# LEGISLATIVE COUNCIL

**Thursday 15 November 2001**

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

## STANDING ORDERS SUSPENSION

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

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

Motion carried.

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

In Committee

Clause 1.

**The Hon. NICK XENOPHON:** I did not have an opportunity to speak in the second reading stage in relation to this bill. I indicate that although I support this bill I do have some concerns. I have already spoken about the amendments moved in relation to this bill in the context of the bill that was passed last month that related to dust diseases and to the Survival of Causes of Actions Act. I accept that the Attorney has been well-intentioned in relation to this, and I accept that this bill may lead to a reduction of delays in the payment of additional awards to a plaintiff or a plaintiff's family. My concerns have already been set out in the parliament in the Statutes Amendment (Dust-Related Conditions) Bill.

I have reservations about how this bill will work with respect to delays. I am concerned that the onus of proof will be with the plaintiff. It will be very difficult for a plaintiff to raise the issue that an insurer is not doing the right thing—and I would like to say that I believe that most insurers and their representatives do try to do the right thing—in the sense of behaving in a manner that is capricious. How would it be proved? That is the issue. These are concerns that have been raised by plaintiff lawyers.

I have not seen the Law Society's submission, but I understand that it has raised concerns about the bill. I do not believe that the bill will do any harm, but my concern is that it may not be as effective as the Attorney believes it will, in the context of a plaintiff getting an award of additional damages. That is something that I would like to explore with the Attorney later in committee. But, having said that, my reservations about the principles of the Attorney's bill are already on the record. Amendments have been passed in the context of another bill with respect to dust disease and victims of asbestos related disease. My concern is that it will be difficult for a plaintiff to ever be able to prove undue or unreasonable delay .

**The Hon. T. CROTHERS:** With some caveats, which I am about to state, I support the bill on the basis that half a loaf is better than no bread at all.

*The Hon. T.G. Roberts interjecting:*

**The Hon. T. CROTHERS:** Listen, you hungry-gutted interjector, half a loaf is better than no bill at all. I want to make the point that I have witnessed, in the case of a son-in-law of mine, who certainly was suffering from a back injury, one of the tactics being used by the Workers Compensation Tribunal, which is another industry related body. This was the tactic of delay, or the tactic of putting it on the worker for him to have two or three extra specialists' reports at $400 a time—he was working for a fellow who was prepared to bankroll him—and, indeed, after the last report they asked for, which was from an orthopaedic specialist regarded as an employment specialist, he was given a 40 per cent total and permanently incapacitated result, which was better than anybody else had given him.

This was after about three additional specialists' reports that really were only being used, first, to try to make the bargaining position much better for the insurance company and, secondly, as a delaying mechanism by the workers compensation body itself in the hope that if it were able to delay it enough then the worker would settle for much less than really should have been the case.

Having said that, and I agree with the Hon. Nick Xenophon about dust-related diseases, nonetheless I believe that half a loaf in this case is better than no bread at all. So with those caveats open, I simply regard this bill as being a better step than what we have. But it remains to be seen what its beneficial impact will be; it may, in the new parliament, have to be revisited after a year or two's operation. I do not agree with what the Hon. Nick Xenophon said, that is, that most insurance companies try to do the right thing. They do not—because they try to do the right thing by their shareholders.

I am not saying that that is not the role of the board: of course it is. That is the nature of private enterprise. But, having said that, most of them, in order to try to save their payouts—which is their role—really do not act in a genuine fashion when it comes to addressing genuine injuries. There are exceptions to the rule but, unlike the Hon. Mr Xenophon, I think they are the exceptions rather than the rule.

**The Hon. T.G. CAMERON:** As I have already indicated in my second reading speech, SA First, People Before Politics, supports this bill. I just wish to add some support to what the Hon. Trevor Crothers was saying. I cannot speak from personal experience in having to deal with insurance companies, but I have had occasion to deal with constituents where it has not been the insurance company that has been unnecessarily delaying the claim, but rather the tactics used by either the defending or prosecuting lawyer, dragging a claim out so that they have got more flexibility to negotiate a settlement, or for whatever reason.

It has always surprised me, and we might get a comment from the Attorney on this, why some of these damages claims take so long to process. My observation of them is that it is not a question of the insurance company holding up the claim but it is lawyers shooting documents backwards and forwards to each other seeking clarification of a point or an interlocutory seeking more information. I know some lawyers who pride themselves on their ability to generate cash out of the process. I find that particularly disappointing. I hasten to add that those lawyers are very much in a minority, and I would suspect that in any profession you will always get a small percentage of people who are prepared to bend the rules to their own advantage. From my observation, delaying a claim for 12 to 18 months with paperwork shuffling backwards and forwards between the respective lawyers' offices does not proceed the action in any way at all, but it generates a lot of fee income for the lawyers concerned.

I do support this bill; I think we are pushing down the right track. It will allow the court to take into account the extent of the unreasonable delay and issue exemplary

damages as punishment for that action. That would seem to me to be a course of action designed to try to speed up the process, to try to force the parties away from taking action to deliberately, unnecessarily or unduly delay, procrastinate or vacillate or whatever word you like, but basically hold up the claim. This bill will allow the court to award damages on behalf of a deceased person in certain cases involving unreasonable delay in the resolution of a personal injury case. I am sorry to have only just caught up on the debate, but for the life of me I fail to see why anybody would oppose this measure. To me it would seem to be in the interests of people who are caught up in these claims on both sides of the fence.

**The Hon. K.T. GRIFFIN:** The bill has its origin in the circumstances in which the Hon. Mr Xenophon's dust related diseases bill came into the parliament. The government had some concern about that bill, because it acted partly retrospectively but it also changed the law quite radically in relation to damages. What we were trying to do was to meet the circumstances covered by the Hon. Mr Xenophon's bill but in a principled way across the field, so that it covered any case where there was unreasonable delay in relation to a claim for damages by a party who subsequently died. That was the area in which we sought to address that. It does not deal with a whole range of other areas of delay, but what the government and I wanted to see was that this should apply, not just to dust related diseases claims but also to other claims where a plaintiff might die.

I agree with the Hon. Terry Cameron. I cannot see why anybody would want to oppose it, unless there were a concern about drafting, and I will seek to tidy up some aspects of the drafting. I think the Law Society was opposed to it because it was concerned about the issue of punitive damages. Punitive damages are not provided for in the law in many instances, although the concept of punitive and exemplary damages is well known, but the government felt that this was a way of at least trying to make a difference and to achieve an outcome if there was evidence of delay in the sorts of cases covered by the bill.

Another point that needs to be made is that there is already provision in the District Court Act and the Supreme Court Act for the courts to award costs against a lawyer where the court is of the view that the lawyer has delayed. To a very large extent that is covered by the rules. This bill seeks to focus upon the defendant and the insurer, to ensure that where a plaintive is ill and likely to die there is not an unreasonable delay which means that the insurer and the defendant benefit as a result of the death of the plaintiff. That is the context. It is quite true that there may be some issues of doubt but, as the Hon. Trevor Crothers says, we should really monitor this to determine whether it needs to be changed—or, if it looks as if it is working well, maybe even expand it. Maybe some people are concerned that this is the thin end of the wedge. We will just have to take that judgment when we see how this works. It may not ultimately be applied in many cases, but at least it is there as a safety net.

**The Hon. T. Crothers:** One of the reasons I raised it is the events of 11 September and latterly. A lot of insurance companies will be up for big bucks.

**The Hon. K.T. GRIFFIN:** There is no doubt about that. I think this is a plus; it is a reform, as the title of the bill shows. Although there are some drafting amendments, I think it will be a useful addition to the law.

Clause passed.

Clause 2 passed.

Clause 3.

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

Page 3, lines 17 to 20—Leave out paragraph (c)

Clause 3(c) of the bill was to repeal subsection (ii) of section 3 of the Survival of Causes of Action Act 1940 and replace it with a new provision. However, that subsection has already been repealed and replaced by a new provision that was enacted by the Survival of Causes of Action (Dust-Related Conditions) Act 2001. If this clause of the bill were passed, it would repeal the new dust related conditions provisions. Obviously, that is not intended. The situation has arisen because the bill was introduced before the Survival of Causes of Action (Dust-Related Conditions) Act 2001 was passed. At that time it would have repealed an obsolete section 3(ii) and replaced it with a clause intended to ensure that delayed damages could be awarded, notwithstanding anything in the Survival of Causes of Action Act. It was in fact a precautionary clause. An amendment that I will move in a moment to prevent overlap between the new dust related conditions provisions and this bill will make it clear enough that damages may be awarded under this bill in a case in which the dust related conditions bill does not apply, notwithstanding other provisions of the Survival of Causes of Action Act.

**The Hon. P. HOLLOWAY:** The opposition believes the amendment is sensible and we support it.

**The Hon. NICK XENOPHON:** In a sense, these are consequential amendments to the passage of the dust diseases bill, and I am sure the Attorney-General would not want to repeal a bill that has just been proclaimed. I appreciate the way the Attorney has dealt with it accordingly.

Amendment carried; clause passed.

Clause 4.

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

Page 4, line 2—After 'Damages' insert:
in the nature of exemplary damages

This first amendment is to make the new provisions to be added to the Wrongs Act 1936 easier to understand, by including this statement of the nature of the damages that may be awarded in the opening words of the new remedy. This is the same wording as has been used in the Development Act, the Environment Protection Act, and the Water Resources Act.

Amendment carried.

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

Page 4, line 8—After 'claim in writing' insert:
(giving a reasonable indication of the grounds of the claim)

This amendment deals with the grounds of the claim and the notification of that. Damages under this bill could be awarded only if the deceased person had made a claim in writing for compensation or damages for personal injury. Some comments were received to the effect that it would be preferable if the bill were more specific about what amounts to the making of a claim. Any attempt to be prescriptive about what constitutes the making of a claim could defeat unfairly some potential claims in which the technical inadequacy of the notice of claim did not result in prejudice to the defendant to the claim for delay damages. This could occur especially when the deceased was not represented by a competent lawyer in the early stages of making a claim.

The words to be added to proposed section 35C(2)(b) give guidance in a general way to what is required. The minimum requirement would be that a reasonable indication of the grounds for the claim have been given. This would be fair to both sides.

**The Hon. P. HOLLOWAY:** The opposition supports the amendment.

**The Hon. NICK XENOPHON:** I indicate my support. Perhaps this is not directly to the point, but I think it is relevant. If a plaintiff has a claim where clearly there is a potential for an award of exemplary damages in relation to the conduct of the defendant unrelated to the aspects that the Attorney-General is trying to deal with in terms of unreasonable delay, will this bill, in any way, impact on that or is it the case—

**The Hon. K.T. Griffin:** They compromise it.

**The Hon. NICK XENOPHON:** That they compromise it, yes.

**The Hon. K.T. GRIFFIN:** I do not believe that it will adversely impact on exemplary damages. This bill goes to issues of process. Exemplary damages go to the way in which the tort may have been committed rather than to the process which follows the commission of the tortious act.

Amendment carried.

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

Page 4—

Line 16—Leave out subparagraph (ii) and insert:

(ii) some other person who controlled or had an interest in the defence of the claim; and

Line 19—Insert:

and

(f) damages have not been recovered and are not recoverable under section 3(2) of the Survival of Causes of Action Act 1940.

I move these amendments together because the first amendment has to be read together with the second. The submissions received from the Law Society and a firm of lawyers who act for a company that has been the defendant in many asbestos related claims indicate that there is some concern about the definition of 'person in default' in proposed section 35C(2)(d)(ii). The full provision currently reads:

(d) the person in default is—

(i) the person against whom the deceased person's claim lay; or

(ii) some other person with authority to defend the claim; and

In the drafting of this clause the view was taken that normally legal practitioners do not have authority to defend the claim in any relevant sense, but merely to act on the instructions of someone who does. However, it seems that the phrase 'some other person with authority to defend the claim' has been interpreted as including lawyers who are acting on instructions of the defendant, insurer, or other person who controls the defence of the injured plaintiff's claim.

These amendments are intended to ensure that it is clear that this clause is not intended to apply to a lawyer who is merely acting on instructions in his or her professional capacity.

Amendments carried.

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

Page 4, after line 24—Insert:

(ab) a lawful fee agreement between a legal practitioner and client does not give the legal practitioner an interest in the defence of the claim;

This amendment prevents overlap between the very recently passed Survival of Causes of Action (Dust-Related Conditions) Act 2001 and this bill.

Amendment carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

## FAIR TRADING (PYRAMID SELLING AND DEFENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 November. Page 2647.)

**The Hon. P. HOLLOWAY:** I indicate that the opposition will support this bill. My colleague the Hon. Carolyn Pickles was to speak on it but, as she is at another engagement, I will put the case on behalf of the opposition. All of us would be well aware of the evils of pyramid selling schemes. They have been around for a long time, although, unfortunately, people still seem to be drawn into these schemes. That is why it is necessary that the various legislatures of this country should ensure that they are kept under control because, unfortunately, the lure of easy money will always attract people to these schemes.

Basically this bill comes out of a national audit of measures in commonwealth and state legislation relating to consumer protection law. I understand from the minister's second reading that national audit identified deficiencies in the commonwealth Trade Practices Act and also in state fair trading laws. The expression in his explanation is that they found the state fair trading acts unclear and difficult to follow in relation to pyramid selling schemes. We would all therefore endorse any measures introduced to try to tidy up that situation. It was also pointed out in the minister's explanation that a Supreme Court decision in this state around that time—1999—enabled some defendants to avoid conviction because they relied on the fact that they had received legal advice to the effect that the pyramid scheme in which they were involved was lawful. We would certainly support the closure of that loophole, which this bill does.

The opposition supports this bill. We hope that, as a result of this new legislation, which I understand will be enacted by the commonwealth and all states, the situation in relation to pyramid selling schemes will be clarified throughout the country. Hopefully, it will contribute to an extinguishment of these particularly nefarious schemes. We support the bill.

**The Hon. T. CROTHERS:** Briefly I rise to say I support the bill, too. The problem is that, no matter how technical we have our bills in respect of pyramid selling, you will always get someone who will find a loophole. In fact dare I suggest that it makes the constructors of the original pyramids—Pharaohs Kufa-Re and Cheops—look like churlish, puerile pikers in comparison with some of the scams that are foisted upon the general public. I support the bill. It is a very big step in the right direction. However, as I said, no matter how smart we think we are, no doubt you will always get someone who will find another little chink of light, so it will be back again, but it is a good step in the right direction.

**The Hon. CARMEL ZOLLO:** As a member of the opposition, I also support this legislation and recognise the importance of it. I think that, as members of parliament, people very regularly come to us who get caught in these scams and this pyramid selling. Often it is a distressed relative of someone who has been caught in the scam. I know that the Office of Consumer and Business Affairs has received a large number of inquiries and complaints from very many consumers in relation to the scams and, in particular, there has been an increase in chain letters, often

from overseas. Of course, we have the medium of the internet now which also catches out people.

Sometimes very vulnerable people, who are lonely and at home, get caught up in it. I am just looking at an information sheet from the Office of Consumer and Business Affairs. People often ask, 'Can't people see through a scheme like this? Why do they join?' Of course, it is all to do with psychology. I think that it is worthwhile that I quote from the information sheet, which states:

> Why would anyone pay to join a pyramid selling scheme? Pyramid promoters are masters of group psychology. At recruiting meetings they create a frenzy and an enthusiastic atmosphere where group pressure and promises of easy money play upon people's greed and fear of missing a good deal. Thoughtful consideration and questioning are discouraged. It is difficult to resist this kind of appeal unless you recognise that the scheme is stacked against you.

As I said, often these schemes target the most vulnerable people in our society. The information sheet goes on to explain why the schemes do not work. Money paid for recruiting people into a scheme is usually more than the commission for selling the goods or services, if there are any, and extra effort is put into attracting more people to join. As I said, there has recently been an upsurge in scams, particularly from overseas countries. One could end up being part of a ticket comprising, apparently, more than 250 people. I am pleased to see that the Office of Consumer and Business Affairs does have a telephone line that people can call with relevant details.

A good public information register has been established to record the scams. I suppose that, in turn, the office fairly well publicises those scams, often on radio—I have heard them on radio. I think that anything we can do to tighten up these scams is very worthwhile and I add my support to the legislation.

**The Hon. K.T. GRIFFIN (Attorney-General):** I thank members for their indications of support for the bill, and particularly to opposition members for picking it up and dealing with it on the run and quickly. It is an important piece of legislation which does seek to address some of the issues that have been raised in the South Australian court case. The Hon. Carmel Zollo raises questions about information that is available about scams. The OCBA web site has information about scams, and that is updated on a very regular basis. There is *The Little Book of Scams*, which has been published and which is now, I think, at least in its second print run.

Whenever there is a scam that is occurring or which comes to the notice of the Office of Consumer and Business Affairs, either the commissioner or I will endeavour to publicise that because it is important that information is available to the public. The real difficulty with a scam is that, although most of us would probably be alert to a scam, there are other people who, perhaps, either do not have the experience or who have not been exposed to the risk and who might be persuaded that it is not a bad idea to try to get some real money really quickly. Ultimately, they are the people who will suffer.

These scams target not just older people. We had the Nigerian scam drawn to the attention of everyone publicly and a business person actually contributed, I think, $250 000. Fortunately, I think that some recovery was able to be made before the money had finally reached the destination in Nigeria. One would think that business people would never do this sort of thing, but, there we are, there is that sort of experience. Certainly, from the government's point of view, our Office of Consumer and Business Affairs is alert to scams. We endeavour to publicise them as soon as information about scams and variations on scams comes to our attention so that the public is informed.

Ultimately, however, there will always be someone out there trying to make a quick dollar without having to work for it or without exercising any skill or judgment. It is in those circumstances that there will be some people who will be convinced of the facade of genuineness and who will contribute and lose their money, and pyramid schemes are in that category. We try very hard to endeavour to ensure that people are not sucked into contributing to pyramid schemes where only the promoter wins and the person at the lower level always loses. Again, I thank members for their indications of support for the bill.

Bill read a second time.

In committee.

Clauses 1 to 4 passed.

Clause 5.

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

Page 4—
After line 7—Insert:
(2) A person must not induce, or attempt to induce, another to participate in a pyramid selling scheme.
Line 11—After 'part in the scheme,' insert:
some or all
Page 5, line 25—Leave out paragraph (a).

The three amendments all relate to clause 5. Since this bill was introduced, the National Parliamentary Councils Committee has identified two issues involving three minor amendments to the drafting proposed for nationally consistent pyramid selling scheme provisions. These amendments are being moved in order to ensure consistency between pyramid selling provisions in the various interstate Fair Trading Acts and the Trade Practices Act 1975. With this one we want to ensure as much as possible that there is national consistency. So, these amendments arise out of that desire. They are relatively minor drafting issues.

The first amendment creates an additional offence in respect of pyramid selling. In addition to the offence created of participation in a pyramid scheme, the amendment makes it an offence to induce, or attempt to induce, a person to participate in a pyramid scheme. The amendment brings the pyramid selling provisions into line with the equivalent provisions in the Trade Practices Act 1975, which create a separate offence of inducing, or attempting to induce, a person to participate in a pyramid scheme. The amendment is necessary for those jurisdictions, such as South Australia, that do not have an equivalent to section 79(1)(c) of the Trade Practices Act.

The second amendment is a drafting issue. The intention of the bill is that a scheme will not escape being an illegal pyramid selling scheme simply because some of the participants are not required to make participation requests. This intention is currently reflected in section 74C(3)(a). However, by amending section 74C(1) to add 'some or all' prior to the words 'new participants', this intent can be achieved without the need for a separate clause. The third amendment follows on from the amendment described above. Section 74C(3)(a) can be deleted as its effect has been incorporated into the definition of 'pyramid selling scheme' in section 74C(1).

**The Hon. P. HOLLOWAY:** The opposition will support the amendments. Obviously it is sensible to ensure that people do not induce others to participate in these pyramid

selling schemes. The other amendments announced by the Attorney are technical ones which we will support.

Amendments carried; clause as amended passed.

Remaining clauses (6 and 7), schedule and title passed.

Bill read a third time and passed.

## RETAIL AND COMMERCIAL LEASES (CASUAL MALL LICENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 November. Page 2647.)

**The Hon. IAN GILFILLAN:** The Democrats support the second reading of the bill. It gives me pleasure to speak to the bill; it is good to see this important issue finally placed on the agenda. The issue of casual mall leases has been an area of uncertainty for many retailers for quite some time. The bill sets out a casual mall licensing code. I note, as have previous speakers, that the bill has the support of the Newsagents Association, the Australian Retailers Association and the Shopping Centre Council.

However, the State Retailers Association has chosen neither to support nor to oppose the bill. It made this decision after being involved in 12 months consultation on the bill on the understanding that all other parties to the consultation had signed off on it. As I said earlier, I support the move to offer some clarification of the situation surrounding casual mall licences. However, I have some concerns with the bill and will outline them to the Council. First, clause 1(1) of the proposed schedule provides a definition of 'adjacent lessee' as follows:

> 'adjacent lessee', in relation to a casual mall licence area, means a lessee of a retail shop that is in the same retail shopping centre and is situated in front of or immediately adjacent to the casual mall licence area;

This definition is important because a lessor cannot grant a casual mall licence that is an unreasonable introduction of a competitor to an adjacent lessee. It is my belief that a competitor introduced via a casual mall licence need not be adjacent to an existing lessee to directly affect the business of that lessee. In fact, a competitor in a good position quite some distance from an existing lessee also would have a detrimental effect on that lessee.

