the Supreme Court and I are of the view that it is undesirable that the Supreme Court should have the jurisdiction conferred on it by the bill. The application of the 'principles and guidelines for government advertising' set out in the schedule to the bill, to a given set of facts, will frequently raise questions that have a distinctly political aspect to them. It is undesirable for the court to be involved in political questions. While matters decided by the courts will, at times, acquire a political significance, it is another thing to confer on the courts a jurisdiction which is essentially political.

Another concern lies in the fact that the application of the schedule to a particular set of facts would raise questions and issues that it would be difficult to deal with satisfactorily under the laws of evidence and having regard to the usual way in which litigation is conducted. As well, the judge before whom such an issue came would have to make judgments and form opinions of a subjective nature.

In short, the judges and I are of the view that the bill, if enacted, will vest in the court a jurisdiction over issues which are political, and a jurisdiction which the court will be ill-equipped to discharge in accordance with usual court procedures.

If the bill is enacted the court will, of course, faithfully administer the law of the state. While it is unusual for the Chief Justice and the judges of a court to express a view about the merits of legislation being considered by parliament, the judges and I are of the view that there are significant objections of principle to the proposed bill, and that it is our duty to bring the objections to the attention of parliament.

I am writing to you because the Attorney-General is the appropriate person to convey a communication from the court to the parliament.

I ask you to bring this letter to the attention of parliament when the bill is debated there.

I emphasise that in writing to you the judges and I express no view at all on the question of whether or not there should be legal controls over government advertising. My concern relates only to the proposal to require a court to enforce the proposed principles and guidelines.

I am sending a copy of this letter to the Hon. N. Xenophon, as a matter of courtesy, because he introduced the bill.

Yours sincerely,

Chief Justice

I seek leave to table a copy of the Chief Justice's letter.

Leave granted.

QUESTION TIME

AUDITOR-GENERAL'S REPORT

The Hon. CAROLYN PICKLES (Leader of the Opposition): I seek leave to make a brief explanation before asking the Attorney-General a question about the Auditor-General's response to the allegations made by the Hon. Joan Hall on 4 October.

Leave granted.

The Hon. CAROLYN PICKLES: In his report, the Auditor-General, an independent statutory officer, said:

. . . categorically denies each of Mrs Hall's allegations.

Of particular interest in the report is Mrs Hall's statement that the Auditor's accusations and opinions would never withstand the test of a court of law. The Auditor states in response:

Mrs Hall has said my 'accusations and opinions would never withstand the test of a court of law'. I do not know what Mrs Hall meant by this statement. If she meant that somebody could sue her for some civil wrong arising out of the matters the subject of the report, she has misunderstood the nature of the inquiry and the conclusions expressed in my report. If she meant that she could challenge the process of the inquiry and the report, then, as the history of her involvement in this inquiry demonstrates, she could have done so many times. However, she has not chosen to do so despite repeated intimations from her solicitors that Mrs Hall was mindful of her rights in this regard.

There is no basis for Mrs Hall's allegations in this regard. In my opinion, the inquiry and my report would withstand the test of a court of law in all respects. The inquiry has been conducted by my office with the assistance and advice of an experienced firm of solicitors and experienced junior counsel from the independent bar. In undertaking the inquiry I have been guided by the advice of senior counsel. As is set out in chapter 1 of my report, this inquiry has applied the standard of proof to reasonable satisfaction as set out by the High Court in Briginshaw v Briginshaw. The inquiry observed the requirements of natural justice and procedural fairness.

My questions are:

1. As the chief law officer, does the Attorney support the report prepared by the independent Auditor-General, which clearly refutes the ignorant claims made by the member for Coles?

2. Does the Attorney agree with the Auditor's statements on page 4, as follows:

. . . in my opinion, several of the matters in Mrs Hall's ministerial statement of 4 October 2001 would, but for the privilege of parliament, constitute criminal defamation within the meaning of section 257 of the Criminal Law Consolidation Act.

The Hon. K.T. Griffin interjecting:

The Hon. CAROLYN PICKLES: I am quoting the report. My third question is: who does the Attorney-General believe, the Auditor-General or the member for Coles?

The Hon. K.T. GRIFFIN (Attorney-General): I am not in a position to make any observation upon the report except to say that the Auditor-General has a power and a right to report to each chamber of parliament under the provisions of the Public Finance and Audit Act. That sets out his rights and responsibilities. It is the law of the state.

In terms of conducting inquiries, a person would be foolish to make an observation about supporting or not supporting a particular report because—and I am usually cautious, as a member of the legal profession and as the first law officer of the Crown—one has to be cautious and ensure that one has all the facts. I do that in the context of criminal prosecutions. When decisions are handed down by the courts, I decline to comment because I am not privy to everything which has been submitted to the court either by way of evidence or in submissions by any of the parties before the court.

One can make general comments about the law and about policy but, when it comes to identifying whether or not a particular report should be supported or not supported, ultimately, one has to take the report at face value and make one's own judgment. That is the very reason why in our system this report, for example, is tabled in the parliament. It gets the benefit of parliamentary privilege. It is a report to the parliament in accordance with the law. And this happens on numerous occasions. So, I am not in a position to make any comment upon the report, other than to take it on face value.

The Leader of the Opposition asks for my opinion as to whether the assertion by the Auditor-General that certain matters might, if tested in a court of law, amount to criminal defamation. Again, I am not aware of all of the background or the detail to which those particular comments might refer. I think that it would be a very bold person who gave an opinion based on so little information that is publicly available in this instance, or at all, as to whether a charge of criminal defamation could be sustained. If that was a hypothetical question, asked in the context of something which happened outside the parliament, I would give the same advice as I now give in respect of something which has been tabled in the parliament, and that is that, first, as

Attorney-General I do not have responsibility for initiating prosecutions for criminal defamation. That is a matter for the Director of Public Prosecutions.

Obviously, matters spoken about under parliamentary privilege cannot be the subject of prosecution or other action in our courts. This is the very reason why there is parliamentary privilege which protects the rights of members to say what they like, subject, of course, to the standing orders of each chamber. In the Council, in relation to restrictions on members saying things, some of which might be defamatory, there are two things. One is the standing orders which talk about no injurious reflection on the parliament, on members or judges, and the second is that we have a sessional order which enables persons who claim to have been defamed under parliamentary privilege—

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: I am talking about the Legislative Council, and I said 'the Legislative Council'. In this chamber we have a sessional order which enables a person who claims to have been defamed by a member in the Council to make application through the President, following a particular procedure, to have a statement incorporated in *Hansard*. So, there are those safeguards. Notwithstanding that, going back even before the Bill of Rights, the privilege under which members have a right to say what they like under parliamentary privilege, even if we may not agree with it, is a right which has been hard fought and won, and which is very vigorously preserved and protected—and should be—by members of parliament.

In relation to issues of criminal defamation, whilst members might have their own views about what other members might say about the use of parliamentary privilege, ultimately, provided there is no contravention of the standing orders, there is nothing to constrain a member from making allegations—and we saw it earlier this week: Mr Atkinson made some very critical comments about the Solicitor-General, and those sorts of comments also have been made here.

I can remember Mr Peter Duncan (when he was Attorney-General back in the 1970s) making under parliamentary privilege a quite stinging attack on Mr Abe Saffron. Even though Mr Saffron had not been the subject at that stage (as I recollect) of criminal prosecution, there were lots of allegations about his character and his behaviour, and Mr Duncan made those statements under parliamentary privilege. That created a bit of an uproar at the time. And, of course, Dr Cornwall made defamatory statements under parliamentary privilege in relation to women involved with the Christies Beach Women's Shelter.

There are plenty of precedents for the way in which members of parliament have chosen to use the privileges of the parliament. We have had some debate about parliamentary privilege from time to time. It is not, of course, the privilege of the members, it is the privilege not even of the house, but of the people, and that privilege cannot be waived by an individual member—and, most likely, cannot even be waived by a house.

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: I am telling the member what the law is. The member asked the questions, and I am telling her, to the best of my ability, what the context is in which one should look at those sorts of issues which relate to, in particular, criticism and defamation. They are sorting it out in the House of Assembly, and that is a matter for them. But ultimately, of course, the brute force of numbers, presumably, will prevail, whether properly or not—about which I am not in a position to make an observation. But that is something that we do have to watch very carefully, that is, that delicate balance between the role of the numbers in a particular house and also the rights and privileges of individual members.

The Hon. T.G. Roberts: Do numbers determine truth?

The Hon. K.T. GRIFFIN: As I have said on many occasions, this parliament can legislate that black is white and white is black. And this parliament can take away rights of individuals, as it did in relation to this inquiry, when in the House of Assembly they put a bar on any legal action by a member or a person—not just a member—outside who may want to seek to establish his or her rights in a court of law. While it was not unprecedented, it was almost unprecedented, because the last time it was done was in some State Bank legislation, and again in relation to an Auditor-General's inquiry. So, let us keep all this in some perspective.

I know that the Leader of the Opposition is trying to get me to say whom I believe; that is the politics of this. The fact of the matter is that I am not in a position to make a judgment about who is to be believed. We have the Auditor-General's report; and we have Mrs Hall's statements in the parliament. The Auditor-General has, in accordance with his right, reported to the parliament. People will have to judge for themselves.

It is open to any member of the legislature, any member of the parliament, to make his or her own judgment. I need say only one more thing. The office of Auditor-General is an important statutory office. Some people say that it is a parliamentary office, but that is not correct; it is not. It is an important statutory office. The Auditor-General, along with the Ombudsman and the Electoral Commissioner, has a right to report to the parliament, but that does not make them officers of the parliament. Nevertheless, the office of Auditor-General is an important statutory office.

As I indicated earlier, the rights and responsibilities of the Auditor-General are set out in the Public Finance and Audit Act and are part of the law of the state. Everyone wants to ensure that the law of the state is upheld. My relationship with the present incumbent of the office of Auditor-General is cordial and professional. I think that that was evidenced in the discussions I had with the Auditor-General in relation to the legislation that actually facilitated the reporting of the Auditor-General on the Hindmarsh Soccer Stadium inquiry. The negotiations were conducted with cordiality and with a proper and professional relationship between the Auditor-General and the Attorney-General.

That is as far as I can take it. It is a longer answer than I would normally hope to give, but I think that it is an important issue that needs to be faced up to. People need to understand what the law is and what each party's rights may be; and, therefore, the extent to which one can make comment on those as Attorney-General is quite limited for a variety of reasons, not the least of which is that I am not privy to all the material that finally led to the conclusions reached either by the Auditor-General or by Ms Hall. That is something that is being sorted out in another place.

The Hon. P. HOLLOWAY: As a supplementary question, does the Attorney draw any distinction between attacking the findings of an office holder such as the Auditor-General and attacking that person himself or his motives?

The Hon. K.T. GRIFFIN: The issue is not one of whether you attack the findings, which anyone is quite entitled to do. As I put it in the broader context, any member

of parliament can defame anyone. Whether the honourable member likes it or not, that is the law. You can make an injurious reflection on an individual, and I have given members enough examples of where that has happened in this chamber alone, as well as in the House of Assembly. You may not like what is being said and you might object to the way in which a member uses parliamentary privilege but, in the end, if there is no injurious reflection upon a member, upon the parliament or upon a judge—I think they are the categories referred to in the standing order—then there are no holds barred.

Of course, a house ultimately can take whatever action it may like in relation to the behaviour of members. That is one of the reasons why ultimately there is a capacity for the President in this chamber and the Speaker in the other to name a member. The members, by a majority, may then move a motion that the person so named be removed from the house, although I cannot quite remember the terminology. But, when the member is named, we all know the consequence of that. A motion is moved and, if the motion passes, the member is required to be absent from the chamber for a period initially of 24 hours. If the naming is not sustained, the ordinary convention is that that indicates a lack of confidence in the Presiding Officer.

I make no comment. I told you that my relationship with the present incumbent of the office of Auditor-General is cordial and professional. It has been a long association over the years and certainly, on my relations with the Auditor-General, I do not make any public comment, except to say that they have been cordial and professional. I am sure that, if you ask the Auditor-General, that will be his view also of that relationship.

The law is that you can make any comments you like. We may not all agree with them, but in the end as members of parliament each of us can use parliamentary privilege to the extent that we believe is appropriate, having in mind the precedents that that may create or which may have been created in the past.

ANSETT AIRLINES

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Treasurer a question on the collapse of Ansett.

Leave granted.

The Hon. P. HOLLOWAY: It was reported today that limited Ansett services would return to Adelaide next week with the federal government and Ansett administrators agreeing to underwrite flights. On 18 September this year, some five weeks ago, following the collapse of Ansett, the Victorian government announced a $10 million boost to the local tourism industry and other measures to address the impact on that state of the Ansett collapse. On 20 September this year the Western Australian government announced a 10-point plan in response to the collapse, including a $5 million boost to the local tourism industry. Today in a press release the new Premier, Rob Kerin, announced that the South Australian government has agreed to 'encourage all government employees where possible to use the new services over the next three months'. My questions to the Treasurer are:

1. Why has it taken so long for the South Australian government to respond to the loss of Ansett interstate flights to this state?

2. What was the total air freight capacity lost to South Australia as a result of the Ansett collapse and what is the expected level of freight volume to be restored as a result of Ansett's limited return to Adelaide?

3. What has been the impact on local industry, particularly the tourism and freight service industry, as a result of the Ansett collapse?

The Hon. L.H. Davis interjecting:

The Hon. P. HOLLOWAY: No.

4. How many of those South Australians who lost their jobs when Ansett collapsed will be reemployed as a result of this partial restoration of services?

