LEGISLATIVE COUNCIL

Tuesday 12 November 2002

The PRESIDENT (Hon. R.R. Roberts) took the chair at 2.16 p.m. and read prayers.

ASSENT TO BILLS

Her Excellency the Governor, by message, intimated her assent to the following bills:

Classification (Publications, Films and Computer Games) (On-line Services) Amendment,

Constitution (Parliamentary Secretaries) Amendment,

Cooperatives (Miscellaneous) Amendment,

Criminal Law Consolidation (Offences of Dishonesty) Amendment,

Criminal Law Consolidation (Territorial Application of the Criminal Law) Amendment,

Gaming Machines (Gaming Tax) Amendment,

Gas Pipelines Access (South Australia) (Reviews) Amendment,

Legal Services Commission (Miscellaneous) Amendment,

Parliamentary Committees (Presiding Members) Amendment,

Statutes Amendment (Bushfires) Bill.

CITY OF BURNSIDE

The PRESIDENT: I lay upon the table the report of the City of Burnside 2001-02 pursuant to section 131(6) of the Local Government Act 1999.

PAPERS TABLED

The following papers were laid on the table:

By the Minister for Agriculture, Food and Fisheries (Hon. P. Holloway)—

- Reports, 2001-2002—
  - Department of the Premier and Cabinet
  - Office for the Commissioner for Public Employment
  - SA Water
- Regulations under the following Acts—
  - Aquaculture Act 2001—Framework
  - Fisheries Act 1982—
    - Coorong Corf
    - Fleurieu Reef
    - Northern Zone Rock Lobster
  - Public Corporations Act 1993—
    - Adelaide International Film Festival
    - Bio Innovation Board
    - Children's Performing Arts Company
  - Veterinary Surgeons Act 1985—Fees Increase

By the Minister for Aboriginal Affairs and Reconciliation (Hon. T.G. Roberts)—

- Regulations under the following Acts—
  - Authorised Betting Operations Act 2000—Clubs Duty Payment
  - Controlled Substances Act 1984—Weight Control
  - Freedom of Information Act 1991—Essential Services Commission
  - Harbors and Navigation Act 1993—Fleurieu Reef
  - Liquor Licensing Act 1997—
    - Adelaide Brief Extension
    - Adelaide Year Extension
  - Prices Act 1948—Unsold Bread
- Rules of Court—
  - District Court—District Court Rules 1992—Error Corrected
- District Council By-Laws—
  - Alexandrina—
    - No. 1—Permits and Penalties
    - No. 2—Moveable Signs
    - No. 3—Local Government Land
    - No. 4—Roads
    - No. 5—Dogs
    - No. 6—Nuisances caused by Building Sites
  - Victor Harbor—
    - No. 1—Permits and Penalties
    - No. 2—Moveable Signs
    - No. 3—Local Government Land
    - No. 4—Roads
    - No. 5—Dogs
    - No. 6—Vehicles Kept or Let for Hire
    - No. 7—Nuisances caused by Building Sites.

STATUTORY AUTHORITIES REVIEW COMMITTEE

The Hon. R.K. SNEATH: I bring up the annual report of the committee for 2001-2002.

Report received and ordered to be printed.

QUESTION TIME

BUDGET CUTS

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation prior to asking the Leader of the Government, representing the Premier, a question about government accountability for budget cuts.

Leave granted.

The Hon. R.I. LUCAS: Members would be aware that, when the budget was brought down in July, a key feature of the budget announcement was claimed savings of some $967 million over all portfolios for the current budget year and for the forward estimate years. During the estimates committee debate in another place on 30 July, the Treasurer was asked the following question:

> For each year, 2002-03, 2003-04, 2004-05 and 2005-06, what is the share of the total $967 million savings strategy announced by the government for each portfolio, and what is the detail of each savings strategy in each portfolio?

The Treasurer, on behalf of the government, said that he was happy to answer that in detail, that he would take it on notice, and get back to the member, Mrs Redmond, the member for Heysen, with a detailed answer.

As you would be aware, Mr President, the provisions relating to the estimates committees of the other place are reinforced to ministers by the chair of each committee in the following terms:

> If the minister undertakes to supply information at a later date, it must be submitted to the Clerk of the House of Assembly by no later than Friday, 16 August.

That was the deadline for the provision of information, and that is what the Treasurer was required to do. In recent days we have seen an example of a significant cut—a cut of almost $2 million—as it affects the Julia Farr Centre as part of this budget savings strategy, and the responsible officer for that agency highlighted in a radio interview that that was a cut in a budget of $22 million for that agency. I am advised that, as of well into the second week of November, some three months or so after the deadline required by the parliament of the Treasurer to provide answers to this question, the Treasurer has refused to provide any information to the parliament on this issue.

The Hon. Diana Laidlaw: Open and honest government!

The Hon. R.I. LUCAS: As my colleague indicates, some people see this as perhaps not being consistent with the claimed position of this government as being open and accountable, and being prepared to provide information to members and to the community. My question is: given that the Treasurer has refused to provide this information to the estimates committee about the budget savings, will the Premier require or direct the Treasurer to provide to the parliament all the detail of the budget savings cuts across the portfolios and for the forward estimates, not just the Julia Farr Centre, consistent with the question that was asked of the Treasurer more than three months ago in the estimates committee?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I do not think it is correct, as the leader alleged, that the Treasurer has refused to provide the answers. It is my understanding that this information in relation to all departments involved some considerable collating and, as a member of the estimates committees under the previous government, let me say that it was not unusual to wait a lot longer for answers to complex questions.

Members interjecting:

The Hon. P. HOLLOWAY: It is not bad, is it, Mr President? This lot have asked for details of every single budget cut across every portfolio, not just by the Treasurer—

The Hon. Caroline Schaefer interjecting:

The Hon. P. HOLLOWAY: Yes, there are a lot of them, as the honourable member says. The reason for that is that the budget position in which this state was left by the previous government was totally unsustainable; we all know that. In fact, if this government had not taken the action that it did to try to bring the finances of this state under control and to cope with all the promises that the previous government had made prior to the last election without any funding—

Members interjecting:

The PRESIDENT: Order! The question was heard in silence.

The Hon. P. HOLLOWAY: —we would be in a much better position and would not have had to make any cuts. Nevertheless, this government has not shirked the fiscal responsibility before it: we have taken some tough decisions in relation to the budget position we inherited. I understand that the Treasurer is collating all the information from the various departments. The former treasurer would know full well from when he was treasurer that, once the general budget parameters are set, the departments go out and implement those—

The Hon. Diana Laidlaw: We want to know what they are implementing.

The Hon. P. HOLLOWAY: The honourable member also would know, as a former minister, that once the budget is set the department would go through the detail and work through these various budget parameters over some months. That has always been the case. When these complex large questions covering multiple government departments have been asked in the past—

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order, the Hon. Ms Laidlaw!

The Hon. P. HOLLOWAY: It certainly is not unusual that it would take some months for all that information to be collated. I will pass the question to the Treasurer and see how that information is going.

The Hon. R.I. LUCAS: As a supplementary question, will the leader of the government provide a list of the cuts that he has implemented in the agencies that report to him?

The PRESIDENT: Order! That is a different question and is not a supplementary.

The Hon. P. HOLLOWAY: That matter was addressed during the budget estimates committees. Indeed, there is some broad outline of that information in the program estimates, so that information has been provided. It has certainly been provided to the Treasurer's office and, when that information from all the departments and agencies is put together, the information will be available.

ANANGU PITJANTJARA LANDS

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about the Anangu Pitjantjatjara Lands.

Leave granted.

The Hon. R.D. LAWSON: Last Friday the Minister for Aboriginal Affairs and Reconciliation issued a news release commenting upon the annual general meeting of the Anangu Pitjantjatjara, which was held on Thursday 7 November. The minister congratulated the newly elected Executive Board and the newly elected Chairman of the Executive Board, Mr Gary Lewis. In relation to the annual general meeting, he said that it was 'a significant opportunity to reverse almost a decade of neglect, which has led to a breakdown of basic human services, including health, housing and education'. My questions to the minister are:

1. Does he accept that, when he came to office, in excess of $60 million a year was being spent by various government sources to support the 3 000 residents of the Anangu Pitjantjatjara lands?

2. Does he seek to suggest that, prior to the last decade referred to in his press release, the situation with regard to the health, housing and educational status of the people on the lands was any different from what it is today?

3. Will he explain to the chamber the purpose for which he personally attended the annual general meeting of the Anangu Pitjantjatjara, and will he indicate whether he canvassed at that meeting for the election of any particular person and whether he supported the process by which nominated representatives of various communities on the lands were elected to the board?

4. As the minister's media release referred to Mr Lewis as holding the executive chairmanship, does he agree that there is a distinct difference between an executive chairman and a chairman of an executive board elected by the Anangu Pitjantjatjara people?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his important questions and for keeping an interest in and following up on the reforms on the lands which both the commonwealth and the state are trying to make in dealing with some of the problems that have been endemic on the lands for the last decade. I hope that his interest continues and that we can work in a bipartisan way to turn around the fortunes of the people in those areas.

The honourable member asked a number of questions; I will reply to the last one first. The process conducted by the previous executive and the Executive Director, Chris Marshall, of going to the communities on a regional basis and electing 10 executive members for endorsement was not

something with which I personally agreed. I sat down with Chris Marshall, the executives of the AP and the executives of the Pitjantjatjara Council on numerous occasions to try to get a process to elect individual members based on regional representation within the communities.

Given that there are 16 (depending on how you count the numbers) major communities, there was always going to be a difference of opinion as to whether you elected executives from 10 communities—which is the way that the legislation endorses an executive being made up—or you put into the arena for discussion a program to increase the number of members on the executive at a later date and to change the composition of the executive to be more representative of the broader communities.

I would have liked that issue to go to the communities in a public display of bipartisanship between the government and the opposition with an executive imprimatur saying, 'Here are some programs for discussion; what do the communities think?' That was the way in which I tried to proceed but, unfortunately, the executive at the time made a decision—and it was its decision to make—to go to the communities to elect 10 members of the incoming executive, which gave the government no room to put forward a proposal containing any different permutations for representation at all.

The disappointing part of the whole process is that, on a number of occasions, we almost had agreement with the majority of both executives on the way to proceed, but in the end that was thwarted by attempts to negotiate changes to the position which determined our final dialogue. So, the government withdrew; I withdrew my support. Although I supported the principles in relation to change, I was not going to give a rubber stamp to the principles under which the elections were conducted because I was in no position to judge how many people would turn out to elect those representatives from the 10 communities; I was in no position to judge whether the information they were going to be given would be uniform throughout those communities.

When contacted, I was given assurances that when the canvassing was done all my concerns would be considered but—from Adelaide, anyway—I was not going to give my imprimatur to that sort of process. So, it was a variance of positions that I disagreed to. The implementation program which the AP Executive then embarked upon—which was what they called a 'rolling thunder' program—was one where people were engaged to go out into the communities to advertise that there were going to be, first of all, constitutional changes to the AP Executive, involving the way in which the AP Executive was to be constructed. Secondly, not only were there to be constitutional changes but there was also to be a change in the way in which the formation of the executive was to be constituted, that is, from 10 regional areas which involved sometimes two and sometimes three communities. I certainly did not agree with that.

I did not agree with that process on two grounds: one was that we were trying to incorporate change into the AP lands, and that was, hopefully, going to be done through negotiations. In the main, many of the people on the lands would be confused if the issues were not put to them in the proper time frames allowing for their consideration and the construction of replies concerning the way in which people dealt with them.

There was change to the permit system, with pressure in relation to changes to the applications involving the way in which mining and exploration for oil were being conducted and, in talking to people within the communities, I felt that an attempt was being made to institute too much change in too short a time frame and there would be confusion, and that the constitutional changes required and the changes to the electoral system would be confusing and should have been fed in before the people themselves took the time to digest what was being considered; then, over time, they could come back to those people who were trying to get change with some form of agreement.

That was the government's preferred position, but it did not happen. The time frames were not ours; the construct was not ours; and the formation for change was not one that was finally considered by government to be appropriate. We were very close to agreement, and we had agreed to some of the changes being advocated by the AP Executive. The name of the executive chairperson is, I think, only a difference in terminology: I do not think there is any difference in the responsibilities involved. I would be seeking that a deputy chairperson be elected: that would be up to the AP Executive, which I expect is trying to get that process in place now.

I attended the meeting on the basis of an invitation I had received from the traditional owners, known as the tjilpis, who suggested that I be present on the lands at the time of the election. It was a matter of the minister's paying his respects to the people on the lands on what was a very big day for them. I was to perform no role or function in relation to canvassing, nor was I to play a role in the election process itself.

The Electoral Commissioner had appointed a person to conduct the meeting. My attendance was not required to assist in that. I was an observer during that process, and I stayed until probably 9 o'clock at night scrutineering. I was asked to scrutineer on the last ballot just to check the process, to see how the process worked, with a system that had gone from an open vote, that is, a public show of hands, to a secret ballot. I was invited by both executive sides who were pitted against each other to observe. The assisting police officer, the electoral representative and I were there. That was the role I played in relation to that. I certainly was not involved in any counting; it was a matter of looking at process.

I think I have already explained the $60 million and what has been happening in the past decade. I have argued in this place on many occasions that the lives of people in the AP lands has deteriorated, not only in the AP lands but in other lands as well. Those people who watched the ABC program last night with the two Pearson brothers who were lamenting the changes that had taken place in Cape York in relation to their communities would realise that there is no difference from the changes that are taking place in a lot of our communities where alcohol, drugs, inter-family violence and abuse, and the deterioration of enterprise building reached a situation where intervention was required.

It is our view that intervention needs to take place to assist and support the people on those lands to come to terms with the difficulties they are facing. We will do that as much as we can without being too obvious in our intervention. We will support the Anangu people holding their elections and working with governments so that we help support their governance by supplying the support that is required. We hope to increase enterprise building and to work with the mining companies where required to provide some enterprise building. We hope to be able to work with Anangu to help build up environmental tourism programs. We will try to improve the circumstances people face in the areas of education, health and housing.

It is not a matter of being critical of the health services being delivered at present. Many people within those areas are doing a lot of good work under very difficult circumstances. Certainly those programs need more support, particularly those dealing with petrol sniffing, alcohol abuse and violence. A housing program has been in place for some considerable time, and that is starting to improve people's lives within housing. However, it is only replacement of old stock. Those of us on the select committee have gone into communities and seen houses that have been burnt, for whatever the reason. Those houses need to be replaced. We need to link education and training to supply the programs we require for educating and training people. Advantage can be taken of that and enterprises built up. Some independence can be maintained by getting people away from welfare and into support programs where they can communally work and operate to build up some respect not only for themselves but in the eyes of the rest of the community. I hope that they are prepared to be able to do that.

The Hon. R.D. LAWSON: As a supplementary question, did you, either publicly or privately, personally or through others, express support for the election of any particular candidate for election at the AP annual general meeting?

The Hon. T.G. ROBERTS: It would have been improper for me to canvass on behalf of any particular candidate. I would like somebody to describe to me the circumstances in which they believe I canvassed for an individual candidate. I was accused by the Director—I think his title is—Chris Marshall of standing on one side of the line, where a line was drawn in the sand between two groups to be counted. He accused me of standing on the wrong side of the line, that is, that I was standing on a line amongst a group of people who were trying to work out on which side of the line they were going to stand.

I was asked to stand on the other side of the line. I said, 'Why would I do that?', and he said, 'Well, it appears that you are canvassing for the group of people standing on the same side of the line as you.' I said, 'Chris, I am not moving for you or anyone else. I have been standing here for four or five hours. There is shade here. I have a bottle of water here. Although I have sunscreen on my face, I am getting quite burnt. I am not going to move out of this position.'

Perhaps my presence on that side of the line was seen by some as canvassing. Unfortunately, there was a show of hands in a public display of support, which further divided the community. I expressed my concern about that, and it was then changed to a secret ballot—after the communities and families were divided publicly by having to show their position. I expressed concern at that, but I certainly did not move. I stayed where I was. The ballot went ahead without too much concern.

The Hon. T.G. Cameron: Your demonstrating days are long over!

The PRESIDENT: Order, the Hon. Mr Cameron!

VISITORS TO PARLIAMENT

The PRESIDENT: I draw members' attention to an important delegation present with us today from Indonesia. I am advised that they are part of the AIDAB program and they are being sponsored by Professor Rob Fowler from the University of South Australia. I understand that they are being assisted in that process by the Hons Mr Cameron and Mr Redford. I believe that these people are here for a month as part of a study tour and exchange of information between judges and senior members of the judiciary. We welcome you to our parliament. We hope your stay is enjoyable and that you gather worthwhile information. Welcome to our state.

REGIONAL DEVELOPMENT

The Hon. CAROLINE SCHAEFER: I seek leave to make an explanation before asking the Minister for Regional Affairs a question about regional development board reviews.

Leave granted.

The Hon. CAROLINE SCHAEFER: I understand that the normal process for regional development boards is to enter into a resource agreement with the government. Some 12 months after the inception of that agreement, a minor review is held and then, according to the contract but normally towards the end of five years, a major review is held. Following that, provided the regional development board has fulfilled its obligations, a new resource agreement between the state government and the regional development board is signed by both parties and adopted.

Six of the states's regions—the Limestone Coast, the Mid-North, Fleurieu Peninsula, Murraylands, Yorke Peninsula and Port Pirie—were due for such an arrangement to be entered into at the end of the financial year. My understanding from the minister himself at the regional development board conference was that major reviews were taking place but that those boards should not be alarmed because eventually the reviews would be completed and draft agreements would be sent to them.

That was five months ago. Those boards have been out of contract since 30 June. Therefore, they cannot conduct their affairs in a business-like fashion. They are halfway into their first financial year with no resource agreement having been entered into. A number of other boards are due to have their reviews started. My questions to the minister are:

1. If they have not been completed, when are the reviews likely to be completed?

2. When will new resource agreements be offered to these boards?

3. Why have the reviews and the resource agreements taken so long to complete?

The Hon. T.G. ROBERTS (Minister for Regional Affairs): The resource agreements with all the 14 regional development boards require a review of each board prior to the end of the agreement term, as the honourable member has said. Economic Research Consultants Pty Ltd (ERC) was selected through a tender process to undertake the regional development board reviews for Whyalla and Port Pirie, and the Northern, Fleurieu, Limestone Coast and Mid North areas. An option to extend the contract to review also the work of the remaining eight development boards has recently been exercised. The review of the remaining eight boards commenced in October 2002, with the objective of completing four by the end of the year and the remaining four by the first half of next year.

Broadly, the review is focused on three facets of operation: context (the unique issues of history and environment that face a specific board); compliance (the extent to which the board met the requirements of its resource agreement and good governance); and, effectiveness (whether the board has achieved its objectives and provided leadership in the community in relation to economic development).

The process involved a study of background documentation (minutes, annual reports, financial reports, correspond-

ence, etc), surveys of board members, board employees, stakeholders and 40 local businesses. The process also involved a review of board records (publications, accounts, minutes book, contract register/contracts, etc.), interviews with past board members and staff (as appropriate) and with CEOs of participating councils and preparation of review findings and write-up of a formal report.

With respect to the six reviews that have been completed, the consultants prepared an overview report summarising the findings across the six regional development boards. In summary, it identified that, while the effectiveness of boards is generally more varied than the compliance aspect of the boards' operations (due to the differing environment and opportunities facing the regions), there is strong support from local communities and stakeholders with respect to board operations.