Secondly, clause 1(2) of the proposed schedule provides a definition of 'competitor'. I have been advised in discussion that the definition is unworkable. I believe that it is too restrictive. The proposed schedule provides:

> For the purposes of this schedule—
>
> (a) in the case of the sale of goods—a person is a competitor of another person if more than 50 per cent (on a floor area occupied by display basis) of the goods displayed for sale by the person are of the same general kind as more than 20 per cent (on a floor area occupied by display basis) of the goods displayed for sale by the other person.
>
> (b) in the case of the supply of services—a person is a competitor of another person if the person competes with the other person to a substantial extent.
>
> (3) For the purposes of this schedule, a person granted a casual mall licence is an external competitor of a lessee of a retail shop if the person is, in the business conducted in the casual mall licence area, a competitor of the lessee but is not a lessee of another retail shop in the same retail shopping centre.
>
> (4) For the purposes of this schedule, a person granted a casual mall licence is an internal competitor of a lessee of a retail shop if the person is, in the business conducted in the casual mall licence area, a competitor of the lessee and is a lessee of another retail shop in the same retail shopping centre.

Subclauses (3) and (4) are self-explanatory, and I have no issue with them. But I believe that subclause (2) is too restrictive. Thirdly, while the provision of a casual mall licence plan and policy is a good initiative, it seems that this will lead to the end of the common mall area. Instead, the mall area will be divided between retail lease areas and casual mall licence areas.

Finally, I question the creation of what is being called a centre court. The bill allows for the creation of a centre court in the casual mall licence plan but does little else. I question whether its aims are not covered by the rest of the bill. However, as I indicated before, we support the second reading of the bill. I look forward to the Attorney, if he is of a mind to and is able to, addressing those matters that I raised.

**The Hon. K.T. GRIFFIN (Attorney-General):** I thank members for their expressions of support for the bill but note that several concerns have been raised about it. There has been particular mention of the State Retailers Association's position. I can say no more than that the State Retailers Association is part of the Retail Shop Leases Advisory Committee, which I chair. It participated in a small working group of that body as well as in the full committee. It contributed to the discussion and raised issues—several of them are similar to the issues that have been raised by the Hon. Mr Gilfillan—which were thrashed out around the table.

The State Retailers Association in its approach to this has stimulated discussion—and proper discussion—about some important issues. It comes from a perspective of, perhaps, suspicion (I hope I do not do it an injustice in describing it as that), and that is not unhealthy.

*The Hon. Nick Xenophon interjecting:*

**The Hon. K.T. GRIFFIN:** I am trying to be balanced in my response. I do not criticise the State Retailers Association for being suspicious of motives. In the end, all parties around the table agreed, other than the State Retailers Association, that the bill was a significant step forward. It is not perfect, but it is better than nothing. In fact, it is significantly better than nothing. It will have to be worked out in practice and, if issues need to be addressed as a result of its implementation, they can be addressed by a further amendment, if necessary. This does have to be given a chance.

The way in which I have tried to develop this is to sit down with all the interest groups and guide the discussion and make decisions, as well as helping others make decisions, on the basis that I do not think that the retail industry, particularly where there are big operators—AMP, Westfield and maybe one or two others—can afford to be at loggerheads with their tenants. A successful retail shopping centre depends upon goodwill between both the tenants and the shopping centre managers and owners. That will not always be present, and it will be more difficult in times of financial stress for that goodwill to be shown.

However, I think that in more recent years there has been a significant change in approach by retail shopping centre proprietors. It may not have been as substantial as some may want, but I think it is a distinctly noticeable change in attitude, and a willingness has developed where they will sit down and discuss these sorts of issues. The fact that last year, or the year before, when we resolved some important issues about renewals—

**The Hon. Carmel Zollo:** Assignments.

**The Hon. K.T. GRIFFIN:** I am coming to that—and then the assignment issue, raised first by the Hon. Carmel Zollo

in amendments to the bill, and now this, all indicates that where there is a will there is a way. We will certainly be monitoring this as a government to ensure that it comes into effect after an appropriate period of training, education and information and that its operation is monitored.

Let me deal with the specific comments from honourable members. The comment was made that the fact that legislation has been introduced recognises that there is a problem but that the State Retailers Association is of the view that the bill will not solve the problem and that it will, in fact, strengthen the rights of the landlords. With respect, I do not agree, and that is something that I guess only time will demonstrate who is right and who is wrong. Another comment is that we will end up seeing every tenant being offered casual mall space and, if that is not accepted, tenants would have no grounds for raising grievances. Again, this is an issue that I expect will be worked out in practice in accordance with the code. The greatest concern of lessees is protection from unfair competition in the granting of casual mall licences, and I think that this goes a long way to addressing that issue.

The bill represents a common position reached after extensive discussion in the Retail Shop Leases Advisory Committee and between members of the committee and their respective constituencies. It is important to recognise also that there has been significant compromise by the various groups represented on the committee, and that has seen some curtailing of the rights of landlords in relation to their use of common space in shopping centres. At the same time, that compromise has created a regime in which a landlord is required to give tenants notice of the conditions under which casual mall licensing will be undertaken within the centre operated by the landlord in which the tenant has retail premises.

It must be remembered that this is a code intended primarily to manage parts of the relationship between landlords and their retail shop tenants. The controls that it imposes on landlords in respect of their management of casual mall licensing are imposed so as to provide some protection for tenants by giving them notice of certain things and providing them with access to remedies. Some compromises, as I have already indicated, have had to be made, but for the first time this code provides a legislative framework in which casual mall licensing can operate and in which there is greater clarity in respect of the proper positions of affected parties.

It does clarify the entitlements and expectations of those affected parties as well as ensuring that lessees have access to greater information about casual mall licensing in retail shopping centres. The code does not purport to require tenants to take up mall space if offered or make access to any remedy contingent on whether or not a tenant accepts an offer of a licence to use mall space.

The code attempts to address competition issues in some detail as this was one of the most significant things that featured in the committee's discussion. However, the committee recognised that it is unrealistic to expect that there could be absolute protection from competition. Casual mall licensing is an established feature of modern retailing. Any shopping centre that participates in the practice will have to deal with the fact that it does introduce elements of competition. The challenge for the committee and this bill was to find ways to see that all parties were dealt with as fairly as possible without stifling what is a legitimate part of shopping centre business.

The code therefore focuses on trying to see that, to the greatest extent possible, competition between tenants and casual mall licensees is fair, and that is the reason why the code addresses such things as the placement of licensees and the obstruction of sight lines and attempts to give some definition to the concept of competition in a way that can be applied by tenants and landlords in a practical context. This is a new area that is being explored by the code. South Australia is, in fact, the leader in this. It is inevitable that there will be uncertainty and perhaps some misgivings but, as I said earlier, there will be an education and information campaign led by the Office of Consumer and Business Affairs and the Retail Shop Leases Advisory Committee. I can confirm that the committee and the Commissioner for Consumer Affairs will keep the operation of the code under scrutiny.

The other point that I need to make in the context of South Australia being a leader in this area is that the Australian Competition and Consumer Commission was invited to participate and did have more of a watching brief than anything else, but also the Australian Retailers Association at the national level was represented, when necessary, and we also had the Shopping Centre Council of Australia represented because they all recognised that whatever was done in South Australia may well flow on to deal with casual mall licensing in other jurisdictions. There was a natural reluctance for South Australia to negotiate until we had brought in the national representation so there could be at least some comfort for both retailers and shopping centre operators and owners that what was being proposed in South Australia, whilst a pacesetter, was nevertheless reasonable and workable.

The Hon. Mr Gilfillan raised a couple of issues, including adjacent lessee. That issue was raised by the State Retailers Association and it was thrashed around in the Retail Shop Leases Advisory Committee. The difficulty was to find a definition which was not a straitjacket. There was some suggestion that we should define this by reference to measurements, but even that was unworkable in the view of all those sitting around the table. The definition in the code, in relation to a casual mall licence now has this meaning: a lessee of a retail shop that is in the same retail shopping centre and is situated in front of or immediately adjacent to the casual mall licence area. That is an attempt to give a better definition than merely referring to 'adjacent'. But I understand the issue that has been raised.

It is not an easy issue to resolve but all the minds around the table, looking at it from a practical perspective, could see that this would at least give some substance to the description of adjacent lessee, even though it may not be perfect.

The Hon. Mr Gilfillan raised the issue of the definition of a competitor. Again, there was a lot of debate about that in the committee. One had to be careful that it was not ultimately going to be a restraint of trade and fall foul of the federal Trade Practices Act or of the general competition policy principles which we are required, as a state, to reflect in legislative arrangements. In the end, all the people around the table determined that this was probably the best description that one could get in the circumstances. It is reasonably practicable, though not foolproof. One or two said it is unworkable. That is something we will have to test in practice.

The Hon. Mr Gilfillan also said that this bill, and the code which it embodies, will see the end of a common mall area.

I would be surprised if that should happen. I do not think the bill and the code provide an incentive for shopping centre proprietors to end common mall areas. Common mall licensing is still very much a part of modern retailing and is the very reason why we are seeking to enact these provisions to try to get some form to the regulatory framework which deals with those in the context of the operation of a shopping centre.

There was then the question of the creation of a centre court. The issue of the centre court was one which arose later in the discussions. I am told that all shopping centres in South Australia have one centre court—they do not have a series of so-called centre courts—and it is largely the hub of the shopping centre, the area where presentations are made and promotions are undertaken: it is a bit like a town square. Everybody else around the table understood what a centre court is. For a layperson like me, unfamiliar with shopping centre practices and design in many respects—

**The Hon. T.G. Cameron:** It's 12 years since you have been in a shopping centre.

**The Hon. K.T. GRIFFIN:** No, I have been to shopping centres; I do not make a habit of it, though. I prefer to go to the small, regional shopping centre which is not anything like the big centres. It was determined that the licensing issue there should be treated differently from anywhere else in the shopping centre, because of the focus on the centre court during sale periods, promotions and so on. I hope that answers the questions raised by the Hon. Mr Gilfillan and by other members. Of course there will be an opportunity to pursue those issues during committee.

I thank honourable members for considering the bill so quickly. I think it is an important piece of legislation which needs to be passed through both houses so we have an opportunity to get it into practice. I also want to thank all of the participants on the Retail Shop Leases Advisory Committee because a considerable amount of time, energy and resources have been put into this, ranging from the small shopkeeper, who has had to leave the business to staff or family to run, to the large operators: all of them have participated with good will so that we have been able to reach a conclusion to this issue, at least for the time being.

Bill read a second time.

In committee.

Clause 1.

**The Hon. NICK XENOPHON:** I will address clause 1 and raise some other issues with respect to this bill. We already know that this bill is, in a sense, a compromise bill, but it does go further than any in other jurisdictions. Only time will tell how effective this bill will be. I do note the concerns of the Hon. Mr Gilfillan as to the effectiveness of the bill, but most people are willing to give it a go. I can understand that the state retailers' association may have a somewhat jaundiced view in light of its experiences in the past with respect to some landlords. I can understand its reticence to endorse it but, by the same token, it has not opposed it. My questions to the Attorney are by way of general questions in terms of how this will operate.

I had a discussion with the Australian Retailers Association this morning, and my understanding is that in the course of the discussions in respect of this bill there was a discussion with the Attorney-General and his office about small retailers throughout the state being made aware of this bill in the form of an education program, including a mail-out with some information to advise consumers of their rights and, presumably, of landlords' rights in this regard. What steps will be taken in that regard to ensure that this bill is well and truly out there in the arena?

**The Hon. K.T. GRIFFIN:** The precise form of the information has not yet been determined, but some drafting has been done in anticipation of the bill being passed. A commitment was given by me, as Minister for Consumer Affairs, and the participants on the Retail Shop Leases Advisory Committee that we would endeavour to have information prepared, on which everybody agreed, so that one consistent message is put out which provides information. If we can do that, it will be a real plus. There was certainly goodwill around the table, such that I am confident that that will occur.

We have put out information before, which has been agreed, about retail shop leases. I think it came in the context of the last major series of amendments relating to renewals, and I expect that shopping centre managers, landlords, retailers, organisations like the Australian Retailers Association, the Small Business Association, newsagents and state retailers would all participate in the dissemination of information.

**The Hon. NICK XENOPHON:** By way of comparison, I refer to the reforms in respect of renewals and assignments moved by the Hon. Carmel Zollo a number of months ago. Was there a public education campaign amongst retailers in respect of that?

**The Hon. K.T. Griffin:** About assignments?

**The Hon. NICK XENOPHON:** About assignments.

*The Hon. Carmel Zollo interjecting:*

**The Hon. K.T. GRIFFIN:** We are targeting the Law Society, the Real Estate Institute, conveyancers and the Property Council—the peak organisations—because it is a question of the legal issues arising out of the assignment, and it will be more a longer term thing than dealing with the issues that are in this bill.

**The Hon. NICK XENOPHON:** I acknowledge what the Attorney says: that, with respect to assignments, it is probably more pertinent for those who are involved in the preparation of documentation and so on, and in giving advice to tenants. With this bill, because it is, in a sense, very much on the shop floor with retailers, what time frame is there on the part of the Attorney's department to disseminate this information? As I understand it, you will be getting feedback from all the various stakeholders before the information is released. Is that the case, and when can retailers look forward to receiving that information?

**The Hon. K.T. GRIFFIN:** There was some discussion in the Retail Shop Leases Advisory Committee about implementation. There was generally a view shared between retailers, representatives and proprietors that this needed a fairly long lead time and, because it deals with issues in disclosure statements and so on, they were talking about trying to have the publicity disseminated, so that later in this financial year, even on 1 July, it will come into effect. But that has not been finally resolved. I hope that there will be preliminary information, certainly preliminary drafts, being circulated if this bill is passed at the end of November. I would then hope that the committee will be able to have some preliminary information available well before Christmas. The problem with that is that most of the retailers will be preoccupied with Christmas trading, and the concern of the committee was: how much time will they have to focus on this? That is why it was thought that a longer lead time was preferable to bring it into operation quickly.

**The Hon. NICK XENOPHON:** Do I take it from that response that some material will be disseminated in the first three months or so of next year?

**The Hon. K.T. Griffin:** Yes.

**The Hon. NICK XENOPHON:** And is it envisaged that your department or OCBA will have information sessions for retailers and landlords?

**The Hon. K.T. GRIFFIN:** I think that is an inherent part of any promotional campaign, but we would want to do that in conjunction with industry organisations. I agree that that is likely to be necessary because many people who are running a business will not be able to sit down and focus upon it. They will want the stimulus and the discipline of being required to do it, say, at a seminar within a shopping centre or a more general seminar run by the industry or a trade organisation.

**The Hon. NICK XENOPHON:** This is my final question in relation to these preliminary matters. I note that during the second reading the Attorney said that there will be monitoring of this new legislation. What is the extent of the monitoring and will there be a mechanism for reporting back to the parliament to get feedback from the retailers and landlords, say, within 12 months?

**The Hon. K.T. GRIFFIN:** I will ensure that the Commissioner for Consumer Affairs includes reference to it in his annual report. I am expecting the monitoring largely to be done through periodical meetings of the Retail Shop Leases Advisory Committee. We have done that in the past with other reforms to this area of the law. It is interesting that, sometimes when we have had an advisory committee meeting, members have said, 'Oh, it's working okay.' That would be the main forum through which the monitoring occurs.

**The Hon. T.G. CAMERON:** Under the schedule concerning an adjacent lessee, would you clarify for me what 'in front of or immediately adjacent to the casual mall licence area' means?

**The Hon. K.T. GRIFFIN:** The intention was to try to give some substance to this. 'In front of' obviously means just out the front of your shop. What the committee had in mind by 'immediately adjacent' was one either side of your shop, but—

**The Hon. T.G. Cameron:** Is that what it means?

**The Hon. K.T. GRIFFIN:** That is what the committee had in mind and was trying to achieve.

*The Hon. T.G. Cameron interjecting:*

**The Hon. K.T. GRIFFIN:** In terms of litigation?

**The Hon. T.G. Cameron:** I do not want there to be litigation about what the words 'immediately adjacent' mean. Put it down on the record and everyone will know.

**The Hon. K.T. GRIFFIN:** It will vary. If it is a narrow shop on one side, it may be that 'adjacent to' will also extend to the second shop. It will depend on the circumstances of the particular shop that is complaining.

**The Hon. T.G. Cameron:** What are those circumstances?

**The Hon. K.T. GRIFFIN:** The circumstances will be the size of your shop, the nature of your business and the size of the shop next door to you. If you have a huge frontage for Woolworths, then 'in front of' is quite obvious, but 'adjacent to' will be just on the boundaries. That is as much definition as we could put into it. The honourable member has drawn attention to the prospect of litigation. The focus of this is to try to mediate any disputes. There is a provision for mediation, and we have endeavoured to use that in relation to the right of renewal provisions that we enacted several years ago. The mediation is available through the Office of Consumer and Business Affairs if necessary. No-one has yet used it, and I am not aware that there has been any litigation. I must say that, since we put that in place, shopping centre managers have been much more attuned to trying to resolve the issues within the shopping centre than having to get out into the broader community to get some independent parties involved in a mediation process.

**The Hon. T. CROTHERS:** Like my colleague the Hon. Ian Gilfillan, I have some problems with this bill. I think it is an improvement on what we have had, but my problem is one of fear: we all know just how charges were set not so long ago in respect of people who were leasing, particularly in the big, one-stop shop areas—the big supermarkets—where people were leasing from big chains. Prices were set and sometimes they were set at such a level that their real aim was to get those people out, because they had been a wart on the body politic of the people who owned the centre.

The Hon. Mr Gilfillan did not elaborate on his views, but my view is that there is some potential for other people acting in a similar business being set up by supermarket chains as a direct result of endeavouring to get rid of someone who is running a fairly successful business in the area. There may well be something in the bill that I have not seen, or the Attorney-General may well be able to assuage my fevered concern, but I do not see anything that would really stop the onward march of unfair and unscrupulous play by the owners of such large sites relative to the type of shop hire that we get from the present-day large, one-stop shop supermarkets.

**The Hon. K.T. GRIFFIN:** The issue of victimisation was anticipated several years ago. The government moved to insert a provision that deals with vexatious acts. A party to a retail shop lease must not in connection with exercise of a right or power under this act or the lease engage in conduct that is in all the circumstances vexatious. I draw attention also to the commonwealth Trade Practices Act, which specifically deals with unreasonable and unconscionable acts. That has been used in relation to shopping centre disputes—at least, interstate.

*The Hon. T. Crothers interjecting:*

**The Hon. K.T. GRIFFIN:** Not necessarily, because the Trade Practices Act covers behaviour.

**The Hon. T. Crothers:** We are talking about what section of the federal act?

**The Hon. K.T. GRIFFIN:** That part of the federal act which makes it unlawful to act unconscionably and unreasonably. Harsh and unconscionable conduct is prohibited under the federal Trade Practices Act and will apply to shopping centre situations.

**The Hon. T. Crothers:** Because our state act is not silent it may not necessarily apply here.

**The Hon. K.T. GRIFFIN:** The federal act pretty much covers the field, unless you have an individual who is the landlord and not a company or corporation. But what we have tried to do in our act with that provision relating to vexatious acts is to try to fill any gap and make sure as much as it is possible to do so that a landlord in particular does not act vexatiously.

*The Hon. T. Crothers interjecting:*

**The CHAIRMAN:** Order! I think the Hon. Trevor Crothers ought to save up his questions until he is making a contribution on his feet.

**The Hon. CARMEL ZOLLO:** I place on record that I am pleased to see the commitment of annual reporting and, more importantly, that there will be monitoring of this legislation by the Retail Shop Leases Advisory Committee, as raised by the Hon. Nick Xenophon. I am also mindful of what the Attorney-General said in relation to waiting to see how this all works in practice and the consensus that was reached. I intended to raise the issue of an adjacent lease in the appropriate clause but, given that it has now been raised, I will ask my question now. If we were talking about a court—particularly a small one—in a shopping centre, perhaps in a horseshoe shape, when we identified an adjacent shop on either side, could we say that something that perhaps is not physically adjacent could also be deemed to be adjacent? That question has been specifically asked of me.

**The Hon. K.T. GRIFFIN:** I do not think we can make specific provision for the different shapes of shopping malls, centre courts and so on. I guess if it is not directly adjacent, it may well be in front of, in the circumstances to which the honourable member refers—

*The Hon. Carmel Zollo interjecting:*

**The Hon. K.T. GRIFFIN:** You have that situation at the International Shopping Mall near the Central Market where there is one circular central area. That is probably a centre court in that context, too. I do not know that we can define it any further. We will have to endeavour to monitor its implementation.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

**The Hon. CARMEL ZOLLO:** In relation to clause 4 under 'Interpretation', again referring to casual mall licence, it says, 'does not exceed 180 days'. How was 180 days arrived at? Is it an average of what is occurring now?

**The Hon. K.T. GRIFFIN:** In the early stages of the discussion the term 'temporary licence' was being used, but that was not felt to be sufficiently defined and everyone settled on 180 days and said, 'Well that gives some shape and form to it.' They said, 'There is nothing more that one can do. If you set the outer limit within that framework, you can have casual mall licensing.' That was the view around the table. Everyone agreed with it, and I think even state retailers agreed on that occasion without compromising their ultimate position.

**The Hon. NICK XENOPHON:** My question is in the nature of a drafting issue, given what the Hon. Carmel Zollo has raised about a casual mall licence where it makes reference to occupying a designated part of a mall area for a period that does not exceed 180 days. I take it that that means 180 days in the course of a year; in other words, a cumulative period rather than 180 days as one distinct period.