5. What will be the impact on the 400 jobs at the Ansett call centre, which in July the former Premier stated was 'a joint investment of $11.7 million by Ansett and the South Australian government and signals major growth in Ansett's Adelaide based operations'?

The Hon. R.I. LUCAS (Treasurer): It was an interesting response from the deputy leader to the interjection from my colleague that he has not spoken to the New Zealand Labour government.

The Hon. P. Holloway: Have you?

The Hon. R.I. LUCAS: No. It is interesting that the Leader of the Opposition, Mr Rann, very often up to recent times hopped into the media highlighting his significant connections—as a former New Zealander, a Kiwi—with key movers and shakers in New Zealand, particularly with Labour administrations both past and present. It has been interesting to note in recent times no reference by the Leader of the Opposition about his New Zealand connections. He has gone very quiet. The Leader of the Opposition, Mike 'Kiwi' Rann, all of a sudden has dropped the Kiwi. He is desperately trying to drop the kiwi accent, and all connections and influence he may have had with the Labour New Zealand government have now disappeared.

The former Premier, John Olsen, outlined very clearly what the state government had done in relation to the tourism industry. We had taken action prior to Victoria, Western Australia and other governments. The former tourism minister, Joan Hall, announced some months ago a major initiative in terms of intrastate advertising for tourism, fortuitous as it was then, but the Queensland and Victorian governments have since then provided extra money for an intrastate tourism advertising campaign. The South Australian government had already done that and was one step ahead of Labor governments in other states and did not need, post the Ansett collapse, to come out with a bold new initiative in relation to tourism.

Regarding the freight capacity, past, present and future, I have no idea but I will ascertain whether there is any information that I might usefully put together to provide to the member. The announcement by Premier Kerin today about requesting government employees to use Ansett services is very similar to announcements made by Premier Bracks and Premier Gallop. It seems to be all right for Labor premiers to make those sorts of announcements but, as soon as a Liberal premier does, the whingeing, whining Labor Opposition in South Australia criticises them.

Members interjecting:

The Hon. R.I. LUCAS: Western Australia does not have Virgin Airlines flying in but South Australia has Qantas and Virgin, and the Ansett administrators have made clear that states like Western Australia, which have only one airline servicing it, would be treated differently. That is not a view we agreed with. Nevertheless, through the former Premier and officers of the government, we have been working with the administrators to try to see that changed. We are pleased.

We congratulate the federal government for its announcements in the newspaper this morning.

In relation to other aspects of the questions on freight and other matters, I will be happy to take advice and see whether I can provide any further information for the member.

ABORIGINAL HERITAGE SITES

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Mines and Energy, a question about heritage protection.

Leave granted.

The Hon. T.G. ROBERTS: Recently, the Environment, Resources and Development Committee tabled a report that highlighted the problems associated with heritage protection and recognition at sites where mining is occurring. In 1993, under a caretaker government, a mine was imploded in the south of Adelaide and subsequently an investigation has shown that that cave system was of some geological significance and that it would have been wise for the cave system to be examined, explored, documented and protected. Unfortunately, that did not happen. The mining program continued. Little or no further examination was undertaken to protect the rest of the system and to this stage, I understand, the mining company that is quarrying in that area has not been given any assistance at all to protect that cave system.

It has since been reported to me that Aboriginal heritage sites are constantly being discovered in peat bog areas in the South-East. Because there is no recognised system of protection, and certainly no discussion around compensation, most of the sites are turned over, certainly not recognised and registered. Will the Minister for Minerals and Energy investigate and report on the introduction of a protocol following discovery of such sites and a process to protect Aboriginal heritage sites uncovered by all forms of mining and, if not, why not?

The Hon. K.T. GRIFFIN (Attorney-General): I will refer the question to my colleague in another place and bring back a reply.

PARLIAMENTARY TERMS

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Attorney-General a question on the subject of parliamentary terms.

Leave granted.

The Hon. A.J. REDFORD: There has recently been some publicity about the length of this parliamentary term and indeed we had—

The Hon. Carolyn Pickles interjecting:

The Hon. A.J. REDFORD: It does when the leader interjects. She has six sitting days before her lacklustre career is over.

The Hon. Carolyn Pickles interjecting:

The Hon. A.J. REDFORD: The honourable member should not interject. That is what happens when she does. She has been in a bad mood all day.

Members interjecting:

The Hon. A.J. REDFORD: Sometimes it is easy. In any event, we have recently seen some advertisements in the *Advertiser* placed by the Australian Labor Party. In the light of that, my questions are:

1. Has the Attorney-General seen the advertisements in the *Advertiser*?

2. Has the Attorney-General heard of continued claims by the ALP, and supported by Michael Elliott between continuous apologies to the Hon. Robert Lucas, supporting those claims?

3. Can he advise the Council of the position set out in the Constitution Act that regulates these matters?

The Hon. K.T. GRIFFIN (Attorney-General): I must say that I did not see the advertisements. They were so significant that they did not catch my eye! But it may be that I have trained myself not to read political advertisements. I had heard that there were some advertisements, and rather belatedly the Labor Party seems to be wanting to change the course of the past 100 to 150 years of history and constitutional provision.

It is a complete furphy that, because 11 October was the fourth anniversary of the date of the last election, somehow we should automatically go to the polls. That is not what the constitution says. It suggests to me that perhaps Mr Rann, who comes from a country across the sea, does not really understand what the South Australian or other constitutions actually provide for.

The Hon. Diana Laidlaw interjecting:

The Hon. K.T. GRIFFIN: He may not have even cared about it. Let us get to the facts, the law and the truth. The fact of the matter is that under section 28 of the Constitution Act—and everybody ought to look at that carefully—the parliamentary term actually starts on the day parliament first meets for business after a general election, not the date of the election. That provision has been in the Constitution Act since 1856. In 1856—

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: I would be happy to.

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: Responsible government came to South Australia in 1856, and that provision is based on English law from about the time of William and Mary in the 17th century. It goes back that far. In 1908, nearly 100 years ago, some amendments were made to further clarify the provision, and they addressed the question of when a parliamentary term actually comes to an end.

There is very clear provision in our Constitution Act. Governments of all political persuasions have lived with it, worked with it and used it. That is, if the first sitting day of the new parliament is between 1 October and the last day of February, the term expires on the last day of February. If the first sitting day is between 1 March and the last day of September, the term ends on 1 March. Then, of course, there is another three months after that within which to hold and complete an election.

There really has been no substantive change to this provision of the Constitution Act since 1908. In 1985, the parliamentary term was changed, in general terms, from three years to four years, generally speaking, but subject to the variability provided for in section 28. So, to say that 11 October, four years from the date of the last election, signifies the end of the parliamentary term and requires an election to be held is not and has never been part of the constitutional law or history of South Australia. It really is just a recent political invention with no basis in law or on merit. Mr Rann has been saying, if the government—

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: They had a few, didn't they? If the government chooses to put off the election until March, for example, Mr Rann has been saying that that is the longest period of delay between state elections in South Australia since Federation. There is a lot of information available on this. In fact, the state government, which was a Labor government, in 1993 ran from 25 November 1989 to 11 December 1993, more than four years after the date of the previous election. If we go back to 1906, a Labor government was elected in November 1906 and held its subsequent election in April 1910, which was three years and five months later than the previous election.

It is I think important to ensure that people read the constitution. I invite Mr Rann, as Leader of the Opposition, to look at the constitution and to learn it, because he has to live within it, and he ought not misrepresent the constitutional position in this state in the way in which he has in relation to the term of this government.

WESTERN DOMICILIARY CARE

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Disability Services questions regarding the Western Domiciliary Care and workplace bullying.

Leave granted.

The Hon. T.G. CAMERON: Information has come to my attention with regard to workplace bullying and other irregular practices at the Western Domiciliary Care workplace. I am informed that the Office of the Employee Ombudsman has been involved in an initial investigation and, subsequently, a further investigation was initiated by the CEO of the Queen Elizabeth Hospital. A copy of the second report has now been provided to the CEO and board of the Queen Elizabeth Hospital. I am informed that the report includes a number of recommendations, including a call for a full investigation into allegations of workplace bullying, the unusually high number of government plated cars allocated to Western Domiciliary Care senior management, staff receiving payment for higher duties outside government guidelines and without appropriate authority, and the attendance of staff at overseas conferences without due account of government guidelines.

I am also informed that a decision has been taken by the board to take no action in relation to the report until April next year. (Convenient, that, isn't it?) A number of Western Domiciliary Care employees are now fearful of further bullying following action on their complaints being deferred until April next year. My questions to the minister are:

1. Has there been an investigation into workplace bullying and other alleged malpractices at the Western Domiciliary Care Service and, if so, what are the results of the investigation?

2. Has a copy of the report been provided to the CEO and board of the Queen Elizabeth Hospital and have they acted on the report's recommendations? If not, why not?

3. Does the report suggest serious malpractices, including issues of workplace bullying?

4. Is it true that the board or the CEO of the Queen Elizabeth Hospital is intending to do nothing about this serious issue until after the state election?

The Hon. R.D. LAWSON (Minister for Disability Services): I thank the honourable member for his question. It is true that, as a result of a complaint from, I believe, a staff member at Western Domiciliary Care, an inquiry was undertaken and a report provided some time ago. I believe that the Office of the Employee Ombudsman was involved in that particular investigation and report.

Subsequently, a further investigation was ordered by the Department of Human Services and a senior public servant, or former public servant, I am not quite sure which, was commissioned to undertake a further inquiry and investigation. I am not aware that that particular report has been concluded, although I have heard around the corridors of parliament house that it has been. Accordingly, I am not aware whether or not the alleged report has gone to the CEO of not the Queen Elizabeth Hospital but the North West Adelaide Health Service, which is the agency of which Western Domiciliary Care is a part. Similarly, I am not aware of whether the report has gone to the board of the Queen Elizabeth Hospital. I certainly understand that it was intended that the report would go to both the CEO and the board. I will undertake to inquire of the chair of the board whether they have received the report and also what action the board proposes to take in relation to any recommendations contained in the report.

In so far as it is alleged that the board of the hospital has ordered that the recommendations of the report not be implemented until April next year, I am certainly not aware of that and, if that decision were taken by the board, I am sure it would be for some good reason. I can confirm that there has been no order from the government that the recommendations not be implemented until that date or that they be deferred. I undertake to look into this matter for the honourable member and bring back a more detailed response in due course.

PELICAN POINT POWER STATION

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Treasurer a question about the Pelican Point Power Station.

Leave granted.

The Hon. Carolyn Pickles interjecting:

The Hon. L.H. DAVIS: I am sorry, Carolyn, are you upset that it is up and running?

The Hon. Carolyn Pickles: No, I just said, 'Come on Dorothy.'

The Hon. L.H. DAVIS: It is not a Dorothy—no, not at all. I was there.

An honourable member interjecting:

The Hon. L.H. DAVIS: It is a powerful question. This morning I attended the official opening of the Pelican Point Power Station by His Excellency, Sir Eric Neal, Governor of South Australia. It was a beautiful day as I drove down Pelican Point Road, off Victoria Road, shortly before arriving at the power station.

Members interjecting:

The Hon. L.H. DAVIS: I passed the site of the Port Adelaide flower farm which, under that doyen of local government administrators, the Port Adelaide Council CEO, Mr Keith Beamish, lost $4.5 million in a very short space of time. The local Labor member for Hart, Mr Kevin Foley, of course, strongly criticised the Liberals for attacking this extraordinary loss which was a burden to be borne by Port Adelaide taxpayers.

As I approached the Pelican Point Power Station, pelicans were wheeling lazily overhead, quite obviously not having read of the inherent dangers of this power station trumpeted by some of the extreme opponents of the power station. I

understand that dolphins loll languidly in the sparkling waters off Pelican Point and not one of them has come close to being boiled, as was claimed by many of the opponents of the siting of the power station.

The member for Hart, Mr Kevin Foley, is also on record as bitterly opposing the siting of the power station at Pelican Point. Yet, we were told this morning that this power station has been constructed in record time. It uses environmentally friendly gas and has been widely acclaimed as a state-of-the-art power station. Indeed, it was said to be the best in Australia. I noticed that the opposition was represented by the Hon. Mr Paul Holloway and the Hon. Mr Robert Sneath but, alas, as hard as I searched, I could not find the local member for Hart, Mr Kevin Foley. I was not sure whether that was because he thought that the site was too dangerous or whether he had a previous engagement.

My question is: is the Treasurer aware whether the member for Hart, Mr Kevin Foley, has apologised for his extraordinary attack and criticism of the siting of the Pelican Point Power Station, and has he gone on the public record acknowledging the benefit of the power station to South Australia and the professionalism and speed with which the power station was built, in the face of the bitter opposition with which he associated himself?

The Hon. R.I. LUCAS (Treasurer): I thought the interjection of the Hon. Mr Cameron was very cruel—that Mr Foley was off getting a haircut this morning. We all admired the Bart Simpson look of the member for Bart. I thank the honourable member for his question. Certainly, I think we all recall the massive protests at the time that were developed, I suppose is the kindest way of putting it, by the Leader of the Opposition, Mike Rann, and Kevin Foley, as the local member, amongst the local residents.

I recall attending a protest meeting addressed by the Leader of the Opposition, Mike Rann, opposing National Power and Pelican Point Power Station, with some 400 or 500 Port Adelaide supporters baying for my blood—and various other things as well, I suspect. All sorts of extraordinary claims were made that the power station would boil the dolphins, destroy the environment, wreck the Aboriginal heritage of the area, wreck the environmental aesthetics of the car body-strewn wasteland that constituted Pelican Point, and that the nearby residents—who were some 1½ to two kilometres away—would have to wear earmuffs because of the noisy sounds of a power station chugging away churning out this power.