The overview report also identified a number of processes and improvements in relation to corporate governance for consideration by the boards. A copy of each board's review has been provided to the respective participating local government authorities and to each board reviewed, with an offer to discuss the findings with the Office of Regional Affairs in the context of the next round of resource agreements.

Crown Law drafted a new resource agreement incorporating a number of changes. The most important change proposed is to expand the boards' objectives from the narrow focus of jobs and investment (which will remain as 'primary' objectives) to include broader objectives, such as infrastructure development, capacity building and skills development, business development leadership, etc. ('secondary' objectives). These changes merely reflect the actual situation in the regions, and it will probably depend on the strength of the relationship with the local government bodies in which those regions are placed.

The new draft agreement has been discussed with the Local Government Association and Regional Development SA and will be put before participating councils in each region and the board in the near future. For those that have not signed, notwithstanding these discussions, the Treasurer has guaranteed ongoing funding to the regional development boards involved pending the signing of a new resource agreement. I hope that has answered the questions put forward by the honourable member.

The Hon. CAROLINE SCHAEFER: The minister has not answered my question. I asked why none of the six boards, the reviews of which have been completed, has seen a draft resource agreement. The minister said that they will in the near future, and I would like to have a definition—for their sake—of how long the 'near future' is likely to be?

The Hon. T.G. ROBERTS: As the honourable member points out, I was not specific about the time frame for resource agreements to be given to each individual council because that information has not been given to me, but I will take that question on notice and bring back a reply.

FISHERIES ACT

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about the review of the Fisheries Act.

Leave granted.

The Hon. R.K. SNEATH: As currently enacted, the Fisheries Act 1982 provides the framework for sustainable harvesting of fish in South Australian waters and, despite amendment, has not kept pace with development in modern fishery management policy in practice in Australia and overseas. In July 2002, the minister announced a review of the Fisheries Act with the goal of making it more effective and more relevant to the industry in the 21st century. Will the minister inform the council of the current status of the review, and what steps are left in the review process?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank the honourable member for his question and for his interest in this important industry. I am pleased to announce that the state government has reached a major milestone in its review of the Fisheries Act. Today, I will be releasing a green paper announcing the beginning of the consultation phase of the review of the Fisheries Act. Today, I will also release the final report of the national competition policy review into the Fisheries Act, which, of course, will be considered as part of that review process. In releasing the green paper, I acknowledge the excellent work done by Dr John Radcliffe and the other members of the steering committee. The paper (which they prepared with the assistance of the various reference groups representing major industry and community stakeholders) will form the basis of the consultation phase.

A series of public information meetings will be held throughout the state, including regional centres, in early December and February next year, so that people with an interest in the Fisheries Act will have the opportunity to talk about the discussion paper and have their questions answered. Responses to the green paper will be taken into account in the preparation of a further paper, which is expected to be released around April 2003 and which will set out the government's policy on the new fisheries legislation. The results of the consultation on this further paper will be taken into account in the drafting of a bill to amend the act, which, hopefully, will be introduced into this parliament next year.

Although the management of South Australian fisheries is regarded very highly both interstate and overseas, as I understand it, the Fisheries Act is now the oldest act of its type. The commonwealth and all other states have upgraded their acts since the South Australian act was introduced in 1982. Many of the difficult issues currently facing government and fisheries management authorities, such as ensuring ecologically sustainable development, food safety, biosecurity and future access arrangements for all sectors of our community, are not covered by our existing act. Also, the act does not incorporate mechanisms to enable best practice in transparent and effective administrative action.

I believe that it is important that all who have an interest in the future of our state's fisheries participate in this review process. I have asked that copies of the green paper be forwarded to all members, but I also advise members and members of the public with an interest in this area that they can view the paper on the PIRSA web site, they can attend one of the information sessions later this year and early next year, or they can make a further submission to the review.

MINING, CODES OF CONDUCT

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about mining codes of conduct.

Leave granted.

The Hon. M.J. ELLIOTT: An article on page 5 of the September 2002 edition of the *Journal of the Mineral Policy Institute* reveals difficulties with the Mineral Council of Australia's voluntary code for environmental management. It reports that, while the Mineral Council of Australia's external environmental advisory group noted improved transparency and environmental performance in some areas, there still remain serious flaws in the voluntary code. Firstly, information gained by the journal under FOI noted how many companies sought anonymity as a condition of participating in the voluntary surveys. Secondly, the journal also found that different reporting procedures between companies made it difficult to assess performance accurately against the environmental management code. Both these issues highlight an ongoing lack of full accountability by mining companies for their environmental performance. My questions are:

1. What discussions has the minister had with the federal government about introducing a national enforceable code of conduct for the mining industry?

2. If the minister has not had any such discussions, would he undertake to lobby his federal counterpart on this issue? If not, why not?

3. Finally, is the state government considering the introduction of an enforceable code of conduct for environmental performance by mining companies operating in South Australia? If not, why not?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): The honourable member has asked a range of questions. I did not catch the name of the journal he referred to—

The Hon. M.J. Elliott: *Journal of the Mineral Policy Institute.*

The Hon. P. HOLLOWAY: I am not aware of the article, but I will look at it and respond to the accusations made therein. I have been to only one ministerial council meeting of mining ministers since I have been a minister. A number of issues are discussed at such meetings, and environmental issues are part of the agenda, but I do not recall having any discussions specifically in relation to environmental codes of conduct. We have within this state requirements we expect our companies to abide by, apart from the mining specific acts such as the Mining Act, the Petroleum Act and other acts that require companies to behave in an environmentally responsible manner. Those companies also are subject to the Environment Protection Act and other provisions in most cases, unless there is a specific indenture agreement. If there are indenture agreements, generally those agreements impose environmental constraints.

As for having an Australia-wide code, I would have to give that matter some thought, as clearly some states may have lower standards than this state has. I would need to give that matter some contemplation before I made on the run policy decisions in relation to that, but I will consider the matters raised by the honourable member and get back to him with a response.

BURNSIDE BUS STOP

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Transport, questions regarding a dangerous bus stop.

Leave granted.

The Hon. T.G. CAMERON: Transport SA has failed to move a bus stop on a busy arterial road outside Loreto College, despite a fatal accident occurring there last year. The Portrush Road bus stop is only metres away from a pedestrian crossing and was identified as a major factor in a tragic accident when a student was killed using the crossing. A Loreto College student was killed and two of her friends were struck by a truck as they used the crossing. Burnside council has asked for the bus stop to be moved. However, no action has been taken. Both Transport SA and the office of the Minister for Transport will not say why the bus stop will not be moved. Loreto College Deputy Principal, Mr James Muir, has also condemned the lack of action, which could put more lives at risk. Will it take another appalling death before Transport SA is forced to act? My questions to the minister are:

1. Why has the bus stop in question not been moved as requested by the local council and college?

2. Considering the bus stop location was identified as a key factor in the cause of a previous death, will the minister direct Transport SA to take immediate action and have it relocated?

3. As a matter of simple courtesy, will the minister write to both Burnside council and Loreto College explaining what action he intends to take?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will take those important questions to the minister and bring back a reply.

GOVERNMENT SPOKESPEOPLE

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, both in his own right and representing the Minister Assisting the Premier in Social Inclusion, a question about government spokespeople.

Leave granted.

The Hon. A.J. REDFORD: I have watched with some interest the progress of the Social Inclusion Unit established shortly after the formation of the Rann-Lewis government. I sought access to a number of documents through the Freedom of Information Act and was granted access to some 33 documents and denied access to 23 documents. The documents reveal that the first meeting, held on 6 May, was attended by the Premier, and the topics included a definition of 'social inclusion', the role and reporting relationship of the board and specific issues including the Drugs Summit, homelessness and school retention.

A paper presented to the board for the first meeting on 6 May said that the Chair, Father Cappo (now Monsignor Cappo), was 'responsible as the public face of the Social Inclusion Board for public comment on the work of the board under agreed protocols'. Indeed, I was somewhat surprised when I read the minutes of the second meeting of the Social Inclusion Unit. At that meeting, the minutes also reveal that the Premier identified three key priorities on entering government—the Economic Development Board, the Social Inclusion Initiative and Science and Innovation—and said that the three areas were to be headed by 'people who could drive major change in a way which was open and accountable'.

The minutes of the second meeting of the Social Inclusion Unit on 14 June 2002 state:

> In his opening comments Father Cappo expressed concerns that the SI Board workshop on Friday 7 June 2002 did not achieve clarity in relation to the SI Board's understanding of the Social Inclusion Initiative. . .

I was surprised at that. In any event, it is then recorded in the minutes:

> Father Cappo then proceeded to outline the Premier's expectations for the SI Initiative. The Premier's views include:
>
> · the need for the SI Board and the Unit to think laterally about how to address causes of social inclusion.

The minutes continue:

> · the expectation that the Chairs of the Government's three major boards (Economic, Scientific and Social Inclusion) will be the Premier's spokespeople in their respective areas;

The minutes further state:

> Father Cappo believes the Unit is under resourced and is prepared to discuss with the Premier the need for additional resources.

In the light of that, my questions are:

1. Has Monsignor Cappo discussed the need for additional resources? How much has he asked for, and how much has the Premier granted?

2. What is meant by the term 'Premier's spokespeople in their respective areas'?

3. Does the minister agree that the appointment of these three people as his spokespeople has the potential to make the chairs of these boards—and, importantly the chair of the Economic Development Board—political characters and figures liable to be accused of political bias and, secondly, undermine the Westminster system by bypassing ministerial accountability to the parliament?

4. Is the minister aware that Monsignor Cappo is now the spokesperson on Aboriginal homelessness (and I assume not the minister), and is this an indication of a lack of confidence in the minister?

5. Who do I send constituents to, the Monsignor or the minister?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his important questions. Unfortunately, regarding the social inclusion questions in relation to science, inclusion and EDB, I am afraid they are outside my portfolio areas. I will refer those questions to the Premier, and the member will have to wait for a reply. In relation to Aboriginal housing, I think the important thing that the Social Inclusion Unit is doing, and will continue to do, is to assist in formulating policy and to—

The Hon. A.J. Redford: I thought we voted for you—

The Hon. T.G. ROBERTS: I think the member will find that there will be input into the Social Inclusion Unit from my portfolio area. Certainly, the boards will be the formulators and discussers of policy, and they will discuss a wide range of issues with particular interest groups. In relation to my portfolio area, they will assist in policy development, in particular in respect of Aboriginal homelessness in the metropolitan area. I think that is the brief that the honourable member is talking about.

I welcome any support and assistance that influences the Premier and the Treasurer in relation to funding and resources that may be made available to my portfolio, and I think it is a good mechanism that people are being consulted in the Social Inclusion Unit with a view to building bridges in the community to try to get the best possible information—and I will make no other comment than that. But, ultimately, the final decision on the allocation of funds and the way in which particular ministers handle their portfolios in relation to the Westminster system will still be carried out.

The Hon. A.J. REDFORD: I have a supplementary question. Does the minister agree that that indicates that they are now political figures?

The PRESIDENT: That is the same question.

The Hon. T.G. ROBERTS: If you operate in the social arena, I do not think you can include them as political figures. They are certainly assisting—

The Hon. A.J. Redford: There is a risk that they could be accused of being that.

The Hon. T.G. ROBERTS: I guess anyone is at liberty to give any definition they like in respect of what they see and what they do not see but, in relation to the definition the member seeks about whether they are political figures attached to politicians or political officers, the answer in my view is that they are not.

REGIONAL ARTS EVENT

The Hon. DIANA LAIDLAW: I seek leave to ask the Leader of the Government, representing the Premier and Minister for the Arts, a question about a regional arts event.

Leave granted.

The Hon. DIANA LAIDLAW: In May this year when the Premier announced that his government would no longer fund the Barossa Music Festival through Arts SA, he also highlighted that Mr Anthony Steel had been engaged to produce, by the end of June, 'an options paper for a new regional arts event in South Australia'. Later, the *Advertiser* revealed that $150 000 had been set aside in the Arts SA budget this financial year to fund this new event. I understand that this figure is in line with the recommendation of the organisation's Peer Assessment Committee and, no doubt, at least the same sum of money has been provided for in forward budget estimates so that any new event would not simply be a one year wonder. Meanwhile, Mr Steel's six week timetable raised expectations that the Premier regarded a new regional arts event as a matter of priority for his government, with a decision on the options paper to be made promptly to enable plenty of lead time to stage a new event within this financial year's allocation of funds.

I seek leave to table a copy of the report on regional arts opportunities prepared by Mr Steel on 27 June, which the opposition has obtained as the result of a freedom of information request by the Hon. Angus Redford.

Leave granted.

The Hon. DIANA LAIDLAW: The options paper presents five opportunities, ranging from the Bundaleer Forest weekend to a jazz summer event in McLaren Vale, with the government to fund a new arts event in South Australia within a budget constraint of up to $150 000 a year. However, I note that the paper makes no reference to any future Sounds Under the Southern Cross, an event conducted earlier this year by Country Arts SA in the Warren Gorge as part of the Year of the Outback celebrations. This silence is interesting, because the report in the *Advertiser* about this event on 29 April opens with this statement:

> The Premier Mr Rann has vowed—

I repeat: vowed—

> it will be back next year.

It is now four and a half months since Mr Steel presented his options paper to the Premier in government and, therefore, I ask the Premier and Minister for the Arts:

1. When will he announce which of the five regional arts events identified by Mr Steel in his report to the Premier in

late June this year will be successful in receiving the $150 000 funding this financial year?

2. Due to the time delay already experienced, is it possible that the Premier is prepared to ignore all five events identified by Mr Steel and unilaterally allocate the funding to a regional arts event of his own selection such as the Sounds Under the Southern Cross?

3. How does the Premier propose to deliver on his 'vow' that the Sounds Under the Southern Cross will be staged again next year?

4. Irrespective of the timing of the Premier's announcements, will he guarantee that the $150 000 allocated in the Arts SA budget this year will continue to be dedicated to a regional arts event, and that the same sum has been provided for in the agency's forward funding estimates, and not simply wiped out as part of the savings targets required of all agencies this financial year and next?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank the honourable member for her question. I will refer it to the Premier and bring back a reply.

ABORIGINAL ELDERS

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about the Council of Aboriginal Elders of South Australia.

Leave granted.

The Hon. J. GAZZOLA: I believe that elderly people have much to offer the wider community. We should embrace these valued members of the community and take advantage of the knowledge and experience they possess. Indeed, their contribution to society is often voluntary but not acknowledged and without reward.

I am aware that elders in Aboriginal society are respected and valued members of the community, and that in South Australia there is a Council of Aboriginal Elders which, I understand, makes an enormous contribution to the community. Will the minister inform the council of the history of the Council of Aboriginal Elders in South Australia and what role this organisation plays in the community today?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): Although I have made some reference to this august body of Aboriginal elders in this council at another time, I do acknowledge and pay tribute to the former government, which assisted in putting together the Council of Aboriginal Elders at a very important meeting in Coober Pedy in 1998 which was attended by some 200 people; that was the formation of the Council of Elders.

The council has certainly moved ahead. It still has 200 full-time members who are over 60 years of age, and now some 100 associate members aged between 45 and 60. The role of the council has expanded. Each regional forum meets regularly with agencies, departments, appropriate organisations and elders. I met with the elders' committee in Whyalla just recently and listened to some of the concerns that they had.

It has certainly been able to bridge the gap between cross-agency support programs that are currently being run by the government in relation to dealing with the continuing problem of ageing elders. Certainly, when we were in the Lands recently, the community at Fregon raised the issue of how to deal with elders, whether it be by assisting them to stay in their homes with the provision of facilities or feeding programs such as Meals on Wheels, or, in a non-traditional way, putting the elders into units, as we do in our western society. Those questions have to be worked out by the communities themselves.

We are providing resources for the Council of Elders in the Department of State Aboriginal Affairs (DOSAA) offices. That has had the dual effect of bringing older Aboriginal people from around the state into the office, as well as providing the opportunity for DOSAA employees to engage in conversation with the elders and try to build up a new relationship, and then using the information and knowledge that older Aboriginal people have to try to bridge the gap that appears to be opening between older Aboriginal people in the community and younger people. Hopefully, by building up that base of respect, we can build up a dialogue and try to come to terms with some of the problems, including the increased number of young Aboriginal people who are being incarcerated and who are put in the position of breaking laws when their own laws and customs appear to be breaking down.

NURSES

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Health, a question about fees to register to practise as a nurse in South Australia.

Leave granted.

The Hon. SANDRA KANCK: There are currently some 23 000 nurses, midwives and mental health nurses registered in South Australia. Current award rates of pay for people working as nurses, depending on their level of qualification and years of service, range from approximately $26 000 per annum for an enrolled nurse to $79 000 for a registered nurse, level 5, grade 6. To register with the Nurses Board, irrespective of whether they are paid the full-time equivalent of $26 000 or $79 000 and whether they work six or 60 hours a week, each nurse is required to pay the same registration fee, and I understand that this fee is currently set at $100. At a time when there are rapidly increasing and severe shortages of trained nurses in the public hospital system, this one size fits all, across the board payment is perceived by some enrolled nurses as just one more disincentive to practise in this state. My questions are:

1. Did the minister sign off on the increase in registration fees for nurses?

2. Does the government consider an across the board registration fee to be socially just?

3. Would the government consider reimbursing or offsetting the cost of registration for nurses at the lower end of the award spectrum to encourage staff back to work in the public health system?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for the important questions she has asked. I will refer them to the minister in another place and bring back a reply.

REPLIES TO QUESTIONS

COMMUNITY FOUNDATIONS

In reply to **Hon. J.S.L. DAWKINS** (16 October).

The Hon T.G. ROBERTS: The Minister for Regional Affairs has advised that:

There is a difference between 'community foundations' and community centres and facilities that exist in many rural centres.

Every rural community has their shared assets—halls, sporting facilities, town squares and so on. Some have community owned hotels, community hospitals, council chambers—managed by local committees or boards to provide either revenue or services for the good of the general community.

Where they exist they have usually been around for a number of years and were built by the fundraising (and in the case of buildings often the labour) of the local community.

Community foundations operate a little differently. They require a local or regional community to establish a nest egg—a trust fund that generates revenue for community initiatives without touching the asset.

Community foundations require different skills and knowledge in relation to their establishment and their fund development. Taxation regulations require community foundation funds to be distributed according to very strict rules that differ from those that apply to the more usual community funds.

Nonetheless people involved in the management of community assets such as hotels, hospitals and sporting facilities have a range of capabilities that are very valuable to communities looking to establish a community foundation.

Information distributed about community foundations has endeavoured to explain the differences between the establishment and management of community foundations and other community assets.

The experience of the Keith war memorial community centre was highlighted as a case study in the building sustainable communities resource kit, released in May. During presentations about community foundations the Keith experience is often used as an example of how philanthropic investments can provide long term benefits to a community.

The chairperson of the Keith war memorial community centre has been assisting the South-East Area Consultative Committee with the feasibility study into the establishment of a community foundation for the south east region of the state. His contact details have been provided to members of communities exploring the idea of community foundations.

YOUTH SERVICES FUNDING

In reply to **Hon. A.L. EVANS** (15 July).