**The Hon. K.T. GRIFFIN:** There is no practice of granting a licence that will allow intermittent occupation. The practice in the retail industry is to grant the licence, say, for one month or one week, and then that is it. There will then be a new licence for the future, if there is a future licensing arrangement. It is not 180 days in aggregate, because, in those circumstances, that might be construed to go over a couple of years. This is about the casual mall licence itself and the length of the licence itself, rather than saying, 'Well, you can have 180 days, but you can do it any time you like over the year.' That is certainly not intended.

**The Hon. NICK XENOPHON:** The other aspect is again a drafting issue. Where it says 'to occupy a designated part of a mall area', is there any risk that, if a landlord does not want to play by the rules in terms of at least the spirit of the legislation, by shifting the casual mall licence five metres, they can get around that? I do not know whether it is an issue, but from a drafting point of view, because it refers to an agreement for a designated part of the mall area that cannot exceed 180 days, can this be got around by simply shifting the licensed area literally three or four metres?

**The Hon. K.T. GRIFFIN:** I do not think there is any intention to allow subversion of the intention of the bill. This is really about there being an area of the mall which is designated as an area for the purpose of issuing casual mall licences, and it is for the purposes of the disclosure statement—

**The Hon. Nick Xenophon:** So, broadly, it will be used for that.

**The Hon. K.T. GRIFFIN:** Yes, broad rather than piece by piece; that is, small licence area by small licence area. It is about designating where casual mall licences can be granted in accordance with this code, and being part of the information that is required to be disclosed in the disclosure statement—

*The Hon. Nick Xenophon interjecting:*

**The Hon. K.T. GRIFFIN:** Yes—it is general rather than specific.

**The Hon. CARMEL ZOLLO:** Following on the same lines I suspect, under the provision for the centre court I note that proposed new section 2(3)(a) provides:

> only one part of the mall area of the shopping centre may be designated as a centre court at any one time;

Do we envisage that centre court shifting as a movable feast, as it were, on a regular basis, because it says 'at any one time'?

**The Hon. K.T. GRIFFIN:** The object of this was to ensure that the whole shopping centre could not be designated as a centre court, and that was the key motivation for limiting it to 20 per cent of the total common area of the shopping area. I suppose that, theoretically, it is possible that one part of the mall area could be designated as a centre court. That might change to another part of the area at some time in the future, but it will not change on a day by day basis because centre court has a definition in the mind of all those who understand retailing in shopping centres.

As I said earlier, the centre court is largely the focal point for the whole of the shopping centre for promotions, performances, presentations, and so on. It is unlikely that one will see a centre court that is the hub of the shopping centre change at random, or even deliberately from time to time. Of course, if there is an extension to the shopping centre, it may be that if it is at one end the proprietors will want to redesignate a different part of the shopping centre as the centre court if, in fact, that puts it closer to the centre of the expanded development.

**The Hon. CARMEL ZOLLO:** New section 1(2)(a) provides:

> . . . a person is a competitor of another person if more than 50 per cent. . . of the goods displayed for sale by the person are of the same general kind as more than 20 per cent. . .

Who monitors those percentages? What is to stop a retailer from, every day, bringing in a new lot of 50 per cent, if you like? Who does the monitoring for something like that?

**The Hon. K.T. GRIFFIN:** In reality, it will be the shopkeeper who claims unfair competition.

Clause passed.

Title passed.

Bill read a third time and passed.

### CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (MISCELLANEOUS No. 3) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 November. Page 2644.)

**The Hon. IAN GILFILLAN:** I make a brief contribution indicating the Democrats' support for the second reading of the bill. It relates to legislation passed by the commonwealth parliament earlier this year. It seeks to enact some legislative consistency between the state and commonwealth legislation. I must observe in passing, however, that our federal colleagues in the Senate had some issues regarding the federal legislation which were not resolved to their satisfaction. However, just acknowledging that is all we intend to do here. It is inappropriate to attempt to revisit those issues. There is no need either for me to repeat comments of members who have already spoken to the bill and, for the sake of brevity and pursuing the efficient operation of this place, I indicate our support for the second reading.

**The Hon. K.T. GRIFFIN (Attorney-General):** I thank members for their indications of support for the second reading of this bill. It is necessary to pass this legislation before the end of the session in order to meet the requirements of the commonwealth and other jurisdictions and I appreciate, therefore, the speed with which it has been dealt with.

Bill read a second time and taken through its remaining stages.

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

### VOLUNTARY EUTHANASIA

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

Petition received.

### PAPERS TABLED

The following papers were laid on the table:

By the Treasurer (Hon. R.I. Lucas)—

Reports, 2000-2001—
- Construction Industry Training Board
- South Eastern Water Conservation and Drainage Board

By the Attorney-General (Hon. K.T. Griffin)—

Reports, 2000-2001—
- SA Water
- South Australian Totalizator Agency Board (SA TAB Pty. Ltd.)

By the Minister for Justice (Hon. K.T. Griffin)—

- Attorney-General's Department—Incorporating the Department of Justice Report, 2000-2001

By the Minister for Transport and Urban Planning (Hon. Diana Laidlaw)—

Reports, 2000-2001—
- Chiropractors Board of South Australia
- Land Board
- Nurses Board of South Australia
- Occupational Therapists Registration Board of South Australia
- Passenger Transport Board
- TransAdelaide

By the Minister for Disability Services (Hon. R.D. Lawson)—

Reports, 2000-2001—
- Guardianship Board of South Australia
- Office of the Public Advocate
- Pharmacy Board of South Australia

By the Minister for Administrative Services (Hon. R.D. Lawson)—

Reports, 2000-2001—
- Department for Administrative and Information Services
- Freedom of Information Act 1991
- Privacy Committee of South Australia
- State Records of South Australia—Report on the administration of the State Records Act 1997.

## QUESTION TIME

### ROYAL AUTOMOBILE ASSOCIATION

**The Hon. CAROLYN PICKLES (Leader of the Opposition):** I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about the subject of the RAA elections.

Leave granted.

**The Hon. CAROLYN PICKLES:** I understand that an email is circulating within the Passenger Transport Board, and possibly elsewhere, encouraging public servants who are RAA members to vote for the former CEO of the Department of Transport, Mr Rod Payze, in elections for the board of the Royal Automobile Association. The message reads:

> Our former chief executive and past Commissioner of Highways, Rod Payze, is standing for election to the board of the RAA. Voting closes on 19 November, so if you are an RAA member and would like to see Rod join the board this is your chance to cast a vote. The RAA has details on how you can register your vote for board members. Rod Payze is well known to us all and his comprehensive knowledge of transport matters would be an asset to the board of the RAA.

The email is signed Arndrae Luks, Manager, Public Affairs. While I acknowledge that Mr Rod Payze was, indeed, a very fine public servant who served both Labor and Liberal governments well, I think this is an inappropriate use of government resources. My questions are:

1. How widely has this email been distributed, and has this message also been distributed throughout the public service using other methods of communication?

2. Will other candidates for the board of the RAA be given a similar opportunity to solicit votes from public servants?

3. Is this canvassing for votes for Mr Payze to join the RAA board being done at the direction of or with the knowledge of the minister?

4. Who directed Mr Luks in his role as Public Affairs Manager for Transport SA to solicit votes for Mr Payze?

5. What other pressures are being brought to bear on public servants to support Mr Payze, and does the minister believe this is appropriate?

**The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning):** That is a series of questions and I do

not write shorthand so I do not have them all. Certainly, I was not aware of the email and I will have to seek confirmation that it is circulating in the form that the honourable member has highlighted. I am aware—

*The Hon. L.H. Davis interjecting:*

**The Hon. DIANA LAIDLAW:** Yes, there may be, but, if the email has been written by Mr Luks, I note that it did not publicly pressure anybody to vote for Mr Payze. It simply was in the terms that, 'If you would like to support him, he would be a good candidate.' So, if it is, in fact, true that there is such an email, I think the words seem to be quite tempered in soliciting votes. I certainly was not aware of such an email. I am a member of the RAA and I am not aware that I have received the email, and I am certainly not telling anybody how I am going to vote.

**The Hon. L.H. Davis:** And I haven't, either. I am a member and I haven't received an email.

**The Hon. DIANA LAIDLAW:** You have not received one, either. I can say, without qualification, that certainly I did not direct such an initiative. With regard to the other matters, I will either seek further advice or look at the detail of the questions and come back to the honourable member with an answer promptly.

## ELECTRICITY, NATIONAL MARKET

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

Leave granted.

**The Hon. P. HOLLOWAY:** In an article in today's *Advertiser* it is stated that a series of options, including a form of price regulation, is currently being examined by the government in a bid to solve the state's electricity crisis. The article states:

> The options are outlined in a special Treasury briefing document circulated to cabinet and government officials.

The options apparently include doing nothing and letting the national electricity market take its course (an option favoured by the Treasurer, according to Tuesday's *Advertiser*); delaying households from entering the market for between three and four years and phasing in increases; and changing legislation to give the independent industry regulator greater powers to regulate prices.

The article states that industry analysts estimate that prices to households will rise between 20 per cent and 30 per cent, that is, $150 annually for average households, when South Australia enters the national market. Further, the article states that any move to delay entry would almost certainly result in compensation being sought by retailers and generators. My questions are:

1. Will the Treasurer confirm that he is opposed to any delay in households entering the national electricity market, as reported in Tuesday's *Advertiser*? If not, what is the Treasurer's preferred option?

2. Does the advice received by the government in its options paper support industry estimates that household prices will rise by between 20 per cent and 30 per cent when South Australian households enter the national market at the end of next year?

3. What advice has the Treasurer received about the possibility of compensation claims against the government if any delay of households entering the national market occurs?

4. Will the Treasurer release details of the Treasury briefing document which outlines the options regarding the entry of households into the national electricity market?

**The Hon. R.I. LUCAS (Treasurer):** This is a perfect example of what we talked about yesterday—a five-pronged question in question time. First, the articles two days ago and again yesterday in the *Advertiser* contain significant inaccuracies.

**The Hon. P. Holloway:** It is mainly today's article.

**The Hon. R.I. LUCAS:** Well, the articles yesterday or two days ago, or whenever it was, and today have significant inaccuracies in them. AGL has placed on the record by way of a letter to the Editor one of the those significant inaccuracies and, from the government's viewpoint, I confirm as the minister responsible for electricity reform that no specific pricing proposal along the lines of the *Advertiser's* front page article has been presented to me by AGL or, indeed, by anybody else. That is the position of AGL and I understand that AGL put that view to the *Advertiser* prior to the story being run in the paper.

Secondly, it is not true to say that an options paper has been circulated to cabinet as claimed in the *Advertiser* this morning. That is not true. There are a number of other significant inaccuracies. The story yesterday or the day before purports to give my personal view. I have spoken to the *Advertiser* on innumerable occasions when I have been asked to give my personal view and I have said that the government is considering all options. I will not indicate my personal view. My view will be what the government decides, as it should be as a member of cabinet. The *Advertiser* has been told that by me on a number of occasions. Therefore, a number of aspects in that report are inaccurate and, in particular, the inference that in some way I was unconcerned about the impact on household consumers post 2003. However, I was not contacted by the *Advertiser* for my views, and inferences about my views, on that particular story.

In relation to the other aspects of the story, it is correct, as I have said before in this chamber, that the government is looking at a variety of options, including the option outlined by former Premier Olsen for a deferral of FRC from 2003. We are also looking at a model that is not the same as but similar to the model that exists in Victoria, and I have indicated to the *Advertiser* previously that we are looking at variations in relation to a number of those models, as well. It is not correct to say that an options paper has been circulated to cabinet, but that is likely to occur in the not too distant future.

Premier Kerin has indicated, or at least he is reported to have indicated, because I have not confirmed this with him, that a decision is likely to be taken within the next few weeks, and that would certainly be my expectation, as well. In relation to the advice that the government is taking, I have no intention of publicly canvassing that advice currently and prior to the government determining its position in relation to these issues.

Finally, I might say in response to the five-pronged question from the Hon. Mr Holloway that at some stage the Hon. Mr Holloway and the whingeing, whining Mr Rann and Mr Foley will actually have to come up with a policy other than a photocopy of the government's policy on electricity reform. There has been no policy position put by the Australian Labor Party in relation to full rate retail contestability.

**The Hon. L.H. Davis:** You would have to do better than Mr Beazley did.

**The Hon. R.I. LUCAS:** What we have in South Australia is exactly the same problem that Mr Beazley had—an unwillingness to define what it is they stand for. All they are prepared to do is to whinge and whine and complain about the policy positions that governments take.

**The Hon. P. HOLLOWAY:** I have a supplementary question. Will the Treasurer provide to the opposition the legal advice which relates to the government's obligations under the contracts that have been signed so that it can respond accordingly?

**The Hon. R.I. LUCAS:** No.

## TELETRAK

**The Hon. T.G. ROBERTS:** I seek leave to make a brief explanation before asking the minister representing the Minister for Gambling a question on Teletrak.

Leave granted.

**The Hon. T.G. ROBERTS:** Today's *Advertiser* carries an article about Teletrak which states:

> The Teletrak racing venture in the Riverland was a 'scam' run by 'crooks', Liberal backbencher Graham Ingerson told state parliament last night.

A lot of people have been tired and emotional over the last 24 hours: I suspect that this may be an overreaction to the matter. I can only assume that since the Hon. Mr Ingerson helped or assisted in the negotiations between the SAJC and a lot of other stakeholders when proprietary racing was being discussed he must know what he is talking about. The *Advertiser* goes on to report:

> Mr Ingerson, former recreation and sport minister, told the House of Assembly the racing scheme was the 'biggest single scam that I had ever seen carried out on the South Australian community'. The scheme is an internet wagering and pay-TV product, involving a racing track which is under construction in the Riverland.

The article goes on:

> 'What upsets me most of all is the people of the Riverland got conned,' he said. 'They got conned in a huge way, because they were told that there was a dream that had an opportunity but it had no opportunity. I am disappointed and disturbed in fact that a whole range of ordinary South Australians have been led up the garden path by a group of crooks.'

The article in the *Advertiser* by political reporter Susie O'Brien continues:

> Mr Ingerson continues to be unhelpful for any organisation trying to undertake proprietary racing. . . Teletrak director John Hodgman said the company had spent about $100 000 preparing licence applications and was still waiting for the government to process its application for a licence—which is necessary for racing to take place. 'All of the required submissions to the Gaming Supervisory Authority have been lodged and we are still waiting for the government to tell us of the status of our licence application', he said. 'The first submission was made in June and before that in January.'

There have been a lot of words spoken and written about Teletrak, including contributions made by a number of regional councils, as I have mentioned in this place before, to the cyber-raceway proprietary racing program. I will not ask whether the honourable member's questions in the other place are accurate. My questions to the minister are:

1. On what grounds would a licence be issued to the applicant under the act?

2. When will Mr Hodgman be notified as to whether his $100 000 has been wisely invested?

**The Hon. R.I. LUCAS (Treasurer):** I am sorely tempted to say something which perhaps I should not say, and therefore I will not. I will refer the honourable member's question to the—

*The Hon. T.G. Roberts interjecting:*

**The Hon. R.I. LUCAS:** I am not leaving this place, unlike the member for Bragg. I will refer the member's question to the Minister for Gambling and bring back a considered reply.

## COMMUNITY BUILDERS PROGRAM

**The Hon. J.S.L. DAWKINS:** I seek leave to make a brief explanation before asking the Minister for Industry and Trade a question in relation to the Community Builders program.

Leave granted.

**The Hon. J.S.L. DAWKINS:** I have previously referred in this chamber to the Community Builders program. The objectives of the program are: to foster community and economic leadership; to provide local residents with the necessary skills, information, motivation and confidence to become more involved in their community and economy; to develop people, communities and businesses that succeed in the global economy; to identify and develop new local and regional economic development initiatives; to stimulate collaboration between communities; and to create a peer support network of friendships across the region. My experience of the Community Builders program is that it has been a excellent developer of leaders in regional communities.

Following the completion of the first four Community Builders clusters in the Far West, Flinders, Fleurieu and Mid-Murray regions earlier this year, the Regional Development Council saw the merits of bringing forward the third year of the program to run alongside those clusters arranged for the current year in the Loxton Waikerie council area, and the Yorke Peninsula, Kangaroo Island and the Mid North regions.

The Regional Development Council was successful in encouraging its Community Builders partners, the federal Department of Family and Community Services and the South Australian Local Government Association, to bring forward their funding components. As a member of the Regional Development Council, will the minister provide the Council with details of the third phase of the Community Builders program?

**The Hon. R.I. LUCAS (Minister for Industry and Trade):** I thank the honourable member for his question and acknowledge his interest and involvement in terms of this program and, indeed, others overseen by the Regional Development Council. Premier Kerin, in his continuing role as Minister for Regional Development, has taken an active interest in regional development issues. One of the significant feedback items in the Regional Development Council from its earliest days has been that, whilst a lot can be done by governments in terms of the regional communities—and there has been a regeneration of industrial and economic development in a number of our regions in South Australia—one of the issues that could not be ignored in any regional development policy was the generation of the new leaders in those regional communities.

Regional leaders indicated that the leadership—whether of show societies, community groups, sporting groups and associations, or councils—was ageing, and that in many areas younger people were not being encouraged to take up, or were not accepting the opportunity of taking up, leadership positions within their communities. There was one of those rare events, a very strong consensus from the Regional

Development Council, where the government and others ought to be looking at what could be done to try to encourage the growth of potential, younger community leaders in the regions.

The Community Builders program, and one or two other initiatives, was one of the results of that discussion and, as both the Hon. Mr Dawkins and Premier Kerin have indicated to me, the feedback has been that it is a successful program and one worthy of continuing.

I am advised that the four most recent programs—there is the third round of programs of Community Builders—will be in the northern region, covering areas such as Orroroo, Melrose, Peterborough, Wilmington, Yunta; the eastern Eyre Peninsula region, covering areas such as Cleve, Cowell, Darke Peak, Kimba, Rudall (and some of us in this chamber will know that Rudall is the home base of the former President, Peter Dunn); the Coorong area, covering Coonalpyn, Meningie, Tailem Bend and Tintinara; and, of course, God's own country, the South-East, covering Mount Burr, Nangwarry, Kalangadoo and Millicent (for the benefit of the Hon. Terry Roberts). I am sure that the Hon. Terry Roberts would agree that in and around that area there is certainly a need to encourage younger community leaders to be taking on a role—

*The Hon. T.G. Roberts interjecting:*

**The Hon. R.I. LUCAS:** The show society has turned over the leadership; I am pleased to hear that. Certainly, I would congratulate Premier Kerin and also the Hon. John Dawkins and other members of the Regional Development Council who have recognised a need in regional communities and identified a particular program. That program is funded not only by the state government; we should acknowledge the commonwealth government and the Local Government Association as well. It is a collaboration between the three levels of government in trying to build the future leaders of our regional communities through some assistance in this program.

## SELLICKS HILL CAVE

**The Hon. M.J. ELLIOTT:** I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Minerals and Energy, a question about the Sellicks Hill cave.

Leave granted.

**The Hon. M.J. ELLIOTT:** On the eve of the 1993 election—in fact, as I recall, about a week before the 1993 election—a cave beneath a quarry at Sellicks Hill was imploded. That cave is by far the largest cave known to exist on Fleurieu Peninsula, and as a consequence of that implosion the Environment, Resources and Development Committee undertook an inquiry. It would be fair to say that the members of the committee at that stage were horrified by the timing, and I must say that no-one has ever been brought to account for the timing of that implosion. But, recognising that it was a deed that could not be undone, the committee sought some changes in the reporting rules etc. in relation to any new caves discovered. At the same time it also requested that an attempt be made to ascertain whether or not any cave remained intact. At the time of the implosion, nobody knew how far the cave system actually went. The time of that implosion was eight years ago, and certainly I think some 6½ years—

**The Hon. K.T. Griffin:** Was that a Labor government?

**The Hon. M.J. ELLIOTT:** There was not really a government at all; it was a week before an election. One might say that the bureaucrats ran free in a period when they should not have. That is an aside. Following exchanges of correspondence, the committee had an understanding that an attempt would be made to ascertain whether or not any of the cave system remained intact. It should be noted that in our most recent annual report it has become apparent that that is not the case. Will the minister explain to this parliament why no attempt has been made to ascertain the current status of the caves at Sellicks Hill?

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

## AUSTRALIAN TOOLING SYSTEMS

**The Hon. R.R. ROBERTS:** I seek leave to make a brief explanation before asking the Minister for Industry and Trade a question about Australian Tooling Systems Pty Ltd.

Leave granted.

**The Hon. R.R. ROBERTS:** Recently one of my colleagues received some correspondence from a constituent who says he is concerned to have his tax funds used properly. In his correspondence he suggested that we ought to ask this question. Does the minister know of the impending failure of the state government financially supported consortium known as Australian Tooling Systems Pty Ltd? Originally, he claims, it was given a loan of $200 000 interest free for 99 years. He asserts that it was offered free of charge at the South Australian Chamber for Manufacturing office space, access to communications systems and administrative support.

He also asserts that the government was to take over the payroll of the only remaining employee, previously paid by funds from the state and private investors. He further asserts that this company has been without adequate staff, due to mismanagement, for several months and shows no sign of the ability to attract funds to pay for marketing, costing, accounts and staff. He asserts that this was all supported and encouraged by a Mr John Cambridge. I do not know the answers to those questions, so on behalf of our constituent I ask them of the minister. Will the minister advise the council of taxpayers' exposure to the imminent failure of Australian Tooling Pty Ltd; how much did taxpayers invest in the firm; and what was Mr John Cambridge's role in this project?