The reality, as the Hon. Mr Davis so eloquently put it in his question, is certainly much different. The power station is critical to the state's economic future. As of today, as we went into the control room, South Australian priced power coming out of Pelican Point is the lowest in the spot market in Australia. South Australia was exporting power to the—

An honourable member interjecting:

The Hon. R.I. LUCAS: We were told lots of things.

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: Danny, the price is right! The Hon. Mr Xenophon said that it would be the highest priced power in the nation, but as of today, in the spot market price (and, as the operators told us, for the past few days, because of outages in Victoria and some problems in Queensland), South Australian power stations such as Pelican Point have been exporting power to the eastern states, as I said, at the lowest price in the national market. Certainly, since full operation in March this year—admittedly, during the off-peak period of autumn, winter and part of spring—the average price has been about $30 and, for some of the time, it has been in the 20s in terms of the spot market price.

I hasten to say that, in terms of South Australia's supply-demand balance, our price problems obviously are caused by the peaks in summer, and there is no suggestion that those prices that we are achieving in autumn, winter and spring are, indeed, the exact prices that we will see in the peaks of summer. Nevertheless, there is no doubt that Pelican Point has been an important additional element to the electricity industry in South Australia in both capacity and supply, and also in placing competitive pressure on pricing.

Deep somewhere within the bowels of the Blue Hills is the lonely voice of the Hon. Nick Xenophon, who managed to get out of the Blue Hills today to ring all the radio stations in between his engagements in the Blue Hills to claim that Pelican Point Power Station should never have been built and that Riverlink should have been built first. As I said to the media and say to the Council today—

The Hon. L.H. Davis: They're not still giving him a run, are they?

The Hon. R.I. LUCAS: All the media did. If the policy position of Mike Rann, Kevin Foley and Nick Xenophon had been followed and we had not built Pelican Point Power Station but had built Riverlink—assuming that we could have, since we did not have permission from NEMMCO for it to go ahead—we would have had massive blackouts last summer and even more significant blackouts this summer.

The Hon. K.T. Griffin: Do you think that was part of their sinister plan to undermine?

The Hon. R.I. LUCAS: As the Attorney-General suggests, I am sure that, as soon as the blackouts came, the same Messrs Rann, Foley and Xenophon would have been criticising the government for those blackouts. The reason why there would have been even more blackouts is that Pelican Point has twice the capacity of Riverlink. Riverlink is about 250 megawatts and Pelican Point is 500 megawatts. On a day like today it is generating 30 per cent of South Australia's power supply. The policy position of Messrs Xenophon, Foley and Rann, that we should not have built Pelican Point but should have built Riverlink, was a recipe for massive blackouts last summer and this summer.

The Hon. L.H. Davis: Riverlink would not have been finished.

The Hon. R.I. LUCAS: That is an interesting point. I have said that all along, and I refer members to the report of the Independent Regulator in August this year on the issue of Riverlink (or SNI). On page 2, the Independent Regulator—not the government—stated:

> At the time at which Transgrid applied to the Independent Regulator for a transmission licence for SNI in late 1999, it was clear that the SNI project could not be completed prior to late 2002.

That is a three year delay. This is the Independent Regulator saying in late 1999, when the application was made, that it would take three years for it to be built and developed. Of course, it has been even further delayed and it is now looking like possibly late 2003, which is four years after that. But that is the Independent Regulator making the claim and it is something that we have been saying for quite some time. We could never get a guarantee as to when Riverlink (or SNI) was going to be built. If we had waited and followed the policy position of the Leader of the Opposition, Kevin Foley, the Hon. Mr Xenophon and Mr Holloway, we would still be waiting for additional power and we would have opposed Pelican Point.

Of course, as my colleague the Attorney-General suggests, that may well have been the very idea of the Labor Party, to try to make sure that we had massive blackouts in the period leading up to a state election.

BELAIR RAILWAY LINE

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Transport and Urban Planning a question about a survey conducted by the Friends of the Belair Line regarding the reopening of the Millswood, Hawthorn and Clapham stations.

Leave granted.

The Hon. SANDRA KANCK: During November 2000 the Friends surveyed all households within approximately a 500 metre radius of the Millswood railway station. In all, 1 000 forms were distributed: 138 forms were either posted, hand delivered or faxed to the return address.

The Hon. Diana Laidlaw: You've already asked me this question this session.

The Hon. SANDRA KANCK: No, I have not. The survey was designed to gauge the likely increase in the level of patronage on the Belair line should the Millswood station be reopened.

The Hon. L.H. Davis interjecting:

The Hon. SANDRA KANCK: In answer to that, Mr Davis, clearly there has not been an answer. Should the Millswood station be reopened, the respondees to the survey estimated that they would make approximately 3 660 trips per month in total. This implies that, should the Hawthorn and Clapham stations also be reopened, the Belair line could see an additional 10 000 boardings a month, or 120 000 additional ticket sales a year.

The Friends of the Belair Line sent a copy of the survey to the Minister for Transport and Urban Planning on 7 December 2000. The Friends asked the minister to reconsider the reintroduction of services to Millswood, Hawthorn and Clapham on the basis of the findings of the survey. As of today, they say that they have not yet received a response from the minister. My questions are:

1. Why has the minister not responded to the Friends of the Belair Line survey?

2. Has the minister commissioned her own analysis of the findings of the survey? If not, why not?

3. Does the minister believe that the findings of the Friends of the Belair Line improve the prospects for the reopening of the Millswood, Hawthorn and Clapham stations?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I recall this question being asked before by the honourable member, either a question on notice or a question without notice. I also know that I received correspondence from Ms Jane Brooks on behalf of the Belair line station and subsequently I think the PTB and—

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: No, I am not testy. I have a clear conscience in terms of this issue. I know why they were closed down, because I was enacting what the Labor Party did but did not want to announce when it was in government, namely, to seal the fate of those stations, but they were happy to leave the announcement to me. It was a decision from the federal and state ministers, the Hon. Barbara Wiese and Mr Collins, regarding the single line access that the Belair line was to be reduced to following standardisation of the freight route. You could not have a single line access, according to Ms Wiese and the federal government, without closing stations and maintaining routes. It was all agreed and a fait accompli before I became minister; I was just left to announce it and it was not something that I really wished to announce.

They are big operational issues and I have always admired the resourcefulness of Jane Brooks and others, and I think the survey that they undertook was a good contribution to the issues. As I recall, a response that was prepared for either me or the PTB to send was that the Millswood station would still be the lowest on the Belair line. The other two stations did not give much courage for the PTB to believe that agreements with the federal government should be ignored or overturned.

Members interjecting:

The Hon. DIANA LAIDLAW: I thought this had all been undertaken with the PTB and TransAdelaide as operational issues arising from the survey. If that is not the case—

The Hon. Sandra Kanck interjecting:

The Hon. DIANA LAIDLAW: Okay. They may not formally have got a reply from me, but I think all the work has been undertaken in relation to the survey and details with the PTB and TransAdelaide as an operational issue. I will go back and check. What they ask ignores the fact of the obligations signed between governments some 8½ years ago. You can have all the emotion in the world but we need to see increased patronage projections and need to overturn or seek to renegotiate various agreements. We need more than a survey and a wish list to operate a passenger transport network, particularly one as complex as running a single line operation to Belair.

FALL PREVENTION HOME ASSESSMENTS

In reply to **Hon. IAN GILFILLAN** (5 April).

The Hon. R.D. LAWSON: In addition to the answers given on 5 April 2001, the following information is furnished:

1. The four metropolitan Domiciliary Care services began providing an early intervention falls prevention program on 1 March 2001. The service is provided by physiotherapists who visit people at home to assess the individual's risk of falling and to provide advice about how to avoid falls. Factors contributing to the risk of falls include flooring, eyesight, muscle strength, balance, medication use and foot problems. As part of this program Domiciliary Care will reimburse participants for up to $30 for the cost of home modifications and/or equipment.

In its first four months the program was in an establishment phase as the four regional coordinator physiotherapists developed a falls assessment screening tool which assesses the twelve modifiable risk factors. Metropolitan Domiciliary Care services have performed on average 20 assessments per week since 1 March 2001. This is expected to increase as a result of further publicity and awareness of the program increases.

2. *Taking Steps* is targeted at older people who do not have long term health problems, are not frail and were previously not eligible for Domiciliary Care services. The average age of clients who have received a home assessment so far is 79 years.

3. There is currently no waiting list for *Taking Steps* assessments in the western, eastern, southern or northern Domiciliary Care areas. The response time, measured from the time that a telephone referral is received until an appointment for a home visit is undertaken, is approximately one week.

At this stage, the new service is formally based in metropolitan Domiciliary Care units. Domiciliary Care service providers carry out home assessments in rural areas on an as needs basis.

4. The target number for falls assessments for 2001-02 is 1 000.

5. I formally launched *Taking Steps* on 7 August at the Eastern Domiciliary Care Service. A physiotherapist coordinator has been based in each of the four metropolitan services since the program commenced. The domiciliary service providers have been consulted on the changes to the delivery of in-home assessments on a regular

basis, with preliminary discussions with Directors held in November 2000.

WORKCOVER

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Disability Services, representing the Minister for Government Enterprises, a question about WorkCover.

Leave granted.

The Hon. R.K. SNEATH: Some time ago WorkCover set a target to become 90 per cent self funded. I wonder whether it is on line to achieve that or whether it has already achieved it. My questions are:

1. Has the minister received information stating the current estimated liabilities on WorkCover Corporation of all outstanding claims as of 30 June 2001, including a proportional estimate of inactive claims and expected future liabilities for which the corporation may become liable? If so, how do the liabilities of outstanding claims as of 30 June 2001 compare with the liabilities of 30 June 2000 and 30 June 1999?

2. Has the corporation's investment portfolio lost a large amount of money in the past four months?

3. Is the corporation's self-funding target of 90 per cent under threat?

The Hon. R.D. LAWSON (Minister for Disability Services): I will refer the honourable member's question to the minister in another place and bring back a reply. However, it is worth saying that the performance of WorkCover in recent years has been most impressive: it has met the benchmarks which the corporation set for itself; it is providing very effective support to injured workers in South Australia; it is a very efficient organisation; and it has been able to reduce the levies paid by South Australian business, thereby enhancing the competitiveness of our state.

The Hon. Diana Laidlaw interjecting:

The Hon. R.D. LAWSON: Indeed. As the honourable member says, there has been a $25 million reduction in each of the last two years. In doing that, the benefits of workers have not been compromised. But, as I say, I will bring back a response in respect of the particular questions asked.

ROYAL ADELAIDE HOSPITAL

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Human Services, questions regarding the Royal Adelaide Hospital and patient food quality.

Leave granted.

The Hon. T.G. CAMERON: My office was contacted by a constituent who is currently a patient in the Royal Adelaide Hospital. He has informed my office that a strike by the catering staff at the hospital has resulted in a serious cut to the quality of food being offered to patients. For example, I am told that patients are being served nothing but cereal for breakfast, sandwiches for lunch and salads for dinner; there are no meat dishes being offered whatsoever.

The result has been that families of patients have been forced to bring in meals for their loved ones. I am informed that the situation has been going on for some eight to 10 days. It is totally unacceptable that hospital patients are not being properly fed: they have enough pain and stress already without having to put up with inadequate food. My questions are:

1. What steps are being taken by the government to negotiate an end to the Royal Adelaide Hospital catering strike?

2. How soon can the patients expect a return to normal catering services?

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

LIQUOR LICENSING (REVIEWS AND APPEALS) AMENDMENT BILL

In committee.

Clause 1.

The Hon. K.T. GRIFFIN: Because amendments have only recently been placed on file, with the concurrence of the committee I propose that, on clause 1, those who have amendments—and there are several key issues—be given the opportunity to address what they seek to achieve. Then, because the amendments have been put on file only recently, I propose that we report progress and the committee then seek leave to sit again.

By doing it that way, I would hope that we could short circuit some of the committee debate next week and facilitate the consideration of the bill so that it can pass and be transmitted to the House of Assembly hopefully on Tuesday, with a view to getting this and a number of other bills through well before the end of the session.

The Hon. Sandra Kanck interjecting:

The Hon. K.T. GRIFFIN: We have limited sitting time before the end of the year, and I would like to see us get some of this work out of the way. It is in that context that I think it would be helpful if we got at least some of the debate out of the way now in preparation for dealing with this on Tuesday.

The Hon. A.J. REDFORD: I rise to speak generally about my amendments that I filed earlier today concerning noise complaints and the issue of live music. On 4 July this year, the Hon. Diana Laidlaw, Minister for Transport and Urban Planning, made a ministerial statement concerning live music in hotels. In her statement, she addressed a number of things, including this government's strong role in developing initiatives to promote contemporary music, ranging from the first appointment in Australia of a contemporary music adviser to the Minister for the Arts, to the launch of Music Business Adelaide and the establishment of Music House in the Lion Arts Centre, amongst other things.

She indicated that she had, over a period of time, raised with the Liquor Licensing Commissioner, the Capital City Committee and the Local Government Association quarterly meeting of metropolitan mayors and CEOs her alarm at the increasing incidence of neighbourhood noise conflicts leading to the loss of live music venues in Adelaide. She went on and pointed out that the issue had been brought to a head following recent development applications and approvals for residential dwellings adjacent to hotels and live music venues in a number of council areas.

In that respect, she was specifically referring to a proposed residential development near the Austral Hotel in the East End of the city and also a residential development which had

been approved by the Charles Sturt Council immediately adjacent to the Governor Hindmarsh Hotel, a hotel that is held high in the hearts of all those who follow the contemporary music industry and, indeed, has won, year after year, state and national awards as a venue for live music. In light of that, the minister resolved to establish a working group and asked whether I would chair that working group. I accepted that honour and am very grateful to the minister for the opportunity afforded me.