The Hon T.G. ROBERTS: The Minister for Youth has advised that:

1. Why has there been a reduction in funding in this crucial area?

The overall net allocation for the youth services budget for the year 2002-03 is greater than the 2001-02 financial year. However, all agencies, including the youth portfolio are require to contribute to the government's efficiency saving strategy.

2. Have any additional funds been allocated elsewhere to compensate for this drop in funding?

Even with the efficiency saving taken into consideration, it is anticipated that levels of activity across all youth program areas can be retained through increased coordination.

The Active 8 programme has received an increase of $300 000 this financial year (as planned), taking the total budget for the program from $1.2 million to $1.5 million.

LUCKY BAY SHACKS

In reply to **Hon. D.W. RIDGWAY** (28 August).

The Hon T.G. ROBERTS: The Minister for Environment and Conservation has advised the following:

1. Can the minister inform me as to what interim action will take place to preserve these shacks in the period between now and the decision by the ERD court?

No interim action will be taken until a decision by the Environment, Resources and Development Court is available.

2. Can the minister ensure the long-term protection of these shacks?

Protection of the shacks needs to take into consideration environmental impacts and public use of the foreshore, and currently the provision of protection is subject to an appeal by the Franklin Harbour District Council in regard to the Development Assessment Commissions decision.

SCHOOL OF ARTS

In reply to **Hon. DIANA LAIDLAW** (28 August).

The Hon T.G. ROBERTS: The Minister for Employment, Training and Further Education has provided the following information:

The sale of the property in question was commenced by the previous government based around a set of criteria aimed at meeting its budgetary requirements.

This government is concerned that such processes are undertaken in a manner that provide certainty for the property markets and to ensure that the use of such assets brings the maximum return to the community.

It is the government's intention to re offer the sale of the land at a future date through a more extensive expression of interest and tender process, with a view to ensuring that prospective purchasers of the land will give full and appropriate consideration to a range of issues. These include meeting the development requirements of the local planning authority, ensuring that community needs are protected, and that a whole of government planning approach to the disposal of assets is considered as part of the sale.

In light of the decision to re offer the property for sale by an expression of interest and tender process, it is inappropriate to respond in detail to the questions raised.

It is the government's intention to commence the new expression of interest and tender process as expeditiously as possible and relevant departmental officers have been instructed to commence the process.

The site in question is currently under the control by the Minister for Employment, Training and Further Education.

As part of the budget planning process the potential returns from the sale were considered. However, the process outlined for the sale of the property has not impacted upon the agency's budgetary program.

ADELAIDE AIRPORT

In reply to **Hon. J.F. STEFANI** (26 August).

The Hon. P. HOLLOWAY: The Premier has provided the following information:

The government is continuing work closely and positively with Qantas, Virgin Blue and Adelaide Airport Ltd to develop an efficient and effective multi-user integrated terminal that meets the needs of all carriers, as well as the travelling public and South Australian business. Passengers and South Australian industry will gain significant benefits from the new multi-user terminal.

Adelaide Airport Ltd is working with carriers to develop a facility that will include air bridges for those carriers wanting them. Qantas is understood to intend to maximise use of air bridges, while Virgin Blue is still considering which option would represent the best commercial, service and image choice for it.

The government is keen to promote maximum access to air bridges in the new terminal.

FOOTBALL VENUES

In reply to **Hon. A.J. REDFORD** (26 August).

The Hon. P. HOLLOWAY: The Premier has provided the following information:

There was considerable community anger that Adelaide seemed likely to miss out on a preliminary final.

My plea to the ACCC to investigate whether or not the AFL's contract with the MCG was in breach of the Trade Practices Act was directed at securing an additional preliminary final for South Australia. I was hopeful of bipartisan support for my efforts.

My request to the ACCC to investigate the MCG/AFL contract was made following specific legal advice concerning the provisions of the Trade Practices Act. The ACCC took the time to investigate the matter and it is unfortunate for this state that no breach of the Act was found on that occasion.

I have not considered and do not propose to consider whether similar arguments might be put in terms of other major sporting contracts. If the honourable member is concerned about the effect of some of these contracts, perhaps he should seek his own legal advice about them.

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GOVERNMENT ACCOUNTABILITY

In reply to **Hon. R.I. LUCAS** (28 August).

The Hon. P. HOLLOWAY: The Premier and Minister for the Arts has provided the following information:

I established a Contract Review Cabinet Committee on 2 May 2002. The committee includes the Treasurer, the Minister for Government Enterprises and me. It is chaired by the Attorney-General and supported by the Prudential Management Group.

I announced publicly on 6 February 2002 that I would appoint such a committee. On that day I said that the committee's first job was to 'go through the major outsourcing contracts—such as John Olsen's water deal—to make sure all the promises made by the (former) government are being delivered'. After the scandals, dishonesty and maladministration of the former government, that seemed appropriate.

One of the first tasks of the committee is 'to ensure that every privatisation, lease or outsourcing contract is being adhered to in its entirety and, where possible, to recommend changes which will produce a valuable outcome for the community'.

This is consistent with the first task of the committee as expressed in the statement of 6 February 2001, referred to by the opposition.

LAPTOP COMPUTERS

The PRESIDENT: I draw honourable members' attention to a matter that has been brought before me. A request has been received from members to be able to use laptop computers in the Legislative Council chamber. I have decided to allow the usage but request that members ensure that the volume control is turned off and remind them that they must not be used for reference for purposes of speech making, questions or any other matters before the council. If any members disagree with my decision I would appreciate it if they contacted me. I call on the business of the day.

SHOP TRADING HOURS (MISCELLANEOUS) AMENDMENT BILL

In committee.

(Continued from 24 October. Page 1199.)

Clause 1.

The Hon. R.D. LAWSON: The committee will recall that negotiations had been undertaken between the industrial parties involved in the retail industry to produce a template agreement which might be adopted by small business engaged in retail. I am advised that that template agreement agreed to by the industrial parties was finally reached late on Friday of last week and that it is in the process of being circulated to small business for the purpose of ascertaining the views of small business as to its suitability. That process will not be concluded until the end of this week. Accordingly, I move:

That the committee report progress.

The Hon. T.G. ROBERTS: Certainly, we would like to proceed with the committee stage of this bill. It is good to see that progress is being made in the area where progress has to be made, that is, between the stakeholders themselves. I am on record as saying that, the more legislation and regulations we have in relation to shop trading hours, the more difficult it appears for the stakeholders to come to agreement about how to proceed to build bridges between consumers and the—

The CHAIRMAN: Order! The Hon. Mr Lawson moved that we report progress, and it does not require a seconder. I am bound to put that. So, the minister does not have the opportunity to respond any further.

Progress reported; committee to sit again.

STAMP DUTIES (GAMING MACHINE SURCHARGE) AMENDMENT BILL

In committee.

Clauses 1 and 2 passed.

Clause 3.

The Hon. R.I. LUCAS: I move:

New section 71EF

Page 7, line 1—Leave out subsection (3) and insert:

(3) However, a transfer does not include—

(a) a transaction by way of mortgage; or

(b) a transaction by way of gift; or

(c) a transaction for which there is no consideration of a commercial nature.

The substance of the bill was well discussed during the second reading debate some weeks ago, and this amendment refers to one specific matter in relation to the operation of the new gaming machine surcharge provisions. From the opposition's viewpoint, and also the industry's viewpoint, as members would be aware, potentially considerable unfairness or inequity could be perpetrated by this parliament unless we are prepared to look at some amendment. I have indicated to the government and its advisers that, if there are problems with the amendment that has been drafted for the opposition by parliamentary counsel, we would be more than happy to engage in further consideration or discussion. I see before the committee at the moment that there is no alternative government amendment, so I am assuming that the government's position is to oppose any amendment along these lines.

I have had further discussions with parliamentary counsel and with the industry about the current drafting of the clause and, if it were a way of securing potential support for the amendment, the opposition would be happy to delete paragraph (b), relating to a transaction by way of gift, if there is concern about that among the government's advisers within Revenue SA. Our legal advice is that paragraph (c), which refers to a transaction for which there is no consideration of a commercial nature, incorporates a transaction by way of gift anyway, and therefore there is no pressing need for the separate provision in paragraph (b).

Parliamentary counsel's advice to me is that that is the way it was originally drafted but, upon further consideration, it has been accepted that if there is concern about the drafting, particularly of paragraph (b), one alternative that I could offer to the committee would be to move the amendment in an

amended form by the deletion of paragraph (b). However, if members have strong views either for or against the drafting as it is, irrespective of whether paragraph (b) is there, our preferred course is to leave it as currently drafted by parliamentary counsel, and that is the way that we are discussing it at the moment.

As I said in the second reading debate, stamp duty is a complicated area of tax law, and adding the gaming machine surcharge to it makes it even more complicated, so I will try to put it in as simple terms as possible. There has been an acceptance by the industry that the government, for whatever reasons, has decided to amend its original provisions for what was to the industry and everyone else a readily understandable increase in gaming machine tax rates to introduce this new notion of a gaming machine surcharge. I do not intend to revisit that argument. The industry opposes it, a number of other people oppose it, but that is the government's intention, and it has the numbers to introduce this amendment into tax law.

The understanding of the industry has been that, if a person sold their hotel with the gaming machines and they were paid an amount of money for the sale of the hotel and the gaming machines, they would pay not only the stamp duty that is paid in any property conveyance but also this additional gaming machine surcharge. For the benefit of members who have not spent as much time on this as others have, I point out that it is important that we bear in mind that there is an existing, relatively onerous provision, supported by the previous government and made even more onerous by the new government in terms of property conveyance, to pay stamp duty anyway.

In terms of the transfer of ownership of hotels with gaming machines, clearly, if it is a freehold title the value is more than if it is a leasehold. I am told that $10 million, say, for a reasonably sized and successful metropolitan-based hotel would not be out of the ordinary. I do not know what the average is—I do not have the average of all the property conveyances—but there have certainly been some recent examples. I am told that, when one looks at the new tax provisions, if you sell your hotel with your gaming machines for $10 million, you are already paying stamp duty of around $543 000, so you are clearly making a significant contribution by way of stamp duty on the sale. That is not being changed by this provision.

What is occurring is that an additional gaming machine surcharge is to be imposed on the sale of the hotel. That provision, again, was opposed originally by the industry, but ultimately what the industry is saying and what the opposition is saying is that, if you sell the hotel for $10 million, you pay $543 000 in stamp duty. I cannot provide an exact figure in respect of the gaming machine surcharge because that is calculated on the net gaming revenue. For example, if your hotel had net gaming revenue of $3.7 million, you would pay a surcharge of another $186 000; if the net gaming revenue is $2.7 million, you would pay a surcharge of approximately $137 000; and if you had net gaming revenue of $1.8 million, you would pay an extra $91 000.

As I said, I do not have the correlation between the value of a hotel at $10 million and what the net gaming revenue might be. If, for example, the net gaming revenue was $3.7 million, if you sell your hotel with the gaming machines you pay $543 000 stamp duty and would pay another $186 000 gaming machine surcharge. So, you pay nearly three quarters of a million dollars in stamp duty and surcharges for the transfer of the hotel and the gaming machine licences. The position that we have arrived at now is that the industry grudgingly has accepted that; that is, you end up having to pay the three quarters of a million dollars.

However, what this amendment is trying to address is that there are some cases where, because of changes in the beneficiaries under the trust arrangements of a hotel ownership, there is no actual sale, and where the family or business concerned might end up having to pay this $186 000 even though there is no actual sale. What you actually have is a hotel running a business of gaming machines, paying the gaming machine tax anyway. If certain circumstances occur and they do not sell to anyone else—

The Hon. M.J. Elliott: No effective sale. You're playing with words. It is no effective sale.

The Hon. T.G. Cameron: I'm lost, too.

The Hon. R.I. LUCAS: The Hon. Mr Elliott can explain later what he means by that interjection. We have a situation, for example, where there is no sale, so you have not transferred the ownership to anyone else, but your family circumstances have changed. You might have remarried and the children of your new family become beneficiaries under your trust arrangement.

So, you have not sold the hotel; you have remarried; and the new children of your blended family become beneficiaries under your trust arrangement. As a result of that, this legislation is saying that even without a sale you would, in the case of this example, have to pay a surcharge of $186 000. I am not sure exactly how it would be worked out, but the government's advisers might be able to tell us how the existing stamp duty arrangements would apply. It may well be that Revenue SA puts a value on that hotel and says that, because you have changed the beneficiaries under your trust arrangements, they will levy the stamp duty, anyway. We can take advice from Revenue SA, as the advisers are here—

The Hon. P. Holloway: Net assets of the trust.

The Hon. R.I. LUCAS: So it is net assets apart from the $10 million that we were talking about earlier. So, in this case, let us say that if it is $10 million and the net assets of the trust are such that there is a debt on it of $5 million (and, again, the government's advisers can confirm this), they would have to pay stamp duty on $5 million; $10 million is the gross value, less the $5 million debt, so the net asset is $5 million.

So, they have to pay stamp duty on the reorganising of their family trust at $5 million, which would be about $250 000 in stamp duty even though there is no sale. Therefore, for the privilege of changing your trust to include the children of your family arrangement, you would not only pay the $250 000 but would have to pay another $186 000 surcharge, even though you do not sell the hotel. It is hard to see any justification for this in a situation where you are not selling the gaming machine licence and you are being hit with an additional impost of $186 000.

It would appear that current stamp duty law requires, even in these circumstances, that you might have to pay $250 000 in stamp duty. From my discussions with people in the industry, people who have been reorganising family arrangements due to divorce, new marriages, new beneficiaries, etc, it has perhaps opened some eyes to the fact that they may have been activating these sorts of provisions.

I asked during the second reading debate what was the justification for this and whether there is a need for this provision in relation to closing loopholes within stamp duty law or transference of property. I will certainly be seeking advice from the government's advisers on this issue. What we

are being asked to do is add to that existing impost—whatever it is—another $186 000, even though there is no sale of a particular asset.

The advice provided by legal counsel to the Australian Hotels Association, and which has been made available to a number of other members who have had discussions with the industry association, has indicated other examples such as where a child becomes an adult and becomes a beneficiary under a trust. Again, there is no sale and no remarriage, but you change your trust arrangements to put in a child who becomes an adult. In those circumstances this provision will generate an impost on the family of up to $186 000.

In a number of trust arrangements the drafting of trusts of some five to 10 years ago was of a style that they talked about a particular tax structure in which a family business had organised itself, and they could well list a series of companies, such as the ABC company or the XYZ company, in which the hotel owner was involved.

I am told that in more recent times, in the last five years, legal advice in relation to tax arrangements is such that, rather than listing the actual name of the company, these trusts are being structured like other companies where there might be majority ownership by the principal owner of the hotel. So they do not actually list the company as the ABC company or the XYZ company. However, they might say a type of class of companies in which Mr Smith may have majority ownership or shareholding or something. In that way it provides flexibility for changing the structure of a trust without having to, in essence, activate these provisions.

I am not a lawyer, and I am not an expert in the operation of trusts. However, Revenue SA would be aware on a daily basis of the operations of trusts as, indeed, is the legal community. I am sure some members in this council have a better understanding of the operations of trusts for family businesses. The bottom line of this amendment—and it is the reason for the amendment—is that a number of examples have been provided where just through a reorganisation of a family's circumstances or, as I said, because a child becomes an adult and then becomes a beneficiary of a trust that happens to own a hotel and there is no sale of the hotel at all, we are being asked to add an additional surcharge of $186 000 for a hotel that might have net gaming revenue of $3.7 million.

For the life of me I can see no logical argument for that. Certainly, the industry has the view that grudgingly it has accepted the government's position that, if you sell your hotel and your gaming licences with it, you will pay not only the stamp duty but the gaming machine surcharge as well. This amendment does not seek to change that at all. It seeks to provide that, if you are not selling your hotel and your gaming licences for consideration of a commercial nature, in those circumstances you should not be hit with this extra $186 000 surcharge, or whatever the number might happen to be.

The Hon. P. HOLLOWAY: I indicate that the government opposes the amendment. I will briefly provide the background to the existence of this bill. Following the government's budget announcement of an increase in gaming tax revenue, some negotiations were undertaken with industry. Of course, as a result of those negotiations, this new stamp duty surcharge was introduced to deal with some of the issues that have been raised by industry in relation to potential cash flow problems. The whole idea of this surcharge was to bring in revenue at a time when assets are realised rather than as it would have applied earlier with higher rates which may have imposed difficulties for the industry. In a sense, this surcharge is to recoup some of the money through a way that is potentially less damaging to the industry than the original proposal. That is why we have the surcharge before us.

However, the government's policy position in respect of the surcharge itself is that it will be payable in situations only where there is an ad valorem conveyance duty liability. In other words, where stamp duty is payable, the government believes that the surcharge should be payable—that the two should run together. The amendments proposed by the Leader of the Opposition will, in effect, defeat that proposition by adding two further exemptions to those that are already included in clause 71EF(3). The first amendment proposes an exemption from the surcharge for a transaction by way of gift. I am advised by the Commissioner of State Taxation that the current provisions of the Stamp Duties Act 1923 provide the same stamp duty liability treatment for conveyancors by sale or gift, namely, they are both liable to ad valorem duty. Whether one gifts a property—

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: That is the way the law is. The point is that that is the existing liability. If you gift or sell something, it is treated the same and the reason for that is obvious.

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: Well, essentially, to avoid loopholes. I think we all would be aware of the debate we had some years ago in relation to estate duties and gifting. Obviously, in relation to those matters, gift tax was the complementary form of the other form of duty to deal with avoidance issues. Essentially, I think it is the same here. At present, sale or gift is liable for ad valorem duty. Any exemption for transactions by way of gift for the purpose of the surcharge, which was proposed by the Leader of the Opposition, would clearly be at odds with the policy intent of the gaming machine surcharge, which is to have the surcharge apply when the ad valorem duty applies.

Let me give an example of one of the problems that might occur. Suppose a person owns a hotel with a gaming machine business and they wish to introduce another partner into the business, whether that person be related or unrelated to the owner. The original owner could simply gift an interest in the business to the incoming partner. This transaction would attract stamp duty, but under the Leader of the Opposition's proposal it would not attract the surcharge. If the same transaction was undertaken by way of sale, both stamp duty and the surcharge would be payable. I think members can see the potential for—

The Hon. R.I. Lucas: Why would you gift something in a $10 million business for nothing?

The Hon. P. HOLLOWAY: There might be other considerations, I guess.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Clearly, you are creating the potential for a loophole.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: The Leader of the Opposition has previously indicated the sorts of sums available. If someone can save $100 000 or $200 000 in duty, they will find ways to come up with a transaction that can make them $50 000 better off; if they can afford to pay for lawyers and do all sorts of structures, they can avoid the duty. That is the problem.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: But you can be selling it. There may be other considerations.

The Hon. R.I. Lucas: What?

The Hon. P. HOLLOWAY: If someone had two hotels and wanted to swap interests, people might find ways of a barter economy. The fact is that it is creating potential loopholes. That was always the problem. My understanding of taxation law is that we always treated gifts in the same way as sales or they created a potential loophole. I gave examples earlier in relation to estate duties, commonwealth succession duties, and so on. They were always closed to gifts to avoid those situations. We believe it would be an inequitable and unacceptable outcome, which would provide significant scope for transactions to be structured to avoid payment of the surcharge.

The Hon. T.G. Cameron: But how? If you can tell me how, when and in what circumstances, you might win me.