**The Hon. R.I. LUCAS (Minister for Industry and Trade):** I would need to take advice on that from the department and bring back a reply. I am happy to do so.

## STATE BUDGET

**The Hon. L.H. DAVIS:** I seek leave to make an explanation before asking the Treasurer a question about the state budget.

Leave granted.

**The Hon. L.H. DAVIS:** The 2001-02 budget, which was brought down in this chamber some months ago, indicated that the economic recovery of South Australia had been steady and that the financial stability of the state had been strengthened as a result of the government's measures. I am wondering whether the Treasurer is in a position to advise the chamber whether he has the final figures for the 2000-01 budget and, given that we are 4½ months through the current financial year, whether he could indicate the progress of this year's budget.

**The PRESIDENT:** I would prefer the Hon. Mr Davis to ask a question rather than saying, 'I am wondering whether'.

**The Hon. R.I. LUCAS (Treasurer):** I am not in a position to provide any detail, being unaware of the honourable member's question, but I can make some general comments about the nature of the 2000-01 budget and the 2001-02 budget. I would hope some time later this month to bring down the final results for the financial year 2000-01. I am pleased to report to the chamber, as a result of my last briefing, that the small surplus that the state government projected in the May budget has certainly been achieved, and it might also be a slightly higher small surplus. That is a further sign of the good financial stewardship of this government in turning around the $300 million to $350 million annual deficit that we inherited in 1994. That is a cash non-commercial sector result. The challenge remains for us over the next four years in terms of our fiscal balance, or the accrual accounting concept. The government acknowledges that more work will need to be done in that area by either a new government or a re-elected government after the next election.

In relation to the second part of the question about the financial year 2001-02, I am pleased to be able to report, on the latest advice, that the budget is broadly on track. As always, there are overs and unders, if I can put it that way. There has been some greater activity in terms of stamp duties on conveyances and one or two other tax lines have had slight increases, but, for example, in the area of royalties, there has been a reasonable decline, significantly due to fires at both Moomba and Roxby Downs, of which the honourable member would be aware; and, because, of the impact on production levels in both those areas, there is forecast now to be a reduction in the royalty income to the state budget.

On the expenditure side (as always) there are some areas of government where there is significant pressure on the budget. In all areas there is significant pressure on the budget, but in some areas that is greater than others, which is not uncommon. Certainly, as members will know, come green book time, if I can put it that way—the halfway mark—most portfolios will indicate very significant cost pressures and requests for new initiatives but, inevitably as one goes through the bilateral process, early next year those cost pressures and significant bids for new initiatives have to be tempered within what is available within the broad budget parameters.

I pay tribute to my ministerial colleagues because, as a team over the past four years, they have very effectively managed to bring in budgets broadly in line with the announced positions at the start of the financial year. As I indicated at the outset, it looks like a positive result—in relation to the year 2000-01—will be able to be reported at the end of this month.

## FISHING LICENCES

**The Hon. R.K. SNEATH:** I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about fishing licences.

Leave granted.

**The Hon. R.K. SNEATH:** It has been brought to my attention that there are pending changes to some older fishing licences by disallowing the holder to fish for cockles. This will have disastrous effects on a number of people who have been making their livelihood from cockle fishing for many years. One particular family has gone to great expense. They have fished cockles under their licence since March 1999. Cockle fishing has been their main source of income and they will be affected greatly. They have shifted house to be closer to the fishing grounds.

They have been informed by employees of the Fisheries Department that steps will soon be taken to remove their ability to use cockle rakes as a registered device on their fishing licence other than for taking bait. They have also been informed that the use of cockle rakes as a registered device, other than for taking bait, will be removed from all South Australian state licences, except for two or three marine scale fishing licences—of which this family will not be one—and, of course, all the lakes and Coorong fishing licences, of which this family is not one. The family purchased this licence in March 1994 for the sole purpose of fishing for cockles.

The family is economically dependent on cockle fishing, apart from a small income earned through the occasional month or so of shearing. Apart from one public meeting in relation to the discussion paper that was released and the recommendations of the Marine Scale Fishing Committee in June 2000, no other consultation or information has been provided to this family. Also, at no stage since that public meeting have they been informed by any party that recommendation 14 in that paper was being further considered or would be implemented. My questions to the minister are:

1. Will changes be introduced to the licences of cockle fishermen in the near future?

2. Will people who are currently actively fishing for cockles be allowed to continue under their existing licence or be given an exemption and, if not, why not?

3. If the right of existing cockle fishermen to fish for cockles is taken from them, will they be compensated for their past costs and future earnings?

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

## GAMING MACHINES

**The Hon. NICK XENOPHON:** I seek leave to make a brief explanation before asking the Treasurer a question about IGT Game King poker machines and the IGC's monitoring system.

Leave granted.

**The Hon. NICK XENOPHON:** On 1 November the Treasurer provided a detailed response to a question I asked on 25 July 2001 over the shutting down of the IGT Game King machines and the Independent Gaming Corporation's monitoring system and related issues. The Treasurer indicated that initial advice was that there was a likelihood of some kind of external interference in the machine although, after further investigation, it was established that the problem was a combination of two mechanical defects inside the machine, which were apparently due to, first, the machine being supplied with a component outside the manufacturer's specification and not in accordance with that tested and approved by the commissioner; and, secondly, the assembly containing the component was not fitted correctly.

The defects caused: '[the machine] to pay too many coins to the player and this overpayment to occur without triggering an error condition.' The Treasurer also indicated that approximately $7 800 was reported as missing from the

machine and the matter was referred to and is the subject of an investigation by the police. My questions are:

1. Given the findings that there were two defects in the machine relating to component problems, will the Treasurer indicate whether a police investigation is still proceeding, in particular against the player in question?

2. Is the Treasurer aware whether the player in question kept the winnings, or is he or she subject to a claim by the venue or, alternatively, is he aware of action being taken by the venue against the manufacturer or any other entity with respect to the assembly of the unauthorised components?

3. Given the strict requirements in the Gaming Machines Act and regulations and the powers of the Commissioner's office to approve machines, have there been any breaches of the relevant legislation and regulations with respect to the use of unauthorised components and the incorrect fitting of components? Further, will any disciplinary proceedings be taken against those persons who may have been responsible for unauthorised components being used?

4. Given the problems that have occurred in this instance, is the Commissioner undertaking spot checks or an audit of machines to ensure that such defects are not widespread?

5. Can the Treasurer advise of the progress of the investigation by the Gaming Supervisory Authority (now the Independent Gambling Authority) and of the progress of the preparation of a report by the Commissioner's office in relation to this incident?

**The Hon. R.I. LUCAS (Treasurer):** I think that was a four-pronged question.

**The Hon. Nick Xenophon:** Five.

**The Hon. R.I. LUCAS:** Five: I missed a prong. I am sure the Hon. Mr Xenophon was desperately disappointed that the scandal that he thought was lurking beneath this story did not materialise.

**The Hon. Nick Xenophon:** I never said it was a scandal, though.

**The Hon. R.I. LUCAS:** I didn't say you said it was. I said that I am sure you were desperately disappointed that the scandal you were looking for beneath the surface did not materialise. Do not tell me that you are not looking for scandals: the honourable member would not want to indicate that he is not looking for scandals.

I am not in a position to answer those questions. I no longer have responsibility for this area. I am happy to refer the honourable member's questions to the Minister for Gambling who does have responsibility for this area and ask him to consider them and bring back a reply.

## BROMPTON LAND

**The Hon. SANDRA KANCK:** I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Human Services, a question concerning the need for a health audit of the inner western suburb of Brompton.

Leave granted.

**The Hon. SANDRA KANCK:** Last month the Channel 7 current affairs program *Today Tonight* carried a story about the Land Management Corporation's plans to sell the 6.6 hectares of vacant land it owns in Brompton. The LMC land, known locally as pugholes, was originally dug for its clay to make bricks. Various forms of industrial waste were then dumped into the excavated land. Large tracts of the former pugholes are now filled with uncompacted and, in places, highly toxic industrial waste.

As a consequence, the land has remained undeveloped despite its close proximity to the city. Rohan Wenn, the Channel 7 investigative journalist who covered the story, found alarming anecdotal evidence of high cancer rates and skin disorders amongst people and pets in the area. It is also clear that many locals believe the incidence of cancer is directly related to the pugholes. My questions are:

1. Will the minister initiate a longitudinal study of cancer rates within the suburb of Brompton? If not, why not?

2. What liability would attach to the state government should a causal link be determined between land owned by the Land Management Corporation and the incidence of cancer in Brompton?

3. Would the sale of the land to private developers in any way limit state government liability for the incidence of cancer related to the land owned by the Land Management Corporation?

**The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning):** I will refer the honourable member's questions to the minister and bring back a reply. In relation to the pugholes, I was prompted—and correctly by the Hon. Julian Stefani—about Labor's administration, pollution and other issues over some time. This is not a new issue, but nevertheless it is one that the government will consider.

## CIGARETTES

**The Hon. CARMEL ZOLLO:** I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning, representing the Minister for Human Services, a question about controls for cigarette packaging.

Leave granted.

**The Hon. CARMEL ZOLLO:** It is now widely accepted and well known that smoking is the largest single preventable cause of death in Australia today. Every year over 19 000 Australians die because of smoking, which is more than the number who die of breast cancer, AIDS, traffic crashes, heroin use and all sorts of accidents and violence combined. Even more tragic is that half of these people die in middle age—smoking just is not glamorous.

Many commitments were made during the recent federal election campaign. One that I was pleased to see was a commitment by the ALP to increase funding for tobacco control programs from $2.5 million to $12 million by the year 2004. With the intention to change the law to require simple generic packaging of cigarettes, tough new measures were proposed to take the glamour out of tobacco smoking and slash the national smoking rate to 15 per cent within five years. Such large increases in funding levels would provide considerable assistance to help people give up smoking and deter young people from starting.

State governments would, of course, have an important role in meeting such targets. Measures that could involve the states would include: new packaging rules restricting cigarette packets to product name, brand and trademark, with no other pictures or images; a ban on misleading terms such as 'mild' and 'light' to describe lower tar levels in cigarettes (this is already happening in Canada and Europe); nicotine and tar levels clearly displayed in large print on the front; more variations in health warnings on packs; full disclosure of ingredients on the side of the pack; and an official health information panel on the rear of the pack. Does the minister support the suggested measures and are any of the proposals outlined also under consideration by the state government?

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

### ROADS, ANANGU PITJANTJATJARA LANDS

In reply to **Hon. T.G. ROBERTS** (3 April) and answered by letter on 30 October.

**The Hon. DIANA LAIDLAW:** Transport SA has responsibility for the maintenance of the Stuart Highway, which is the main access road to the Lands, and is a public road. Anangu Pitjantjatjara receives funding each year, for maintenance of roads within the Lands, through the Aboriginal and Torres Strait Islander Commission (ATSIC), the Department of State Aboriginal Affairs (DOSAA), and the South Australian Local Government Grants Commission. Anangu Pitjantjatjara is recognised as a local governing authority under the commonwealth (Local Government) Financial Assistance Act and, therefore, receives funding under this program (both general purpose and identified road grants). Road maintenance on the Lands is provided by AP Services. Usage by tourists of these roads is by application and agreement.

I am aware that after the substantial rainfalls which occurred in the north west of South Australia between September 1999 and March 2000, roads in the Anangu Pitjantjatjara lands were inaccessible to heavy transport with many roads totally inaccessible.

Initial estimates of damage were in the vicinity of $400 000. The regional manager of Transport SA in Port Augusta inspected the roads and verified the initial claim. The claim has since been amended to $652 854.35.

Due to the lack of transport, possible food shortages became a concern in many communities. In response, DOSAA organised the initial food drops by helicopter to the communities in need. This was fully funded by DOSAA. As the situation worsened, the State Emergency Service sought assistance from the defence Forces through the army sector.

DOSAA also underwrote the repairs to the damaged bore access road at Indulkana at a cost of $127 000. ATSIC then provided $99 000 to supplement the costs.

DOSAA was only informed verbally of the damage to the Anangu Pitjantjatjara lands access roads and was not requested to supply any funding or support until 20 February 2001. On this date, a letter was sent to DOSAA from the Anangu Pitjantjatjara Services Aboriginal Corporation seeking assistance in gaining contributions to costs incurred in the repairs and roads and other associated costs.

The letter states that the cost of repairs totalled $652 854.35 with $202 844 already received from ATSIC and $280 000 identified from the Local Government Grants Commission, resulting in a shortfall of $170 010.35.

ATSIC has provided authority for AP Services to fund the $170 010.35 shortfall from an ATSIC funded Roads Upgrade Program. This authority was provided subject to AP Services writing to the Minister for Transport and Urban Planning seeking reimbursement (the funds were meant to be used for a road upgrade at Puta-Puta, located near the Pipalyatjara community). The letter has been received and AP Services has been advised that Transport SA does not have a funding allocation for flood damage repairs.

I am advised that ATSIC is keen to work with DOSAA and Transport SA to develop funding partnerships for improvements in Aboriginal road infrastructure.

When making recommendations for funding assistance from the Local Government Disaster Fund, the management committee considers the total works budget of the Local Governing Authority and the authority's capacity to rearrange part of its works budget to meet the needs of the current disaster.

These funds provided by ATSIC and the Local Government Disaster Fund were in addition to the annual allocation. In addition, the Anangu Pitjantjatjara Council received $375 855 in funding under the 'Roads to Recovery' program announced in December 2000.

Transport SA has been required to respond to significant damage caused over the period on the public road network under its care, control and management. Transport SA has also provided engineering advice to AP Services on the road repairs and supported its successful funding submission to the Local Government Grants Commission for $280 000.

As the honourable member is aware, roads on Aboriginal lands can be accessed only by permit provided by the traditional owners. As such, they are not available for public use and so their maintenance is not funded through Transport SA. I have, however, requested that Transport SA continue to make its engineering expertise available to Anangu Pitjantjatjara for the purposes of scoping and costing flood damage repairs.

With respect to the broader issue of Transport SA involvement in Aboriginal lands roads, the agency recently met with AP Services to clarify respective roles and responsibilities. I am pleased to announce that Transport SA will be providing increased and ongoing assistance to Anangu Pitjantjatjara in the areas of road planning design and project management.

### RAIL SERVICES, COUNTRY

In reply to **Hon. R.R. ROBERTS** (3 October).

**The Hon. DIANA LAIDLAW:** Great Southern Rail (GSR), which runs the Ghan and Indian Pacific trains past the towns of Red Hill, Crystal Brook and Snowtown, specialises in long haul passenger transport services. Trains stop in these towns to allow other train services to cross. GSR does not pick up passengers at small towns such as Red Hill, Crystal Brook or Snowtown as this would impair its ability to run long distance services effectively.

In relation to train services for the residents of Snowtown, I am informed that research of timetables back as far as 1990 indicates that GSR trains have not stopped at Snowtown for at least 10 years. The railcar service that was previously operated by Australian National between Adelaide and Whyalla and Adelaide and Broken Hill, which did stop at Snowtown, ceased operation in the early 1990's.

In relation to the removal of platforms from Crystal Brook, Redhill and Snowtown, I am advised that the passenger platform facilities at these locations consisted of what was described as a 'low level hard stand platform'. Essentially, this means that an area, the length of one or two passenger coaches, was built up with soil filling by approximately six inches above the normal ground level so as to reduce the gap between the ground and the first step of the coach.

Whether a station has a platform does not determine whether it will allow passengers to board. For instance, Port Pirie (Coonamia) has no platform and GSR does pick up passengers at this location.

The towns of Red Hill, Crystal Brook and Snowtown receive daily bus services from Premier Stateliner. The state government funds concession fares on these services for pensioners, people who are unemployed or students. From Monday to Friday, four Premier Stateliner bus services travel through each of these towns on the way to Adelaide—two of these are AM services and the other two are PM services. In addition, numerous services are provided on weekends, for example, in Crystal Brook, four buses are available each Sunday for commuters travelling to Adelaide. Full timetable details are available in the StateGuide, which is available from approximately 200 outlets throughout South Australia, Victoria and New South Wales. The StateGuide provides timetables for all South Australian country bus services.

In addition to these bus services, the Mid-North Community Passenger Network (CPN), located at Clare, services the townships of Red Hill, Crystal Brook and Snowtown and surrounding districts. The Department for Transport, Urban Planning and the Arts (Passenger Transport Board) and Department of Human Services jointly fund Community Passenger Networks—and a total of nine are now operating throughout South Australia. The networks coordinate services and provide information and passenger transport services to people who are transport disadvantaged. Anyone wishing to find out more about the CPN in a particular district should contact the Passenger Transport Board, or directly contact the CPN coordinator.

### EPIC ENERGY

**The Hon. P. HOLLOWAY:** I seek leave to make a brief explanation before asking the Treasurer a question about Epic Energy.

Leave granted.

**The Hon. P. HOLLOWAY:** I have recently received a letter from Sue Ortenstone, the Chief Executive Officer of Epic Energy, which is currently developing a 2 200 kilometre pipeline project to transport Timor Sea gas from Darwin to Moomba. In the letter, Ms Ortenstone expresses Epic's concern about the review of the effective life of gas industry

assets and the recent postponement of the COAG ministerial council on energy. Ms Ortenstone writes:

> The Commissioner of Taxation originally deferred the issuing of an effective life determination for gas industry assets to allow for clarification of the policy from COAG's independent review of the national energy market. Clearly the delay in COAG's review indicates that no clear picture of the implications for the tax treatment of the gas industry will be forthcoming prior to the end of the Commissioner's six months deferral.
>
> . . . Epic Energy is concerned that the Commissioner of Taxation may still make a determination on the effective life of gas industry assets immediately after the six month deferral has expired towards the end of December 2001. As advised in previous correspondence, the immediate introduction of a 50 year effective life for gas industry assets would pose serious threats to the financial viability of existing projects like the Darwin to Moomba pipeline.

According to Dr Allan Beasley, Executive Director of the Australian Pipeline Industry Association, in an article in the *Australian* recently, the commonwealth has eroded pipeline industry confidence by allowing the Australian Tax Office to determine the tax life of pipeline assets, with industry fears that 'it may be at least 18 months before a national energy strategy is developed'.

In view of those comments, my question is: is the Treasurer aware of the concerns of Epic Energy and the Australian Pipeline Industry Association and, if so, what representations have been made by the Treasurer to the Commissioner for Taxation regarding this issue that is so important for the future of the gas industry in this state?

**The Hon. R.I. LUCAS (Treasurer):** I will need to take some advice. My recollection is that this issue has been raised by the former Premier with either the commissioner or, probably, more likely, with the federal government when it was first raised many months ago. I am happy to take advice from the Premier. Major carriage in relation to gas policy is in the primary industries department, so I would need to speak to Premier Kerin, as well. I am happy to take advice and bring back an answer.

## PUBLIC TRANSPORT SUBSIDY SCHEME

**The Hon. SANDRA KANCK:** I seek leave to make a brief explanation before asking the Minister for Transport a question concerning the current review of the Public Transport Subsidy Scheme and its possible extension to people with vision impairment.

Leave granted.

**The Hon. SANDRA KANCK:** On 12 April 2000, I presented the signatures of 10 508 South Australian electors calling for the inclusion of people who are legally blind in the taxi transport scheme. They say that this long overdue reform would recognise the mobility impairment associated with sight problems and bring South Australia into line with the majority of other states and territories. It would help erase the attitude of people like the Minister for Disability Services, who claimed to this parliament that people who are vision impaired should not be discouraged from maintaining their independence by using existing public transport systems. I am informed that the report of the review of the Public Transport Subsidy Scheme is currently with the Minister for Transport. My questions are:

1. When does the minister anticipate making a decision regarding the report of the review of the scheme?

2. Will the minister release the report for public comment prior to announcing any decision?

3. If not, will the minister guarantee the release of an unabridged version of the review after announcing her decision?

**The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning):** A very similar question was asked by the Hon. Terry Cameron about three weeks ago. I indicated then that I have the report and I also indicated that, because a review is being undertaken of regional transport issues and networks, including the community passenger network systems and generally focusing on how we can improve services and the integration of services in country areas, I had deferred considering the transport subsidy report at this time. It is my very strong belief that both reports should be considered together.

The honourable member may be aware that most transport subsidy recipients reside in the metropolitan area. There are certainly some people in country areas who are eligible, but the services are not available to them. So, the $8 million and more that is spent each year on subsidised assistance for people with physical impairment is disproportionately enjoyed by people in the metropolitan area compared to people in country areas. That is a reason why I believe both reports should be considered together. The regional transport review should be received by the latest in mid-December, and it could be earlier because it is certainly in its final stages.

Measures can be taken to maximise benefits to those most in need in our community in the metropolitan area and country areas, and across a range of disabilities. That is my goal, but that is also why I have not wanted to consider just one aspect of the review in terms of metropolitan issues where there are a range of transport modes. I want to see how we can do better in future with taxpayers' subsidies for transport to help people in country areas because, as the honourable member would know, there is an ageing population and there is also an increasingly high proportion of older women living by themselves in country areas. Services are not as widely available as they have been because over the past 20 years there has been a rationalisation of services and, if populations decline in some areas, there will be further rationalisation of services.

How do we provide for people to continue to live in their district, if not on their farms or in their towns, where they are known and are familiar with the networks, but may not have the services? I am very keen to see what networks we can provide to help them gain those services, but I suspect that there will be considerable travel involved, and how can we subsidise that travel? Those are the complex issues that I am looking at at the moment. I acknowledge the support that I have been given by the Minister for Disability Services and the fact that he has provided an officer to the Passenger Transport Board to help work through these issues. I do thank the minister for that. I know the honourable member's interests are not only in the broad issue of public transport in the metropolitan area, and not just focusing on any one disability group. It is on my mind, but I want to do the best with the dollars that are available.