The minister referred to a number of different options that we might consider and went on and made this most important statement:

> I have taken the step to set up the working group recognising, first, that the issues currently being experienced between residential dwellings and entertainment venues are also occurring in most other states and capital cities in Australia—however, a brief research effort into the actions by other state governments to combat the issues reveal limited action has been taken; and, secondly, parallel recent issues experienced in peri-urban areas of the Adelaide Hills—and some horticulture and viticulture areas across the state—with the increase in the number of people moving to these areas leading to an increase in complaints about farm practices and heavy vehicle traffic movements.

She went on and made this rather pertinent observation:

> Overall, I am acutely aware that cities have traditionally, and must continue, to provide for arts and entertainment, not simply residential and retail uses. In fact, if live music and hotel uses are lost, the role and fabric of our city will be eroded—and even cafes and restaurants which regularly rely on ancillary entertainment uses to attract patrons will be threatened in the longer term.
>
> I am not pretending that there is one simple, easy answer to resolving the conflicts between live music venues and adjacent residential dwellings but, with the establishment of the working group and goodwill by all, the government will explore all measures to both reduce potential conflicts and resolve them more effectively if and when they arise.

The working group comprised Jason Turner of the Environmental Protection Authority in relation to noise issues; Stuart Moseley, a representative of the Local Government Association, who is now the senior planner with the City of Adelaide; the Liquor and Gaming Commissioner, Mr Bill Pryor; David Day, a well known music identity in South Australia, representing the music industry; Michael Jeffries, representing the hotels association; Trevor Johnson, representing the Police Commissioner; and Kate Knight and Bryan Moulds, representing the property council and property interests, and we were very well and ably assisted by two officers from Planning SA, Mr Chris Welford and Ms De'Anne Smith.

I would like to be on the record as saying that each and every one of those persons made a positive and strong contribution and I convey my strong personal appreciation for their work. Indeed, each and every member of that committee made a very strong and positive contribution to the ultimate outcome. We met more than once weekly over the eight week period and there were also a number of other informal meetings that took place with various people. In particular, I am grateful to the Liquor and Gaming Commissioner, Mr Bill Pryor, who went to some trouble to bring together liquor licensing legal practitioners to discuss the issues.

Shortly after the establishment of the working group, a demonstration was held on the steps of Parliament House following a march from Victoria Square, and I was delighted to participate in that. I know a number of members of parliament, including the Hon. Sandra Kanck, also participated in that march. Apart from the fact that there were 'Save the Gov' signs littered throughout the crowd of 5 000, it was heartening because it was a strong and powerful endorsement by the South Australian community, and the Adelaide community in particular, of the importance of live music to the cultural heritage and life of this state. Indeed, in that respect, before I go on to comment further on the demonstration, it was well supported by the Real Estate Institute of South Australia, and I had the opportunity to meet with Miss Joyse Woody, the executive officer of that organisation, who told me during the course of the meeting that her view is that members would put up with additional bureaucratic or other requirements if it led to an outcome that ensured that Adelaide was a vibrant, culturally rich environment to live in because it is her view—and I endorse this view—that, without that culturally rich environment, South Australia, and in particular Adelaide, runs the risk of losing young people.

It is more than just salaries and wages and job opportunities that keep our young people in South Australia: it is also the perception that they are part of a vibrant and growing community and are the centre of something that is important and reflects our well-being. I know in the past we have had some disagreements, but the Real Estate Institute is well served by someone who has that sort of vision in relation to the future of South Australia.

In any event, at the demonstration there were a number of speeches and there was some great music. The Hon. Diana Laidlaw gave a very strong speech in which she said that the interests of the music industry and live music would be paramount in the consideration of the government. Indeed, she was very warmly received by the crowd and I think that is a consequence of her undoubted enthusiasm and commitment to live music and all that it stands for, and it stands as a testimony to her achievements as a minister thus far.

The live music working group, in its meetings, first decided that it would agree on a set of basic principles. I am pleased to note that the basic principles were agreed to unanimously. I think it is important that I read these basic principles into *Hansard* so that those who are confused about the purpose of these amendments can refer to them for the purpose of interpreting that legislation. They are as follows:

> The working group accepts the following basic principles as fundamental to the consideration of options to minimise and, if necessary, resolve conflicts between licensed entertainment venue operators and residents.
>
> 1. It is vital for South Australia to promote and enhance the live music industry because it plays a key role in maintaining a vibrant entertainment and cultural environment and generates employment of a significant number of people such as musicians, promoters, sound engineers, security firms, recording studios and booking agents.
>
> 2. Licensed entertainment venues play a critical role in the ability of the live music industry to perform its important role in the South Australian community.
>
> 3. Licensed entertainment venues providing live music, in order to fulfil their critical role, must be able to operate in a legal environment that offers clarity and certainty, and should not be subjected to capricious, vexatious or unjustified interference in carrying out their lawful activities of providing live music.
>
> 4. Licensed entertainment venues, developers and residents should be provided with positive assistance so the licensed entertainment venues and the live music industry are able to meet their important cultural objectives, and can do so within realistic expectations.
>
> 5. Mixed use zones and precincts are an intrinsic part of modern living, particularly in the central business districts of cities. The development of a mixed use zone/precinct in the Adelaide CBD is an important part of Adelaide's competitiveness and vibrancy and is well recognised by town planners and development planning policies.
>
> 6. New licensed entertainment venues and/or residential developments in mixed use zones and precincts must take into account the existing activities of occupiers, and that must include reasonable noise attenuation measures required (whether on the new

or existing development) as part of the development approval process or any subsequent complaint process.

7. Buyers and tenants of residential property in the vicinity of licensed entertainment venues should be made aware of those venues prior to their acquiring a legal interest in the residential property.

8. The preservation of residential amenity in residential zones is a factor to be taken into account where a licensed entertainment venue changes the nature of the entertainment provided.

9. Responsible management of licensed entertainment venues is a vital component in minimising the potential for noise complaints and other complaints.

10. The issue of patron behaviour, including noise generated by patrons in the vicinity of licensed entertainment venues, should be treated as a separate issue from the provision of live music.

I will make one comment at the outset, and that is this: there is a collective community responsibility to ensure that live music and an appropriate cultural environment survives and thrives in this city. It is not simply the responsibility of the providers of live entertainment to ensure that it is provided appropriately. It is my view, and I suspect it is the view of the majority of members of this place, that the community has a collective responsibility to ensure that such activities thrive and grow.

In relation to that set of basic agreed principles, a series of recommendations were put to the minister and I will briefly summarise them. First, the Environmental Protection Authority should collate available information concerning entertainment venues in relation to the need for noise attenuation and the practicality and cost of noise reduction measures, and produce guidelines and a technical bulletin on noise levels associated with licensed entertainment venues to assist planning authorities and enforcement agencies. The Environmental Protection Authority has undertaken to produce those guidelines by the end of January next year.

Secondly, Planning SA will ensure the adequacy of the planning strategy to guide development plan amendments dealing with mixed use areas and prepare a planning bulletin on new licensed entertainment venues and development proposals in areas surrounding existing licensed entertainment venues, taking into account the EPA's research guidelines, and also advisory material for use by councils during the preparation of policies relating to live music issues. Planning SA has undertaken to prepare that planning bulletin by the end of February 2002.

Thirdly, local government bodies should be encouraged to update development plan policies in their areas. These policies, where they have not already done so, should include suitable noise attenuation policies for licensed entertainment venues. They should also continue to consult widely with affected stakeholders and should be encouraged to work closely with licensed entertainment venue operators in relation to plan amendment reports. They also should consult with the live music industry in the PAR process, reinforcing public mechanisms already in place, encouraging submissions to be made in relation to the PARs that increase the potential for residential development to occur in mixed use localities. And, finally, to consult with the AHA and other relevant industry associations, enabling them to assist their members to understand, monitor and participate in the PAR process.

The fourth recommendation relates to the building code. We recommended that the building code of Australia should be amended to incorporate material on noise attenuation, based on the EPA guidelines for new residential buildings constructed in the vicinity of existing or possible future licensed entertainment venues, or in a mixed use precinct for new licensed entertainment venues being constructed in the vicinity of existing or possible future residences. We know that that is a very slow and difficult process and involves the minister securing a consensus result on a national basis. And we all know and understand the difficulty and the time-consuming process of that. As a consequence, the committee also recommended that, as an interim measure, a South Australian specification on this matter should be prepared. Since the public release of this document, and the cabinet response to this document, I have not seen any criticism of that proposed interim measure.

Fifthly, the Liquor Licensing Act ought to be amended. That is the subject of the amendments that are before this parliament. In particular, we recommended that the importance of the live music industry be recognised in the objects of the act. And we also recommended that that would assist a court in determining what is an appropriate order to be made in relation to a noise complaint, having regard to the fact that we are asking this parliament to recognise the importance of live music in the cultural fabric of this state. We would hope, and I am sure it will happen, that the courts then subsequently follow the parliament's commitment to the importance of live music in this state.

We also recommended a change in the procedures in dealing with noise complaints and that we should also ensure that, in dealing with complaints, the licensing authority must have regard to certain factors including the nature of the activities on the premises, the trading hours and style of operation, the desired future character of the locality and, in particular, if it relates to a mixed use area, EPA guidelines and, finally, that it be an objective assessment in relation to any undue offence and annoyance.

We also recommended that we look at the partial integration between the Development Act and the Liquor Licensing Act. In that respect, there was quite a degree of discussion, and I would be less than frank if I did not indicate to this parliament that there was some strong disagreement as to whether or not there is an appropriate integration between the Development Act and the Liquor Licensing Act. I must say that I for one think that the integration between the Development Act and the Liquor Licensing Act since the promulgation of the act in 1997 and the practices and practice directions adopted by the Liquor Licensing Court have improved remarkably.

It was extraordinarily difficult for those who were arguing that it ought to be improved to actually point to specific examples where there was some failure in the process which meant that people were arguing or dealing with the same issues, first, before a planning authority and, secondly, before the Liquor Licensing Authority. Indeed, it seems to me (and I am speaking personally) that the Liquor Licensing Commission and the court have been extraordinarily careful in honouring and following the planning decision makers' decisions in relation to liquor licensing issues. But, as is the case in almost everything we do, we acknowledge that there may be some areas for improvement, and we have recommended that the government look at that.

The sixth recommendation relates to buyer beware statements. This is particularly pertinent in relation to the comments made to me by Ms Joyse Woody. We recommended that the Land and Business (Sales and Conveyancing) Regulations 1994 and the Residential Tenancies Act regulations 1995 be amended so that purchasers of land for future tenants of houses be notified of the existence of licensed entertainment venues in their vicinity. There is a number of different ways in which that could be achieved but it was the view of everyone, after extensive investigation and discus-

sion, that that could be provided by the Department of Environment and Heritage as an extension of the existing process for provision of Form 1 statements by making it available on the internet. What we had in mind was that the section 7 statements and the statements that are provided to prospective tenants have the web site on the form, and the potential tenant or the potential purchaser can go to that web site, look up where licensed entertainment venues are, work out where they are in the vicinity of the premises in which they propose to reside, and then make their own inquiries. Indeed, one would hope that that would be taken into account if there was a subsequent noise complaint. Let me give one example of how we see it working.

We know that a residential development is taking place immediately adjacent to the Governor Hindmarsh Hotel. We all know that the Governor Hindmarsh Hotel has been providing live music in what until very recently has, essentially, been an industrial area, without any complaint and without any concern about noise levels. We accept on face value that the Charles Sturt council went through an appropriate planning process, and we do not seek to interfere in that planning process. But we would hope that the people who either purchase the units or tenant the units immediately adjacent to the Governor Hindmarsh Hotel will receive appropriate advice about the activities of the Governor Hindmarsh Hotel and, if they choose to proceed with the transaction, it is their understanding that they should have to put up with the level of noise that the Governor Hindmarsh puts out.

I think it is important that we recognise that people's behaviour changes over a period of time. When I was young, live music was the province of clubs and not necessarily of hotels, because we had 6 o'clock closing. With the change from 6 o'clock closing to 10 o'clock closing we saw the advent of live music in hotels—and, indeed, I think hotels were given the opportunity to extend their trading hours if they provided live music, and they became great cultural icons, particularly during the 1970s. We saw our personal habits change from leaving work, going to the hotel and then going home, to going home then going to the hotel and looking for our entertainment.

As we moved to midnight closing, people started to go out later. What we are seeing now (and I am sure that we have all had this experience) is a situation where young people do not go out until 11 or 12 o'clock and, in order to satisfy that demand of young people in a modern 21st century city, venues are now providing live music up until 5 and 6 o'clock in the morning. That is a standard that is happening throughout the world and one that, if we are to maintain our reputation as a vibrant capital city, we have to learn to live with and learn to provide to those young people. I know that, in the case of the Governor Hindmarsh—

The Hon. Carolyn Pickles interjecting:

The Hon. A.J. REDFORD: The honourable member interjects, and I would not disagree with that statement. If the Governor Hindmarsh seeks to change its hours, I would hope, in the context of these amendments, that these people who are buying these units or moving into these units understand that the Governor Hindmarsh has a perfect right, if it chooses to, to seek to change its hours and the way in which it operates, and will be given that opportunity and will be allowed to cater for the demand of its patrons should it see fit.