The Hon. P. HOLLOWAY: If you can gift it, you pay no surcharge but you pay stamp duty. If the surcharge is several hundred thousand dollars—

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: Well, you get money in return in some other way; you would find another unrelated transaction where you would get your money but avoid stamp duty. Surely we have seen enough of the tax avoidance industry in this country over the past 20 or 30 years to know these things exist. Let us not put our heads in the sand. People find all sorts of ways to provide—

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: It depends on the incentive. Obviously, if we provide people with a potential to avoid tax—significant amounts of tax on a particular transaction—the incentive will be there to find a way around it. That is our experience, and I am sure all members would be well aware of that. That is the first amendment moved by the Leader of the Opposition. The second amendment proposed by the leader is to exempt a 'transaction for which there is no consideration of a commercial nature'.

I am advised by the Commissioner of State Taxation that, whilst the first proposed exemption for a gift is a well understood legal concept, the second proposed exemption (if adopted) would be extremely difficult to administer and would provide scope for an environment in which the surcharge would not be payable. In common language, I guess it could create a loophole. Considerations can take many forms that, from the perspective of a third party not involved in the transactions, may be of no commercial value. For the purposes of the amendments proposed by the leader, these types of transactions would not constitute a gift.

Whether they constitute consideration of a commercial nature would be open to interpretation and, no doubt, considerable debate; and it introduces a whole new concept into what is already extremely complex legislation. As the leader admitted earlier, stamp duty legislation is already extremely complex, and one has to look only at the size of this bill to understand that. We are introducing a new concept. Stamp duty legislation deals with consideration, and to introduce subcategories of this consideration of a commercial nature—as opposed to consideration of a non-commercial nature—takes a difficult area of law into uncharted waters.

The leaders's proposed amendments—in seeking to provide further exemptions—introduce scope for potential avoidance of the surcharge and add further complexity to what is already extremely complex areas of law. For these reasons, the government opposes the leader's amendments.

The leader talked about the issue of family discretionary trusts. I am advised that Revenue SA rarely sees documents of that type. It is not anticipated that these situations are likely to arise in practice—certainly not very often, any way.

Also, senior stamp duty assessors advise that the family discretionary trust documents submitted to Revenue SA are usually drafted with sufficient broadness to include all members of the immediate and extended family group, including a child of a specified beneficiary. The leader appears to be addressing one particular case, but I think that the great fear—

The Hon. T.G. Cameron: If he is telling you that he is misleading you for his own purposes.

The Hon. P. HOLLOWAY: The advice is that family discretionary trusts are usually drafted with sufficient broadness to include all members of the immediate and extended family group, including a child of a specified beneficiary. The Leader of the Opposition, I believe, basically was justifying his amendments in terms of that particular case. However, in doing that the government believes it is creating a much broader loophole that would potentially, obviously, put the revenue at risk by providing scope for extensive avoidance.

The Hon. R.I. LUCAS: Is the Leader of the Government confirming that it is government policy that if a hotelier remarries and the children of the new marriage are made beneficiaries of the trust—and even though the hotel is not sold (in the example I have given)—that they should pay a gaming machine surcharge of $186 000 as a result of that remarriage?

The Hon. P. HOLLOWAY: It is not government advice to tell people what to do in their personal lives: it is up to the hotel owners to get their own advice. I am saying that it is the experience of Revenue SA that people sufficiently broadly structure their interests to be able to cope with such situations.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: They are usually drafted with sufficient broadness to include all members of the immediate and extended family group, including a child of a specified beneficiary.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Including the child of a specified beneficiary. Clearly, if a change in ownership occurs a new person is involved. We are saying that where stamp duty is currently applicable the surcharge should apply. Essentially, the argument is that, in situations where stamp duty currently applies, so should the surcharge apply. We should not have a situation where you have this different level.

The Hon. R.I. LUCAS: The minister is refusing to answer the question. Is the impact of this legislation that he has before the committee that, in the circumstances of a hotelier remarrying and his having to amend his discretionary trust in the example I am giving to incorporate the children of his new wife, and if the net gaming revenue of the hotel is $3.733 million, that hotelier will have to pay $186 677 approximately in gaming machine surcharge, even though the hotel is not sold to anyone else?

The Hon. P. HOLLOWAY: I am advised that in that case it would depend on the drafting of the original trust deeds as to whether such a situation would apply.

The Hon. R.I. LUCAS: In the circumstances where there is no reference in the trust deed to future remarriage and divorce of the current partner and other children other than

the children of the first marriage (if there were any) there would be a surcharge. I am not aware—and lawyers are present in the chamber—of too many partners of a marriage who draft family trusts which talk about the events of children of the next wife who comes along. I think that is a cute point from the Leader of the Government.

To answer the question of the Leader of the Government, in the circumstances which I outlined in my last question and where there is no drafting in the discretionary trust or the family trust which talks about the next wife and the next wife's children being beneficiaries as well, will he confirm that the bill he has introduced into this chamber will lead to the payment of a surcharge of $186 000 approximately?

The Hon. P. HOLLOWAY: What the bill seeks to do is that, if stamp duty was applicable on such a transfer—in other words, if the documents were such that stamp duty was applicable (which, I believe, is much more significant than the surcharge in those cases)—then, yes, the surcharge would be applicable. That is the key point: the two should go together. The point I am making is that we believe and the government's policy—

The Hon. T.G. Cameron: You do not think that is unfair?

The Hon. P. HOLLOWAY: If stamp duty is applicable, then the surcharge should be applicable. We believe that that is imminently fair. Your argument appears to be that they should not be paying any tax on it at all. That appears to be the suggestion. What we are saying is, 'Look, if stamp duty is applicable, then the surcharge should be applicable.'

The Hon. R.I. LUCAS: After four or five goes, I thank the Leader of the Government for confirming the answer to the question which I have been putting. There are a number of examples, and I have just outlined one. I do not want to waste the time of the committee by having to ask six questions each time to get the obvious answer. It could be simply as a result of family circumstances and not through tax avoidance, tax evasion, or any of those circumstances at all. It might not even be a divorce and remarriage; it may well be that the wife or husband has passed away and the surviving spouse remarries and changes the discretionary trust. The minister is saying that he wants to add to the already existing impost, which I have identified. As I said, one of the issues is an interesting question of whether or not, in these circumstances, stamp duty should be payable, anyway.

It is not the opposition's intention to try to open up a new and significant loophole, so we have left alone the issue of stamp duty that is part of stamp duty law at the moment. However, what this minister and the government are saying is that, in circumstances where there is no sale but due to the death of a partner or divorce a person remarries and new children become part of a trust arrangement, they would have to pay an additional surcharge of $186 000 over and above a quarter of a million dollars in stamp duty in the example I gave where you are already paying for the joy of remarrying or marrying again as a result of the death of your partner.

It is iniquitous that we should be adding to an already significant impost in this way. The industry grudgingly accepts in the end that, if you sell your hotel for $10 million or $5 million, not only will you pay, in the example I gave, $500 000 plus in stamp duty but also another $186 000 in surcharge. They have sold the business for a profit, one would imagine, and therefore they pay the $500 000 plus, as well as the $186 000; but, when you are not even selling your business and you have a minister of this government saying that because you happen to remarry you have to pay another $186 000 for the privilege of remarrying, it is a disgrace, and I hope some members of this chamber would take a different view from the Leader of the Government, Premier Rann and Treasurer Foley on this issue. Through a set of family circumstances, this Premier says that they ought to pay $186 000 extra in surcharge for the privilege of remarrying.

The Hon. P. HOLLOWAY: The Leader of the Opposition is grossly distorting. The leader claims to be seeking to introduce an amendment to address an anomaly—an anomaly which I have already pointed out, according to Revenue SA, is most unlikely to arise. If this amendment is carried it will open a loophole in relation to this which must therefore—

The Hon. T.G. Cameron: Tell us what the loophole is.

The Hon. P. HOLLOWAY: Once it is put in law that you can gift, it opens up the possibility for a whole lot—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: It will create a loophole in relation to the surcharge, so the $5 million expected to be raised by it—the $5 million going to schools, hospitals and police—to some extent will be placed in jeopardy.

The Hon. R.I. Lucas: You just said you did not get anything from it.

The Hon. P. HOLLOWAY: You are constructing a case based on a very narrow set of situations, but you are creating a much broader loophole which could be exploited by a whole lot of other people not in the situation to which you refer. I am seeking to protect the revenue. You can argue all you like about whether our current stamp duty laws are fair—the trust provisions have been in existence for about 20 years, since the original stamp duty was introduced. You can argue whether they are fair, but we have to ensure that the surcharge applies to those people for whom stamp duty is currently applicable. We are seeking to keep that nexus, and by breaking the nexus we will potentially open up a loophole which will in part put the money proposed to be raised by this measure, which I think was $5 million a year on average (as stated in the second reading speech), in jeopardy. That is money to be spent on schools, hospitals and police.

The Hon. T.G. CAMERON: I can understand the Leader of the Government's concern about the way in which people in the past exploited loopholes. Revenue SA and the Commissioner of Taxation is not averse to turning inside out individuals and companies to try to extract a few more dollars from them. I do not think the government has convinced me that this is a loophole. If it is a loophole, is the Leader prepared to table any legal advice he has from the Commissioner of State Taxation or Revenue SA as to precisely what loopholes he is talking about? Can he give any specific examples which make sense and which have any practical application in the real business world?

I cannot imagine that someone will give away half their revenue stream without some very good reason. I do not accept that a loophole will be that someone will give away half their business for nothing, but will have some other crooked arrangement sitting behind the scenes, which would not be legally enforceable at law—certainly, not under South Australian contract law. Is the government prepared to table the legal advice that it received from the Commissioner of Taxation in relation to what loopholes it believes it would be opening here?

The Hon. P. HOLLOWAY: I have read into the record the advice from the Commissioner of Taxation. As he clearly points out, in his view, because we are introducing a new definition of 'transaction, for which there is no consideration of a commercial nature', it would be extremely difficult to administer and provide scope for creating an environment in

which the surcharge would not be payable. He says that stamp duty legislation currently deals with consideration (that is a word that is understood) but that, if you introduce subcategories of consideration of a commercial nature as opposed to consideration of a non-commercial nature, it takes a difficult area of law into uncharted waters; in other words, you will get a whole lot of legal cases—

The Hon. T.G. Cameron: Is that a legal opinion, or is that his opinion?

The Hon. P. HOLLOWAY: It is his opinion—and a pretty obvious one, I would have thought. The history of taxation avoidance in this country surely is sufficient reason to provide evidence that this can be the case, and once you provide these new sorts of concepts and definitions someone will challenge it. There is a big incentive. If $200 000 plus is at stake in some of these transactions, people will challenge it. The taxation commissioner will be in the courts fighting these cases, spending heaps of taxpayers' money on debates over definitions. I would have thought that that would be pretty obvious, once you create new concepts for which the legal definition is not well known.

In relation to gifts, as I said earlier, you can have two apparently unrelated transactions where someone gifts something to one person to avoid tax and, presumably, in return, there is another gift of the appropriate value that happens out there, purportedly at arm's length. Heavens above, we have seen enough of that sort of thing in this country over the last 25 years, in relation to taxation law, to try to get around transactions. It would certainly increase the compliance task of the commissioner: if he sees a gift—for example, the gifting of a hotel—he would have to try to look and see if there is some other complementary transaction somewhere by which money is flowing in the other direction. These are the sorts of difficulties you encounter once you provide a tax-free gifting in a system.

The Hon. M.J. ELLIOTT: I will not support the amendment. It seems to me that the liability for this levy is created in a similar way, in relation to a trust, to the way in which the liability for stamp duty is created. It seems to me to be logically inconsistent for the former treasurer to say that this should not be happening, when he did not seek to address the issue of stamp duty in the same way when he was treasurer. Since the liability is created in essentially the same way, if one is unfair, the other is equally unfair. On that basis, I will not support the amendment.

The Hon. T.G. CAMERON: In relation to my previous question to the leader, can he confirm that the Commissioner of State Taxation has taken no legal advice on this matter and that the opinion that he has read out is his own personal opinion?

The Hon. P. HOLLOWAY: I am advised that the commissioner has not sought advice from crown law. But, after all, I would imagine that the Commissioner of Taxation and his senior officers who deal with this matter day in, day out are probably in as good, if not better, a position than anyone else to understand the likely implications of changes.

The Hon. T.G. CAMERON: There seems to me to be a great deal of debate about this and, certainly, confusion in the minds of some members of this council in relation to this matter. Would it be too much to ask the Commissioner of State Taxation to consult with crown law to obtain its opinion on this matter? After all, that is the supreme body to which government officers, bureaucrats, etc., go to seek an opinion. Here, we are looking at discretionary trusts, trusts, contract law, etc., and I am somewhat surprised that, on a matter on which there is obviously some controversy, the Commissioner of State Taxation has not sought a separate legal opinion, in particular from Crown Law.

The Hon. P. HOLLOWAY: As I said, I think the expertise in the area of stamp duties resides with the Revenue SA people. If you want to ask someone what is likely to happen in relation to stamp duty, with all due respect, the Crown Solicitor obviously has a great deal of experience in the law over a broad number of areas but I think most observers would agree that this taxation law is a very specific and complex area, and the people dealing with it day in and day out—the practitioners within Revenue SA—are much more likely to be able to make this assessment.

I fail to see how consulting the Crown Solicitor would be of much help. After all, we are looking at a hypothetical situation here. If parliament knew in advance what people were going to do or how they would react to particular laws, I guess we would rarely have to move amendments in this place, because we could predict. But, in relation to taxation laws, there is no limit to the inventiveness of some people to find ways around laws.

There is a whole industry in this country, worth probably billions of dollars each year, which looks at ways of avoiding taxation laws of various forms. Some of the brightest minds in the country, unfortunately—and sadly, perhaps—are applying themselves to that activity rather than creating wealth. But, perhaps I have said enough about the legal profession.

The Hon. T.G. CAMERON: I wonder whether the leader could answer a specific question. Where a discretionary trust has been set up and subsequently the married couple adopted a child who was not specifically provided for in the trust, the trust deed had not been altered and one of the marriage partners passed away, what would be the situation? For example, if the remaining spouse wanted to include the adopted child in the discretionary trust, would duty be paid?

The Hon. P. HOLLOWAY: I think that depends on the construction of the trust. I gather that it is possible to construct a trust to allow for such things. Maybe that is increasingly what will happen: people will look at the construction of these trusts to make them as flexible as possible, I imagine. But, it would be very difficult for me to give a legal opinion without looking at a particular trust—not that I could do so in any case, I suspect—but even our lawyers—

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: It depends on the construction of the trust.

The Hon. T.G. CAMERON: As I have said, if the discretionary trust was set up to provide specifically for the children of that marriage and a couple subsequently decided to adopt a child and that child had not been included in the discretionary trust and one of the partners of the marriage passed away and the remaining member wanted to include the adopted child in that trust, would duty be payable? A yes or no would be easier for me to understand.

The Hon. P. HOLLOWAY: Unfortunately—

The Hon. T.G. Cameron: I know what the answer is—it is yes.

The Hon. P. HOLLOWAY: Unfortunately, in relation to trusts it is not quite as simple as that. One further complication, I have just been advised, is that it depends on whether an additional beneficiary is an income beneficiary or a capital beneficiary. I am advised that if it is an income beneficiary there is only a $10 stamp duty payable and it is not

ad valorem, so therefore, I gather, the surcharge would not apply.

The Hon. T.G. Cameron: By your earlier definition that is a loophole, isn't it?

The Hon. P. HOLLOWAY: This whole area has evolved as an extremely complex law. Court cases are being fought all the time in relation to this. If you are asking me whether this is fair, and the way you would like it to be if you started from scratch, I do not know. Maybe the answer to that question is no, but, nonetheless, we made adjustments to the gaming tax revenue, after negotiations with industry, and reduced the revenue in that stream. This was one means of recouping that revenue so that the budget parameters could be met but in a way that would have less impact on the industry. That is why this way has been chosen. I guess we could have a debate here about stamp duty tax for a long time.

The Hon. T.G. CAMERON: I certainly was not intending to impute that the Leader of the Government in the Council is an unfair person. He has always struck me as being a fair person, if not one of the fairest people sitting in the council. It is not him I am worried about. It is the Commissioner of State Taxation that I am worried about. The Hon. Paul Holloway referred to the fact that tax avoidance is often a $1 billion industry and that clever lawyers will exploit loopholes in the act. But the reverse side of the coin is that if things are not made crystal clear, if boundaries or limits are not placed on a particular piece of legislation, and we have the Commissioner of State Taxation not even bothering to get a legal opinion as to an entirely new matter, then it is not without precedent that commissioners for state taxation have interpreted an act of parliament or a bill in the way they see it, and the way they see it is usually in terms of what maximises the revenue.

I do not wish, like the Hon.Robert Lucas, to go through an exhaustive list of what other loopholes there may be in the original wording of the act that the government has provided. I am sure that the Commissioner of State Taxation would be more than happy with the original wording that was set down by the government. As I see it, that gives him almost carte blanche to do whatever he sees fit. In the absence of any specific independent legal opinion as to the precise boundaries or limits of what the government intends, I will have great difficulty in supporting the government on this issue. It is an issue on which I would normally support the government, whether it be a Liberal or Labor government. I think it would be appropriate for the minister to go back to the Commissioner of State Taxation and examine some of the loopholes that currently exist and get a legal opinion so that members can vote with more clarity and, therefore, more certainty.

The Hon. P. HOLLOWAY: The whole point of this is that we are trying to avoid creating a loophole. What we are saying is that this is a very complex area. I do not know whether one would call them loopholes, but there are certainly different interpretations. I referred earlier to the difference between a beneficiary being a capital beneficiary or an income beneficiary. Is that to be regarded as a loophole, or perhaps when parliament originally set that up there were very good reasons why it differentiated between the two. The point is that it is not the Commissioner of Taxation who can go back here and reconsider loopholes. What the commissioner and the government are trying to do is to keep this as simple as possible and so we are just saying, 'Let's go with the existing law in relation to stamp duties, and we will tack the surcharge on top of it,' because that is the simplest way. The leader's amendment is seeking to have different rules for the surcharge and the stamp duty itself.

For reasons that we have debated at some length, there are clearly divisions over that. I do not know that going back to the Commissioner of Taxation will resolve that. You may believe that we should keep it simple and avoid the potential for loopholes by applying the surcharge in the same way as stamp duty is applicable, and we can revisit stamp duty at some other stage if there are loopholes, but the government's position on the surcharge is to reduce the opportunity for any avoidance. That is why we are basically keeping it as simple as we can and going with the linkage to the existing stamp duty. I ask the committee to support this.

The committee divided on the amendment:

AYES (10)

Cameron, T. G.	Dawkins, J. S. L.
Laidlaw, D. V.	Lawson, R. D.
Lucas, R. I. (teller)	Redford, A. J.
Ridgway, D. W.	Schaefer, C. V.
Stefani, J. F.	Stephens, T. J.

NOES (9)

Elliott, M. J.	Evans, A. L.
Gago, G. E.	Gazzola, J.
Gilfillan, I.	Holloway, P. (teller)
Roberts, T. G.	Sneath, R. K.
Zollo, C.	

Majority of 1 for the ayes.

Amendment thus carried.