## APPRENTICES

**The Hon. R.R. ROBERTS:** I seek leave to make a brief explanation before asking the Minister for Workplace Relations a question on the subject of apprenticeships.

Leave granted.

**The Hon. R.R. ROBERTS:** I have recently been approached by a constituent living in Port Pirie regarding his

daughter's hairdressing apprenticeship. My constituent's daughter is 20 years of age and completed her first year apprenticeship on 12 September 2001. On commencing her second year, she approached her employer for her second year wage increment and was informed that 'she had not learned enough at trade school to warrant her pay increase and would remain on the first year level'. Her employer also mentioned that her hours, in actual fact, would be reduced to 20 hours per week due to the business encountering financial difficulties.

Soon after, my constituent's daughter was approached by her employer and asked to sign a workplace agreement in order to cover the reduction in her hours. Up to this time she was covered by the hairdressers and toilet salons award. As I understand it, the employer offered the workplace agreement on the advice of Mr Paul Brock from Business SA located in Port Augusta.

Further information suggests that at least 22 other apprentices from various industries have been asked to sign workplace agreements. When this action was taking place with my constituent's daughter, she was given only the last page to sign, without seeing the rest of the agreement. Confirmation that this practice is not legal has been received from the Employee Ombudsman's Office and the Apprenticeships Training Board. My questions to the minister are:

1. How many other apprentices have been forced to sign workplace agreements?

2. What measures can the government take to ensure that apprentices' rights will be protected?

3. What information is currently being provided to Business SA to advise employers of their legal obligations to apprentices?

4. What are the minister's inspectors doing to protect vulnerable employees and penalise or censure exploitative employers?

**The Hon. R.D. LAWSON (Minister for Workplace Relations):** I would suggest that the honourable member's constituent report the facts of this matter to Workplace Services, and I can assure him that all aspects of it will be investigated. I note that the constituent has already referred the matter to the Employee Ombudsman, who seems to have given certain advice in relation to the issue, which would, on the facts recited by the honourable member, be entirely correct. I was surprised to hear that an Australian workplace agreement was being proffered to an employee apparently covered by a South Australian award. I am however delighted by the fact that the return of the Howard government will mean that Labor's plan to remove the capacity to enter into workplace agreements is completely foiled and we will have some flexibility into the future. In conclusion, can I say that obviously—

**The Hon. R.R. Roberts:** You support what this exploitative employer is doing.

**The Hon. R.D. LAWSON:** What I support—and what I am sure every member of this chamber would support—is that those people who are in apprenticeships are encouraged and those people who take on apprentices are reminded of their obligations. I have no reason to believe, apart from the honourable member's uncorroborated story, that this particular employer was wantonly acting in breach of any legislation. As I say, I will pass the matter on to Workplace Services and bring back further information if it is available.

## TUNA FISHERY

**The Hon. L.H. DAVIS:** I seek leave to make a brief explanation before asking the Treasurer a question on the subject of the Hon. Ron Roberts's allegations on the tuna industry.

Leave granted.

**The Hon. L.H. DAVIS:** On 31 October, in his five minute matter of interest speech to the Council, the Hon. Ron Roberts made a series of allegations regarding tuna boat owners having a particular advantage in the fishing industry by virtue of the fact that they are major donors to the Liberal Party of South Australia. Has the Treasurer had an opportunity to examine those allegations, and can he advise the Council whether the allegations made by the Hon. Ron Roberts are correct?

**The Hon. R.I. LUCAS (Treasurer):** I thank the Hon. Mr Davis for the question. I also thank the Hon. Ron Roberts for his willingness to reopen the matter again last evening. I indicated soon after 31 October that these outrageous allegations, which were made under parliamentary privilege by the Hon. Ron Roberts, would be strenuously denied, I was sure, by Premier Kerin. It has taken some time—a little longer than we might have otherwise wished—to check all the details of the allegations that had been made by the Hon. Mr Roberts. I now respond to those allegations this afternoon.

I state at the outset that parliamentary privilege is a responsibility which is given to members of parliament. It is not something which should be treated shabbily by members, such as the Hon. Ron Roberts, in an endeavour to smear and destroy the reputation of members of parliament, by throwing mud under the protection of parliamentary privilege, and without being prepared to make the same allegations outside this chamber.

The Hon. Ron Roberts, on a number of occasions, has claimed the 'holier than thou' status and has challenged members to go outside the chamber to make their claim. I challenge him to go outside this chamber and repeat the claims that he made under parliamentary privilege on 31 October. The reality is that he will not do so, because he knows the claims were wrong. What we have seen is that the opposition in South Australia is very concerned at having a new Premier in Premier Kerin—a man whose integrity is beyond reproach.

We have seen, through the shadow treasurer in another place this week and now the Hon. Ron Roberts, an endeavour to smear the reputation of the new Premier in a desperate attempt to use the remaining days of this parliament—and we will see over the remaining three days those members of the Labor Party who are prepared—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. R.I. LUCAS:** —to make any allegation that they wish, or that their party wishes them to make—to make all sorts of outrageous allegations. It is only people like the Hon. Ron Roberts and the shadow treasurer who, when their party says, 'Get up and try to smear the new Premier', are prepared to stand up and make these allegations and throw mud. There are many other members who are not prepared to stand up in this chamber and do that. They tell the organ grinders within the Labor Party, 'Go away. We won't ask these questions. You ask the questions yourselves.'

But it is people such as the Hon. R.R. Roberts and the shadow treasurer who are clearly prepared to use this chamber and the responsibility and right of parliamentary

privilege to smear members of parliament in another place. To refresh members' memories, the claim that was made (and let us put it very simply) was that members of the fishing industry were able to buy from now Premier Kerin changes in government policy to assist them. That is what he said; he said they gave money—

*The Hon. R.R. Roberts interjecting:*

**The Hon. R.I. LUCAS:** Now he says he did not say that. That is an outrageous untruth from the Hon. Ron Roberts. He made the allegation that members of the fishing industry made donations to the Liberal Party and that, as a result of that, now Premier Kerin—

*Members interjecting:*

**The PRESIDENT:** Order, the Hon. Paul Holloway and the Hon. Ron Roberts!

**The Hon. R.I. LUCAS:** —made changes in fishing industry policy. Premier Kerin denies that absolutely and certainly believes it is an outrageous allegation. I am sure that if he were here he would join me in challenging any coward who would make that claim in this chamber to go outside on the steps and repeat it. I hope that members of the media will be prepared to put the question to the Hon. Ron Roberts and ask him whether he is prepared to go outside this Council and make those same allegations without the protection of parliamentary privilege.

In relation to the specific claims that are being made by the Hon. Ron Roberts, the Premier says that the government commissioned a report from an independent allocation advisory panel nearly three years ago to recommend a methodology for the equitable allocation of the pilchard resource. Those recommendations of the panel, which included a retired judge, were accepted by the government. Fourteen identified fishers were allocated access to the pilchard resource under the quota system. The tuna industry in fact—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. R.I. LUCAS:** They are squawking over there now; they do not like the truth when it comes out. The Premier also said that the tuna industry in fact was not pleased with the recommendations but to their credit abided by the decision of the independent umpire. The pilchard fishery over the past few years has gone from strength to strength with a total allowable catch for 2002 being set at 17 750 tonnes. This is based on a 12.5 per cent spawning biomass exploitation strategy. The biomass is estimated from a scientific stock assessment report conducted annually on the fishery. The industry now has stability in relation to the access arrangements and fishers are investing in value adding opportunities to maximise the return from the resource.

In relation to further comments made by the honourable member concerning the owner operator policy, in effect in the marine scale fish fishery and inland waters fisheries the government is on the public record as saying that the government will not be dismantling this policy unless other alternative strategies are developed which may lead to improved management outcomes for fishers and the community. In particular, officers from the minister's department have indicated to me that, in his statement, the Hon. Ron Roberts said that the Chief Executive Officer had set up a committee to work out how those policies could be implemented. I am told that that claim is wrong and that no committee has been set up to consider the owner operator system. However, the issue will be fully debated through the fisheries review process currently under way. The Hon. Ron Roberts, by way of squawking interjections, asked which parts were wrong in his statement. In reading the comment from the Premier and the advice from his officers I have just indicated the very many parts of his statements and claims that were wrong.

However, the key thing which was wrong was the outrageous allegation that, in some way, a person of the integrity of Premier Kerin would in any way change his particular views on fishing policy and government policy in this area because someone gave a donation to his political party. That is a disgraceful allegation, which is capable of being made only by someone with the integrity of the Hon. Ron Roberts, or indeed the shadow treasurer on other issues in another place. It is something for which the Hon. Ron Roberts should be ashamed and it is something for which all members—Labor, Liberal and non-major party members—should condemn the Hon. Ron Roberts in this grubby attempt to smear the reputation of a man of integrity and the new Premier in South Australia, Rob Kerin.

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## INDIGENOUS SPORTING CHAMPIONS

**The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning):** I seek leave to table a ministerial statement given today by the Minister for Aboriginal Affairs (Hon. Dorothy Kotz) on the subject of indigenous sporting champions.

Leave granted.

## LEGAL PRACTITIONERS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 October. Page 2444.)

**The Hon. IAN GILFILLAN:** I indicate Democrat support for the second reading of this bill. It makes some miscellaneous amendments to the Legal Practitioners Act 1981. These relatively minor amendments are as a result of a competition policy review. I will refer to the amendments briefly. Currently a person must be an Australian resident to be admitted as a legal practitioner. However, there is no requirement for that person to remain an Australian resident. The bill amends that act to remove the initial requirement. The bill also deals with allowing land agents to draw up tenancy agreements. Currently only legal practitioners can draft agreements for rental value greater than a prescribed amount. These amounts are set at $10 000 for residential tenancies and $25 000 for commercial tenancies.

The intention of the bill is to remove the restrictions that currently exist. Clause 5(b) of the bill relates to the Statutes Amendment (Public Trustee) Bill 2001. I ask the Attorney-General whether it is appropriate to pass this clause while the fate of the Statutes Amendment (Public Trustee Bill) 2001 is still in doubt. The bill also sets out the procedure for a legal practitioner from interstate to notify the Supreme Court within 14 days of practising in South Australia of any conditions or limitations on their practitioner certificate.

The bill also amends the definition of 'company' and deals with the terms of members appointed to the Legal Practitioners Disciplinary Tribunal. The Law Society made comment

on two elements of the bill. Both relate to clause 5, which deals with the drafting of tenancy agreements and trustee companies. First, concern was expressed that, while residential tenancy agreements were relatively simple and regulated by the act, the same is not the case for commercial tenancy agreements. I would ask the Attorney-General to comment on this in his closing remarks on the debate, as well as the likely insurance requirements of land agents who, under this bill, would perform these tasks.

The second concern raised related to trustee companies, and I refer to a letter received from Mr Chris Kourakis QC, President of the Law Society. The letter states:

> Wills and Trustee Companies
>
> As to the amendment proposed by Clause 5 with respect to trustee companies, the Society has no objection as long as equivalent insurance requirements are imposed on trustee companies. Alternatively it may be sufficient that by reason of other regulations the public can be assured that any claim for professional negligence in the preparation of wills can be met from the assets of the company. If trustees are to be permitted to charge a fee for wills there must be a review of requirements concerning:
>
> (i) Full disclosure to clients about the company's role and particularly charges for performing executor duties. The Law Society believes that in the context of the 'free' will preparation by trustee companies many clients do not fully comprehend the eventual charges upon the estate.
>
> (ii) The basis of the (usually percentage) commission charges made for executor duties and the relativity between those charges and those made by legal practitioners in administering estates.

I ask the Attorney-General to address these points when he concludes the debate. There is a matter which is still not clarified and which I would like the opportunity to address. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

## FREEDOM OF INFORMATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 November. Page 2653.)

**The Hon. A.J. REDFORD:** I support the second reading of this bill, which was introduced by the Hon. Robert Lawson on 25 July 2001 following a tabling of the Legislative Review Committee report concerning the Freedom of Information Act on 15 September 2000. The Legislative Review Committee report on the Freedom of Information Act was debated in this place on 25 October 2000—more than 12 months ago. The report, if I can summarise it, raised the following concerns with the existing act:

(a) The act itself created uncertainty and examples of that included uncertainty as to matters including broad and inconclusive lists of exempt agencies and documents.

(b) The Public Service culture of antipathy and even antagonism to the concept of open government.

(c) The process of dealing with applications and the external review processes were confusing, complex, costly, cumbersome and time consuming.

In response to these findings, the Legislative Review Committee made three basic recommendations:

(a) That the current list of exempt agencies and documents be subject to a single simple test.

(b) A centrally coordinated program of education, training and accreditation be implemented.

(c) That the review process be revamped, removing internal review limiting any right of appeal to the courts to questions of law.

In considering each of these recommendations, the committee made a number of observations, including:

(a) That there is a conflict between the existing objects of the act and the extensive list of exempt agencies and documents.

(b) The definition of 'agency' did not cover universities, professional boards, local government, etc.

(c) That refusals to disclose documents were made if documents fell within an exempt category irrespective of the nature of the material sought to be disclosed and the public interest in that regard.

(d) That deemed consent should replace deemed refusals in the absence of a response from an agency.

(e) That conciliation or mediation ought to be encouraged in dealing with disputes involving FOI.

(f) That the Ombudsman be encouraged to report non-complying agencies to parliament.

(g) In the case of outsourcing that documents subject to the control of the contractor be deemed in the possession of the agency.

(h) That Government Business Enterprises (GBEs) that are subject to being a natural monopoly in a commercial sense be subject to FOI irrespective of commercial considerations.

Pursuant to section 19 of the Parliamentary Committees Act, the minister responded to the report by letter dated 14 May 2001. In his response he made the following comments in relation to the report:

(a) Regrettably, detailed evidence supporting many of the committee's conclusions in (sic) is not contained in the report. For example, the claim of the committee that there 'is a public service culture of antipathy and even antagonism to the concept of open government' is not substantiated by the evidence.

In response, I point out that the report is a summary of the evidence. In fact, the evidence was tabled in support of the assertion: the minister need only have looked at the evidence of his own officer from State Records or indeed an examination of the survey responses sent to each agency. The Ombudsman, who deals with more agencies than any other office, also supported that assertion. However, I must say that the response that was made some months after the report is unfair when it makes that assertion.

In further response, I would say that many commentators made that assertion in relation to freedom of information—and the minister does acknowledge this in his contribution in response to the Hon. Ian Gilfillan's bill. To give credit to the minister, he does refer to Rick Snell, an administrative law lecturer at the University of Tasmania, and to others. But I draw the minister's attention to the evidence of both Mrs R. Horgan of State Records, an officer in his own department, and, as I said earlier, the Ombudsman.

In addition, the committee gained the view of public service culture from other both direct and indirect evidence before it. For example, the Ombudsman has considerable experience in dealing with matters involving FOI requests. In the 1995-96 annual report (and annual reports were mentioned in the bibliography of that report), the Ombudsman stated:

> It has been my experience that many agencies are still bound up in the culture of caution and secrecy, particularly when it comes to the release of internal documents and public interest considerations.

Mr Biganovsky, in that report, referred to cases that he said indicated that many agencies still had to grasp the notion that the act endowed to each member of the public a legally enforceable right to access government documents, apart from those with specific and properly argued exemptions. Ms Carol Altmann from the *Australian* newspaper informed the committee:

My recent experiences with the FOI Act have exposed what I consider to be some major loopholes which allow it to be used in a way that contravenes the spirit of the act.

There was also a submission in support of that from the *Advertiser*. Other examples of the culture were also given. These included details as to why applications that were rejected were rarely, if ever, given—despite section 48 of the act requiring agencies to justify their determination. Journalists were told that the documents they were seeking were exempt but were not told what those documents were.

One journalist reported that in most cases it took longer than 45 days for an agency to make its first determination. Ms Megan Philpot, a legal officer with the Ombudsman's office, referred to a wariness—she used that term—in some agencies about the FOI Act in evidence she gave to the committee on 25 February 1998. She had heard comments from agencies that, because of the act, certain officers were reluctant to record matters in a more documentary form. She also gave evidence of the use of yellow stickers that could be removed easily when an application for FOI came in.

John Harley, the then President of the Law Society of South Australia, said in his evidence of 3 June 1998:

Other practitioners have raised with me a problem with the culture of the public service, that it does not really cooperate to fulfil the intent of the legislation. They feel that public servants take the attitude of trying to get out of it by providing the minimum amount possible and being as uncooperative as they can rather than it being an exercise of cooperation in the light of the aim of free and open government.

Mr Harley added that he thought it was difficult to impose legislation to change a culture, but with proper training he thought the problem could be cured. This was also supported in evidence given to the committee by the Hon. Michael Elliott when he referred to personal difficulties in obtaining information under the act. In agreeing with the inclusion of the statement in the report, the committee members also drew on their own experience and those of their colleagues.

I know this information was not annexed to the report, but the minister may recall that the committee sent out a survey to each and every agency within the public sector. Some of the results from the survey slipped through and we got a fairly clear glimpse of the attitude of the public sector in relation to dealing with freedom of information applications. Unfortunately, during the course of securing surveys from the public sector the government intervened and sought to centrally collate the responses, and one can see a changing trend in answers.

Notwithstanding that, if one looks at the survey results one will see that there was a general antipathy and culture of antagonism to the concept of open government. On behalf of the committee, I reject the minister's assertion that there was an absence of evidence supporting the assertion made by the committee that there was such a culture of antipathy. I hope that at some stage in the not too distant future there will be an acknowledgment on the part of the public sector, whether it be at ministerial or other level, that there is a level of difficulty in understanding that there is now, created by statute, a public right to access documents.

The second point the minister made in his response and also in his statements to this place in response to the Hon. Ian Gilfillan's legislation is as follows:

The cost to agencies (and hence to the community at large) of processing applications under the FOI Act is considerable. In the latest report, this cost was estimated at not less than $1 million of which only $110 000 was recouped in charges.

He also said that that figure did not include the costs the Ombudsman bears in dealing with freedom of information applications.

In relation to that, in terms of the total budget expenditure of the government, which was $7.2 billion, the cost of $1 million is insignificant when one considers the importance of open government and the adherence of the principles of open government espoused so commonly and so often by members from both the government and the opposition. In that respect, $1 million is a small price to pay for the concept of open government.

The next criticism of the report that the minister made was that he did not favour the repeal of the current FOI Act and the wholesale replacement of its provisions with the bill proposed by the committee. From a personal perspective, that is a matter for the minister. Whether or not the outcomes are better served by the wholesale replacement of the act with a completely new act or substantial amendments to the bill, is probably neither here nor there. At the end of the day, the results will be in the eye of the beholder and, ultimately, the passage of time will prove to be the judge of whether or not these amendments will succeed in ensuring better, more reliable and cheaper access to public documents and, indeed, better outcomes in relation to the concept of open government.

It would be churlish of me, however, not to acknowledge and thank the minister for some of the positive responses in relation to the report issued by the Legislative Review Committee. Indeed, the minister was prompt in his acceptance of a number of matters. First, he was prompt in his acceptance that the objects of the act should incorporate a general proposition that information should be made available unless there is good reason for withholding it. He also acknowledged that the time in which an agency should deal with an application should be reduced from 45 to 30 days. He also indicated his acceptance that responsibility for FOI within agencies will be allocated to an officer designated 'Principal FOI Officer', who will be required to have an accreditation to ensure an appropriate level of competency. I suggest to all members, whatever their views are about this bill, that that is one of the most significant and important reforms that this piece of legislation brings. Finally, he acknowledged that, where an application is refused, there should be a compulsory requirement that the agency would have to state the reasons and the grounds for withholding access.

The minister went on to say that the adoption of a public interest test would require the exercise of difficult judgments about the public interest, the maintenance of constitutional conventions and the effective conduct of public affairs. Indeed, he said that they would involve some very difficult judgments on the part of those who make decisions about the release of the documents. I agree with the minister that there are some difficult decisions that might well have to be made but, when one looks at the bill or the existing act, one could not be criticised for saying that the amendments also involve difficult judgments on the part of decision makers—and, indeed, the existing act does involve difficult judgments on the part of decision makers. We have a public sector that deals with difficult public issues all the time.

The minister in his response referred to the report of the Australian Law Reform Commission, with particular reference to cabinet documents. He quoted the Law Reform Commission's statement as follows:

It is not in the public interest to expose cabinet documents to the balancing process contained in most other exemptions or to risk undermining the process of collective decision making. To breach the cabinet oyster would alter our system of government quite fundamentally.

The minister says that that supports a position that the public interest test should not be the sole test in relation to dealing with freedom of information applications. I am not sure that the minister and I might not be engaging in some forensic distinction about nothing and that at the end of the day it is the actual release of documents and the actual availability of documents which are more important than how you characterise a particular issue, but I would say this: it would be, even in the New Zealand model, very rare and exceptional for a cabinet document to be released, because the Ombudsman and the authorities under the New Zealand legislation—and I would expect the same would apply if we adopted a similar provision in this state—would recognise that, in all but extraordinary cases, the public interest is best served by the non-release of public documents. Extraordinary circumstances that may arise would be where cabinet or a member of cabinet engaged in some illegal or some other reprehensible conduct where it might well be, in very exceptional cases, in the public interest to release those documents.