The next issue is that of patron behaviour. We recommended that the AHA, the police and the Liquor Licensing Commissioner develop protocols and procedures to be applied when complaints are made about patron behaviour. In this sense, and in the sense of the amendments to the Liquor Licensing Act, I must draw members' attention to the precinct agreements that have been largely facilitated by the Liquor Licensing Commissioner as part of the Attorney-General's crime prevention strategy. In a number of regions in South Australia, including Mount Gambier, Whyalla, Marion, the city West End (I digress to say the city East End does not seem to be able to agree on anything at the moment) and various other parts of the state, including Holdfast Bay, the Liquor Licensing Commissioner convenes regular meetings involving police, local government and entertainment providers and sets out a code of conduct and a standard of behaviour to which everyone subscribes, and they have regular meetings if any problems arise. The evidence that was given to the working group is that that is working exceedingly well and, in that respect, I think the Liquor Licensing Commissioner deserves congratulations for initiating that process.

The second issue we raised was in the context of patron behaviour. We recommended that the scope of section 20 of the Summary Offences Act should be expanded to create a new offence relating to circumstances where any person who, without reasonable cause, disturbs another in or adjacent to any licensed premises where entertainment is held by wilfully creating any undue noise. In this sense, a number of hotels have been subjected to noise complaints, not because of the noise that is emitted by the entertainment within the hotel but because of the behaviour and the noise that has been created by those outside the hotel—and not necessarily by patrons of that hotel.

Indeed, some of the evidence that we received (and I know that it may well be challenged and some people might disagree with it) was that, in the case of the Bridgewater Hotel, a number of the people who were making noise, who were disturbing the nearby residents were, in fact, people who were 16 and 17 and not of an age to go into the hotel. They were out in the car park waiting for friends or trying to participate and making a lot of noise. It was clear to the committee that the responsibility for that behaviour should not fall solely on the licensee or the provider of the entertainment and that, in fact, it is a community and policing responsibility.

In looking at and debating the issue, I must say that there was strong concern from the working group that we did not unduly impinge on people's civil liberties and did not return to the dark days of the 1970s when the police were pushing young people around and there was this great antipathy between the police and young people. We wanted the police to have sufficient power to ask people to move on, not because they are creating an offence where people might be in fear of their personal safety but because they are making too much noise and disturbing local residents.

It would also alleviate another issue that came to the attention of the committee: that, in relation to the conciliation process with noise complaints, many hoteliers were being asked to provide very high levels of security and security guards at great cost to the hotel. Whilst they were consenting to the condition of providing those security guards, what was happening was that the cost of providing those security guards in fact exceeded the cost of providing the entertainment itself. After a period of time, the licensee decided that it was uneconomic to provide the music and, whilst there was no order as such in the Licensing Court, we lost another venue.

We in the working group were committed to the principle that, in relation to general human behaviour in the streets, in mixed use precincts and the like, it is a whole of community responsibility to deal with those issues and we should not be seeking to transfer that whole of community responsibility in managing and policing those issues to the providers of entertainment, ultimately to the detriment and cost of the entertainment and live music industry.

Our final recommendation is that we establish a live music fund to assist venues in relation to structural and building improvements, to assist developers of residential developments in mixed use precincts, and also to enhance the development of the live music industry. We presented those recommendations to the minister, the minister took them to cabinet and on 20 October the minister announced her response. As chair of that working group, I must say that I am extraordinarily pleased with the response of the government to the working party's recommendations.

First, the government said that it would adopt the amendments recommended by the working group to the Liquor Licensing Act. Secondly, the government indicated that, through the Environment Protection Agency, it would produce the appropriate guidelines, and also acceded to the request in relation to Planning SA. The minister indicated that she would initiate the specifications in relation to noise attenuation. In relation to patron behaviour, as a working group we acknowledge that we did not consult broadly with the legal profession and others who might be affected by this, and the government will seek to have further public consultation before finally accepting that recommendation and drawing up amendments to enable the public to consider them. In that respect, I am grateful.

Indeed, in all those matters it is important to note the involvement of three key ministers: the Hon. Diana Laidlaw, as I said, the Attorney-General, Hon. Trevor Griffin, and, of course, the Hon. Iain Evans, Minister for Environment and Heritage, who has responsibility for the Environmental Protection Authority. In relation to the live music fund, I understand that the government is considering that as part of the budget process. Unlike cabinet, I do not have a list of competing priorities, but I would urge the government to seriously consider the proposal.

I know that if I have seen a minister who did not look overly busy in the past fortnight they have generally had a considerable lecture from me about the importance of establishing such a fund. Indeed, if those avid readers of *Hansard* have nothing to do, I would suggest that, if they do see a minister in the immediate vicinity, they also join in this lobby effort in relation to this budget issue.

The Hon. Diana Laidlaw: My advice is that you've been very effective.

The Hon. A.J. REDFORD: Thank you. I should turn to talk generally about a couple of issues and then deal specifically with a couple of comments about the amendments, so that members understand precisely where we are coming from. First, I would like to draw members' attention to a letter from Richard Tonkin of the Governor Hindmarsh Hotel. I will not read it into *Hansard* at this stage but may well take the opportunity to read it when we get to the specific clauses on live music. I might even leave it to the Hon. Sandra Kanck and give her the opportunity to read it. But I would draw members' attention to the letter from Richard Tonkin, which sets out the history and growth of a family business going right back to the western districts of Victoria and the role they play.

And it is not just in the Governor Hindmarsh. I know that the Tonkin family has played an extraordinary role in the Frances Folk Festival that has grown so rapidly in recent years, to the extraordinary benefit of the local community. I would also draw members' attention to the West End Live Music Plan, which has been prepared by Downer Koch, and the importance of the West End as Adelaide's live music destination. I must say that in relation to the East End I think we have missed an opportunity: not that I am laying the blame for that at the feet of any particular person, but there has been a series of decisions (and personalities) that has led, to a certain degree, sad to say, to the demise, in some respects, of the East End. I think that it is very sad.

I know that there are some people in the East End who are working their guts out to try to revive and keep alive the magic of the East End that we all enjoyed from the period of the first Grand Prix up until relatively recent times, but they are struggling because there are some within that immediate vicinity who do not understand that living in the middle of a capital city means that you have to put up with a little bit of noise and a little bit of city life and that living in the East End is not a substitution for living in Burnside or the Adelaide Hills. I would hope that that would work.

I do know that the proprietor of the Grace Emily Hotel looked me in the eye, and if he told me once he told me seven times that, if we do not get the West End right in terms of music and entertainment, that is Adelaide's last chance to get a music and entertainment precinct right in South Australia. Indeed, the availability of the Balfour's site in the West End and how we manage it will be absolutely critical to how the West End and the city develop. I would hope to see every member in this place at public meetings, pushing the importance of live music in the West End.

I look forward to seeing the Hon. Anne Levy back at meetings, pushing the envelope and saying that we have to have such venues as the Grace Emily Hotel and young people and all that life and vibrancy that the West End potentially can have because, without that, Adelaide is a city that is not destined to grow and not destined to thrive, and not destined to provide a strong future for our young people. I cannot put too strong an emphasis on that.

I will not go through in detail the submissions that were made to the committee other than to say we received an enormous number of very high quality submissions. The AHA put a strong position and in some cases we did not follow its recommendations. However, I will deal with one particular suggestion it made at the outset, and that was this issue of first occupancy rights. I know it is an issue around which there has been repeated and regular agitation over a period of time since this debate first surfaced.

The first point the committee was mindful of is that we are probably (and hopefully) at a low point in relation to the availability of venues in Adelaide. We were concerned that if we enshrined first occupancy rights as defined by the AHA—and it acknowledged this as we went through the process—what we would be doing is preventing the establishment of new venues, because this whole development process in terms of the development of a live, lively, modern 21st century city would degenerate into an argument as to who was there first.

I will use the example of the Brecknock Hotel. If the Brecknock Hotel decided—and it has in recent times—to put on live music, we were concerned that the first occupancy argument would be used by nearby residents to say, 'Sorry, you have not had live music. We were here first: you should

not have live music.' We hold the view that, in a mixed use precinct in the middle of a capital city, residents have to put up with a reasonable amount of live music and have to move into a city area particularly in the expectation that the nearby hotel, whilst it may not provide live music today, may provide it in the future. It would be incongruous to establish a scheme where, if it had been established 18 months ago or two years ago, the Grace Emily would not have been permitted to put on live music. In relation to these amendments we have endeavoured to achieve that.

In relation to the principle put forward by the AHA that we freeze all residential development in the City of Adelaide, after lengthy discussion, we believe that we convinced the AHA that that would not be in the interests of its members. After all, if I were the owner of a hotel, I would not mind thousands of people living near my hotel, provided they lived near my hotel in an environment where they would not complain about my activities, because they are a great source of custom and patronage. We all know how hard it has been throughout the course of the 1990s, following the difficult times of the 1980s, to attract people back to live in the city. We believe that, provided they know what they are getting themselves in for, that is an appropriate mechanism to deal with this. We believed that, in the long run, it would be counterproductive to the music industry if we froze development and an increase in the city population.

I will not go through in detail the submission of David Day, except to say that he prepared an excellent submission and set out a number of economic factors in relation to the music industry. However, I will read out part of his submission which I think is very important. Entitled, 'What is the live music scene 2001?' it states:

> On average, a small, up to 250-person, venue will have the following persons involved over three nights of music or entertainment: band/DJs personnel, 10; door persons, 3; act manager, 9; PA operator, 6; PA supply company, 10; printers, 12; street press staff, 14; venue staff, 6; security contractor, etc., 9; total for a week, minimum of 79 are involved [for a three night act at an up to 250 person capacity venue].

If you look at a venue such as the Governor Hindmarsh where, on occasions, they have larger acts, the number of people involved are at this level: bands and DJs personnel, 80; door persons, five; act managers, 15; PA operators, seven; PA supply company, 15; printers, 15; street press staff, 14; venue staff, 40; security contractors, etc., nine; national promoters, 15; local reps, three; and, drivers, two. The total for the week is 220, plus the record company and all of that. In relation to those, we have probably 4 200 people per year per venue and a minimum of 80 000 impressions per year over, say, 20 venues. He refers to the APRA report which says that it has 2000 SA paying members on its books with 720 registered bands. He goes on and says:

> The loss of a workplace to those members would be critical to them sustaining even the meagre living they get now. This has particular ramifications on youth unemployment figures as most staff at venues and indeed those in bands are young and students.

This puts the industry into some context. Some of the opportunities include: publicists, booking agents, artist managers, promoters, street and commercial press staff, photographers, recording studios, crewing companies, graphic designers, web site designers, full and part-time music association coordinators, legal services, accountants, CD and tape manufacturers, event caterers, event and site managers, PA companies, studio and live sound engineers, insurance providers, lighting supply companies, musical instrument retailers, independent record companies and CD distributors, transport hire companies, security firms, breweries and other alcohol providers, soft drink suppliers, etc. That is a great range of people.

He points out that there are currently only about 20 contemporary new style music venues in the metropolitan area and that we have lost at least 15 or so in the past five years. He points to the fact that that has been due to a range of factors and not just noise. He says that there are about 60 to 80 regular cover band venues and 30 dance or DJ-style rooms operating. There are four larger dance clubs including Heaven, Zanzibar, New York Bar and Grill and Planet and they would involve up to 120 persons a week. Indeed, the list of lost venues over the past 20 years is extensive.

I would also like to thank Mr David Case, a man I have never met, who lives at Semaphore and who provided a detailed submission. I am also grateful to the Leader of the Opposition, the Hon. Mike Rann, and it is important that I read his submission into *Hansard*, as follows:

> Dear Angus,
>
> I write in response to your letter of 7 August requesting my comments in relation to the issue of neighbourhood noise disputes involving live music venues. I am of the view there should be legislative change to recognise the 'existing use' rights of live music venues where developers or individuals are seeking to build residential accommodation. I support the use of noise mapping to designate areas which should be exempted from noise complaints from accommodation which is not yet built, which should alert people considering buying or building a home near an established entertainment zone or establishment and allow them to make an informed decision before signing a contract. I believe this policy should apply only to existing live music venues and should not allow other hotels and clubs to suddenly introduce live music into established residential areas where it could cause annoyance to home owners. Thank you for the opportunity to respond in relation to this important issue.

I hope when the opposition considers these amendments next week that it considers that we have endeavoured as best we can to accommodate nearly all the suggestions made by the Leader of the Opposition. We agree with his penultimate paragraph, with the exception that we also believe that there ought to be the continued introduction of live music into new venues in mixed use precincts, and we have focused on that.

The Australian Democrats also made a submission and supported the AHA's recommendation. The Hon. Sandra Kanck in her submission said:

> Of course, a number of ramifications flow from enshrining first use rights in legislation. I believe notification requirements for buyers of residences near established live music venues are absolutely essential. Nor should such rights create carte blanche for live venues on the noise front.

I again would hope that these amendments fit in with that assertion. She also suggested that we look at the legislation passed by the Queensland parliament. In that regard I am grateful for that suggestion. We did look at that legislation. Indeed, I made inquiries from people involved in the music industry in Queensland about the effect of those amendments. What has happened in Queensland, according to the people to whom I spoke, is that it is being used as much to stop live music and new live music venues as it is to protect existing live music venues.

Indeed, one story that I was told by the principal of Ocean Records was that one hotel across the Brisbane River was getting complaints from one recalcitrant person in her late 70s who proved that she had lived there much longer than the hotel had been providing music, which was a period of only 15 years. In the end, notwithstanding these amendments in Queensland, the hotel thought it would be cheaper to buy the

house that she owned—at great expense—move her out and move in younger people to enable it to continue the provision of live music.