The Hon. P. HOLLOWAY: I move:

Page 7, lines 22 and 23—Leave out 'it is effected by a conveyance that is exempt from ad valorem duty under this act' and insert:

(a) no liability to duty is imposed (apart from this division) in respect of the transaction (or an instrument by which it is effected); or

(b) the transaction is effected by a conveyance that is exempt from ad valorem duty under this act.

The government's policy position in respect of the surcharge is that it will be payable only in situations where there is an ad valorem conveyance duty liability. The bill as it is currently drafted contains an exemption from the surcharge where there is an exemption from ad valorem duty under the Stamp Duties Act.

Concerns have been raised and legal advice given to the Australian Hotels Association that there may be situations that may give rise to a surcharge liability where there is no corresponding stamp duty liability. To confirm the policy position that the surcharge is payable only when there is a liability to ad valorem stamp duty, the government proposes to move an amendment to new section 71EH.

It is widely acknowledged that stamp duty conveyance legislation is extremely complex. Not only are legal interpretation issues very complex but also differing conclusions as to the operation of stamp duty provisions are reached by legal experts. In one recent case in point (MSP Nominees Pty Ltd & Anor v. Commissioner of Stamps) a three-nil decision of the Full Court of the Supreme Court of South Australia was unanimously overturned by five High Court justices.

In this very complex environment, the government makes no apologies for the fact that it must rely on the advice that it receives from Revenue SA and government legal experts. Having considered further legal advice given to the AHA, Revenue SA and Parliamentary Counsel are of the view that it would be prudent to make the tabled amendment to put beyond doubt that the surcharge will be payable only where ad valorem stamp duty is payable.

The Australian Hotels Association has advised that the amendment to be moved by the government provides the clarification and security that the industry has been seeking in respect of confirming that the surcharge is in addition to any ad valorem stamp duty liability and, conversely, is not payable where there is no underlying stamp duty liability.

Based upon advice that the government has received, this is the only amendment that is necessary to be made, but the government will monitor the legislative provisions to ensure that there are no unintended consequences. With the complexities of the provisions in mind, the government included in the tabled bill the power to exempt transactions of a specified class from the surcharge by way of regulation. I seek the council's support for this amendment.

The Hon. R.I. LUCAS: We have the advantage of receiving advice from legal counsel for the Australian Hotels Association. Counsel has indicated that it is in agreement with the amendment. Certainly, the opposition is happy to support the amendment for the reasons that the Leader of the Government has outlined and also because the AHA and its legal advice agrees with the amendment as well.

Amendment carried.

The CHAIRMAN: I am advised that, because of the success of the amendment of the Hon. Mr Lucas, there is a clerical problem with the bill as it stands. There is an example, which appears from lines 23 to 27, which needs to be removed. The process is that—

The Hon. R.I. Lucas: Where is that?

The CHAIRMAN: On page 7. The question is: that the example be removed. Those for the question say aye and those against say no. The ayes have it.

Clause as amended passed.

Clause 4 and title passed.

Bill reported with amendments; committee's report adopted.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I move:

That the bill be recommitted on motion.

The Hon. R.I. LUCAS (Leader of the Opposition): It is a highly unusual move from the Leader of the Government and I know from my time in parliament that it is not something that is generally done. I cannot recall an example without at least some advice being provided to the opposition and to other members of parliament that a particular clause or bill was to be recommitted. This contravenes the spirit of the understanding that has always been adopted by former governments and former leaders of the government. It is a gross discourtesy from the Leader of the Government to not only opposition members but other members of this chamber for him to seek to recommit this bill, for what purpose I am not sure, and to do so in a way where he has not advised any other party of his intentions.

Given the circumstances, we have no idea on this side of the council as to the reason for the Leader of the Government's wish to seek to recommit this provision. I seek your advice, Mr President, as to whether it complies with standing orders that a recommittal motion be taken on notice, and what options other members in the chamber might have should they be unhappy with the discourtesy that is shown in this action from the government.

The PRESIDENT: My advice is that the motion should be that the bill be recommitted with a specific emphasis, and I understand it is in respect of clause 3.

The Hon. P. HOLLOWAY: Yes, that was my intention, Mr President.

The PRESIDENT: That is the form in which it will be put, that the bill be recommitted in respect of clause 3, on motion.

The Hon. R.I. LUCAS: Is the motion for recommittal or recommittal on motion?

The PRESIDENT: Recommittal in respect of clause 3, and the minister wishes to do it on motion.

The Hon. R.I. LUCAS: Is that two separate motions or one?

The PRESIDENT: The motion that we are considering is that the bill be recommitted in respect of clause 3. The timing of that will be the subject of another motion. My understanding is that it will be on motion, which would provide opportunities for the sort of consultation that the Leader of the Opposition requested to take place. The question is that the bill be recommitted in respect of clause 3. Then we will consider a timing motion separately on the advice provided by the Leader of the Government.

The Hon. R.I. LUCAS: How many times can members speak to the motion?

The PRESIDENT: Once.

The Hon. R.I. LUCAS: So the minister cannot speak either?

The PRESIDENT: He can conclude the debate. The question before the council is that the bill be recommitted in respect of clause 3.

Motion carried.

The Hon. P. HOLLOWAY: I move:

That the recommittal be on motion.

Motion carried.

PUBLIC FINANCE AND AUDIT (HONESTY AND ACCOUNTABILITY IN GOVERNMENT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 October. Page 1124.)

The Hon. T.G. CAMERON: This is one of the three bills presented by the government as part of its 10-point plan for honesty and accountability in government. This bill will amend the Public Finance and Audit Act of 1987 to require a government to table in parliament, within three months of being elected, a charter of budget honesty outlining the broad fiscal objectives and a framework for assessing the government's performance against those objectives. The bill sets out the principles on which the charter must be based, including transparency and accountability in stating, implementing and reporting on the government's objectives. All very laudable objectives. The objectives must take into account tax policy and burdens, risk conservancy, delivery requirements etc, and consideration of the whole range of government activities and short and long-term objectives must be taken into account.

In addition, the charter will require the government's financial objectives, the principles on which it will base its decisions regarding receipt and expenditure, a statement of how these principles will be translated into measures that can be assessed, and the arrangements for regular community reporting on progress and outcomes in relation to objectives. The Treasurer will be able to issue instructions in order to ensure compliance, and the penalties for failing to comply with an instruction will be increased from $1 000 to $10 000. Just as an observation on that point, I believe that the penalty

for failing to comply with an instruction by the Treasurer on a matter such as this should be significantly higher than $10 000. Be that as it may.

The Under Treasurer must prepare and release a pre-election budget update report within 14 days of an election being called. This report will contain an update of the current and prospective budget position. The standards of reporting will be the same as those required for the state budget, based on professional judgment without political interference. In the state's interests, the Under Treasurer may exclude from the report commercial confidentiality information or things that are confidential. SA First supports this bill. However, some matters come to mind, which I would ask the government to address in its reply.

Will there be an opportunity in the parliament to debate or discuss the budget charter when it is laid before the parliament, and likewise for any changes to be debated when they are allowed? The bill allows the government in the budget charter to determine the methods of assessment of its own objectives. Would it be feasible for there to be legislated methods of assessment or—heaven forbid—allowing an independent body to do so, so that we can see that there is genuine transparency and that we are not entering a position whereby the government will, in effect, assess itself?

The Hon. R.I. LUCAS secured the adjournment of the debate.

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

Adjourned debate on second reading.

(Continued from 24 October. Page 1219.)

The Hon. CARMEL ZOLLO: I am pleased to speak to this bill which is an adaptation of a private member's bill moved by the Hon. Nick Xenophon to assist persons who are victims of mesothelioma and asbestosis. As has been pointed out, to the credit of the former attorney-general (Hon. Trevor Griffin) the private member's legislation of the Hon. Nick Xenophon was adapted and the bill modified in a productive way. Due to the last election the bill lapsed in parliament and therefore we have this legislation before us again.

The bill adds a new division 10A—entitled Unreasonable Delay in Resolution of Claim—to part 3 of the Wrongs Act 1936. The bill will also update the Survival of Causes of Action Act 1940 by removing out of date references to causes of action. In certain circumstances the new division 10A will create an entitlement to damages in the nature of exemplary damages.

Under section 35C of the Wrongs Act, courts and tribunals will have the power to award:

> . . . on application of the personal representatives of a person who has suffered a personal injury (including disease or any impairment of physical or mental condition) and who has made a claim for damages or compensation but died before damages or workers compensation for non-economic loss have been determined.

Furthermore, courts and tribunals will be able to award damages against a defendant or any other persons who control or have an interest in the defence of claims made (such a person could be an insurer or a liquidator). For example, the term 'the person in default' is used to describe the defendant. The court or tribunal may find that the 'person in default':

> . . . knew or ought to know that the claimant was, because of age, illness or injury, at risk of dying before a resolution of the claim and that the person in default unreasonably delayed the resolution of the claim.

The legislation also clearly spells out that a court or tribunal is able to punish the person for the unreasonable delay.

At the direction of the court or tribunal, damages will be paid to the dependants of the deceased person, or to his or her estate, with this provision applying if the deceased person dies on or after the commencement of the amendment and, importantly, whether the circumstances out of which the personal injury claim arose occurred before or after that date.

The new provisions are all about deterring delay by persons who stand to gain by a reduction of their liability if the claimant dies before the claim is resolved. It will have the effect of removing the incentive for them to delay claims and also provide an incentive to deal with them quickly.

Those of us who were here in the last parliament remember the commitment with which the Hon. Nick Xenophon introduced his private member's legislation to assist the victims of mesothelioma and asbestosis. He took on the cause with concern for those affected and a great sense of justice. The dangers of being exposed to the harmful substances without safety precautions took some time to be recognised, and we regularly see some sad cases brought to our attention either via constituent representations or the media as to the terrible death that those affected by mesothelioma and asbestosis suffer. I think it is important that this injustice be recognised and rectified by providing assistance to sufferers and their families. I am pleased to add my support to this bill.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): The bill has two aspects: first, modernising the Survival of Causes of Action Act 1940 by replacing obsolete provisions and redrafting the core provision to modern drafting standards; and, secondly, adding some new provisions to the Wrongs Act to deal with certain cases in which a person who is entitled to damages or compensation for personal injuries dies before his or her claim has been resolved (new division 10a). I thank honourable members who have made contributions to this bill and explained the clauses succinctly.

The proposed new provisions in relation to the Wrongs Act relate to claims for damages or compensation for personal injury by persons who have a short life expectancy. The object of the bill is to discourage persons in default from unreasonably delaying the resolution of these clauses in the hope of avoiding liability for general damages.

The claimant is a person who suffered a personal injury and has a good claim for damages, workers' compensation or criminal injuries compensation, and has made a claim in writing for damages or compensation. The person in default is the defendant (that is, the person whose wrongful conduct caused injury) and persons who stand behind the defendant, usually an insurer but also a liquidator, or receiver and manager of a company or the personal representatives of a deceased defendant. A lawyer who is acting for the defendant or insurer cannot be a person in default unless he or she had a personal interest in the outcome of the case in addition to his or her remuneration. Personal representatives are the executors or administrators of the deceased person's estate.

General damages or damages for non-economic losses are the damages that are awarded for a claimant's personal pain and suffering, loss of expectation of life and bodily and mental harm. Entitlement to these does not survive the death of the claimant, except in the cases in which a claimant had sued for damages for a dust-related condition. Damages for

economic loss are the damages to compensate for financial losses; for example, loss of earnings, medical expenses, care expenses and modifications to housing. These are considered to be losses to the estate, and they survive the death of the claimant in all cases.

In relation to how the bill would work, the claimant suffers an injury, and the claimant is entitled to damages or compensation and makes a claim. The person in default knows or should know that the claimant is at risk of dying before the claim is resolved. The person in default unreasonably delays. (The person in default might be tempted to delay, because the claimant's death would relieve the defendant of liability to pay general damages.) The claimant does die before the claim is resolved.

This bill would allow the personal representatives of the claimant to make a claim against a person in default for damages in the nature of exemplary damages for the unreasonable delay. The court would have to decide whether the claim did have a good claim for damages or compensation for the injury and whether there had been unreasonable delay by a person in default. If the answer to both those questions is yes, then the court would have a discretion as to the amount of damages that should be awarded on account of the unreasonable delay.

In determining the amount of damages, the court is to have regard to:

(a) the amount of damages the person in default has saved by the death;

(b) any need to punish the person in default—this would tend to increase the amount; and

(c) any other relevant factor—and these would tend to decrease the amount. These can be such things as:

- the way in which the plaintiff pursued his or her claim;
- whether damages for delay are being awarded against any other person in default;
- the ability of the person in default to pay; and
- whether the person in default had already been punished, or is likely to be punished by the criminal law (although this would be a rare case).

There is one qualification to this. If the deceased person's claim was for workers' compensation, the amount of damages awarded for the unreasonable delay cannot exceed the amount to which the deceased person was entitled by way of compensation for non-economic loss.

Any damages that are awarded may be paid to the dependants or the estate, with preference given to dependants. This bill does not apply to cases in which the claimants made a claim for a dust-related condition and then died from it. Last year parliament thought that these were a special type of case when it passed the Survival of Causes of Action (Dust-Related Conditions) Act 2001, commonly referred to as the Xenophon act. If both the Xenophon act and this bill applied to them, the defendant could be liable twice. Again, I thank members for their contribution and for the support that this bill apparently has across the floor. I hope it has a speedy passage.

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

OMBUDSMAN (HONESTY AND ACCOUNTABILITY IN GOVERNMENT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 October. Page 1129.)

The Hon. R.D. LAWSON: I support the second reading of this bill. The Ombudsman in South Australia performs a very important state function and has done so since this act was enacted in 1972. We in this state have been very well served by the office of the Ombudsman. The present Ombudsman is a distinguished occupant of the office, and he has been most dedicated and committed to the performance of his important public function.

It is worth stating that the ombudsman movement across the world is a relatively new development. Sir John Robertson, a distinguished former New Zealand ombudsman and chief ombudsman, wrote:

> The breathtaking speed with which the ombudsman institution grew in the 40 years between 1956 and 1997, expanding as it did in one large jump from one side of the world to the other and then back again, more than anything demonstrates timeliness, and evidences the popularity of its invasion of the modern democratic state. The ombudsman institution was gifted to the modern day world by Sweden, and after being taken up by other Scandinavian countries, in 1962 moved across the world to New Zealand and after that it quickly spread in Australia, Canada, the Pacific and Africa and then back into many European and new world countries. The latest count suggests that the institution now exists in 84 countries which have some 215 parliamentary type ombudsman type positions.

Sir John was there writing in 1997. This state has been an important part of the movement and, as I mentioned earlier, we have been well served by our Ombudsman. The Ombudsman is an international feature, as mentioned by Sir John. There is now published an *International Ombudsman Yearbook*. In the first volume of that yearbook I noticed this pertinent remark:

> The Public Sector Ombudsman is now found at all levels of government in many countries around the world, both in established and consolidating democracies. The Ombudsman is an independent office, traditionally appointed by the legislative branch, to investigate poor administration of government. More recently, some Ombudsman officers have been given human rights protection responsibility.

If one reads the annual report of the South Australian Ombudsman tabled in this parliament, one will have occasion to gain a great insight into the vast array of services which the Ombudsman undertakes. The last annual report for the year ended 30 June 2001 contains 187 pages, together with a summary of complaints and matters finalised, which itself must occupy the best part of 50 pages. This report is an interesting array of case studies, statistics, analyses, discussion and other information that is vital to an understanding of the nature of the Ombudsman's tasks.

It is also very illustrative of the sort of issues that arise in the South Australian community. Members on this side of the chamber have been a great supporter of the Ombudsman and of the system of an administrative complaints mechanism that has oversight of administration in this state. There are, of course, limitations on the office of Ombudsman—there always have been and, in my view, there always ought be. At present, the crux of the Ombudsman's Act is section 13, which provides:

> The Ombudsman may investigate any administrative act.

The Ombudsman is concerned here, as in other jurisdictions, with administration: he is not concerned with the policy. It is worth recalling—as we come to this important bill that has significant amendments proposed by the government—what was said at the time of the introduction of the act in 1972. The then attorney-general said:

> The Ombudsman is concerned with administration not with policy, since he is not empowered to question the decision of a

minister. He may, however, examine the facts that relate to a decision. In this way, the doctrine of ministerial responsibility is preserved. His functions act in aid of the parliament in its oversight of the administrative machine.

This is from *Hansard* of 1972, the Third Session of the Fortieth Parliament, at page 1697.

It is also worth remembering that the Ombudsman is not entirely excluded from the consideration of policy, because some policy is itself administrative. It is clear, however, that it was not intended that the South Australian Ombudsman should have power over a minister or over ministerial policy decisions. I think the strength of the current occupant of the office of Ombudsman in this state is that he wisely appreciates the limitations of his power and that the respect in which he is held by the parliament and the community could be undermined if he strays into areas of policy. It is, of course, political policy that the Ombudsman should not stray into. He is quite at liberty to examine departmental policies, which are clearly administrative in nature.

Justice Gerard Brennan, a former distinguished chief justice of Australia, previous to that a judge of the High Court and before that a federal court judge and one of the founding members of the Administrative Appeals Tribunal, in the case of Becker v the Minister for Immigration and Ethnic Affairs, decided in 1977, said:

A distinction will necessarily be drawn between policies of different kinds. Some policies are clearly made or settled at the political level, others at the department level.

His Honour went on to refer to a judgment of Sir Douglas Menzies, a judge of the High Court, in the Ipec-Air case (1965), where he said:

There are. . . sound grounds for treating a decision to be made at departmental level as something substantially different from a decision to be made at the political level.

It is against this background that the currently proposed amendments to the Ombudsman Act should be considered.

The Labor Party claims that this measure is part of its so-called 10 point plan for accountability and honesty in government. This government has no mortgage over concepts of accountability and honesty. We, too, on this side of the parliament—and I am sure all cross-bench and other members of both houses of this parliament—are equally committed to the principles of accountability and honesty in government. We will support any measure which enhances accountability and honesty, but we are committed to ensuring that measures which are adopted are in fact a true improvement, workable and will provide the benefits claimed for them. The political policy of the Australian Labor Party at the last election contained the following statement:

The Liberal government over the last few years has significantly limited the ability of the Ombudsman to investigate complaints, especially in areas of government now privatised or outsourced.

That is a charge which I reject. The Liberal Party has not, whether over the past few years or at all, sought to limit the ability of the Ombudsman to investigate complaints. It is true that some services have been outsourced but, on those occasions when there has been outsourcing, other mechanisms have been established to ensure that the rights of the citizen, in particular the right of a citizen to have an independent third party intercede in respect of administrative matters, have been upheld.

For example, in October 1999 we established the Electricity Industry Ombudsman with important functions. There was also the outsourcing of the management of the Modbury Hospital, a public hospital in South Australia. That outsourcing has had particular advantages for the community in that the company which has that contract, Healthscope, as manager is required to perform the same services at the same standard but at a lower price than is paid by the government in respect of other public hospitals in our system, and savings have been made in consequence which makes it possible for the government—the Liberal government previously and now the current government—to invest in other programs. However, with the Modbury Hospital's outsourcing, the board of the hospital is still in place and all the protections available to any member of the public who goes to a public hospital are preserved.

Likewise, with the outsourcing of SA Water, certain of the functions of SA Water are now performed by United Water, but the interface with the consumer remains with SA Water, a government instrumentality which bills them, receives their complaints and attends to administrative issues. It is interesting to look at the report of the Ombudsman to see whether these outsourced activities give rise to significant levels of complaint.