But, at the end of the day, I am not sure that the debate about whether there should be a sole public interest test or whether there should be a public interest test which is subject to cabinet exemptions is really going to lead to any great practical difference in application or any difference in the number and range of documents that might be released, except in the most exceptional of circumstances. In that respect, I do not believe that we should in this place spend too much time debating that issue. There will be other occasions, I have no doubt, for this parliament and this place to debate freedom of information legislation at some stage in the future.

The next issue that the minister raised in relation to the committee report is that there be a centrally coordinated program of education, training and accreditation to be implemented by state records throughout all sectors that are subject to the Freedom of Information Act. The minister supported that recommendation, and I must say that I welcome that support. Indeed, in my submission and from my viewpoint, I think that that is one of the most significant, important and vital reforms. Let me put it in this sense: the committee acknowledged that one of the most significant advantages of the New Zealand legislation and why it has succeeded so well in terms of the release of the information is that it was a piece of legislation that was produced in cooperation with the public sector, at the instigation of the public sector and with the endorsement of the public sector. That is the most significant reason that the New Zealand system works so well. It is my view that this measure advanced by the minister, that there be a coordinated program of education, will facilitate and assist the further development of freedom of information reform in years to come and over the next few years.

If I can put it in this context, this piece of legislation has been around only since 1992 and, in terms of law and law reform, we are at a stage of infancy. So, I would see that, with this education program, it may well be that at some stage in the future it will be the public sector itself that comes to the government of the day and suggests some of the more radical reforms suggested by the Legislative Review Committee.

**The Hon. P. Holloway:** Sensible.

**The Hon. A.J. REDFORD:** The honourable member interjects that it is sensible, and I am pleased to know that he thinks that way, because I certainly share that view. In relation to the other matters that the minister responded to, he indicated on the issue of natural monopolies that:

The concept of a 'natural monopoly' is too vague for inclusion in legislation. The inclusion of agencies which are discharging functions of this kind would have to be determined on a case-by-case basis. Further evidence and examination is required before this recommendation could be agreed to.

I have to acknowledge that the minister has indicated that further evidence and examination is required, and I welcome that. However, I point out that it is my view that a natural monopoly is capable of reasonably precise definition rather than a case-by-case basis as proposed in the response. I give the example that a definition of a natural monopoly is contained in the Victorian government paper on the electricity market entitled 'Stage 2: A Competitive Future—Electricity'. In that paper, a natural monopoly is defined as:

An activity, usually because of high fixed costs associated with it that cannot be provided by more than one market participant [effectively at any one time].

There are many examples of that, and our telecommunications network is probably another example of a natural monopoly. In any event, I am pleased to see that the minister and the government have not closed their mind on that issue.

There are also issues relating to internal and external reviews. In relation to external reviews, the government has essentially supported the recommendations made by the committee with some argument about the detail and, again, I am not going to go to the wall on that. However, it rejected the view that internal reviews ought to be abolished. One needs to consider the whole package of the reforms. Based on the evidence that the committee received, it is my view that internal reviews are a waste of time and money and only manage to delay the ultimate resolution of the matter. However, the minister is of the view that there is some benefit in maintaining internal reviews. I would say that, with a better education, better facilities, better—

**The Hon. Ian Gilfillan:** Accreditation of the office.

**The Hon. A.J. REDFORD:** —accreditation and all those things, the minister may well be right that we ought to maintain internal review, see how those education processes work and, if they do not, subsequently remove them. In that respect, I think that the minister's response is considered and thought out and, again, it is an issue for which time will be the best test. I also note that there is a provision that, where a decision is made by a principal FOI officer or a head of a department, there be no internal review. Again, I think that goes a long way towards addressing the concern and the issues identified in the Legislative Review Committee's report. I do not believe that there is any great moment in the difference between what the committee recommended and what the minister's response has been.

The committee recommended that, where there has been outsourcing, the documents that are in the hands of the contracting party be deemed to be in the possession of the agency itself. The government's response to that is that it could not accept the recommendation in its current terms. I think it is important that I quote what the minister had to say, because I do not believe the difference between the committee and the minister's response is all that great when one considers the practical application of it. He says:

Indeed, it is not clear what is encompassed in it. If it is related to personal information, the committee itself gave examples of how the

issue is currently addressed, eg, the Modbury Hospital patient records are available notwithstanding outsourcing of the management of the hospital.

If the minister is saying that that approach will be extended across government in terms of dealing with freedom of information applications, then essentially what the minister is saying in a practical sense is that the application of the law is consistent with the recommendation made by the Legislative Review Committee. If that is the case, again I take no issue with where the minister is coming from.

I turn now to the legislation that has been dealt with. I point out that the Hon. Ian Gilfillan was incorrect—one of his few incorrect statements on this topic—in his assertion that I voted against his bill. That is not the case. I did not vote at all, and perhaps that might warrant more criticism than voting for or against it. That is in fact what occurred.

**The Hon. Ian Gilfillan:** I'm sorry, Angus.

**The Hon. A.J. REDFORD:** That's all right.

**The Hon. R.R. Roberts:** You didn't vote for it.

**The Hon. A.J. REDFORD:** It wouldn't have made any difference, Ron; even you could count those low numbers. The Hon. Rob Lawson's bill has been introduced with the aim of reducing complexity and providing quicker finalisation, greater transparency and a greater emphasis on the public interest in making information available. In particular, it seeks in the preamble to expand the objects of the act and, when one looks at the amendment, what he seeks to do is change the objects by removing big 'G' government and replacing it with little 'g' government and then defining little 'g' government as including a range of bodies including local government and intergovernmental agencies.

That is no small change to the objects although, consistent with the Legislative Review Committee recommendations, I would have liked to see a further expansion. Be that as it may. However, I do note that the LGA, in a letter to the Hon. Paul Holloway, which he read into *Hansard*, did have some concerns about the expansion of the Freedom of Information Act to cover local government bodies. I must say, for those who are reading this speech, that this bill seeks to remove the specific freedom of information provisions that relate to local government in the Local Government Act and bring local government into the same regime that other public sector agencies are subjected to.

In the Hon. Paul Holloway's contribution, he referred to a letter written to him from the LGA in which it was its view that the Local Government Association and single council subsidiaries and regional subsidiaries be incorporated in schedule 2 of the act as exempt agencies. I do not have a specific view about the LGA, although the LGA makes great play about the fact that it is a formally recognised body in the Local Government Act and it is also a body that is entirely publicly funded through local government, so it ought to be exempt. I am not sure why the LGA believes that it ought to be exempt. It is not in a commercial operation, it does not have competitors and I am not sure why, other than its being exempt in the past, it should not be brought into the fold. I would be interested to hear why and how it justifies that.

I am very concerned about the issue of bringing council subsidiaries and regional subsidiaries into a general exemption. One might use the example of an issue that has been brought before parliament recently, that is, Green Phone, which was raised on a number of occasions by the Hon. Terry Roberts. I am not making any judgments about who did what, when, where or how, but there have been substantial issues relating to Green Phone that are the subject of public interest. If the LGA's initial submission to the minister was proved correct, one would imagine that the Freedom of Information Act would be put beyond people seeking information about Green Phone.

Just before I came in here I was provided with a letter from the LGA, directed to the minister and dated 14 November—and I think to be fair to those avid readers of *Hansard* I should cite it so that it puts what I have just said and what the Hon. Mr Holloway said in context:

> We appreciate your decision to introduce an amendment to schedule 2 of the bill to include the Local Government Association as an exempt agency.

I digress: I would like to know why it is included. What is peculiar about the LGA that requires it to receive a blanket exemption? It is simply the Local Government Association: it does not have any other purpose or reason for not disclosing documents. It goes on:

> The LGA seeks further consideration in relation to problems regarding subsidiaries and regional subsidiaries established by councils. The LGA seeks your support to amend the existing exemption 7 to include an additional provision as follows:
>
> (d) If it contains a matter of a commercially sensitive nature which, if disclosed could or would be used by a trade or business competitor or potential competitor.

The rationale is that the LGA is of the view that whilst existing exemption 7 would provide some protection for agencies in relation to applications for sensitive business information it is not adequate to cater for requests that may be motivated by commercial business competitors, for example, the Western Region Waste Management Authority (WRWMA) undertaking an extensive market research project to identify a potential market for a new service which would significantly enhance the operations and financial revenue of the agency. If a competitor becomes aware of the research being undertaken and applies to access this information it would be difficult for WRWMA to justify refusal for access under the current exemption 7.

I am what some people have described as a right-wing economic rationalist, and unashamedly so. I cannot understand why councils would need to go into commercial operations. I have yet to see councils succeed in significant commercial operations in a competitive environment: Green Phone is but one example. We were harangued for hours, firstly by the Hon. Legh Davis and secondly by the Hon. Terry Cameron, about the ill-fated Port Adelaide Flower Farm. There are examples littering the history of this parliament, and this state, of local government getting involved in competitive commercial enterprises and going belly-up. I am not sure that councils should be exempt from freedom of information legislation simply because they want to compete in a commercial environment.

**The Hon. P. Holloway:** But in fairness waste management has always been a local government role——

**The Hon. A.J. REDFORD:** The honourable member makes a fair interjection. I accept that waste management is an issue relating to the environment that can be the subject of local government activity. But generally speaking—

**The Hon. R.D. Lawson:** There is plenty of private sector support.

**The Hon. A.J. REDFORD:** There are plenty of private sector players. But let me describe a scenario: a local council decides to get the private sector to provide waste management to the local council area. It gets the tenders in, considers them and decides that they are all way too high and it can provide the service itself. In those circumstances I see no reason to presuppose that the local council should not be the subject of freedom of information applications. Whilst it is engaging in a competitive tender process, and once it has made that decision to secure that business for itself, it should be the

subject of public scrutiny: the community should be able to look at it.

**The Hon. P. Holloway:** They're saying that they just want exemptions for commercially sensitive information.

**The Hon. A.J. REDFORD:** The problem in talking about commercially sensitive information is what that might mean. I can tell you from my experience of sitting on the committee that everything will be commercially sensitive. You will get jack squat out of the council. If you consider the Western Regional Waste Management Authority, for example, where an extensive market research project has been undertaken, which identified a potential market for a new service, I have to say, based on my experiences with local government—Green Phone and the Port Adelaide Flower Farm—I have a red light and an alarm going off in the back of my head already, because local government, particularly in a competitive environment, has never covered itself in glory. Neither has a state or federal government, with a few exceptions such as Qantas and the like.

I have some concerns about that, particularly when the most secret arm of government in the state at the moment is local government. We all have examples. There is one I know of, although I will not go into it at the moment, where councillors are excluded from meetings, are excluded from documents, and are excluded from submissions, simply because they hold a different view from the CEO or the mayor. If those people do not get access to documents, what hope does the public have in accessing the information necessary for well informed decision making and judgment? What hope does the media have in executing its important role?

The third major issue that the minister has addressed is the reduction in time from 45 to 30 days in dealing with applications. That is to be welcomed. And I know that he has adopted, in its entirety in this respect, the recommendation of the Legislative Review Committee. It is the actual outcome that is important. And it is the ability of agencies to be able to delay, pause and obfuscate in relation to these applications that will probably determine whether this sort of recommendation will make any real or substantial difference. It is the other processes that deserve our attention.

The next aspect of the bill to which I refer is the establishment of an accreditation system for FOI officers which, I understand, pre-supposes better training. The minister's response goes further than the recommendations of the Legislative Review Committee. In that respect, I congratulate the minister: his response in relation to this is better than the suggestions made by the Legislative Review Committee. With an appropriate training regime involving local government, I am confident that the impetus for improved access to documents, and the impetus for more extensive reform in relation to the concept of open government, will be driven by FOI officers who have undertaken an accreditation course and come to understand and feel the importance of open government.

In the legislation, the minister has required improved detail and improved reasons from agencies for refusing an application. Again, that is welcomed. He has also included provisions that will improve record keeping. That was an issue that the Legislative Review Committee, in its report, grappled with in some detail. Indeed, in many respects, some of the biggest issues and misunderstandings that arise in this area have been as a consequence of poor record keeping rather than anything else.

In summary, in relation to those amendments, I state that the most significant and, in some respects, the least sexy amendments and changes are improved training, accreditation and improved record keeping. In my view, they are the changes that will drive more open government, more access to documents and the type of environment that I suspect the South Australian public would be pleased with. Other amendments facilitate conciliation or mediation on the part of the Ombudsman or the Police Complaints Authority in dealing with applications: again, that is to be welcomed. The amendments to schedule 1 are also welcomed. They are a big step forward in implementing the recommendations of the committee.

I am not clear why some aspects in relation to the schedules have been incorporated. I will quote a couple of examples. Firstly, the amendment to clause 8(1)(b) of schedule 1 provides for an exemption in relation to a document and states:

(i) could reasonably be expected to have an adverse effect on the agency or other person by or on whose behalf the research is being, or is intended to be, carried out; and
(ii) would, on balance, be contrary to the public interest.

I am not sure what is meant by the term 'have an adverse effect'. If an agency has found itself in an embarrassing position, it will always have an adverse effect, when one releases the document, in the eyes of the agency. I suspect, though, that the word 'and' with the words 'would, on balance, be contrary to the public interest' would answer that concern. I will be grateful if the minister could confirm that, perhaps not in his response but at some stage, whether it be today or before the bill is finally passed by the parliament.

I am at a loss to understand why the universities of South Australia warrant an exemption under schedule 2. Perhaps I should say that I am not sure why they are incorporated. Someone has interjected that there is an amendment on file that deals with that. If that is the case, it is to be welcomed. The Motor Accident Commission is a natural monopoly. No-one else is providing its services in this state, and I am just not sure how we can justify an exemption for the Motor Accident Commission as an agency.

I acknowledge that there are some documents which the Motor Accident Commission would hold and which should be the subject of an exemption in the public interest. One might look at some of the information that it may hold in terms of the investigation of fraudulent claims, and things of that nature, which would certainly fall within the category of an exempt document and be the subject of a refusal because it would not be in the public interest for the release of such a document. However, I am not sure why the Motor Accident Commission would be exempt. That is particularly the case when you look at the fact that we have not included the WorkCover Corporation in any exemption, so I would be pleased if the minister could explain why that is the case.

In summary, the Legislative Review Committee went through this in some detail, and I think some of the criticisms of the report on the part of the minister and his agency were made without looking at all the evidence that was available to the Legislative Review Committee. Secondly, the minister has rejected some of the recommendations made by the committee and approached them from a different perspective. I will not make any adverse comment in relation to that, other than to say that in the long term it is the actual result in making documents more accessible to the public that will indicate whether or not what we do here today is appropriate. However, I do acknowledge that the minister has attempted

to deal with the issues raised. Apart from some of the issues that I raised concerning local government, the universities and the Motor Accident Commission, I believe that this bill warrants the earnest attention of members in this place.

**The Hon. R.D. LAWSON (Minister for Disability Services):** I thank members for their contributions to the second reading of this bill and for their expressions of support, albeit some of which could best be described as lukewarm, but I am glad to hear the unanimous view that the government's bill is an improvement on the existing regime. As the Hon. Angus Redford has just spoken I will address some of my remarks to his comments. As the Chair of the Legislative Review Committee, the honourable member has outlined a strong defence of the report of that committee, and I commend that committee on its efforts in relation to freedom of information.

The honourable member commented that the government's response which was given in my name to the report of the committee made the comment that, regrettably, detailed evidence supporting many of the committee's conclusions is not contained in the report. For example, the claim of the committee that there is 'a Public Service culture of antipathy and even antagonism to the concept of open government' is not substantiated by the evidence. It went on to state that in the absence of that evidence it was not intended in that response, nor is it possible, to answer assertions of that kind.

That was not intended to be critical of the Legislative Review Committee or its report. What was said there was that the detailed evidence was not contained in the report. The honourable member correctly says that the evidence had been taken and was lodged in the parliament, presumably with the balance of the material collected. The only point being made there was that the report itself did not set out things that could be responded to immediately; one had to go to the evidence in detail. We are not saying there was no evidence of those assertions, and I would not like it to be thought by anybody that the government's response was in any way dismissive of the work that the committee had done. I would hope that the government's response was not interpreted as being a brush-off to the committee. Of course, it is true that the government did not accept the substantial thrust of the main recommendation of the committee, namely, that we adopt the New Zealand Official Information Act model. The reasons were given in the response and they have been discussed in the parliament, so I certainly will not go into that again today.

The honourable member mentioned that the cost of FOI applications was over $1.1 million. Whilst in itself that is a significant amount of money, it is not a large proportion by any means of the total government budget. The only point being made there is that there is a cost to freedom of information, and it is a not inconsiderable cost. It has to be balanced against other demands of government. I certainly know that, for example when I am seeking an additional $1 million for disability services, it is extremely difficult to extract amounts of that kind. So, money that is being spent on freedom of information is not being applied to other programs, the vast majority of which are worth while and necessary.

The honourable member commented upon internal reviews. The Legislative Review Committee was of the view that internal reviews should be done away with. I think that is a fair comment if we are to maintain the current system of administration but, with raising the standard of freedom of information cross the whole public sector, putting in more accountability measures and requiring the principal information officer of any particular agency to be of a higher level and having appropriate training and accreditation, the process of internal review should be enhanced. I was delighted that the honourable member acknowledged, as have other members, that better training, record keeping and other administrative measures will no doubt enhance the way in which our freedom of information works here.

The honourable member mentioned the universities. I should explain that in my second reading speech I said that, as the honourable member correctly said, the universities had been included but with a view to their removal if negotiations with the universities could be appropriately finalised. I can inform the Council that the universities have all agreed that they should be subject to the Freedom of Information Act and accordingly an amendment will be introduced during the committee stage to ensure that they cease to be exempt authorities. The Hon. Angus Redford raised the question of the Motor Accident Commission. I will certainly seek further information on that matter and provide a more detailed response in committee.

The matter of the Local Government Association and local government authorities was raised by a number of members, and the Hon. Angus Redford read out the Local Government Association's latest response, which I think is self explanatory. It is worth saying that the government takes the view that the Local Government Association itself is not the sort of agency that carries on a business with the public but is rather an organisation that is there for the arrangement of the affairs of local government authorities.

*The Hon. A.J. Redford interjecting:*

**The Hon. R.D. LAWSON:** The honourable member says there are a number of other regional local government associations. The thing about the Local Government Association itself is that it is a body established by an act of parliament for a public purpose and, were it not for a specific exemption, it would be included, whereas as far as I am aware those other associations are not established under or by force of a provision of the Local Government Act. I will certainly investigate the issue about regional local government associations.

The government certainly agrees with the Hon. Angus Redford's suggestion that subsidiaries of local councils, which are conducting business such as waste removal, waste management and so on, should not be exempt from the legislation. We are now including local government in the Freedom of Information Act, and an amendment will indicate that those statutory subsidiaries are included. The government takes the view that the existing exemption, which exists for commercially sensitive information of any agency, would apply to those subsidiaries and they should not be given special exemption or treatment in relation to commercially sensitive information.

The Hon. Paul Holloway mentioned that giving greater power to the Ombudsman, in his view—or perhaps the view of a colleague in another place—was attempting to fix the problem from the wrong end. The government was accused of admitting that it has no intention of adhering to the spirit and objects of the act, and therefore we were seeking to let the Ombudsman pick up the pieces. Nothing could be further from the truth. Giving the Ombudsman the power to conciliate and negotiate is simply giving him an additional weapon in his armoury to ensure that the machinery of this legislation can be appropriately oiled.

The Hon. Paul Holloway also talked about the possible lack of resources in the Ombudsman's office, but I can report that, during the past financial year, 69 reviews were conducted by the Ombudsman. That is not a significant part of the total work load of the Ombudsman, and it is not anticipated that that process of conciliation will create significant additional work for the Ombudsman. If it does, in the fullness of time, no doubt additional resources could be allocated. The Hon. Paul Holloway did say that the performance of the government under the FOI legislation was varied.

It is worth putting on the record the fact that the latest figures for the year ended 30 June 2001 indicate that some 7 029 applications were finalised: of those, 5 952 (some 85 per cent) were given full access to the information sought or documents; a further 9 per cent (631) were given partial access; and 6 per cent (446) were refused. So the refusal of 6 per cent out of some 7 000 applications indicates very substantially that information sought under this act is provided. One of the important elements of this bill is that, under this regime, it will be provided in a more timely fashion than has been required in the past.

The Hon. Ian Gilfillan mentioned that the exemptions in the current act are so numerous that it does not require very much imagination to find an exemption and claim an exemption within the categories mentioned in schedule 1. It is true that schedule 1 has a number of pages and that there are a number of descriptions of the exempt documents. They come into the categories of restricted documents, documents which require consultation, and other documents, and they are described in detail for the benefit of the public servants who have to administer the legislation. The Hon. Ian Gilfillan's own bill has a number of exemptions which are described rather more generally.

This was the bill that was not supported in this chamber and was defeated at the third reading; and it is the bill that the Legislative Review Committee suggested. However, that bill contains two pages of reasons for withholding information, and some of them, it seems to me, in the broadness of their description, would be very difficult to apply for any civil servant. I refer to reasons such as maintaining the constitutional conventions for the time being which protect the confidentiality of communications by or with the sovereign or the Governor, and maintaining the constitutional conventions for the time being which protect collective and individual ministerial responsibility. These are generalised constitutional concepts, which, in my view and in the view of the government, are too complex and too unhelpful to give to FOI officers and expect them to make a quick judgment.