That is why we did not go down the path of legislatively prescribing a noise level standard and a first occupancy right. I might say—and we have not said this in our report—that the EPA is fairly clear about—and the officer of the EPA, who has a good working relationship with the hotel industry and, in particular, with the proprietor of the Grace Emily, is very mindful of—what is an appropriate noise level. Indeed, I did not understand it. He took me out one night to a few venues—and I will tell members over the bar some of the funny stories that came out of my visits to various venues with a noise meter that is a big black thing about 18 inches long and two inches wide that attracted a lot of attention.

The Hon. Carolyn Pickles interjecting:

The Hon. A.J. REDFORD: No, to be perfectly frank, we did not. I have to say in a personal response to the honourable member's interjection that obviously occupational health and safety issues ought to be paramount. I know that those experienced in the live music industry do take steps to ensure that they are protected, but that is not to say that is not another issue that ought to be considered. I think the honourable member makes a pertinent interjection.

I also acknowledge that the shadow attorney-general, Michael Atkinson, made a submission supporting a 'buyer beware' policy and pointing out that he is the member of parliament for the Governor Hindmarsh Hotel. He said:

> . . . I wish to see it continue as the live music venue that it is. Although the vacant land between the Bowden Railway Station and the Gov was used for residential purposes until about 1995, when the dwelling was burnt down, the new townhouses are likely to attract occupiers who will object to the noise made by the Gov.

I will read the last paragraph in its entirety.

> New residents in my electorate contact my office to complain about hotels or industries that were in the neighbourhood at the time they attended the open inspection and bought their property. These residents explained that the open inspection was on Sunday and the establishment which harms their residential amenity was not operating that day. I am weary of developers and real estate salesmen who tell potential buyers, 'Yes, the bus stop will not be there in a few weeks.' 'Don't worry, the industry is about to be zoned out of the area.' Don't worry about the prison—the government has plans to close it soon.' Frank and blunt disclosure documents would give potential buyers due notice of those things which detract from residential amenity of the property such as a foundry, a live music venue or a street with heavy traffic. Of course vendors and real estate salesmen would try to rort the disclosure statements and do anything to stop the council including local advice on the statement. This is going to be a tremendously difficult and expensive way to go but I think disclosure statements on hazards to residential amenity are justified.

I think Michael Atkinson has some salient points. I hope that what we have recommended, while not expensive, does achieve what he believes should happen, and that is the protection of existing venues.

We also had submissions from councils such as Mount Gambier, West Torrens and Unley. I draw members' attention to one example of how difficult this can sometimes be. A venue in Mount Gambier was the subject of complaint about noise. Unusually, the complaint was not from residents anywhere within 400 metres or 500 metres of the hotel but nearly across the other side of town. Extensive investigation discovered that the music was going down through the cellar of the hotel, through the underground caverns and caves and popping up some kilometres away, much to the annoyance of those residents. That issue was resolved by changing the speakers—putting them on the walls instead of on the floor—and making a few changes to the configuration of the cellar, and those residents did not hear the music. This indicates just some of the difficulties that can arise.

I am also grateful to Tim Simpson, of the East End, for his support and I know that the Adelaide City Council is giving him a grant, to deal with the issues there.

In closing, I draw members' attention to the fact that we may not have all the answers, and I suspect that we might, at some stage in the future, be revisiting the issue.

During the course of our inquiries I came across a document entitled 'Report of the Committee on Noise from Places of Public Entertainment' dated July 1983. In that report, the working party, which was chaired by Mr Inglis, the then Director of the Pollution Management Division, along with various other people of similar representative groups as my group, made a series of recommendations. They talked about the decline in music venues and made a number of recommendations concerning zoning regulations, development standards, building standards; an interesting recommendation to the effect that illegal parking should be rigidly policed; that additional inspectors for noise be appointed; and that changes be made to the Licensing Act (referring to decisions made by the then Acting Judge Kelly, who is now a long-term judge in the Licensing Court). Recommendations were also made regarding changes to late night permits, and the like.

I think that the lesson from that is that this is one of those issues to which parliaments will always need to monitor and give attention. Indeed, annexed to that report is a list of premises providing entertainment. I must say that that list is much lengthier than a similar list that was provided to my committee, so it does highlight the matter. In relation to the legislation, I think that, in terms of understanding the effect of the amendments (and I have already alluded to the change in the objects of the act), I should read into the *Hansard* the advice that I was given by Katherine O'Neill in relation to the proposed amendments to section 106 of the act. The advice states:

> I have spoken with the drafter about your concerns. As I understand you, the desired effect of the provisions is to ensure that a complainant does not succeed merely because it is shown that a person or persons are genuine in their sense of grievance or are genuinely adversely affected. You consider it important for the authority to be satisfied also that the behaviour complained of, (noise, etc.) was objectively unreasonable. That is, the complaint must be not only genuine, but justified. The drafter advises that the proposed amendments to the provision have the following effects:
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> 1. The threshold requirement that the complaint (being an individual and not the council or Commissioner of Police) 'claims to be adversely affected'. . .
> 2. However, in deciding whether to dismiss the complaint or to make orders, the authority is to have regard to a list of factors. That is, to claim to be 'adversely affected' is not enough.
> 3. The factors are as listed in proposed (6)(b). The authority must [take into account each of them]. That is, they are factors to be taken into account. None is given predominance over any of the others and none will necessarily be decisive. It is a matter of weighing all of them in coming to a result. Conceivably, there might be circumstances in which one of the factors weighs so strongly as to be the decisive factor, but that is a matter of the authority's judgment.
> 4. The requirement to have regard to the unreasonableness or otherwise of the activity, 'noise or behaviour' (item (b)(ii)) constitutes an objective test of whether the noise, etc., was unreasonable in all the circumstances. This can interact with other factors such as EPA guidelines and relative development plans. There may be some types of noise or disturbance which is so extreme as to be unreasonable in almost any situation (such as, for example, patrons needlessly ringing doorbells of neighbouring houses), so that the other factors

> will now outweigh this one. Equally, there may be some types of noise disturbance which is so trivial or accepted that they are always reasonable (such as the noise of footsteps leaving the licensed premises or doors of the premises opening and closing as patrons come and go). Between these extremes will be a range of noise and activity, the reasonableness of which the authority must consider, and weigh with the other factors.
>
> Thus, while a result could be reached based on reasonableness alone, this would be unlikely except in very extreme cases. In particular, it is unlikely that the section would have the effect that noise from live music emanating from a hotel or club would automatically always be considered inherently reasonable or inherently unreasonable. More likely, an assessment of reasonableness would be influenced by other factors listed in the subsection, such as the period of time over which music has been occurring at the premises.
>
> Hence, the net effect of the provision will be that the authority must not only consider whether a complainant claims to be adversely affected but must also assess objectively whether the complaint should be dismissed, or should result in orders against the licensee, having regard to all the relevant factors.

I draw members' attention to the fact that it is my strong view that, in 100 years, we will not be judged by the political events of the last week or the last fortnight; we will not be judged by the result of the forthcoming federal election; and we will not be judged by the results of inflation factors, employment levels or the sorts of things that generally occupy us on a day-to-day basis. In 100 years we will be judged by the product of our artists, authors, musicians and poets. We judged the late 19th century and the early 20th century by the likes of C.J. Dennis, Banjo Paterson and Henry Lawson.

In 100 hundred years our community will be judged by our musicians—their words and music, their activities and their success—whether it be on an international, national or local stage. People will see our community through the eyes of those musicians. It is vitally important that we as a parliament recognise that and ensure that we have a thriving city, a thriving culture and, above all, a successful and prosperous live music industry.

The Hon. SANDRA KANCK: I will be reasonably brief because I raised my concerns in my second reading speech and my amendments, obviously, attempt to address those concerns. My amendments deal only with section 106 of the Liquor Licensing Act but I think that the idea of altering the objects of the act is a good one.

My amendments, looking at the issue in section 106, provide that, as long as you reside, work or worship in the vicinity of the licensed premises where the noise is coming from, you can lodge a complaint. My amendments attempt to put some limits on that so that you have to reside, work and worship on a regular basis and be there at the time that the noise is alleged to have occurred. The amendments contain a provision that after a complaint is lodged no action will be taken for 28 days, and the reason is to allow the complainant and the licensed premises to negotiate before it gets to the point where the commissioner deals with it. I will give an example. In May last year I did a tour of the East End after midnight. One of the places that I visited, a place called Q, was burnt out earlier this year.

The Hon. T.G. Roberts: Did you see Angus there?

The Hon. SANDRA KANCK: No, I did not see Angus. This was May last year, so it was before all this blew up. Q was a place that most people had complaints about in terms of people living in the East End apartments. The interesting thing about that place is that it had a roof but no ceiling, so that the noise of the live music echoed and the whole of Q became a resonating chamber that I can understand would have justified some of the complaints. If someone lodged a complaint about Q under the sort of provisions I have proposed, there would be an opportunity for the licensee to say to the residents in those apartments, 'What if I put in a ceiling?', and that might be a simple solution.

I have included prior occupancy rights and, obviously, we will explore that more because the amendments that the Hon. Angus Redford has put on file deliberately avoid prior occupancy rights. I have also given the liquor licensing commissioner the opportunity to dismiss a complaint. As it is currently worded, once a complaint is lodged there has to be at least a conciliation process when, on some occasions, it may not even be necessary.

I think it is important that we are taking this action at the present time. Obviously, this is not the whole solution. This is simply the liquor licensing side of it and not the planning side of it. But, since the whole issue blew up in relation to the Governor Hindmarsh Hotel, the Bridgewater Inn has terminated live music because of the complaints. Since the large public rally, I also understand that the Seven Stars Hotel made a decision to no longer stage live music. It is very timely that we have this bill before us and that we are able to use it is an opportunity to address the issue of live music in Adelaide.

The Hon. K.T. GRIFFIN: I want to give some lengthy responses to the proposals of the Hon. Sandra Kanck in the hope that they will be on the record and I will not have to repeat them all next week. Of course, it may be a vain hope, but we will see. All her amendments will ultimately be opposed by the government, because we will support the amendments moved by the Hon. Angus Redford.

The Hon. Sandra Kanck interjecting:

The Hon. K.T. GRIFFIN: We will see. If I take the amendments paragraph by paragraph—and I know they are not all before us at the moment—it might help to at least explain why the government is taking that position. Paragraphs (a) and (b) seek to restrict who can complain about noise, offensive activity and patron behaviour. The present law provides that a complaint can be made if an activity on or the noise emanating from licensed premises or the behaviour of persons making their way to or from licensed premises is unduly offensive, annoying, disturbing or inconvenient to a person who resides, works or worships in the vicinity. A complaint can be lodged by the Commissioner of Police, the local council or a person who claims to be adversely affected. However, in the latter case, the complainant must be authorised by at least 10 people who reside, work or worship in the vicinity unless the commissioner is satisfied that the complaint should be accepted even without this.

The amendment proposed would mean that a complaint could not be brought unless the person offended or annoyed, if not a local resident, actually works or worships in the vicinity on a regular basis at a time when the activity, noise or behaviour is occurring. This is a double test. The work or worship must occur on a regular basis, and it must occur at a time when the behaviour complained of is in progress. Obviously, this will reduce the range of persons entitled to complain.

The government sees two main problems with what is proposed. First, it may not always be clear who satisfies the regular basis test, and it could work unfairness; for example, what is the position of an elderly person who often attends church in the vicinity but cannot attend every Sunday, perhaps for health reasons, or who attends different services from week to week? Presumably this will not satisfy the

regular basis test. On the other hand, a visitor who comes to the vicinity once a year during the summer holidays and attends the Christmas services during that visit will satisfy the test. Similarly, while a person who works regular hours in the vicinity can complain, a casual worker whose hours vary cannot complain, even though at times he or she is present when the offensive behaviour or noise is occurring. This seems unduly harsh.

Secondly, some quite legitimate complaints may be ruled out by the amendment. It should be borne in mind that complaints about licensed premises are just as likely to be about patron behaviour as about noise emanating from the premises; for instance, suppose that someone runs a business such as a shop, office or professional rooms next-door to the licensed premises. It happens that patrons leaving the licensed premises late at night make a practice of dropping rubbish such as bottles and cans on the lawn or forecourt of the next-door business as they traverse it to go to a nearby bus stop, ATM or taxi stand. The offensive or annoying behaviour in this case occurs during hours when the business is closed. Since no-one is working there when the offensive activity is occurring, there is no right of complaint. It will be difficult to deal with the matter by a complaint to the police about littering because of the difficulty of identifying the persons involved.

This may leave legitimately aggrieved persons without a remedy. For this reason, the amendment will leave schools, in particular, in a vulnerable position. It will usually be the case that the offensive or annoying behaviour of patrons will occur after school hours. It could happen that patrons engage in such behaviour so as to affect the amenity of the school premises when the school is closed, such as by using the premises as a shortcut. This could pose a danger to children. Under these amendments, the school staff cannot complain.

The government would prefer to see the act confer rights of complaint on a wider, rather than a narrower, range of persons. Note that, for a complaint to be brought by an individual, he or she must be able to claim to be adversely affected. A person who is unaffected by the behaviour will not succeed in a complaint. This being so, it is better to allow the complaint to be made and then have it evaluated on its merits by the licensing authority, rather than to filter out what might be quite proper and legitimate complaints by narrow rules about who may complain. Hence, the present law should be retained on this point.