By far the greatest number of complaints to the Ombudsman, certainly in the year ended 30 June 2001—and I believe that that was a fairly typical year—were made by persons in correctional institutions. In 2001, some 785 out of 1 783 complaints related to correctional institutions. Those complaints were from all prisons in the South Australian correctional system, including, as I gather, the Mount Gambier prison, which is the only South Australian penal institution currently managed by the private sector on behalf of the government.

However, we accept that there is no reason why the Ombudsman should not be able to deal with complaints from a prisoner in Mount Gambier in the same way as a complaint from a prisoner at Cadell, Port Lincoln, Port Augusta, Yatala, Mobilong, or wherever, is dealt with. To the extent that this bill will make that clear, we certainly have no objection and will be supporting the measure.

It is interesting and important to note that the Ombudsman has very wide powers under his act in undertaking an investigation. The Ombudsman has the powers of a commission as defined in the Royal Commissions Act, as if the Ombudsman were a royal commission and as if the matter the subject of an investigation were set out in a commission of inquiry issued by the Governor. The Ombudsman has wide powers to call for documents, to obtain information, to examine witness and to do all that is necessary in aid of the investigation being conducted.

A procedure for investigations is laid down in section 18 of the act, and from that it is clear that investigations must be conducted in private. There is no necessity for the Ombudsman to hold a public hearing. The Ombudsman must, however, inform the principal officer of the relevant agency of the decision to proceed with an investigation that is being conducted. Before making a report which affects an agency, the Ombudsman must allow the principal officer of the agency a reasonable opportunity to comment on the subject matter of the report. It is important that that element of natural justice or procedural fairness is maintained in relation to the Ombudsman.

The essential features of the bill briefly may be described as follows. I mentioned that the trigger for action by the Ombudsman at the moment is an investigation into an administrative act. It is proposed in this bill that the notion of administrative act will be extended to include 'an act done in the performance of functions incurred under a contract for

services with the crown or an agency to which the act applies'. Secondly, the government will have the power to declare by regulation that any person, body or company is an agency in respect to which the Ombudsman has power to investigate. I mention in passing that this is a provision with which the opposition does not agree. We believe there ought be some limitation on the power of the government to declare by regulation that a person, body or company is an agency.

As presently drafted, under clause 3 of the bill, any government at any time in the future could declare a football club, church, community group, company, whatever they might be doing, to be an agency for the purposes of the Ombudsman Act and thereby allow the Ombudsman as a roving royal commissioner to investigate and report upon the activities of such a body. We accept that the notion of agency is to be extended from government departments and government bodies to other private sector organisations, companies, corporations and partnerships that perform functions for the government.

That is perfectly reasonable and we will be supporting the amendment proposed in so far as it extends the definition of agencies to those companies and bodies which are performing functions for the government. However, we do not believe that any government ought to be given a blanket power by regulation to declare any company or organisation at all in the community, whether performing government functions or not, to be an agency for the purposes of this act. During the committee stage I will introduce an amendment to limit the power of a declaration by regulation in relation to agencies.

A third and important change to be wrought by this bill is to empower the Ombudsman to conduct a review of the administrative practices and procedures of an agency, that is, to conduct what is described as an administrative audit. Where, for example, there is not a single complaint from a particular individual about, let us say, the way in which the new bus ticketing system operates but there is a complaint about the system, it will be possible, under the bill, for an administrative audit to be carried on, that is, one that examines and reviews the administrative practices and procedures of an agency. Once again, we believe that that ought be limited to the agency in so far as it is performing functions for the government. It is manifestly clear that a government department that is performing functions can be audited administratively. If, however, a company is performing a particular service for the government on an outsourcing contract, the capacity of the Ombudsman to examine and audit those practices ought be limited to the practices that relate to the outsourced functions.

Let us take EDS, for example—the company that performs many of the government's information technology services. It is a large company with other clients, and operates out of a purpose-built building in North Terrace: it is where EDS has its Asia Pacific headquarters in relation to many of its activities. But EDS has other clients. It has won contracts to act for the commonwealth government, for General Motors and, I believe, some banking institutions and the commonwealth customs department. So, if it is deemed appropriate, for example, for the Ombudsman to conduct an administrative audit of EDS, in our view, it ought be limited to EDS in its capacity as performing a function for the South Australian government, and the Ombudsman, as a roving royal commissioner, ought not have the power to go into the books of EDS in relation to its other customers and clients. That is one example.

Let us take a simpler example. Outsourcing has been taking place in the government sector for about 100 years. Take the case of some contractors cleaning a school, for example: it might be a very small business, which performs the cleaning not only for a school but also for the local council or some local businesses. Once again, were it ever necessary (I do not imagine it would be) for the Ombudsman to conduct an administrative audit of the processes and procedures of some school cleaning outfit, it is our view that the Ombudsman ought not to have the capacity to review the other activities—businesses—of the particular entity.

The next series of amendments relates to the Statutory Officers Committee of the parliament. Hitherto, that committee has had a role only in overseeing the appointment of a new ombudsman. However, under the bill, the committee will be charged with the responsibility for providing an annual report to the parliament on the general operation of the Ombudsman's Act.

This has been the subject of a good deal of discussion within my own party. The Statutory Officers Committee is chaired, I think, by the Attorney-General and is a joint house committee. Its functions, to date, have been merely in relation to the appointment of parliamentary officers such as the Ombudsman, the Auditor-General, the Industrial Relations Ombudsman, the Electoral Commissioner and officers of that kind. If this committee is charged with the responsibility of this annual report, it will be necessary for the committee to be appropriately resourced with a research officer and other staffing and necessary resources. However, we will certainly support this amendment but we seek an assurance from the government that those resources will be forthcoming to ensure that the Statutory Officers Committee is able to discharge its responsibilities.

The next general topic of these amendments to the Ombudsman's Act is the introduction of a prohibition on agencies using the word 'ombudsman' in their own complaints handling procedures. It is well known that some industries have established an ombudsman. I suppose the banking industry ombudsman is the best known of them; in South Australia we have an electricity industry ombudsman; and there are a number of non-government, semi-government, quasi-government and private ombudsmen operating. It is probably beyond the power of this parliament to prevent that proliferation occurring, much as we might deprecate it. However, what we can do and what this bill does is prevent government agencies establishing their own ombudsmen and creating general confusion in the community about the proliferation of ombudsmen.

The Ombudsman himself has indicated support for this bill, and most of the measures that are here incorporated have been mentioned in annual reports over the years. So, after indicating that I would like the minister to provide an answer to the question of resources for the Statutory Officers Committee, and also that during the committee stage I will move amendments in relation to the extent of the definition of 'agency', the Liberal opposition supports the second reading.

The Hon. CARMEL ZOLLO: I am pleased to add my support to this amendment bill. The legislation before us is part of the government's commitment made at the last election to strengthen the powers of the state Ombudsman. I think it is important to place on record that the state Ombudsman in South Australia, Mr Eugene Biganovsky, is one of our most respected public servants. With the quantity

of outsourcing that we saw during the term of the last Liberal government, questions were often raised as to how complaints against areas of government which had been privatised or contracted out could be better handled.

The Hon. R.D. Lawson: We didn't outsource the Julia Farr Centre.

The Hon. CARMEL ZOLLO: I did hear what the member had to say, but I think there is nothing wrong with clarifying in legislation exactly how complaints are to be handled. Clause 3 of this bill explains the definition of 'administrative act', to clarify the Ombudsman's jurisdiction in relation to outsourced operations. In its current form it only applies to administrative acts of agencies, public service administrative units, other government authorities and local government councils. This revised definition ensures that the Ombudsman can investigate:

> (b) an act done in the performance of functions conferred under a contract for services with the Crown or an agency to which this act applies.

The bill also amends the definition of 'agency to which this act applies'. This amendment provides greater consistency with the jurisdictions exercised by the Ombudsman. At this time, there is no general provision in the act to recognise an audit function of the Ombudsman. As to be expected, most matters dealt with by the Ombudsman are complaint-driven. Whilst the Ombudsman does have an 'own initiative' power under the act that allows him to deal with matters of administrative concern, it was considered appropriate to amend the act to provide for the Ombudsman, should he consider it to be in the public interest to do so, to conduct a review of the administrative practices and procedures of an agency to which the act applies.

Another important amendment to this bill will see the restoration of the Statutory Officers Committee to which matters in relation to the general operation of the Ombudsman Act and the requirement to produce an annual report on the work of the committee relevant to the Ombudsman Act will be referred. This was the case in the original 1996 provisions of the Ombudsman Parliamentary Committee.

New section 32 clearly spells out the prohibition of the use of the word 'Ombudsman' when used in relation to internal complaints handling systems of agencies within the Ombudsman's jurisdiction. I understand that some agencies within the jurisdiction of the Ombudsman have expressed the desire to use the title 'Ombudsman' in their internal complaint handling system operations. Given that the title is conferred by this parliament to the person appointed by them to investigate complaints by citizens against the government or its agencies, I am certain all honourable members would see the need for this clarification. Indeed, it seems the title is widely misunderstood. I came across someone once wanting to use the word as it related to the female sex as 'Ombudswoman'. In fact, the word is not gender specific but is rather, as I understand it, Swedish for 'Commissioner.' I am pleased to add my support to this amendment bill.

The Hon. A.L. EVANS: Family First supports the second reading of the Ombudsman (Honesty and Accountability in Government) Amendment Bill. Under the current law the Ombudsman has power to investigate any administrative act of any agency. He can therefore investigate any government department, statutory authority or any other authority declared by proclamation. The bill expands the type of administrative organisations that can be investigated by the Ombudsman. The Ombudsman can investigate:

> (b) an act done in the performance of functions conferred under a contract for services with the Crown or an agency to which this act applies.

An obvious issue with this bill is the additional workload on the Ombudsman's office. Are we to ensure that extra staffing and other resources will be made available? I notice that the Hon. Mike Elliott, while speaking on this bill, raised a similar query concerning adequate resourcing. I would like to know if the minister has had any opportunity to consider this as an issue, and what his response is.

The Hon. R.K. SNEATH secured the adjournment of the debate.

STATUTES AMENDMENT (HONESTY AND ACCOUNTABILITY IN GOVERNMENT) BILL

Adjourned debate on second reading.

(Continued from 29 August. Page 998.)

The Hon. R.D. LAWSON: I rise to indicate Liberal opposition support for the second reading of this bill. The bill was introduced by the Premier in another place in May this year. The government claims that the bill is consistent with its so-called 10 point plan for accountability and honesty in government. The 10 point plan included a promise to 'impose penalties for the improper use of information acquired through government contracts' and also to impose 'much tougher provisions and penalties to deal with any improper use of information acquired by persons concerning publicly funded projects and government contracts to avoid conflicts of interest'.

As I indicated in relation to the Ombudsman (Honesty and Accountability in Government) Amendment Bill to which I spoke a little earlier, I indicate that we certainly support measures to improve and enhance accountability and honesty in government. The passage of this bill thus far indicates that it is no easy task to appropriately identify in legislation the means by which one can enhance accountability and honesty. It was of significance that when this 'landmark bill' was introduced by the Premier in May it comprised some 24 pages, and subsequently the Premier had to introduce some 13 pages of amendments more accurately to reflect the intention of the government in relation to this issue. The fact that 13 pages of amendments were incorporated in a bill of 24 pages indicates that there was a great deal of thinking after the bill was first prepared and that, notwithstanding the easy rhetoric of the Premier in introducing the bill, these issues are complicated and require relatively sophisticated legislation.

There are four essential elements in this package of measures. The first relates to the obligation to act honestly. There is, of course, a general obligation on every citizen, whether they be a minister, a member of parliament, a public servant, an employee in a public corporation or a contractor to government and any employee of such contractors to not act dishonestly. There are well established provisions of the criminal law and of the civil law which provide sanctions for persons who act dishonestly. The suggestion that it is necessary to impose some new statutory obligation is in my view questionable. The way in which this new statutory obligation was described in the second reading is as follows:

> All directors, all chief executives and all employees—indeed, anyone performing public sector work—will have imposed on them a general obligation to act honestly in the performance of their duties. . . This includes the contractors and consultants hired by government. . .

I emphasise that these obligations already exist either in the general law or in the sort of contracts and terms of engagement which the government customarily and invariably adopts. I do not think there is any evidence—certainly none has been provided by the government in the second reading explanation in support of this measure—that those people in South Australia who are engaged in this work have acted otherwise than honestly.

The second general area relates to the requirement for senior executives to disclose their pecuniary interests. Once again, extracting from the second reading explanation, this new requirement is described as follows:

> All senior executives of a public corporation will be required to disclose in writing their pecuniary interests including interests of any associates.

Associates are widely defined in the bill as originally introduced. So, this second obligation is one of disclosure of pecuniary interests. It is important to note that it is mere disclosure. In the same way as members of parliament are required to disclose in a declaration of interests their pecuniary and other interests, senior executives of public corporations will have the same requirement imposed on them.

Moving on from the requirement to disclose pecuniary interests, a wider obligation is imposed in relation to conflict of interest. This is the third area. The second reading explanation states:

> Senior executives and employees will be required to declare any conflict or potential conflict between their interests and their duties. The employees will include not only people employed by a public corporation but also anyone who performs work for them. Senior officials and other employees in the public sector will be subject to the same provisions.

The distinction between the second and third clause is that in the second clause senior executives are required to disclose their pecuniary interests in advance, even if those pecuniary interests do not give rise to any immediate conflict or possibility of conflict. However, in relation to the third category, not only senior executives but all employees will be required to declare actual conflicts of interest. This provision will relate not just to senior executives but to all employees, not only those employed by the public corporation but anyone who was performing the work for them. This net was cast very wide in the initial bill.

The fourth area is described in the second reading explanation as follows:

> It will give explicit legislative backing to the code of conduct of South Australia and public sector employees recently produced by the Commissioner for Public Employment. The code of conduct will bind all public servants including chief executives and all employees and chief executives of other public sector agencies.

I think it is worth saying that, under the previous Liberal government, a code of conduct for South Australian public sector employees was promulgated by the Commissioner for Public Employment in October 2001. That code of conduct was widely disseminated. It was made under the provisions of the Public Sector Management Act, and I must commend the Commissioner for Public Employment not only for developing the code and promulgating it but also for producing it in a way which is clearly understood and understandable after consulting with all interested groups.

In 2001, we doubted that it was necessary to make this a statutory code. The Public Sector Management Act contains adequate sanctions in relation to the code, but we are certainly not opposed to giving it statutory force, if the government so wishes. I also refer to the guidelines for ethical conduct for the South Australian Public Service, which was also published by the Commissioner for Public Employment in October 2001. Once again, that is a very clear statement of the obligations of public sector employees.

Lest it be thought that there has been no action on these fronts in the past, I also ought to mention a circular that was issued by the Commissioner for Public Employment in November 2000 that promoted and introduced a form for the declaration of pecuniary and other private interests of chief executives within the public sector. Those chief executives (who, of course, hold very high office) are required, as are members of parliament and ministers, to declare their pecuniary and private interests. That form was promulgated under the previous government.

In relation to the obligation to act honestly, in my introductory remarks I mentioned that both criminal and civil law already contain sanctions and obligations in this regard. However, it is worth reminding the council that the Criminal Law Consolidation Act, which is itself to be amended by this bill, currently includes a number of offences relating to public officers. These offences, of which there are four, have not been in the legislation for very many years in this current form.

First, the offence of bribery or corruption of public officers, both the offering or taking of bribes, is proscribed by section 249 and has long been an offence under our law. Fortunately, it is an offence under which there have been very few prosecutions, certainly in recent years, in our public sector.

Secondly, there are offences of making threats to or reprisals against public officers, which is an offence under section 250. Once again, fortunately, it is not an offence which is often encountered in the criminal justice system, although, as we learned tragically last month, public servants are the subject of threats, and there have been reprisals. Certainly, the tragic apparent reprisal against Dr Margaret Tobin for acts carried out not in this state but in her previous role as a public servant remind us all that public servants are at risk in the discharge of their duties. In making those comments, I make no observation one way or the other about whether the person who is currently under investigation has committed any particular offence.

[Sitting suspended from 6 to 7.45 p.m.]

The Hon. R.D. LAWSON: Before the adjournment, I was explaining that the Criminal Law Consolidation Act already includes four separate offences relating to public officers. I dealt with bribery or corruption of public officers, either offering or taking a bribe, and also the offence of making threats to or reprisals against public officers. The third of the offences is called abuse of public office by a public officer, that is, improperly exercising power or influence using information gained as a public officer for the purpose of securing a personal benefit or causing injury or detriment to another. That is an existing offence and it is a highly relevant offence to the current bill, as I will explain in a moment. The fourth of these series of offences is demanding a benefit on the basis of public office.

Each of these four offences is very serious, the maximum penalty for which is seven years' imprisonment. The expression 'public officer' in the Criminal Law Consolidation Act is very widely defined. It includes judges, members of parliament, ministers, public servants, police officers, local

councillors and council officers, and directors and employees of state instrumentalities.

The Hon. J.F. Stefani interjecting:

The Hon. R.D. LAWSON: And senior public servants, as the Hon. Julian Stefani reminds me. However, this bill extends the definition of public officers to those people who might be employed by a company or by an organisation that is undertaking work for the government. So the bill seeks to create an artificial element of public officer by the rather indirect means of creating an offence of abuse of public office. I will come to that in a moment.

The extension is not only those public officers that I mentioned, whom everyone in the community would regard as public officers, but also persons who personally perform work for the crown, a state instrumentality or a local government body as a contractor or as an employee of a contractor on behalf of the contractor. That means that the local cleaning company that might have the school cleaning contract or the tuck shop contract for a school is actually regarded as a public officer.

The Hon. Diana Laidlaw: The bus company?

The Hon. R.D. LAWSON: Not only the bus company, the executive of the bus company, but also the bus conductor, although there are not too many of those left, and the bus driver. Similarly, it is not only the contractor himself, not only the person who might have the contract to clean the school but also the other workers employed by that person who has the contract, and they might be very part time, very casual, very occasional workers who come in because someone is ill, for example, to do a cleaning session at a school. Those people are now to be deemed to be public officers. Of course, it will mean any consultant to the state government.

There is a lot of adverse political comment made about consultants, and the image is created in the media of consultants being very highly paid international lawyers, accountants, economists and the like, but if you look in the reports of any of our government bodies you will see hundreds of consultancies, many of them for $1 000 or less, many of them for people providing some very minor service or advice or assistance to a department. Thousands of South Australians who are conducting small businesses and giving advice to government on a very ad hoc or occasional basis are to be deemed to be public officers for the purpose of these sections.

This bill uses the artificial device of deeming contractors to be public officers when, in fact, they are not public officers. The amendments will mean, in effect, only a modest change, because every one of these cleaners, every one of these consultants, every one of these plumbers who goes to a school is already under a duty: the duty that binds all citizens to act honestly, not to act dishonestly, not to cheat, under pain of some penalty. The only new offence that is created in this part of the bill that deals with the criminal law is that persons who are not actually government servants or the holders of any public office will now be exposed to prosecution for abuse of public office. In our view, that is illogical.

If you want to create a special offence for them, fine, let us create a special offence, but do not call it abuse of public office. It is illogical and it creates a concept of abuse of public office that is wider than already exists. Even now the concept is a very vague one, and is very little used, in any event.