It is also worth saying on this particular point that, although the Hon. Ian Gilfillan suggests that you can find a number of exemptions for any particular case—and of course some refusals do provide more than one reason—the ratio of documents to reason, as I am advised, is still between only 1 and 1½. In other words, for each document 1½ reasons, on average, are given for refusal. It is not as though a whole catalogue of exemptions are claimed. Finally, the Hon. Ian Gilfillan introduced a large number of amendments, which we will discuss in committee, but the following general point can be made about them. After reading the Hon. Ian Gilfillan's amendments, it appears that he has sought to amend the government's bill so that it more or less reflects what his bill (which has been defeated) would have contained had it been passed—

**The Hon. Ian Gilfillan:** Very astute.

**The Hon. R.D. LAWSON:** The honourable member suggests it is astute. I do not know whether he means astute on his part or on my part, or both of our parts. Given the fact that this chamber has rejected the Hon. Ian Gilfillan's first bill and the Legislative Review Committee model, I can indicate that the government will not be supporting amendments which have the effect of restoring the Gilfillan bill. I thank members for their expressions of support.

Bill read a second time.

In committee.

**The Hon. R.D. LAWSON:** It is not intended to proceed with the committee stage of this bill at this time. Discussion with members suggests that that is inopportune at the moment.

Progress reported; committee to sit again.

## RETIREMENT VILLAGES (MISCELLANEOUS) AMENDMENT BILL

Consideration in committee of the House of Assembly's amendment.

(Continued from 14 November. Page 2706.)

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

That the House of Assembly's amendment be agreed to.

The two amendments relate to the exclusion of definitions of 'de facto spouse' and a consequential definition of 'resident'. The bill, as introduced and as passed in the Legislative Council, extended the definition of 'spouse' to include 'de facto spouses'. This amendment was described in the second reading explanation as part of a series of definitional and minor administrative matters and other amendments to 'bring the legislation into line with other legislative or administrative changes'. As members will know, nowadays much legislation which refers to spouses also refers to de facto spouses.

However, the issue of including 'de facto spouses' in the Retirement Villages Act was not raised in the discussion paper or in the extensive consultation processes which occurred before the legislation was introduced. It was, as I say, regarded as a minor and definitional matter which was attended to administratively and without consultation with residents or retirement villages. Administering authorities of retirement villages raised concerns that the inclusion of 'de facto spouses' could create considerable administrative difficulties because it is difficult to establish whether or not parties are living de facto unless there is a more expanded definition of 'de facto'.

There are, of course, common law tests established by case law to determine whether or not two people are living together as husband and wife de facto; however, those tests are quite complex and do often require legal expertise to apply them. Other pieces of legislation contain some objective elements to determine whether or not a de facto relationship exists, for example, the Family Relationships Act which defines as putative spouses those who live together for five years continuously, or five out of the last six years, or who have a child. A test of that kind is quite certain.

However, a duration of five years would be inappropriate and unrealistically onerous in the context of retirement villages where the minimum age for entry is itself five years and most people living in retirement villages are significantly over that age. As this issue was not closely examined in the consultation process, the government decided that it would be best to exclude all references to 'de facto spouse' in the

bill and to address that again through the Retirement Villages Advisory Committee; and after a consensus can be reached between residents and administering authorities or, if no consensus is reached, after a decision is made considering all of the ramifications, the bill will be brought back with a further amendment.

The government does intend to examine further the retirement villages legislation—these particular amendments having arisen in relation to a review of the regulations, and that was the primary focus. The other definition that was removed by amendment in the House of Assembly was the definition of 'resident'. That was an associated amendment with that of 'de facto' in order to accommodate the fact that 'resident' includes 'spouse' which in turn included—under the first bill—'de facto spouses'. It was necessary to clarify that the spouse/resident did not have to be the spouse at the time when the occupation commenced unless the contract provided otherwise.

However, in view of the fact that we are examining the whole question of de facto spouses, it was appropriate to remove also the new definition of 'resident', and that issue will be revisited after full consideration. It is for those reasons that the government moved the amendments in the House of Assembly, and it is for those reasons that I urge the committee to agree to the amendments suggested by the House.

**The Hon. P. HOLLOWAY:** The opposition will accept the amendments that have been suggested by the House of Assembly. In doing so, I wish to make a couple of points. First, we were aware that this issue in relation to the definition of 'resident' had been raised. It was originally raised by the Retirement Villages Association in a letter to my colleague on 11 October. We were aware that, in a response to the Retirement Villages Association on 17 October, the minister said:

> I do not consider that the new definition—

that is, the definition of 'resident'—

> will have the consequences described in your letter. The very hypothetical example of a residence contract continuing ad infinitum already exists and is not altered by extending the definition to de facto spouses.

Clearly, the minister has decided to have another look at it. The opposition is taking a view in relation to much of the legislation we are putting through this parliament in its dying days. We have only one sitting week left. Perhaps if these bills were introduced at any other time we would consider them in more detail but, given that we do not have that time, it is our view that it is better in cases such as this to take the cautious path, to not upset the apple cart and to get the bill through. We can deal then with any issues that arise in the future. We have only three days of sitting left and the parliament will adjourn.

As the government has talked about holding an election in March or even April, and given that there is every possibility there would be a change of government and it might be several months before all the returns are in and the parliament resumes, we might be talking about a six to seven month break in this parliament. The opposition's point of view is that it is far better to get something that is workable into place as soon as possible—particularly in this area where there is a need for changes to be made for many years—and if there are relatively minor issues (and I would put that in this category) they can be addressed in the future.

In relation to what we might do in the future, I will take this opportunity to read into the record a brief letter that was sent to my colleague the shadow minister for ageing, Lea Stevens, from the Council on the Ageing. It was received on 13 November, after the bill was debated in this Council, and it makes an important point. The letter states:

> COTA made representations to that review [the review of the Retirement Village Act regulations] and participated in discussions on the Retirement Villages Act Advisory Committee, and pressed the minister to bring forward the recommended changes.
>
> Although COTA's representations went further in certain aspects than the government's amendments, COTA supports the amendments. We also support the further amendment agreed in the Legislative Council which will in due course extend the limitation on charging of maintenance fees after departure from a village to existing residents. We note that the required review of regulations has resulted in changes to the act itself. However, submissions were never invited on amendments to the act. If there had been such a call, a wider range of proposed changes to the act would have resulted.
>
> Despite various serious efforts to address concerns of retirement village residents over the last decade, issues persist. Notwithstanding that most residents are happy with their choice to live in a retirement village, the structure of the industry creates unusual dilemmas.
>
> COTA would therefore welcome the opportunity for a broader review of the Retirement Villages Act, a position shared by the SA Retirement Village Residents Association (SARVRA). Such a review should include an examination of the issues created by the dominant funding arrangements in the South Australian industry.
> Ian Yates, Executive Director.

The point in the letter is that there is a need for a broader review of the act. So it is probably prudent, if there is some concern about aspects of this measure, that we deal with them in the future. Perhaps at that time it will be appropriate to have a much broader review of the Retirement Villages Act. With those comments, I indicate that we support the amendments of the House of Assembly.

**The Hon. IAN GILFILLAN:** The Democrats oppose the amendment. We believe that it should be revisited to alter what is now an accepted practice. It is very short-sighted not to accept that de facto relationships are a large part of our community structure, and as those cohorts move into older age groups more people will be moving into retirement villages.

I am not persuaded that the rather minor—in my view—and maybe temporary adjustments that would need to be made by the Retirement Villages Association justify making this extraordinary exclusion in this legislation. In most other legislation we have unanimously accepted that this is a social reform. Some people have felt a little more reluctant about accepting it than others, but de facto relationships are now accepted in law as legitimate relationships. For those reasons, I indicate that we oppose the amendment.

**The Hon. T. CROTHERS:** I have heard what the Hon. Mr Gilfillan has said. He is a member who does his work and does it very well most of the time. I draw to his attention why I believe Paul Holloway has touched on why we should support the measure—and he said that half a loaf is better than no bread. The point the Hon. Mr Gilfillan raised has not been mentioned—and he is quite right about a lot of the things he said.

If a de facto couple are living in a retirement village unit and either the female or male of the partnership owns the unit, that can still be left to the other partner by way of an ordinary common law will. Let us not lose sight of that fact. We have advanced somewhat. Whilst it may not be well liked—and I do not particularly like it—I understand the position the Hon. Paul Holloway has put: that the alternative is to wait for six months or more before you can address the matter.

By accepting the amendment, at least you have made some progress. The Hon. Mr Gilfillan will still be here in the next

parliament: I think that is correct. Therefore, he will have time to revisit it. There is no provision here that would prevent him from doing that. As I understand it—and no doubt my learned friend, the Hon. Robert Lawson, will tell me if I am wrong—a de facto couple can leave whatever property and money has accumulated through time to each other by way of an ordinary will. I support the amendment.

**The Hon. R.D. LAWSON:** I assure the Hon. Trevor Crothers that the decision to agree to the removal—and I believe only the temporary removal—of a de facto is not based on any moral reservation that anyone has about de facto relationships. Far from it. We want to ensure that people who enter into relationships that affect their property rights—and this is what we are talking about here in relation to retirement villages—are appropriately protected.

We do not seek to exclude them: we seek to include them but to include them in a way which is considered and which will have regard to the way in which this rather unusual industry operates its licensing arrangements that exist for the occupation of retirement village units, which is quite complex. We should not prejudice either residents or retirement village developers in what they seek and what they should get.

The Hon. Paul Holloway said that I had indicated to the Retirement Villages Association that I intended to retain the de facto definition. That was because the Retirement Villages Association had said to me that there was trouble including that definition. For example, in this hypothetical scenario, a 95 year old resident in a retirement village who is single forms a de facto relationship with a 20 year old woman. He dies, and she, under the legislation—

**The Hon. Carolyn Pickles:** He dies with a smile on his face.

**The Hon. R.D. LAWSON:** He dies with a smile on his face. She certainly has a big smile on her face because she has another 70 years' occupation of that retirement village unit. Then, perhaps when she is 90 she takes up with a 20 year old toy boy who has a smile on his light because he gets another 70 years' occupation. This would not be a terribly satisfactory arrangement for the retirement village. It was concerned about occupation ad infinitum.

My response in the letter that the Hon. Paul Holloway read out was that the same thing could happen at the moment because the 90 year old gentleman could get married to the 20 year old and she would be his lawful wife, and the same could happen under the existing legislation. This made me think that we ought to look at this whole question to ensure that there are not unintended consequences. As COTA was indicating, this whole process started off with an examination of the regulations and how we could improve them. Certain things were identified, and some of them required amendment to the legislation. That is why we brought in these legislative measures.

It did not start out as a total legislative review. COTA has indicated in the letter that the Hon. Paul Holloway read that it would like to have a broader review of the Retirement Villages Act, and I indicate that the government proposes to undertake that as a matter of urgency. I look forward to addressing not only this de facto issue but also a number of other outstanding issues that have been under discussion. But I am delighted that we have been able to make a number of significant reforms in this legislation and I am grateful for the expressions of support.

**The Hon. IAN GILFILLAN:** I believe that to pass this measure is over-discrimination against de facto relationships. I think the minister made the rather beautiful point that, in fact, legal matrimony could even exacerbate this rather bizarre relay race of elderly spouses marrying which has been portrayed. Of course, such a relationship need last for only a day and it is a legal arrangement. At least with a de facto, a 95 year old would have to see through to a century with a 16 year old, who would then be 21. So, in fact, if it is one versus the other, I think the de facto would probably cause less strife to the retirement village.

But that is, to me, taking it to the degree of farce and I do not want to dwell on that. Whatever may be the palaver surrounding this, the fact is that, if the committee passes this amendment, we are overtly discriminating in the treatment of de facto relationships compared to legal spouses, and I believe that is unacceptable and we intend to vote against it.

**The Hon. P. HOLLOWAY:** I think the comments of the Hon. Ian Gilfillan need a response. In effect, this amendment that the House of Assembly passed restores the position that exists in the current Retirement Villages Act. That is my understanding of the position. I think the minister has at least shown his bona fides in originally moving the change to include de facto relationships. What appears to have been the problem here is, of course, that there are some unintended consequences that have been identified. That has, therefore, caused the government to decide that it needs to rethink it.

The opposition has consistently supported an extension of the definitions of spouse and I can name a number of times that we have moved amendments to bills in this parliament to try to achieve that. All that we were doing in accepting an amendment here was really trying to get the substantial amendments that have been made to the Retirement Villages Act through before this parliament adjourns. I do not know that having a conference on this matter at this late stage would be helpful, particularly when this whole matter is going to be reviewed, anyway.

But, to make the record complete, in view of the comments the Hon. Ian Gilfillan has made, I think at least to get the record straight I should have read what the Retirement Villages Association put in its submission in relation to this. I will read it in full. It states:

> We do however have one significant concern which we have already expressed both to the minister and through the RVAC about the amendment to the definition of 'resident'.
>
> To the best of our knowledge this matter has never been discussed at any meetings of the RVAC and has not been canvassed in any of the documents referred to in the minister's second reading speech.
>
> Our concerns are that we have not been made aware of the proposed interpretation, implication and the need for the change. We question whether the change to the definition implies that if a resident remarries, or has a de facto relationship, that their new partner automatically becomes party to a residence contract. If so, then how does the administering authority establish whether the resident was/is in a de facto relationship, particularly when such claims are most likely to arise after the death of a party to the original contract? We are also concerned that if such an arrangement extends to new marriage partners and/or de facto partners (now residents), then the provision has the potential to extend current residence contracts ad infinitum, certainly well beyond the originally anticipated terms of contract that could already be 10/15/20 years old when this bill becomes law.

I interpose to indicate that the minister has already addressed that particular point. The letter continues:

> It may be argued that the provision 'subject to any provision of the residence contract' allows village managers to vary or qualify the definition of 'resident'. This qualification leaves existing residence contracts which previously had no need to define a resident as anyone other than a party to the contract, or anyone subsequently admitted to the contract by mutual agreement of the parties, subject

to the new definition through default. The extensive consequences of perpetualising a residence contract through the changed definition of resident must not be ignored.

Another concern about adding de facto to the definition of spouse is the opportunities which arise for bogus claims of de facto relationships by carers or unscrupulous people wishing to exploit the opportunity presented. Such claims have the potential to add years of delay to finalising the estates of deceased first residents. Taken to an extreme, changing of the definition appears to open up the possibility for children of de facto claimants to become entitled to reside in retirement villages even though they may not be entitled to become parties to a residence contract.

Of further concern, is that many and possibly the majority of existing residence contracts, by default, treat parties to a residence contract as 'joint tenants'—in other words, the value of the resident's estate automatically vests in the surviving resident, now proposed to be extended to include any new spouse and/or de facto claimant.

If the changed definition of resident is to proceed, it will have a significant effect on the majority of current residence contracts and must at least be included in clause 20 (transitional provisions) to avoid retrospectivity and to allow the industry to adjust to such a major change.

The letter continues about other measures in the bill, but I thought it was important to at least put it on the record. As far as the opposition is concerned, we accepted the assurance that was given by the minister originally that it did not create adverse consequences but, given the fact that we are now in the dying stages of the parliament, in our view we would like, if possible, to work this thing through. I think that letter from the Retirement Villages Association indicates that there could be some considerable complexities with it, and it is probably not something that we can do given the huge amount of other legislation that we have to consider in the last three days of this sitting.

**The Hon. T. CROTHERS:** I want to say a number of small things but they are very important for all people to know. The Statutory Authorities Review Committee had occasion during one of its investigations to meet with the Retirement Villages Association. The point I want to make concerns one John Foster Dulles, a brother of Alan Dulles, the head of the American CIA and the Secretary of State in the Eisenhower administration, a very ardent Presbyterian who, on hearing that his son had changed his religion to Roman Catholicism, made the point (after many years as a fairly bigoted Presbyterian) that many were the roads that lead to God.

As I recall the meeting of the Statutory Authorities Review Committee with the retirement villages people—and I know that the Hon. Legh Davis was on the committee and I think it was around in Sturt Street at the time—most of those constituent parts of the Retirement Villages Association were not lay bodies, they were church bodies. There were the Lutheran Church, the Salvation Army, I think the Uniting Church and other churches—the Baptist Church, I think. The majority of the people running those retirement villages, and the best organised of those people, were the church associations.

I heard the letter that the Hon. Paul Holloway read out, and I can also read between the lines. It may well be that it will be very difficult, indeed, to convince some of these organisations that there should be recognition of de facto relationships, given that all of the churches, almost without exception (except some recently formed for the purpose) support the concept of marriage as it has been handed down to us for many generations under English and even Anglo-Saxon law. That is just one point that I would make because, perhaps, a lot of members do not know about that in respect of this matter, and that is why I said half a loaf is better than no bread at all.

It might be a much more difficult position than one thinks to try to convince these people that that is the way one ought to go. Some of them are very broadminded people. Nonetheless, I think that we would get a fight from the Uniting Church, the Lutheran Church and the Salvation Army. One must bear that in mind. I know that the Hon. Mr Gilfillan means well, and in general circumstances I would support him. However, for those reasons and because of that little bit of knowledge that I gained from the Statutory Authorities Review Committee about the way in which the Retirement Villages Association is composed, that is, by a number of churches and some other groups, I think it would be somewhat difficult.

It is better for us to support that which is before us in the eternal hope that some day—the sooner the better for mine—we can convince the retirement villages that, in spite of all the legal hocus pocus in their letter, the way to go is to give recognition to what is essentially, as the Hon. Mr Gilfillan said, an event that is happening all around us. That is usually the way that the law has altered in the English-speaking world. Because of the disparate nature of the Retirement Villages Association, let me conclude by quoting from an old Irish priest, who said, 'Our Ireland tis a funny place, a land of mist and salt; our Ireland tis a funny place, where man fights man for the love of God.' I support the Hon. Mr Lawson's proposition.

**The Hon. R.D. LAWSON:** The Hon. Trevor Crothers is entirely correct to say that many retirement villages are run by charitable, not-for-profit and, in some cases, religious organisations. However, I assure him and the committee that the government does not seek to discriminate between those who live together with the benefit of holy matrimony or without that benefit. We have supported amendments to include de facto spouses in the Superannuation Act, the De Facto Relationships Act, which this government introduced, the Dentists Act and the Veterinary Surgeons Act. We have done the same in the Criminal Law Consolidation Act in relation to domestic assault by including a definition of de facto.

We recognise the reality and we sought to include it in this legislation but did not appreciate fully the ramifications of doing so and did not consult with all parties. I want to ensure that we do that so that people understand where they stand and so that residents are not disadvantaged, as they might be, with an ill-considered amendment. That is why we support the amendment made by the House of Assembly, and I thank the Hon. Trevor Crothers for his support.

The committee divided on the motion:

AYES (14)

| | |
|---|---|
| Crothers, T. | Davis, L. H. |
| Dawkins, J. S. L. | Griffin, K. T. |
| Holloway, P. | Laidlaw, D. V. |
| Lawson, R. D. (teller) | Lucas, R. I. |
| Redford, A. J. | Roberts, R. R. |
| Schaefer, C. V. | Sneath, R. K. |
| Stefani, J. F. | Zollo, C. |

NOES (4)

| | |
|---|---|
| Elliott, M. J. | Gilfillan, I. (teller) |
| Kanck, S. M. | Xenophon, N. |

Majority of 10 for the ayes.

Motion thus carried.

## STATUTES AMENDMENT (BOOKMAKERS) BILL

Second reading.

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

*That this bill be now read a second time.*

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

Leave granted.

In response to requests from the South Australian Bookmakers' League the government has agreed to amend bookmaker taxation arrangements. The revised bookmakers tax rates will ensure taxation arrangements in South Australia are competitive with rates in other jurisdictions and also provide greater administrative simplicity.

Current bookmaker taxation arrangements for racing betting comprise a racing club levy equivalent to 1.4 per cent of turnover plus additional components of State tax revenue ranging up to 0.77 per cent of turnover dependent upon the location of the bookmaker and the race. Sports betting is taxed at 1.75 per cent of turnover.

In addition, bookmakers receive a reimbursement from the State government for the amount of GST paid to the Australian Taxation Office. As the industry was advised at the time these GST reimbursement arrangements were introduced (1 July 2000), these arrangements were not considered a long-term solution.

State tax on racing betting with bookmakers is to be fully abolished. Further, tax on sports betting with bookmakers is to be abolished other than a tax of 0.25 per cent of turnover on sports bets from persons outside Australia.

Bookmaker GST reimbursements are also to be abolished.

Under the revised arrangements the only State tax (or reimbursement) for bookmakers will be 0.25 per cent of turnover on sports bets from persons outside Australia.

The net result of these changes is estimated to have a negative net impact on the State budget of $35 000 per annum.

This revised taxation structure provides South Australian bookmakers with rates equivalent to the benchmark rates set by Victoria with respect to racing betting and the Northern Territory with respect to sports betting. It will provide the opportunity for bookmakers to compete effectively in the increasingly competitive national sports betting market.

The South Australian Bookmakers' League support these revised arrangements.

In concert with amending the taxation arrangements the racing club levy and prescribed fees (better known in the industry as stand fees) are to be removed from the legislation in favour of negotiated arrangements between the SA Bookmakers' League and the racing industry.

While the racing club levy (1.4 per cent of turnover) and stand fees are currently established under the Act they are already largely a commercial matter between the bookmakers and racing codes. The SA Bookmakers' League and racing industry have recently been negotiating a revised commercial arrangement and I understand that the parties have agreed to replace the current levy and fee arrangements with an all encompassing levy of 0.9 per cent of turnover.

Consistent with that, the parties have agreed that the legislative provisions should be removed from the Act. This will enable future negotiations to occur in a normal commercial manner.

These amendments demonstrate the government's commitment to providing a competitive taxation environment in the State and supporting the bookmakers and racing industry in developing their commercial relationship.

I commend the bill to the House.