In relation to paragraph (c), I indicate that, as I understand it, this amendment would require that no conciliation meeting or other hearing can be held until a period of 28 days has elapsed from the service of the complaint on the licensee, rather than the 14 days proposed by the government amendment. It will also require the complainant to serve the licensee directly rather than relying on the commissioner to notify the licensee, as happens at present. Presumably, this is intended to allow time for the licensee to investigate the validity of the complaint and, if persuaded, to take steps to address the problem. However, some complaints may be serious or urgent such that a 28 day delay may be unduly harsh for the complainant. For example, if patrons are making a practice of parking vehicles in such a manner that local residents and businesses cannot access or leave their properties, or cannot receive deliveries or help services, it is not desirable to enforce a delay of 28 days. Inability to address the matter promptly by this complaint mechanism may lead the complainant instead to opt for other approaches, such as involving the police, the EPA or other authorities. In that case, there may be a hostile response from the licensee, escalating conflict to the point where a conciliated result becomes unlikely. Also, the knowledge of this built-in delay in handling complaints may cause residents to complain at an earlier stage, perhaps at the first sign of trouble, in preference to seeking to resolve the matter directly with the licensee. This may mean a needless increase in the number of formal complaints.

The government amendment proposes instead a 14 day period. This should be ample for licensees to consider the validity of the complaint. In many cases, it may not be the first notification that the licensee has received that there is a problem. Even if it is, 14 days should be ample. The conciliation hearing should then be able to proceed. Should it emerge in conciliation that the parties need more time to investigate issues and options, no doubt the conciliation can be adjourned or interim orders made to enable this to occur. It is not the practice of the commissioner to require parties to proceed to meetings and hearings if it is apparent that they are resolving the problem without intervention.

The government also has a concern about the proposal that it must be the complainant who serves the licensee. Under the government amendments, it would fall to the commissioner to notify the licensee, as happens now. It is preferable that the commissioner acts as intermediary in this way, particularly if there is a high level of conflict or hostility between the parties, as it can avoid the escalation of conflict. In particular, complainants who are private individuals need to be made aware that they do not have to deal directly with the licensee about whom they have complained if they do not wish to do so.

In relation to paragraphs (d) and (e), the amendment would empower the commissioner to dismiss, at the outset, complaints which are not properly made, are frivolous or vexatious or do not warrant further action. It would also allow the commissioner to suspend proceedings to allow settlement negotiations.

As to the first, presumably one of two things is contemplated. Either the commissioner is expected to make this determination based on the written complaint as lodged, or else it is intended that a preliminary hearing be held to determine an application to dismiss a complaint. The difficulty with the former is that the commissioner may not be in any position to make a fair assessment of this on the basis of the written complaint as lodged.

Not every complainant is equally well able to express his or her concerns in writing. Not every complainant will choose to be legally represented in a matter of this kind. The risk is that justified complaints may be blocked even before conciliation is attempted if the full story does not appear from the written form. There may be a tendency to disadvantage persons of lesser education, of non-English speaking background, or of intellectual disability.

As to the latter, a preliminary hearing, I hope members can see that it is most undesirable and wasteful of resources to provide for a hearing to be held before the conciliation stage to seek to assess whether a complaint should proceed further. Inevitably, the same material will emerge as it would in any case emerge in the conciliation process and in the hearing itself. It will amount to an attempt to determine the complaint as if it were a preliminary point and it will operate to block conciliation.

Also, obviously if the complaint is not dismissed as a result of the initial hearing (and in the majority of cases of course it would not be), an atmosphere of hostility between

the parties may have been generated such that the prospects of a successful conciliation may well be reduced.

If there is a concern that parties should be able to avoid conciliation in a case where it will clearly be unfruitful, this should be addressed as in the government amendments; that is, the parties should make this request of the commissioner satisfying him that good reason exists. This process will be far simpler and cheaper than what is proposed here.

I point out in passing that there is no reason to believe that the number of complaints made per year imposes an unreasonable burden on licensees. Since October 1997 (when the present act came into operation), there have been a total of 57 complaints relating to a total of 49 licensed premises; that is, the average number of complaints per year over the four years of operation of the act is 14.

To put this in perspective, there are presently 4 267 licensed premises in South Australia. So, over the last four years only about 1 per cent of all licensed premises have attracted a noise or disturbance complaint. Thus, the likelihood of a licensee chosen at random having to deal with a complaint in any given year is very small indeed, almost negligible. The great majority of licensees in South Australia have not experienced one single complaint over the life of the present act.

Further, the government has no reason to suspect that there is a high level of frivolous or vexatious complaints. The requirement to obtain the support of 10 other local residents, or of the council or police, tends to militate against this. For these reasons, the government is inclined to the view that it is best to hold the conciliation meeting and give the parties every opportunity to explain the alleged problem in person. Experience shows that a large proportion of complaints are resolved by this means.

If a complaint can be dismissed as proposed by this amendment, but the complainant still feels aggrieved, one can predict that he or she will have recourse to other avenues such as involving the police, EPA, local council, local community or by directly taking up the complaint with the licensee. The aim of saving time for the licensee therefore may not in fact be achieved in any case.

As to the second part of this amendment, this is not needed. There can be no doubt that the licensing authority has the power to adjourn proceedings at any time to allow the parties to negotiate. To propose that this be able to be done, however, solely at the request of one party does not add any benefit. If one party wants to suspend proceedings to seek a negotiated settlement but the other party is opposed to this, then it is obvious that no negotiated settlement is likely to be reached by that means.

It is only if both parties are amenable to this course that it can be helpful. Of course, in that situation it is the present practice of the commissioner to permit parties an adjournment. It is a common occurrence in conciliation that the parties ask for an adjournment to pursue avenues of resolution before coming back to a hearing.

Such requests are routinely granted. I would be very surprised if any of the regular users of the licensing authority were unaware of the practice of the authority in this regard or had found it difficult to obtain such adjournments as were conducive to settlement. As members are aware, conciliation has proved very effective in the liquor licensing jurisdiction.

The next amendment, which is to 'clause 6, page 4, after line 9,' would insert a reference to a new criterion to be regarded by the licensing authority in determining a complaint. It would be required to have regard to whether the activity, noise or behaviour complained of was occurring on such a regular basis over such a period of time that the complainant ought reasonably to have been aware of its existence before commencing to reside or worship in the area. This will necessitate consideration of what exactly the relevant noise or activity is, and its history.

There might be some preliminary difficulties. For instance, if the concern is noise, is it a matter of identifying how long noise at that level has been going on, or how long noise of that type has been going on, or just a matter of assessing how long there has been any noise emanating from the premises? If there is a long history of live music but a brief history of exceeding the noise level restrictions in the licence conditions, which is the relevant history? Or if there is a long history of noise from playing recorded music but a short history of noise from live music, which counts? Will it result that a long time resident who has not complained about live music at a legally acceptable level but who brings a complaint when that music begins to exceed the permitted level is intended to have no redress? The answer is not clear.

Oddly, the proposed amendment seems to imply that there must have been a consistent pattern of the particular activity, noise or behaviour before it will be taken to be the case that the complainant should have known about it. But an activity such as live music or other entertainment could well become known in other ways. The complainant might have received actual notice. For example, the working group report proposed legislative amendments to put purchasers of properties on notice of licensed premises in the area. In that case, even if the premises had only recently started to provide live music, should not the complainant's actual notice be relevant? Or the entertainment activity might have been widely advertised in the media, such that it would be reasonable to expect the complainant to have known about it before moving in. One would have expected that the licensing authority should be able to take this into account. Indeed, under the proposed government amendments, it would be able to do so because that amendment provides for all relevant factors to be considered.

The government does not find the amendment helpful. On the other hand, the amendment proposed by the government represents a synthesis of the views and concerns of the working group members and provides for all relevant factors including any relevant history in relation to the activity, noise or behaviour to be taken into account.

They are the reasons why the government prefers the series of amendments by the Hon. Angus Redford. Those amendments do fit in with the tenor of not only the bill but also the act. Having put my views and having heard the views of the Hon. Mr Redford and the Hon. Sandra Kanck, I propose to move that the committee report progress and seek leave to sit again, in the hope that notwithstanding the differences of views on this issue, and having now put those views on the record, we will be able to deal more expeditiously with the bill and the amendments early next week.

Progress reported; committee to sit again.

CORONERS BILL

In committee.

Clause 1.

The Hon. K.T. GRIFFIN: With the concurrence of the committee, I would like to follow the same procedure that we have just followed in relation to the Liquor Licensing

(Reviews and Appeals) Amendment Bill. There are some amendments on file by both me and the Hon. Ian Gilfillan and I propose to invite the Hon. Mr Gilfillan to outline the scheme of his amendments at this stage. I will take the opportunity to respond so that the arguments are on the record. We will move through and report progress on clause 3.

The Hon. IAN GILFILLAN: In speaking to this clause, I accept the invitation of the Attorney and I will read to the committee some background to my amendments and then possibly address some other matters in detail. I have put on file a number of amendments to this bill. Initially I caused to be drafted amendments that would give effect to recommendations 13 to 17 of the Royal Commission into Aboriginal Deaths in Custody. Secondly, I have amendments dealing with the issue of post-mortems and exhumations of bodies. To begin with, I will speak to the amendments relating to the royal commission. I will read into *Hansard* recommendations 13 to 17 so the committee has knowledge of them. The recommendations state:

> 13. That a Coroner inquiring into a death in custody be required to make findings as to the matters which the Coroner is required to investigate and to make such recommendations as are deemed appropriate with a view to preventing further custodial deaths. The Coroner should be empowered, further, to make such recommendations on other matters as he or she deems appropriate.
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> 14. That copies of the findings and recommendations of the Coroner be provided by the Coroner's Office to all parties who appeared at the inquest, to the Attorney-General or Minister for Justice of the State or Territory in which the inquest was conducted, to the Minister of the Crown with responsibility for the relevant custodial agency or department and to such other persons as the Coroner deems appropriate.
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> 15. That within three calendar months of publication of the findings and recommendations of the Coroner as to any death in custody, any agency or department to which a copy of the findings and recommendations has been delivered by the Coroner shall provide, in writing, to the Minister of the Crown with responsibility for that agency or department, its response to the findings and recommendations, which should include a report as to whether any action has been taken or is proposed to be taken with respect to any person.
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> 16. That the relevant Ministers of the Crown to whom responses are delivered by agencies or departments, as provided for in recommendation 15, provide copies of each such response to all parties who appeared before the Coroner at the inquest, to the Coroner who conducted the inquest and to the State Coroner. That the State Coroner be empowered to call for such further explanations or information as he or she considers necessary, including reports as to further action taken in relation to the recommendations.
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> 17. That the State Coroner be required to report annually in writing to the Attorney-General or Minister for Justice (such report to be tabled in parliament), as to deaths in custody generally within the jurisdiction and, in particular, as to findings and recommendations made by coroners pursuant to the terms of recommendation 13 above and as to the responses to such findings and recommendations provided pursuant to the terms of recommendation 16 above.

I note that these recommendations have never been implemented by the state government. Following discussions with the Law Society and a number of others, we evolved the amendments that are before this place in my name. The requirements themselves are not onerous, and I summarise their effect. First, they will permit the Coroner, after making recommendations on a death in custody, to make recommendations on other matters as he or she deems appropriate. Secondly, they will require the Coroner to send copies of his or her findings and recommendations to the Attorney-General, to all persons who appeared personally or by counsel at the inquest and to any other person who the Coroner believes should receive a copy, and to the relevant minister.

Thirdly, where the findings of an inquest include recommendations, the Attorney-General must lay before parliament a report giving details of any actions taken or proposed to be taken in consequence of those recommendations. This report must be tabled within six months and a copy forwarded to the Coroner. Fourthly, they will require the Coroner to report annually to the parliament on deaths in custody generally and on the findings, recommendations and responses made under these proposed amendments. These are vital amendments to allow the Coroner's Court to be effective in the investigation of deaths in custody and the prevention of repeat occurrences.

The second set of amendments are as a result of a letter and further discussions with the Law Society Aboriginal Issues Committee. I have filed further amendments to the bill dealing with post-mortem examinations and exhumation warrants. I point out that the amendments dealing with the deaths in custody apply to all deaths in custody and are not exclusive to those of indigenous or Aboriginal Australians.

The concerns were, more specifically, that the Coroners Bill did not adequately address a situation when a next of kin objects to a post-mortem or an exhumation. I believe that it would be useful to read from this letter from the President of the Law Society, which raises the issue. The letter states:

> The Coroners Bill 2001 does not make any provision for the next of kin to object either to an autopsy, or to an exhumation of a body. In contrast, the Victorian Coroners Act 1985 provides that where the senior next of kin has requested the Coroner not to direct an autopsy but the Coroner decides that an autopsy is necessary, the Coroner must give written notice of that decision to the senior next of kin. The Coroner must delay the autopsy for at least 48 hours after giving that notice, unless the Coroner believes that the autopsy needs to be performed immediately. Within that 48 hour period, the senior next of kin may apply to the Supreme Court for an order that no autopsy be performed. For these purposes the senior next of kin is defined as (in order) the spouse, child, parent or sibling of the deceased person (section 29).
>
> The Victorian Coroners Act 1985 provides for a similar procedure in the case of exhumations. The Coroner must give at least 48 hours' notice to the senior next of kin before the body of the deceased is exhumed, unless the Coroner is satisfied that it is not possible to do so. If the senior next of kin asks the Coroner not to exhume the body, the Coroner must not exhume the body for at least 48 hours after giving that notice. Within that 48 hour period, the next of kin may apply to the Supreme Court for an order that the body not be exhumed (section 30).
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> For cultural and religious reasons, autopsies and exhumations are issues of extreme sensitivity to many Aboriginal people, as well as to many other social groups. In the past, many Aboriginal families have been caused great distress by autopsies being performed on family members, against the wishes of the family concerned.
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> The legal rights of families in these circumstances are unclear, which has led to further suffering for grieving families. The absence of procedural rights has also increased the legal costs incurred by families seeking a judicial determination.
>
> The Victorian legislation clarifies this area, and strikes a balance between the public interest and respecting the wishes of next of kin in such difficult circumstances. The Coroner's rights and obligations in such circumstances are also clearly set out, for the assistance of the Coroner. Copies of the relevant sections are enclosed for your information.
>
> The Law Society considers that the addition of similar provisions to the Coroners Bill 2001 would be of great benefit to the Aboriginal community, would signal a sensitivity to the Aboriginal culture and would also serve the interests of the general community.
>
> The present Bill provides an excellent opportunity to ensure that due consideration is given to the sensitive cultural and religious concerns referred to above.
>
> Yours sincerely
> Martin Keith
> President

These concerns are entirely reasonable and in keeping with our philosophy. I have therefore filed amendments to address this issue. The situation in South Australia is different from

that in Victoria. Members will note that the amendments drafted are somewhat different from those provisions in the Victorian legislation, but the effect is the same. The amendments will allow a senior next of kin to formally object to a post-mortem examination or an exhumation. The next of kin would have 48 hours to apply to the Supreme Court for an order preventing the operation and the matter would then be determined by the Supreme Court.