We will be proposing at the committee stage to introduce a new description of this offence. If the government wants to create an offence, fine—let us have the offence. But let us call a spade a spade and not suggest that it is something else. The bill also provides that a former public officer who improperly uses information gained by virtue of his or her office for the purpose of securing a benefit will be guilty of an offence. Under the existing law this offence can be committed only by a person holding office.

The concept of acting improperly is at the heart of this new requirement. It is already defined in the Criminal Law Consolidation Act, and I will read the definition because it is quite extraordinary. It is extraordinary to lawyers and it will, I imagine, be extraordinary to people who are not lawyers—members of this place and anyone else who is listening. The definition provides:

> A person acts improperly if the person knowingly or recklessly acts contrary to the standards of propriety generally and reasonably expected by ordinary decent members of the community to be observed by public officers.

This provision is already in our law and it is very vague. We introduced exactly the same notion into the Criminal Law Consolidation (Offences of Dishonesty) Amendment Bill which passed through this chamber last month.

On 15 October, in speaking to the second reading of that bill, I referred to a number of cases and also a number of the academic criticisms of the introduction of this rather vague test into our criminal law. I think it is worth repeating for the record that this test was first developed in the United Kingdom in the early 1980s in two cases called Feeley and Ghosh, and this notion of the standards to be expected by ordinary decent members of the community has been criticised because it is argued, first, that if a question of the honesty of the conduct of an accused person is left solely to a jury—and this question must be left solely to a jury: what is the standard of ordinary decent members of the community?—different juries may give different answers on the facts which are indistinguishable one from another.

In other words, in one case one jury might take one particular view on exactly the same facts and, in another case in the following week, yet another jury might take another view. So, the conduct of one person in one case is identical to the conduct in another, yet juries adopting different standards of honesty because of their idiosyncratic views will convict one and acquit the other.

The Hon. Diana Laidlaw: Or because of their multicultural background.

The Hon. R.D. LAWSON: Indeed. Secondly, it said that the task of determining what constitutes dishonesty often involves complex value judgments and questions of policy which are beyond the average jury. That might sound a little arrogant and a typical academic legal criticism but, if you think about it, if any of us were a member of a jury being asked to define what are the standards expected of ordinary decent members of the community—and we are a jury of ordinary citizens judging the standards that some merchant banker adopted in relation to some highly complex international financial transaction which we really do not understand—it is difficult for people who are dealing with something that is beyond their experience to make judgments of this kind. Thirdly, it is argued that it is a function of the court, that is, the judge rather than the jury, to determine the proper scope to be given to any criminal offence.

So they are criticisms that have been adopted of this test. We introduced the test into our Criminal Law Consolidation Act within the last 10 years. As I mentioned, we have now expanded this concept into the new criminal law relating to

offences of dishonesty. It already exists in the Criminal Law Consolidation Act relating to these offences of a public nature, and we are, once again, applying this very difficult test in relation to this rather amorphous notion now of 'public officer' which extends beyond what public officers are.

I will next move to the amendments that this bill will make to the Public Corporations Act. I will briefly explain the provisions of that act. The Public Corporations Act, which was passed in 1993, was intended to ensure that public corporations—that is, bodies corporate established under a state act and whose governing body includes at least one person nominated by a minister—are conducted in accordance with the standards imposed upon ordinary commercial corporations. This is all part of the move which has engulfed not only Australia but also many other comparable countries under which government organisations are expected to perform to the same standards of integrity and to meet the same disclosure and conflict of interest requirements that already apply in the private sector.

There are a number of public corporations, and many of them are corporations under which regulations have been made under the Public Corporations Act. I ask the minister to indicate in his reply—if there is a list of South Australian public corporations which could be put on the record—those particular organisations to which these apply.

The Public Corporations Act requires that public corporations perform commercial operations in accordance with prudent commercial principles, and the duties of diligence and fidelity imposed on the directors of these public corporations are comparable to those which apply to the directors of other commercial corporations. Section 19 of the existing act specifically requires directors of public corporations to disclose any direct or indirect pecuniary interests. This bill will extend this notion into five different categories. So, not only will directors be required to make disclosure but also all employees and senior executives will be required to do so. 'Employees of a first class'—a new section—will require employees to act honestly, and there is a fine of $15 000 or four years imprisonment or both that can be imposed for a breach of that provision. A person contravening the section can be ordered to pay an amount which is equal to the profit made by that person and compensation for the loss suffered by the public corporation.

There are also requirements that employees disclose conflicts of interest, and the requirement of the original bill—and on my quick reading of the bill this evening I have not been able to ascertain whether this is the case—that the interest of employees is to include that of his or her associates is continued. However, the associate is very widely defined, being not only a spouse or putative spouse but also parent and remoter linear ancestors—that is, grandparents, great-grandparents, great great-grandparents, and so on—sons, daughters, or remoter issues—that is, grandchildren, great-grandchildren, etc.—brothers, sisters, as well as companies in which the employee or any of the relatives—that very wide class that I have just mentioned, including remote lineal ancestors—have 10 per cent of the capital, or a trustee of a trust in which the employee or a relative of the employee is a beneficiary.

It must be said that this wide definition of associate already applies in relation to conflicts of interest in relation to directors of public corporations, but of course directors are usually a smaller category of individuals, very often in responsible positions and very often in positions where these matters can be drawn to their attention. However, to require every employee to inquire into the shareholdings of their great-grandmother and to make disclosures is casting the net extraordinarily and unreasonably widely.

New provisions will apply to senior executives, and 'senior executive' is defined as the chief executive of the public corporation or the person who is designated by the board of the corporation as the holder of a senior executive's position. These new provisions will also apply to senior executives. Their duty of disclosure arises when they are appointed or one month after the commencement of the operation of this bill, if it becomes law. However, employees are under a slightly less onerous duty of disclosure. Their duty arises only when a conflict arises. Unless and until a conflict of interest arises the employee is under no obligation to disclose. Some public corporations themselves have subsidiaries. These provisions will apply in relation to employees and senior executives of subsidiaries of public corporations.

I will next deal with the relationship of this bill to the Public Sector Management Act. The Public Sector Management Act already governs the Public Service. It already contains a provision in section 56 which requires public sector employees who have a pecuniary or other personal interest in a matter, if that interest conflicts or may conflict with the employee's duty, to disclose the interest to the chief executive, and the employee must then obey any directions which the chief executive might give to resolve the conflict. It might mean that the chief executive directs that the individual employee has no dealings, for example, with the son or wife who is engaged in a particular task. That is a provision which has worked well.

However, the bill actually repeals section 56 and creates a new regime. It is not entirely new, but it puts it in a different form. The Public Sector Management Act will now require all public sector employees to observe the requirements of any code of conduct which is issued from time to time by the Commissioner for Public Employment. As I mentioned in my earlier remarks, the commissioner in October last year did issue such a code. I interpose here a question which I would like answered when the minister responds: will that code of conduct issued by the Commissioner for Public Employment be treated as the code of conduct applicable under these new provisions; or is it intended that there will immediately be some redraft of the code of conduct; and when will we have an opportunity to peruse such a code if a new one is envisaged?

Next, the definition of 'public sector employee' is extended; and, again, it is extended artificially. On this occasion it is extended to include a person personally performing the work of the Crown or a public sector agency as a contractor, or as an employee of a contractor or otherwise on behalf of the contractor. Again, this means that our casual, part-time, once only cleaner in a departmental school will be deemed to be a public sector employee.

The Hon. J.F. Stefani: Or the nurse.

The Hon. R.D. LAWSON: Or the nurse or the plumber.

The Hon. Diana Laidlaw: Or the bike courier.

The Hon. R.D. LAWSON: Or the bike courier, as the Hon. Diana Laidlaw interjects. But the plumber called into a school or a hospital—

The Hon. J.F. Stefani: Or a security guard.

The Hon. R.D. LAWSON: The Hon. Julian Stefani interjects, 'security guard'—certainly. But the plumber who is engaged to change a washer on a leaking tap in some government house or building will become a public sector

employee under this provision. That means that this person must act honestly in the performance of his or her duties, and we have no quarrel with that—although, as I mentioned earlier, we take the view that the plumber, or anyone else, is already under obligations that apply to all citizens. You do not have to create the artificial construct of suggesting that the person is a public sector employee when plainly he or she is not.

If the public sector employee, including on this occasion the contractor or the contractor's apprentice or employee, has a pecuniary or other interest that conflicts or may conflict with the employee's duties, the employee must disclose that interest to the CEO and must comply with the CEO's directions to resolve the conflict of interest. A public sector employee, as the definition is extended, will be taken to have an interest if an associate (and, again, that very wide definition of 'associate' comes in) has an interest in the matter. If an employee is convicted of an offence against these sections he or she can be ordered to disgorge profits made and/or pay compensation for any loss or damage.

The query and concern we have about these provisions is that they will be applying to people who will have no conceivable idea that they are being brought within the vortex of obligations (about which they have no concept or understanding) of a public sector employee. As I have mentioned several times, whilst we have no objection to people being required to act honestly in the performance of their duties, creating new offences where it is extremely difficult, first, to ascertain that you are covered by the legislation, is a very onerous obligation.

And it is all done not because there has been any demonstrated evidence that there is widespread corruption or dishonesty by these people, but because of the rather mindless rhetoric of honesty and accountability that the Premier has been able to sprout without really explaining to the community the implications of this legislation. There is a new class of persons to whom the Public Sector Management Act will apply called corporate agency members.

Corporate agency members are defined as 'directors of public sector bodies corporate' or 'members of a body corporate where there is no governing body and where the body corporate is not a public corporation'. Although no examples have been given in the government explanations I have seen, it is envisaged that this would apply, say, to the board of the Art Gallery of South Australia or to the board of the Adelaide Festival Centre, or perhaps to bodies such as the Construction Industry Long Service Leave Board and similar bodies which carry out statutory functions but which are not trading enterprises.

I ask the minister to provide in his response to the second reading a list of the bodies which the government envisages will be caught within the expression 'corporate agency members'. Under this bill, corporate agency members will have a duty not to be involved in any transaction with the agency without the written approval of the relevant minister, and this prohibition will extend to an associate of the member. Once again, 'associate' has that very wide and somewhat artificial meaning.

Corporate agency members will have a duty not to acquire shares or interests in the agency or in any subsidiary of the agency without the approval of the agency. The corporate agency members who have a pecuniary or personal interest in a matter which is under consideration by the agency or its governing body will have to disclose that interest to the agency. They must not take part in any discussion in relation to the matter, and they must not vote or be present when discussion or voting takes place. A corporate agency member who does not comply with these requirements may be fined and/or removed, can be ordered to disgorge profits made as a result of their contravention and to compensate the agency for any loss which it suffers.

Under the Public Sector Management Act there is also a new requirement that senior officials act honestly and disclose pecuniary interests. Senior officials are defined as 'the Commissioner for Public Employment, the chief executive of an administrative unit or a public sector agency, or someone who is declared to be a senior official'. These senior officials are required to act honestly, they must disclose pecuniary interests to the relevant minister and, if such an interest or other personal interest conflicts with their duties, they must disclose that fact to the minister and not take any further action in relation to the matter, except as authorised by the minister. A senior official convicted of one of these offences I have mentioned can have his or her employment terminated, can be ordered to disgorge profits and to pay compensation.

We have less concern about imposing onerous obligations upon highly paid and responsible senior officials. They can be expected to be aware of their obligations and to be able to disclose their pecuniary interests and, because they are well remunerated, they can be expected to ascertain the ground rules applying to their employment. That is quite a contrast to the obligations which have been cast upon certain employees who might be casual employees who might come within the orbit of the public sector only on rare occasions.

It is noted that a number of amendments will be moved in this chamber. In a note on the amendments to be introduced, the government has now adopted the view that only members of high level advisory bodies such as the Economic Development Board and the Science and Research Council should be bound by the honesty and conflict of interest provisions proposed in this bill. What is now proposed is a new definition of 'advisory bodies' to include 'only those members who are appointed by the Governor or a minister'.

The idea that provisions apply only to high level advisory bodies will require some explanation from the minister; and, in particular, the parliament deserves to know precisely what bodies will be encompassed. We should not be simply given examples such as the Economic Development Board and the Science and Research Council, which are two of the most prominent and recent appointments. People in the community are entitled to know precisely which body is affected. We will be seeking from the minister either a list of these bodies or an assurance that a list will be published in the *Gazette*.

The Hon. J.F. Stefani: It should not be a problem for the government to get the full list. I mean, it has the bodies; there are no problems. The Statutory Authorities Review Committee has done quite a lot of work on that.

The Hon. R.D. LAWSON: The Hon. Julian Stefani interjects that the Statutory Authorities Review Committee has examined and prepared a list of statutory authorities. For the purposes of examining this bill, I did look at the reports of the Statutory Authorities Review Committee, but even that committee did not claim to have been able to ascertain completely and exhaustively all the statutory authorities, and certainly so far as I am aware no comprehensive list of public corporations is published. There are lists of statutory authorities established as a body corporate but, if one looks at the lists that are published, they include a number of bodies that either have gone out of existence or changed their name,

and it is extremely difficult to ascertain the identity of such bodies. We will be seeking lists and definitions from the minister so that ordinary citizens will know precisely who is and who is not required to comply.

The notion of 'senior officials' is proposed to be changed slightly in a manner which I am assured the minister will explain. In my opening remarks I mentioned that, when it was introduced in the House of Assembly, the bill comprised 24 pages and that 13 pages of government amendments were passed. That indicates that the government brought this measure in entirely half-baked. It was not considered thoroughly during the committee stage in the other place, and we in this place certainly intend to have a thorough examination of every aspect of this measure. At the committee stage, we will introduce amendments to 'associates'. We will also move amendments designed to ensure that the citizens of this state are made aware of obligations which might arise under legislation of this kind.

It is all very well for the Commissioner for Public Employment to send out brochures, as he did last year—and we commend him for it—explaining to every public servant (all 60 000 of them) their obligations, but similar material should be made available to anyone who is to be required to comply with this legislation. If they are not made aware of their obligations, we regard it as grossly unfair and unjust that they should be exposed to quite serious penalties. We propose to ensure that written notice of disclosure requirements be given to all who are expected to comply with this measure.

With those remarks, I indicate support for the principle of honesty and accountability but express extreme scepticism about some of the methods used in this bill to meet those objectives.

The Hon. A.L. EVANS: I will speak briefly on the bill. Family First supports the second reading of the bill, which forms part of a package of three bills and which implements the government's 10 point plan for honesty and accountability in government. The bill ensures that all people working in the public sector, whether as members or directors of public sector corporate bodies, as senior executives or officials, as employees or as contractors, are subject to duties of accountability and honesty. Under the bill these duties apply, whether or not the bodies are subject to the Public Corporations Act.

The bill operates to increase honesty and accountability within the public sector, and that is always a good thing. My only comment concerns the management of obligations under the act. How will the government provide managers and supervisors across government with the ability to ensure that they are meeting their management obligations so that the full force of the law can be applied when necessary? The duties now apply to a broader range of employees and officials, but the law will have no teeth if there is no way of monitoring that the duties are being complied with. I seek an answer from the minister on this issue and other issues before I can totally support this bill.

The Hon. A.J. REDFORD: I rise to make a number of comments about the bill. First, I congratulate the shadow attorney-general for much of what he said because I wholeheartedly endorse his comments. This bill comes to us as part of the 10 point plan for honesty and accountability in government. In his second reading contribution the minister states that the bill ensures that all persons working in the public sector are subject to duties of honesty and accountability. The bill, in seeking to achieve its end, seeks to amend the Criminal Law Consolidation Act, the Public Corporations Act and the Public Sector Management Act.

In that respect, the bill has a number of characteristics which impose significant new (the government's word) obligations on a broad class of people, and they include: first, contractors and consultants who now have an obligation to act honestly in the performance of their duties; secondly, senior executives who will be required to disclose pecuniary interests, including any associates' interests; thirdly, senior executives, who will be required to disclose any conflict or potential conflict of interest. Fourthly, a code of conduct will be incorporated with legislative force.

The issues I wish to speak about specifically this evening are those which pertain to the Criminal Law Consolidation Act, the amendment relating to which extends the coverage of offences of a public nature and offences to contractors and their employees. The practical effect is to make contractors and employees liable to prosecution for 'abuse of public office'. It also extends criminal sanctions to former public officers. I agree with the shadow attorney-general's analysis that these amendments are far too extensive. Certainly, for such a broad increase in the arm of the criminal law, a case has not been made. Indeed, in my eight years as a member of parliament I have, by and large, been impressed by the honesty and integrity of public servants and public officials throughout the public sector.

The Hon. G.E. Gago interjecting:

The Hon. A.J. REDFORD: The honourable member interjects with a look of incredulity on her face. All I can say is that she may think that there are a number of public servants out there who are not honest. She may think that there are a number of public servants out there who do not act in the public interest, and she may have this general cynicism about the public sector.

An honourable member interjecting:

The ACTING PRESIDENT (Hon. R.K. Sneath): Order! Interjections are out of order.

The Hon. A.J. REDFORD: But I assure her that, when she spends some time with members of the public sector, she will come to—

The Hon. G.E. Gago: Dishonest.

The Hon. A.J. REDFORD: She keeps yelling the word 'dishonest', but I have to say that I deprecate her interjections to the effect that some broad malaise of dishonesty or corruption exists in our public sector. I am disappointed that a member who has been here for such an extraordinarily short time would seek—

The Hon. G.E. Gago interjecting:

The ACTING PRESIDENT: Order!

The Hon. A.J. REDFORD: —to besmirch the good reputation of the public sector in this state simply to advance some pre-election agenda that, quite frankly, has passed us by. The biggest extension to the criminal law in this sense includes a person who personally performs work for the crown, a state instrumentality or a local government body, such as a contractor or an employee of a contractor or otherwise directly or indirectly on behalf of a contractor. That is an extraordinarily—

The Hon. G.E. Gago: Misleading, dishonest.

The ACTING PRESIDENT: Order!

The Hon. A.J. REDFORD: —broad statement. The honourable member keeps interjecting, and when she rises to her dainty little feet—

The Hon. G.E. Gago interjecting:

The ACTING PRESIDENT: Order! Interjections are out of order.

The Hon. A.J. REDFORD: —perhaps she can explain how one of these amendments might deal with the perception that she might have in so far as the former premier is concerned, because not one of these amendments affects a politician, serving or past. If the member is going to interject, one might expect that she would read the bill, understand the second reading explanation and bring some level of intelligence to the debate—because it is completely absent, in that she mindlessly espouses interjections that are way in the past. If she really wants to go down that path, I will defer to the current DPP, Mr Paul Rofe QC, who investigated the former premier under these provisions and exonerated him.

Far be it from the member, in a malicious, deceptive and disgusting fashion, to interject. The current Director of Public Prosecutions, who I understand enjoys the support of her superior, the Attorney-General, determined that there was no improper conduct, in the context of the criminal law, in so far as the former premier was concerned or, indeed, any of his staff. If the honourable member wants to interject, what she ought to do, with the greatest of respect, is get her facts right. All she does is undermine what little respect we might have had for her by those stupid and ridiculous politically motivated interjections.

The Hon. Diana Laidlaw: Who is she? You haven't identified her.