Explanation of Clauses

PART 1

PRELIMINARY

*Clause 1: Short title*

*Clause 2: Commencement*

*Clause 3: Interpretation*

These clauses are formal.

PART 2

AMENDMENT OF AUTHORISED BETTING OPERATIONS ACT 2000

*Clause 4: Repeal of s. 59*

Section 59 (which is not yet in operation) provides for the payment of fees by bookmakers to racing clubs. It corresponds to section 113 of the Racing Act.

*Clause 5: Repeal of s. 82*

Section 82 (which is not yet in operation) provides for payments to racing clubs out of the duty paid by licensed bookmakers. It corresponds to section 114(5) of the Racing Act.

PART 3

AMENDMENT OF RACING ACT 1976

*Clause 6: Repeal of s. 113*

Section 113 provides for the payment of fees by bookmakers to racing clubs. This matter is to be left to commercial arrangements between bookmakers and racing clubs.

*Clause 7: Amendment of s. 114*

Section 114 provides for the duty payable by bookmakers. The section is amended to remove the obligation to pay duty in respect of bets made on race-results. The amendments also reduce the duty payable in respect of bets made on approved events from 1.75 per cent to 0.25 per cent and apply the duty only to bets made by persons outside Australia.

*Clause 8: Repeal of s. 114A*

Section 114A obliges the Commissioner to reimburse GST paid by bookmakers on bets in respect of which duty has been paid. It is intended that the repeal of this section will not take effect until all the required reimbursements have been made.

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

## STATE SUPPLY (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 31 October. Page 2577.)

**The Hon. SANDRA KANCK:** Members will not be surprised that I rise to speak on this piece of legislation. I have been following developments regarding the state's procurement agency since December 1998 when I raised serious issues regarding the conduct of SupplySA and its failure to observe the procurement reform strategy with regard to Group 65 medical products. This failure to observe the reform strategy was costing our public health units dearly. I had estimated that savings of up to $20 million were not being made due to poor practice. These are savings that our public hospitals can ill afford to lose. Unfortunately, the issue was not easily digested by the media and therefore failed to gain the attention it warranted. I note too that the ALP found the issue too difficult to deal with despite being alerted to the problems as early as November 1998. I remind members that issues surrounding the performance of SupplySA are still before the Auditor-General as a result of a motion passed by this chamber. I do note that the Auditor-General has been extremely busy of late.

Since the matter was referred to the Auditor-General, the then director of SupplySA, Mr David Burrows, has had his contract terminated. There are still questions regarding his conduct and the nature of his termination which remain unanswered. I was informed that criminal charges could have been laid against Mr Burrows but that nothing came of it because witnesses felt too intimidated by this man to come forth. Despite many of the problems that I highlighted in December 1998, the minister still claimed that things were going well in state supply. In his response to a question I put to him on 10 December 1998 he said, 'The procurement reform strategy itself is on track and performing well.' Again, in March 1999 the minister stated:

> Far from the honourable member's allegations that SupplySA is not observing this procurement strategy, I assure her and the Council that the procurement strategy is being assiduously pursued.

He made claims of a successful implementation of this major procurement reform and the positive impact that it is having,

and will continue to have, on the purchase of supplies, especially medical supplies. If this implementation had been so successful, I wonder why problems in state supply have been consistently raised by the Auditor-General over a period of years. The latest problems—highlighted in the 2001 report—have resulted in this amendment bill. The root of the problem is not so much the need for legislative change as it is the culture, the manner in which business is done. It is associated with questions of probity, transparency and accountability. The 2001 Auditor-General's Report states:

> By any measure a key element of public sector procurement processes is the quality of the tendering and contracting processes undertaken by agencies. Audit has drawn attention in past reports to concerns regarding the conduct of these important processes by agencies. Audit is to direct attention in 2001-02 to the quality of aspects of the tendering and contracting component of the procurement process cycle. This subject review area will also consider the nature and extent of waivers of competitive processes and the reporting accountability associated with this matter.

In October 1997 the official publication of the Government Purchasing Task Force stated:

> A comprehensive employee training and development program will lay the foundation for the South Australian government's procurement reform. Hundreds of government employees will be involved in the program over the next two years to develop new levels of competency, efficiency and accountability in procurement practices.

Yet in 2001, the Auditor-General says:

> The board has not to date formally issued detailed, instructive guidance to agencies concerning best practice procurement policies and procedures. Nor has it issued formal instructive advice to agencies as to what those policies and procedures might comprise.

What has happened in four years? Again, I highlighted the problems with the tendering and contracting processes with a question I currently have on notice. In July 1998 the contract for incontinence products was completed by the Hospitals and Health Services Association of South Australia purchasing agency—which no longer exists—and sent to SupplySA for approval. The tender process had been completed, the product evaluation done and the contract recommendation made. The recommendation was estimated to make a 35 per cent saving for our health services. This translated to a saving of $700 000 per year on just one line of product.

In October this year the Accredited Purchasing called for a request for proposals with the aim of contracting suppliers for the provision of continence products. All health services will be required to provide details and usage for the tender process. So what has happened to the original recommendations? Why has it taken three years for the tender process to begin? Does this mean we have lost more than $2 million in savings in that time, savings which could have been used in offsetting the lack of affordable incontinence products for the elderly and people with disabilities in this state? I understand the difficulty in reforming the purchasing strategy and the obstacles to overcoming the culture which existed, but what I do not understand is the government's insistence that everything was fine.

More energy and time seemed to go into defending the department rather than getting to the bottom of the problems in a quick and efficient manner. Yet the guiding principles of the purchasing strategy include professional integrity and probity, and management of risk and accountability. This amendment bill will extend the supply board's legal basis for the procurement of services as opposed to goods. The supply board's track record on the purchasing of goods has not been particularly efficient, so the extension to services raises serious concerns as services are far more difficult to define.

Saying that, I support the second reading of the bill and am hopeful of a comprehensive implementation of the guiding principles of best procurement practice, which should result in significant cost savings being made by our overstretched public health system, is a bit of a risk but, at this point, I am indicating my support for the second reading.

**The Hon. T. CROTHERS:** I rise to make some observations. I well recall a number of years ago, as a member of the Trades and Labor Council Executive, the matter of procurement of goods and services by the state first being raised by the Metal Trades Union—and quite correctly raised. The problem is that, when you talk of cost savings by buying from interstate, or outside this state, there are extra costs in doing that. For instance, there are all the services that would have to be supplied to the people who are unemployed because they do not have a sufficient production bank, because of the lack of purchase of whatever material they manufacture or service they provide. Those people are then rendered unemployed.

It happened here on a number of occasions, where a number of South Australian companies closed down: in fact, the state government could have, and perhaps should have, awarded them the contracts, relative to keeping their operation in existence in this state. But of course that has not always happened. So when people talk of cost savings, it is not just as simple as talking of cost savings because, although you are buying from outside the state at a cheaper price, you have to include a number of benefits that are hidden from the public eye regarding costs in fact saved by purchasing within the state. I just make that point because it is nothing new in respect of what is going on now.

In fact about 20 years back, Mick Tumbers and I were the two people who went to see Don Dunstan, or it might have been Des Corcoran, concerning this matter. It is nothing new, because all governments have endeavoured at times to buy from without the state and on many occasions each government might not have costed properly. In other words, the loss of jobs here through not having a sufficiency of production capacity to keep companies afloat, versus cost savings by buying cheaper from interstate because there is a bigger market to produce, must be considered. New South Wales has a population of about 7 million. This is obviously a very well situated company in respect of health products and incontinence products. It can produce them much more cheaply because it is producing them in greater mass than we do with a population of just under 1.6 million.

As I said, what constitutes cost savings is a difficult problem to grasp. In fact, our own industries in this state may well go under because we are affecting some costs by buying from interstate. I will not comment on this bill until I hear the minister speak. I have looked at it in some depth in respect of this matter but I say—and I repeat, and it bears repeating—that it is a matter not of looking at dollars and cents saved by purchasing from without the state but of money flowing to the state from an industry that a government audit may keep alive and well in respect of its on-going existence.

**The Hon. A.J. REDFORD** secured the adjournment of the debate.

## VOLUNTEERS PROTECTION BILL

Adjourned debate on second reading.

(Continued from 13 November. Page 2654.)

**The Hon. A.J. REDFORD:** This is a landmark bill and a world first. This bill goes further than any legislation in terms of protecting the volunteer sector than any other jurisdiction in the world and, in particular, the United States which, until the introduction of this bill, has led the way in legislative protection for legal liability for volunteers.

The history leading up to the promulgation of the bill was set out in the second reading explanation. I point out that I was one of the two representatives who visited the United States to research the federal and state legislation that protects volunteers, and also to look at other issues relating to volunteer liability and risk management, particularly having regard to the perception that had been conveyed to the government as a result of the various workshops that the risk of being liable for volunteers was discouraging people from putting themselves forward as volunteers.

It is important to understand that people in the volunteer sector range from those performing complex management tasks, such as serving on boards of varying sizes and importance, to those who provide professional services, such as doctors, nurses and lawyers providing their services on a voluntary basis, to those who provide volunteer services at a pretty basic level, whether it simply be selling raffle tickets or digging holes to make playgrounds and the like. So, it was with that in mind that we visited the United States.

The United States, with its 50 states, has varying and substantially differing types of legislation throughout each state jurisdiction, and there was a great degree of inconsistency in the treatment of volunteer liability in the United States throughout the last decade. An Illinois Congressman, John Porter, fought for a period of 11 years to get the federal Volunteer Protection Bill through the United States Congress, no mean feat and a very rare occasion when a non-government sponsored piece of legislation traversed its way through Congress. I am sure the Hon. Nick Xenophon would understand the difficulty of that when we consider how difficult it has been for Senator Kyle to get his internet gaming legislation through the United States Congress.

At the time the bill was passed it was indicated that it was needed as a consequence of a fear of declining participation with a rise in litigation and high insurance costs. The bill got little attention. There was little or no opposition and it had been developed after many states had their own versions of similar legislation or, in other cases, good Samaritan legislation. It was designed to be a minimum standard and once enacted it was implemented immediately with little or no implementation or strategy. The bill was taken up more strongly when issues of risk management were taken up and, indeed, President Bush, strongly endorsed by his successor, President Clinton, established the national non-profit risk management centre which I visited in Washington DC. They were very strong on the fact that this sort of legislation (and I will not go into it in any detail) must be accompanied by risk management strategies, risk management education and training for the volunteer sector.

The important thing to note in relation to the United States legislation is that it provides immunity to volunteers from the risk of being sued for damages. That by itself did not fully and completely address all the problems faced by the volunteer sector, and I will name just a couple. Despite the United States federal and state legislation, volunteers were still at risk of being sued and, whilst being held immune from damages if they were acting only negligently or within the scope of the legislation, were still responsible for their own legal fees for the defence of these claims, etc. Indeed, we were told that the impact of the federal legislation by itself had not had a significant effect on the desire of people to volunteer, because there was still a substantial risk that, notwithstanding the fact that volunteers were immune from liability for damages, they could still be sued and still have to be drawn on the conveyor belt of litigation at great personal and individual cost, and that deterred people from volunteering.

We visited quite a range of different people, but one of the most important and interesting meetings we had was with Mr Ken Goldsmith, the Director of State Legislation at the American Bar Association in Washington DC. The American Bar Association is an extraordinarily powerful lobby group in the United States; I suppose that with 400 000 members it would have to be. During the course of the meeting with Mr Goldsmith I raised with him the fact that the US federal legislation had not had the desired impact because of the real fear on the part of volunteers that they would be subjected to litigation. I also raised with him the American Bar Association's attitude to legislation of this sort. He gave me what at the time I found to be surprising but very interesting advice.

His advice to me was that the legal profession had been divided by the legislation. The California Bar Association strongly opposed the legislation, whereas the Alaska Bar Association strongly supported it. He went on and explained to me that the reason why the legal profession was divided was that, whilst the plaintiff lawyers were concerned that this might cause a diminution in rights in relation to their clients—and some cynics might say a diminution in work and remuneration—the balance of the legal profession is so wholly wrapped in providing volunteer services in so many different ways that they were very supportive of the legislation. He gave the example of the many hundreds of thousands of lawyers in the United States who volunteer their services, whether to serve on boards or provide legal advice and in other ways, being discouraged because they are either liable for damages—and the American legislation fixed that up—or, alternatively, they would be dragged into the legal system.

Some of us in this place who have been involved in legal cases would well understand that that can be a very frightening and expensive process, notwithstanding that you are comforted by the fact that you may well be found not liable at the end of it. It had also led to a large number of cases where people were arguing recklessness and gross negligence on the part of volunteers in order to attract the personal liability, and this had the double edge of putting some of these volunteers outside the volunteer organisations' insurance policies, because they did not cover volunteer risk if there had been gross negligence.

By simply giving immunity for damages as a consequence of acting negligently, as opposed to gross negligence, in some cases the net effect of the US legislation was to increase the perception that there was grave legal risk in volunteering. It was Mr Goldsmith of the American Bar Association who indicated to me that unofficially the American Bar Association's preference was to have legislation which provided immunity from suit, as opposed to immunity from damages. There is a subtle but important distinction between the two. Immunity from damages is what it says: an immunity from damages. It does not prevent litigation being taken against a

volunteer, and it does not prevent their being liable to legal costs and obviate those volunteers of the need to see a lawyer and engage them at expensive rates. Armed with this and having visited other organisations (and I will not bore members with a lengthy speech on that) I came back and suggested in company with the minister and a number of other people within the minister's agency that we ought to go further than the United States legislation and that this legislation ought to provide an immunity from suit.

I turn now to look at the bill. The bill is very self-explanatory. It is important to understand that if the bill becomes law it is to be interpreted such that the objectives set out in the preamble are met. In the preamble's first provision, the parliament is making a policy decision, recognising the importance of the volunteer sector. In the preamble's second provision, the parliament recognises that there is a major disincentive not only because of personal liability for damages but also, and just as importantly, legal costs in proceedings for negligence. It is as a consequence of that that clause 4 is drafted in this way:

> Subject to the following exceptions, a volunteer incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in the course of carrying out community work for a community organisation.

Clause 5 explains it in even more detail, and in particular clause 5(2) provides:

> A person (the injured person) who suffers injury, loss or damage as a result of the act or omission of a volunteer may not sue—

and I emphasise the words 'may not sue'—

> the volunteer personally unless. . .

Then it goes through the basis of it. When the instruction was given to the drafter of this bill, the intent was to ensure that, if a person is a volunteer served with a summons, that person should be able to go to the court on an interlocutory application to summarily strike out the claim against the volunteer—providing evidence that they were acting as a volunteer and that they were acting within the scope of their authority as a volunteer—and be able to avoid the prospect of being involved directly in long and lengthy litigation.

*The Hon. Nick Xenophon interjecting:*

**The Hon. A.J. REDFORD:** The answer to the honourable member's question is yes, there would have to be such a process. I would hope that the courts in looking at the preamble look at the objective of this bill. I am certain that, if they do not do this as a matter of practice—not that many cases will attract this—we will have to revisit it. The parliament is saying, quite clearly, that the major disincentive to volunteering is the legal costs in proceedings for negligence, and therefore there is a duty on the part of the courts in implementing parliament's policy (should this legislation be passed) to minimise those costs. Indeed, the third provision in the preamble sets that out in more detail and explains the bill in somewhat more detail.

Following the passage of this legislation, the government must play an educative role. In any accident or any situation that causes personal injury, there are three potential losers. First, there is the person who suffers the injury—and in many cases they bear their own loss; secondly, the person who caused the injury; and, thirdly, the government, or some other third party that might pick up what the other two parties do not pick up. The policy of this bill is to say that the person who causes it—that is, the volunteer—does not pick up any of the liability. The next question is: who should pick it up? Obviously, in most cases, the victim should not pick it up.

The government intends—and it has appointed me (and I am grateful for the opportunity to be involved)—to set up a committee to develop strategies to ensure better risk management, which, first, reduces the rate of injuries and ensures that volunteers conduct their enterprises with as little risk as possible; and, secondly, provides an educative role in terms of insurance. We did not follow the American model by saying there should be improved insurance and setting out in a schedule what the insurance should be, because we believe that insurance policies and so on are too complex, too difficult and are not creatures that are easily subjected to being put in schedules or legislation. We believe that the best way to approach this is by explaining to organisations that are incorporated the importance of insurance. Some resources will need to be applied to do this, and I understand that those resources will be applied by this government.

Let me explain this in a practical sense. Let us say that the Hon. Nick Xenophon and I volunteer to be members of a Lions Club to build a playground in the parklands just outside Victoria Park. I am not sure that the Hon. Ian Gilfillan would have joined us in that enterprise—

*The Hon. Ian Gilfillan interjecting:*

**The Hon. A.J. REDFORD:** He would be picketing us. Let us say he—

*The Hon. Ian Gilfillan interjecting:*

**The Hon. A.J. REDFORD:** But you are not volunteering for the Lions Club because it is not part of the Lions Club activity. Let us say that I inexplicably do something. For instance, when digging a hole the spade, which I am not holding firmly enough, goes flying out of my hand and hits poor Nick Xenophon in the head; and poor Nick Xenophon, mindful of his responsibilities not only to his constituents but also to his family, takes it upon himself to properly seek legal redress and damages for the losses he has suffered—and that is his right. Under this legislation he would not be able to sue me, but he would be able to sue the Lions Club. What is critical is that the Lions Club needs to understand, in conjunction with its membership, what is an appropriate level of insurance. We need to ensure that all incorporated bodies have risk management as a creature of its annual general meeting and that the issue of insurance is dealt with at every annual general meeting just as the appointment of the auditor or the report of the president, the chair and so on—

*The Hon. Nick Xenophon interjecting:*

**The Hon. A.J. REDFORD:** No, they do not have to be insured. I am not sure that compulsory insurance in any situation ever works. When you are talking about the breadth, the complexity, the depth and the range of the volunteer sector from small groups of people doing small things in their community to large organisations such as the Guide Dogs, Scouts, Freedom From Hunger, or some other organisations you could not possibly legislate or prescribe an appropriate level of insurance. It is absolutely vital for the government and all of us to embark upon a risk management and education program to ensure that these bodies are properly insured.

The second issue, and it is important, is the extraordinary challenge that the events of New York, the cyclones in the Caribbean some two or three years ago, and various other incidents, have placed upon the underwriting industry. We are now seeing insurance premiums double and quadruple—

**The Hon. Nick Xenophon:** HIH.

**The Hon. A.J. REDFORD:** And HIH. The government is very mindful of that. I am pleased to see that part of our working group's brief is to look at ways in which we can minimise premiums, whether there be bulk purchasing and

things of that nature. They will be things that we will look at. That is not to say that there are examples where a lot of volunteers in this state are protected under other insurance policies. For example, the CFS and Friends of the Parks are protected under state government insurance policies, and volunteers working for local government are protected under local government insurance policies.

It is a complex issue and one that I will not labour now. It is an extraordinarily complex issue but one that must be addressed by the government in conjunction with the passage of this bill. It is landmark stuff and it is well ahead—despite what some people have said in another place—of anything that has been done in any other jurisdiction, to my knowledge, in the world. The Hon. Trevor Crothers raised a concern that there might well be some abuse of this legislation: someone would ruthlessly employ people to fall within the bill and thereby escape liability. I have looked very carefully at what the honourable member said. I think that it can be answered very shortly, and I am sure that the minister might wish to expand on this when she responds.

If people are employees they are no longer volunteers and therefore lose the protection of the legislation. If the proprietor, referred to in the honourable member's question, is not incorporated under the Associations Incorporation Act and is not a community organisation delivering a charitable service as defined in the act, the legislation, again, would not provide any protection to that 'volunteer'. So that the questions and the issues raised by the Hon. Trevor Crothers cannot possibly, on any facts that I can think of, fall within the ambit of this legislation.

The Leader of the Opposition in the other place made some criticism that perhaps this legislation ought to go further and cover volunteers who are volunteering for non-incorporated bodies. The difficulty with that proposition is that you simply would not be able to police it. Any person caught in any situation would be able to say, 'I was a volunteer for X person', and it would be almost impossible to determine whether there was a genuine volunteer relationship between some body or another.

Secondly, if you went down that path you would run the very real risk that you would be volunteering for another volunteer who secured the same exemption and, in fact, you would find that the person who was injured would be completely out of court and would not be able to sue an association that was securing the benefit of the volunteering work. I would be interested to hear any suggestions from members opposite at any stage over the next year or so as to how it could be extended to non-incorporated bodies, but I would be surprised if anyone could come up with a way in which it could be done.

In any event, the process of incorporating a body ought to be encouraged; it has been in the past and it is not a difficult exercise. I think that just about anyone who can fill out a form of any complexity—and certainly much less complex than an ordinary income tax return—would be able to incorporate a body. I do not think that it is too much to ask a body, if it wants to get the protection of this, to go down that path. I would be very grateful, during the course of developing the risk management strategies and appropriate insurance responses, to hear any suggestions from any members in this place as to what we can or might do.

I am happy to exchange any information. I am sure that the volunteer sector needs—and my committee particularly—all the help it can get in dealing with what is a very difficult and complex issue. At the end of the day, it is really pleasing to see that the Labor Party, SA First and this government are embracing the importance of voluntarism and the absolutely extraordinary contribution that volunteers make to our community. I think that this is an extraordinary moment in volunteer history, if I can say so, in that sense. I am very grateful to the opposition for its endorsement of this legislation.

**The Hon. IAN GILFILLAN** secured the adjournment of the debate.

## ADJOURNMENT

At 6.01 p.m. the Council adjourned until Tuesday 27 November at 2.15 p.m.