The amendments would also allow the Coroner, under certain conditions, to perform post-mortems or exhumation if the operation must be completed without delay. I also draw the committee's attention to the definition of 'putative spouse' that we have chosen to use in my amendments. It is not the ideal definition, nor is it the Democrats' preferred definition. However, we do realise that there has been wide debate on this issue in this place, so we decided to present these amendments with a definition that has been agreed to previously by this parliament. Once again, we do not believe that this definition is ideal; however, recognising that we have already debated this point, we have chosen to go with the definition with which the parliament is already comfortable.

I have had discussions with people involved with coronial activities, and the information provided to me is that Western Australia has very similar legislation that is identified in the amendments I have on file, and it appears that it is working reasonably well. One comment that is fair to make and was raised with me is that this has opened up a wider field of next of kin protesting and objecting and, therefore, there is a wider role for social workers to have a face-to-face briefing with those people, and that has certainly increased their workload prior to this opportunity being available to the family. However, in many cases, that consultation has reduced the suspicion and fear and alleviated the concern so that the objections were raised. Again, in any case, that consultation could be regarded as a social benefit in that it provides compassionate care for people who are obviously confronted with a quite dramatic and traumatic decision when someone close to them has recently died.

The issue of exhumation is statistically very small and probably not as likely to be of quite the same degree of stress to the family, but I still include it because I believe it does fit into the same category. The discussion may be that there is an anomaly and that my amendments set out a pattern whereby a next of kin can proceed along a process to the Supreme Court to halt the intention of a coroner to perform or arrange to have performed a post-mortem or an exhumation.

At the same time, in my subclause (4) I have stipulated that the Coroner, if convinced that the circumstances demand it, is able to proceed with a post-mortem or an exhumation without delay. It is not hard to see, and I have had discussions close enough to the source to realise, that the Coroner's approach is such that there are occasions on which it quite clearly would be against the best interests of the community to hold up or prevent a post-mortem.

A couple of cases were given to me, but one that would stand out quite clearly is where an infant mortality is arguably either physical abuse or SIDS (sudden infant death syndrome). For the diagnosis of SIDS, all other alternatives must be exhaustively explored before that diagnosis is safe, which virtually means that there has to be a post-mortem to relieve what may be the inference that there has been physical abuse as the cause of death.

In recommending my amendments, particularly to those members who have not had a chance to consider them, I imagine that the contentious ones will be those dealing with the post-mortem and exhumation, being new sections 22A and 22B. I do ask members to dwell on the right, which I believe is soundly based, that members of a family of a deceased person should have to protest and oppose a post-mortem or an exhumation under circumstances which I have already indicated and which the letter from the Law Society indicated, particularly in relation to the Aboriginal community. However, I have recognised and repeat that the overriding public interest should empower the Coroner. My amendment provides:

> [when]. . . in all the circumstances, [he or she deems it] necessary that the post-mortem examination be performed without delay, the state Coroner or the Coroner's Court may give directions to that effect and the post-mortem examination may be performed accordingly.

I hope that upon consideration the committee will see fit to pass the amendments that I have on file.

The Hon. K.T. GRIFFIN: When we get to the consideration of the clauses to which the Hon. Mr Gilfillan's amendments relate, I will be indicating the government's opposition to them, and I thought I should try to help the committee understand the reasons why that is the case. In my second reading reply I have already addressed the issue of appeals against post-mortems. I know that it is a sensitive area, but the difficulty is that post-mortems are in the public interest. They really do serve broad public purposes.

In the coronial context, post-mortems are necessary to enable the state Coroner or the Coroner's Court to determine the cause and circumstances of reportable deaths—and we are talking about reportable deaths—and that is a public interest function. Post-mortems are an essential part of that process.

The wishes of the next of kin of a deceased person are not the measure of public interest. The state Coroner does in fact consult with next of kin before determining whether or not there will be an inquest, for example, a post-mortem. He tries to explain the reasons why a post-mortem will occur. It may be that we have a situation where a next of kin is actually responsible for the deceased's death. It may not be obvious at the time; there may be some suspicion. The appeal process proposed by the Hon. Mr Gilfillan would enable the person who is responsible to delay and frustrate the investigation into the cause of death.

There are already limitations placed on the state Coroner or the Coroner's Court in the exercise of its power to order a post-mortem. The Coroner may do so only for the purposes of determining whether an inquest is necessary or desirable; the court may do so only for the purposes of an inquest; inquests may be held only in relation to reportable deaths; and, of course, the state Coroner can issue a warrant for an exhumation but only with the consent of the Attorney-General. The appeal process is certainly likely to slow down the investigation into the death of the deceased. There are those sorts of reasons why the government does not believe that an appellant process is appropriate.

The other point raised by the Hon. Ian Gilfillan in what he just said is that, even though there may be an appeal to the Supreme Court, it is still possible for the Coroner, notwithstanding an order of the Supreme Court, to proceed. With respect to the Hon. Mr Gilfillan, I suggest that it is a bit weird that the Supreme Court, the superior court in this state, makes an order or is in the process of considering a matter which has been taken on appeal or review and the Coroner can still go ahead. With respect, I do not agree that that comes to grips with the issue.

The Hon. Ian Gilfillan interjecting:

The Hon. K.T. GRIFFIN: Well, 'unusual' suggests that it may happen on occasions. I do not know of any case in which a matter has been considered by the Supreme Court, and in fact even after the Supreme Court made an order, that a Supreme Court order may be ignored or the process may be ignored. There is a real concern about the power of the Coroner to proceed with a post-mortem notwithstanding the review by the Supreme Court. A next of kin already has a more limited right to go to the Supreme Court on judicial review and to review the administrative decision of the Coroner.

The Hon. Ian Gilfillan interjecting:

The Hon. K.T. GRIFFIN: Well, I agree, it is a much more limited right than what the Hon. Mr Gilfillan wishes to confer. His right is a very wide right which, as I said, can act to delay, quite significantly, a decision to proceed with a post-mortem. That will also be a matter of some anguish for next of kin if they have to go through the appeal process. As I said earlier, there are social workers attached to the Coroner's Court. They are very much involved in consultation with next of kin about whether or not there should be a post-mortem and the circumstances in which a post-mortem occurs. In those circumstances, to the best extent possible, the wishes of the next of kin are taken into consideration but, ultimately, they are not paramount because of the overriding public interest.

I want to turn, briefly, to those recommendations which relate on those amendments which relate to the recommendations of the Royal Commission into Aboriginal Deaths in Custody. This state has an excellent record in respect of the implementation of those recommendations, which were made 13 years ago. Whilst we should constantly monitor the effect of those recommendations, I think it is time for us to look to the future and to look to see whether other issues need to be addressed—the underprivileged, the disadvantaged and other systemic-type difficulties—rather than going back to the recommendations. Every jurisdiction has made a conscious decision about the extent to which a recommendation should be implemented, if at all.

In this state, in relation to the Coroner and the exercise of the Coroner's power, governments have made the decision that we have gone as far as we believe is appropriate and necessary to deal with the recommendations of the royal commission. There is no point in blindly implementing the recommendations unless there is a significant beneficial public interest to be served.

The first amendment that relates to a royal commission recommendation is the amendment to clause 25. What is proposed is that the court must, unless it is of the opinion that it is not warranted in the circumstances, make a recommendation. At the moment all it says is that the court 'may' make recommendations. I would have thought that there are some quite compelling reasons as to why we should not be saying to the Coroner, or to the Coroner's Court, 'You have to make recommendations'. That is starting off with a presumption that recommendations should be made and then giving the Coroner the opportunity to say, 'Well, in the circumstances, it is not warranted and therefore I will not make recommendations.'

What has been the position, and what is proposed, is that the Coroner has a discretion to make recommendations, and those members who have seen some of the reports of inquests recently, in fact over a longer period of time than just the past year or so, will have noticed that the Coroner has made recommendations.

Sometimes governments have agreed with them, mostly they have: in other cases they may disagree with the Coroner. Ultimately that choice must be left open but the option for the coroner must also be left open, and it ought to be discretionary, rather than compelling, with an option to opt out.

In relation to clause 25 there is also an amendment which widens the Coroner's Court's power to make recommendations. It provides:

> . . . a recommendation may be made. . . despite the fact that it relates to a matter that was not material to the event that was the subject of the inquest.

At the moment recommendations may be made where:

> . . . in the opinion of the court they prevent, or reduce, the likelihood of a recurrence of an event similar to the event that was the subject of the inquest.

That is quite different. The provisions in the bill, in my view, address the issue much more effectively. It is somewhat unusual for a court such as this to be given a wide-ranging power. Ordinarily, they deal with issues which are raised before them. They focus their determination on the matters which are before them, and not extraneous matters which, for one reason or another, they may take it into their minds to comment upon. The real danger of the Hon. Mr Gilfillan's amendment is that it will be an inducement to legal practitioners and others to seek to broaden the argument to encourage the Coroner to make recommendations which might suit a particular party but which may not be relevant to the event which the Coroner is actually exploring.

I do not believe in giving any more power than is necessary and, I must say, that the Hon. Ian Gilfillan has not, with respect, put anything of a persuasive nature which would suggest that this is a desirable development. Then there is a provision about notice, that is, the provision of a copy of findings and recommendations. I think that they are all the things which the Coroner now does as a matter of course. I will have another look at that amendment; perhaps there is no harm in adopting it, but it all happens as a matter of course and it gives flexibility. I should say that the findings of the Coroner are now, as I am informed, available on the internet. They are available publicly to everyone.

The one issue about which I do not agree in relation to the findings and recommendations is that the Attorney-General is required to, within six months after receiving a copy of the findings and recommendations, cause a report to be laid before each house of parliament giving details of any action taken or proposed to be taken by any minister or other agency or instrumentality of the Crown and forward a copy of the report to the court. I do not agree that the court should have what is effectively a policing responsibility in respect of its findings.

Once it has made its findings its job is finished. Because the findings are on the internet they are publicly available. It seems that anyone who has an interest in seeing the findings and whether any recommendations are being pursued has the opportunity to do so. In any event, I think that it will be a monstrous task for the Attorney-General—through his department—to keep tabs on what is happening in various agencies, which may all approach recommendations in different ways. The Courts Administration Authority presents an annual report.

Supreme Court judges present an annual report; the District Court judges in the Magistrates Court do not. I do not support the view that there ought to be an annual report from

the state Coroner, which is effectively a reporting on the administration of the Coroner's Court. The Coroner's Court is under the umbrella of the Courts Administration Authority, and it should be sufficient that the authority itself contains reference to the Coroner rather than requiring an individual court to provide an annual report to the parliament.

It really is, again, unusual—perhaps incongruous—and, in my view, inappropriate. They are the issues that we will be exploring in more detail. Hopefully, the contributions which both the Hon. Mr Gilfillan and I have made will enable us to short-circuit some of the debate.

The Hon. IAN GILFILLAN: I would just like to add a couple of comments as I can see that both the Attorney's contribution and mine may well be the definitive material upon which diligent committee members make up their mind. While I believe we have got an eminently satisfactory Coroner currently filling the position, from observations interstate one cannot always be certain that that will be the case. There can be a possibility that a coroner may have quite an enthusiasm for post-mortems.

I believe that the recent profusion of post-mortems and the retention of organs unfortunately reflects on the fact that we need to regularise this process in a way which may appear cumbersome. I will not repeat my argument, but I think it is a mistake to assume that the performance of the Coroner's office will always be perfect because we have always chosen someone who will act in that way.

My final comment is in regard to the Royal Commission into Aboriginal Deaths in Custody. At its time it was rightly recognised as a signpost for a caring, humane society to work to minimise a totally intolerable loss of life. For that reason, I make no apology for seeking to put into statute various measures which will report on, control and encourage action, rather than just platitudinous words. With those two observations, I am happy to rest my case until the committee sits again.

Clause passed.

Clause 2 passed.

Progress reported; committee to sit again.

WEST BEACH RECREATION RESERVE (REVIEW) AMENDMENT BILL

The House of Assembly agreed to the bill without any amendment.

LAND ACQUISITION (NATIVE TITLE) AMENDMENT BILL

The House of Assembly agreed to the bill without any amendment.

JOINT COMMITTEE ON IMPACT OF DAIRY DEREGULATION ON THE INDUSTRY IN SOUTH AUSTRALIA

The House of Assembly informed the Legislative Council that it had appointed Mr Meier in place of Mr Hamilton-Smith, resigned.

ADJOURNMENT

At 5.38 p.m. the Council adjourned until Tuesday 30 October 2001 at 2.15 p.m.