The Hon. A.J. REDFORD: The Hon. Gail Gago. I think that what she has done is insulting and, in fact, unparliamentary. Let us get back to the bill, because nothing in this bill is directed to members of parliament and/or their staff. If the honourable member thinks that something ought to be directed to members of parliament and/or their staff, I look forward to her introducing her own amendment to cover those events, if she has the wit or the initiative—and, so far, I have seen an absence of both. I am pleased that the honourable member is now silent. The provision in terms of—

Members interjecting:

The ACTING PRESIDENT: Order! The honourable Angus Redford has the floor. Members on both sides of the council will come to order.

The Hon. A.J. REDFORD: I am very grateful for your protection, Mr Acting President—although sometimes I enjoy not getting it, because it is like shooting peas in a pod. The provision that seeks to extend the criminal law is extraordinarily wide. It covers the gardener, the teacher's aide, all sorts of minor contractors, and a broad range of people who engage in acts for and on behalf of the Crown pursuant to contracts. Indeed, not one case, to my knowledge, has been brought to the attention of the media or the courts or my office or, indeed, parliament in the many statements made by members which would indicate that contractors require the sanction of the criminal law in this fashion in terms of the conduct they have engaged in. I invite the government in its response to give some examples of events that have occurred in the past of improper conduct on the part of employees or contractors, or employees of contractors, which would warrant this extraordinary extension of the criminal law.

There is a basic rule of thumb in a criminal court that if you are liable to a gaol term of more than three years you have committed a very serious offence. This bill provides for a gaol term of seven years. So, we are talking about situations in which ordinary people, working-class people, whose conduct might be considered to be pretty normal, could potentially attract the sanction of the criminal law. The contractor who has the contract to do the lawn-mowing at the Naracoorte High School might say to the headmaster, 'I'm getting on a bit and I'm going to retire. Can my brother or cousin take over the contract?' That happens on a daily basis, and there is, based on the definition of 'improper conduct', which I will come to, a real risk that a person in that situation could be prosecuted and be liable to a seven year gaol term. The government has failed to make any case for the extension of the criminal law in this fashion.

Section 238 of the Criminal Law Consolidation Act says a number of things in defining the concept of acting improperly. Firstly, the person must act 'knowingly or recklessly'. I am comfortable with the term 'knowingly' but I am very uncomfortable with the term 'recklessly', because what may be reckless in the eyes of one person may be negligent in the eyes of another, and those are terms of judgment. Then, in terms of what is acting improperly, you have to determine what is 'contrary to the standards of propriety. . . expected by ordinary decent members of the community'.

As the Hon. Robert Lawson pointed out, different juries are likely to come to different conclusions. Already, judges in the criminal law are under great pressure because of disparity in sentencing, and that is a very difficult process. One can only wonder what potential ridicule the criminal law might be held in by different standards being applied by different juries when determining the standard expected by ordinary decent members of society. It is not just a matter of different juries on the same day: standards in our community change over time.

I know that what might have been acceptable conduct in the late eighties, in a corporate sense, would be totally unacceptable in the late nineties or the early 21st century. We are imposing a criminal sanction in that respect and the government is yet to make a case as to why that might be required. The bill goes on to add a significant provision in relation to former officers. Section 251 of the Criminal Law Consolidation Act adds the following:

> A [former] public officer who improperly—
> (c) uses information that the public officer has gained by virtue of his or her public office,
> with the intention of—
> (d) securing a benefit for himself or herself or another person; or
> (e) causing injury or detriment to another person,
> is guilty of an offence.
> Penalty: Imprisonment for seven years.

It is already difficult enough for public officers, particularly members of parliament, to secure reasonable employment.

The Hon. P. Holloway: It wasn't too hard for Dr Wooldridge.

The Hon. A.J. REDFORD: The honourable member interjects. It is difficult and we could run through a couple of the honourable leader's former colleagues—I know he does not lose any sleep over it; that is the nature of the beast—who are having difficulty in securing proper and appropriate employment. I know that following the 1993 election, there were a number of his colleagues, including the honourable member, who had a lot of difficulty in securing employment.

The question is why there is the need for such a provision. Have there been cases or are there situations of former public officers improperly using information? What sort of circumstances does the government have in mind when it uses the term 'improper' in the context of a former officer? Does a public servant who accepts a redundancy package and subsequently goes to work for another company that might be dealing with the public sector run the risk of a seven-year

gaol term, simply because he or she seeks to use the considerable skills they have generated over time in order to feed their family and exercise their skills?

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: The honourable member interjects and says 'information'. I would be interested in the honourable member's response to this: it is very hard to be definitive about what is knowledge and what is skill. Let us consider a lawyer. The knowledge that a lawyer has about how to get an application into court and what processes and techniques one might use in terms of negotiating is very much dependent on knowledge, and what knowledge that person might have gained as a consequence of working in the public sector.

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: That's right. The critical word and the only word that actually brings this thing back to some commonsense is this word 'improper', but that is dependent entirely upon an arbitrary decision as to what might or might not be contrary to the standards of propriety expected by ordinary, decent members of society. Put yourself in the position of being a former officer who is about to take up a position that deals with that officer's former department. He might go to see a lawyer and ask whether that is appropriate. A lawyer is going to say that he does not know and cannot speak with any confidence about what might or might not be a standard of propriety expected by an ordinary, decent member of society.

It varies from person to person, it varies from day-to-day and it varies from circumstance to circumstance. So, at the end of the day you will say to anybody who takes a redundancy package—quite a lot of people do that, and I know this government is offering a few—'Don't go anywhere near the government.' Unfortunately—and I say this from my ideological perspective—the government is the biggest business in town.

An honourable member: And getting bigger by the day.

The Hon. A.J. REDFORD: It is getting bigger by the day, as the honourable member correctly and astutely interjects. It is the biggest business in town. So, you will say to all those public servants whom you are offering redundancy packages, 'Don't go anywhere near the public sector—it doesn't matter how good you are—because there is a risk that you might be the subject of a criminal sanction. If there had been a spate or series of this sort of conduct I could understand why a government might bring this in, but the only justification I have seen for bringing this in is a series of pre-election rhetoric. None of it said that it would amend the Criminal Law Consolidation Act to provide that former public servants, former contractors or former employees of contractors run the risk of a criminal sanction in the event that they use any knowledge or skill that they might have developed over a period of association with the government or a government agency—

The Hon. G.E. Gago interjecting:

The Hon. A.J. REDFORD: Despite what the Hon. Gail Gago might interject, it is absurd to potentially expose those good, hard working people to the potential of criminal prosecution. It is absurd and unjustifiable. I am sure that, if the honourable member took this back to his caucus, he would find some people who might get their minds around the ridiculousness of this amendment.

It is interesting to see the context in which this legislation was brought into being. It was brought into being in 1992 by the failed and discredited Bannon government, of which the Hon. Paul Holloway was a member, for the State Bank. It was brought in as a response to the State Bank royal commission inquiry. I know the Hon. Mr Gazzola is giggling over there, because he knows he had very little to do with that government, but a number of members in this chamber are hanging their heads at this minute.

The Hon. J. Gazzola interjecting:

The Hon. A.J. REDFORD: The honourable member interjects and says that there are none whatsoever, and I have to say that, from my considerable research into his background, I cannot see any association between him and the State Bank, and for that he is to be congratulated. What the Hon. Chris Sumner said in relation to the introduction of this whole section of offences was that the state of the criminal law in relation to corruption in public officers was woeful. He pointed out that a number of offences needed to be brought up to date and referred to a number of Law Reform Commission reports on the issue. He referred to the fact that the Secret Commissions Act was seriously deficient. For the benefit of the Hon. Gail Gago, I point out that we recently passed a bill here dealing with offences of dishonesty, and we dealt with the Secret Commissions Act—

The Hon. G.E. Gago interjecting:

The Hon. A.J. REDFORD: The Hon. Gail Gago interjects again, and I am stunned at the fact that she was not in the chamber when we went through that lengthy, detailed and constructive debate. We went through that debate then in getting rid of the Secret Commissions Act and bringing the law up to date in terms of offences of dishonesty and the like. In November 1991, the Hon. Chris Sumner, in relation to the bill that established these provisions, said:

> The bill seeks to balance rights and responsibilities; the rights to do the job demanded by public office free from intimidation, threats, bribery and reprisals, while imposing the responsibility to carry out that public trust with propriety and due regard for right conduct.

In the case of former employees, where is the balance in this bill which was ably identified by the Hon. Chris Sumner? Where is the former officer free from intimidation, threats and bribery if that former officer should seek to do business with the government after losing their job, taking a redundancy package or retiring? It is absurd. The Hon. Chris Sumner went on to correctly observe the following:

> This balance is hard to achieve, especially in the regulation of the conduct of public officers. It is always difficult to tell when, for example, a minor gift to a public officer for a job well done turns into a bribe for favours received. The traditional way of setting the limits is to require that the conduct of the public officer is committed 'corruptly'.

I cannot see where contractors, employees of contractors and former employees in any way shape or form fall within that balance. I would be very interested to see how this government in advancing this bill, can properly identify the balance in relation to this. Quite frankly, I am not sure, once this bill passes, why anyone would want to take a redundancy package that this government seeks to advance in terms of the public sector.

The Hon. Chris Sumner went on to identify what he saw as a very difficult issue, and that is the question of what is meant by the term 'improper'. It is an extraordinarily difficult term to define, particularly if you happen to be involved in determining whether or not a prosecution ought to proceed, or if you happen to be in a position such as I was back in 1995 of advising a client who had been charged with acting improperly within the context of the Corporations Law. At that time, the Hon. Chris Sumner endeavoured to assist by

inserting in the act section 238, which sets out a definition of 'acting improperly'.

A number of cases have caused even more problems since then in determining what might or might not be improper in the context of a course of action. The definition is circular, it is vague, and it causes uncertainty. One need look at only a couple of terms: first, what might be expected of an ordinary, decent member of society. Society is one of these organisations that is always arguing about what is good or what is not. One only has to turn on talkback radio late at night to listen to the debate on just about anything to work out what might or might not be decent.

Then we look at what is meant by the term 'propriety'. The *Chambers Dictionary* says that 'propriety' means 'accepted standards of conduct'. Are they to be religious, moral or ethical standards? Where are they to come from? How is a jury, when confronted with a court case, able to make such a determination? I say from experience that it is extraordinarily difficult in many cases for juries even to grapple with the term 'dishonest'. The courts deprecate—and quite rightly so—any judge who might seek to define 'dishonest'.

The law says that jurors ought to be able to arrive at a consistent standard for what is or is not dishonest conduct. However, I can assure members that, when you move into the area of 'improper', it becomes very difficult. Indeed, in my view, the then attorney was misguided in his belief that the definition might have set some definable limit that was capable of helping people understand what is meant.

If I can give an example of how difficult it is when looking at what might or might not be improper and how a court might go about determining what is meant by a provision such as this, I draw members' attention to the High Court case of Chew v the Queen, which was a case decided in 1992 concerning section 229(4) of the Companies Code. In that case, the court determined what is meant by that provision, which states:

> An officer or employee of a corporation shall not make improper use of his position as such an officer or employee to gain, directly or indirectly, an advantage for himself or for any other person, or to cause detriment to the corporation.

Some people might say that is not all that hard.

The Hon. T.G. Roberts: It's not all that hard!

The Hon. A.J. REDFORD: The honourable member interjects. I throw him a challenge, because he is a very smart man, according to some. I will read this paragraph, and I defy anybody in a subsequent contribution to make any sense of it. In discussing the term 'to gain', his Honour Chief Justice Mason says:

> 2. The sense in which the word 'to' is used in association with the infinitive may be purposive ('in order to') or causative ('so', or 'so as to', though 'so as to' may sometimes signify purpose rather than result). It is common to use 'to' with the infinitive, in the sense of 'in order to' so as to express purpose, particularly in an adverbial clause, as an adjunct (1) See Quirk et al, *A Comprehensive Grammar of the English Language* (1985), par. 15.48; *Oxford English Dictionary*, 2nd ed. (1989), vol.XVIII, pp 166-167. No doubt the use of subordinators such as 'in order to' or 'so that' is more frequent and makes for more precise expression. However, that circumstance does not of itself justify the conclusion that the use of 'to' with the infinitive in an adverbial clause as an adjunct is usually causative, for that is not the case.

My question to the government is (and, in particular, I would like the Attorney-General to apply his mind to this) how would it explain the meaning of that and what all that is about to the contractor, who might be the gardener at Naracoorte High School? With the greatest of respect to the Attorney-General, I suspect that he would not be able to do so.

Tonight, that is what we are seeking to do, in effect, in changing the law: we are seeking to import into the criminal law concepts that are so complex and so difficult that they would not be understood by the sorts of people whom the Attorney is seeking to catch. I would be most interested to have an explanation from the Attorney as to what conduct he seeks to catch with the amendments that is not already covered in the criminal law.

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: Yes, I am talking about the amendments to the Criminal Law Consolidation Act, in toto. The government should come to this place and explain to me (and I bet you it cannot) what circumstances it is seeking to catch with serious penalties, such as seven-year gaol terms, that are not already caught by other provisions in the criminal law, particularly some of the offences of dishonesty that we passed a few weeks ago. I bet you that they cannot do it.

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: The honourable member interjects, and I have some concerns about the way they are currently expressed, but I have even more concerns that the government is piling one bad law on another questionable law. In terms of dealing with this specific provision for which the government seeks this parliament's endorsement, what set of factual circumstances is this government seeking to catch that is not already caught by another provision in our criminal law? I bet you, sir, that they cannot think of one, and that is because this is all about politics. It is not about the criminal law, it is not about dealing with ordinary people who go about—

The Hon. J.F. Stefani: The offence hasn't been defined.

The Hon. A.J. REDFORD: Exactly. The honourable member says it far more succinctly than I did. It is a serious offence. The High Court said in Chew's case that the concept of impropriety is an objective one. It does not depend on the mental state of the person charged. It is what other people might define as improper or outside the standards that one might expect. We do not even do that for murderers, for rapists, for armed robbers or for drug dealers, but we will nick the former public servant or the small-time contractor because they may not be able to prove some element of dishonesty on their part. In my view, no case has been made out to extend the law in that fashion.

I also refer members to the very difficult case of the Queen and Byrnes and Hopwood, which was decided in February 1995 by the High Court. In that case the High Court, in particular Their Honours Justices Brennan, Deane, Toohey and Gaudron, conceded:

> 'Improper' is an indefinite term not commonly used in the criminal law.

Therein lay the difficulty for the High Court in trying to determine what it should or should not do. In terms of supporting what I said about the mental element of this term 'improper', in that case the High Court stated:

> However, such an intent or belief is not a condition of liability under the subsection. The essential elements of the offence are an improper use of a position by an officer or employer of a corporation and a purpose of gaining or causing detriment.

Anyone involved in the private sector, and a lot of people who are not, are out there for personal gain. They are doing it so they can feed their families and live ordinary, decent, reasonable lives. Then they have this concept of 'improper' hanging over their head and the risk of arbitrary prosecution.

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: The honourable member shakes his head. I was in one such case. I acted for a person who was charged with acting improperly. It involved two very prominent members of this community, the brother of one of whom gets appointed to some pretty senior boards around this country. He went through a three-week trial, after a 2½ year lead-up to the prosecution. At the end of the prosecution case, the judge looked at the jury and said, 'Ladies and gentlemen of the jury, you don't have to go on if you don't want to. If you think there is nothing in this case, you can say not guilty.' They all stood up and said they did not think there was anything further to go on with.

That is what they said. The judge said, 'No, ladies and gentlemen, you actually have to go out and agree with one another.' They said, 'We've sat here for three weeks listening to this stuff and we think he's not guilty, and we haven't got time. We just want to get out of here.' That is what happened. But this man was almost broken by the process. This man nearly lost his reputation over the process. He lost all his worldly goods over the process.

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: It is exactly the same thing. A zealous prosecutor got it into his head that he was going to make a name for himself and get his picture in the paper because he was a high profile Adelaide figure.

The Hon. J.F. STEFANI: And he was using government money to do it.

The Hon. A.J. REDFORD: The honourable member correctly interjects 'and using government money.' I would not mind if some government one day stood up and said, 'If we prosecute someone in these circumstances and we lose, we'll pay the costs.'

The Hon. J.F. Stefani: Absolutely. Not tax costs; the whole costs.

The ACTING PRESIDENT: That is out of order.

The Hon. A.J. REDFORD: The honourable member's interjection may have been made slightly to the right of where he normally sits, but I think it was a very pertinent interjection and I will be very grateful if it appears on the record. It is a very extraordinary set of circumstances when a person is prosecuted. I do not believe that simply for the sake of a headline or a mantra—and we all know what this Premier and this government is about: it is a headline-driven government—we ought to bring in a provision such as this creating a new penalty for hard-working former public servants unless you can come up with some justification to do so. Give me a set of circumstances which says, 'These are the circumstances that we think are wholly unacceptable to the South Australian community' and which is not already caught by another provision in the criminal law. As I said, I bet they cannot do it.

I would urge the Attorney-General to have a good look at Burns' case and Chew's case. I would be very interested to hear his rationale and his jurisprudential explanation in words that his listener group with Bob Francis would understand. If he can do that, he is a better man than me. I have to say that it is almost impossible to put these provisions with a sense of some certainty so that ordinary, average people going about their ordinary lives do not run the risk of criminal prosecution and, just as importantly, put them in terms such that jury members are not put in a position where they have to make an arbitrary position based on their own personal prejudices. This sort of legislative process is simply driven by some misguided objective to be popular and, at the end of the day, when people seriously look at it, they will say, 'What are we doing all this for?' It is crazy stuff.

The Hon. G.E. GAGO secured the adjournment of the debate.

FREEDOM OF INFORMATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 October. Page 1225.)

The Hon. R.D. LAWSON: I rise to support the second reading of this bill. The Liberal Party has been a great supporter of freedom of information legislation, and if and in so far as this bill improves the freedom of information regime in this state then the government can be assured that we will support it. Regrettably, however, this bill, far from widening the scope of freedom of information in this state, narrows it considerably.

Last year, the then government, after extensive consultation and a report from the Legislative Review Committee which met for many months and produced a very comprehensive report under the chairmanship of the Hon. Angus Redford (the Hon. Ian Gilfillan was a member of that committee, as was the Hon. Paul Holloway), in response to the recommendations of that report and also as a result of its own examination of freedom of information legislation, introduced a number of significant measures. It is worth indicating that these measures were introduced and came into operation earlier this year; they are measures that have not long been on the statute book.

It is also worth mentioning briefly the significant changes which were made by the previous government with, I might say, the support of Australian Labor Party members. The bill that was introduced last year provided for a wider application of the so-called 'contrary to the public interest' test in various classes of exempt documents. This was an important statement that indicated that the government was interested in ensuring that the claims of public interest were rigorously applied in freedom of information determinations and that agencies were not able to hide behind the rubric of 'contrary to the public interest' without actually being able to demonstrate fully the necessity for the claim.

The bill last year provided for a reduction of the time from 45 days down to 30 days that agencies had to deal with applications; that was a considerable improvement and a substantial change. The bill also created the title of accredited freedom of information officer. The reason for this was to ensure that better standards of training and support were available to those members of the Public Service who are required in a front-line way to receive and process applications for freedom of information.

The objective of the government was to provide a higher level of training and a more professional approach by ensuring that freedom of information officers were not simply the lowest person in the Public Service hierarchy or not simply a person who was given a task because no-one else would do it, but to give some status and professionalism to freedom of information. It is appreciated and recognised that the quality of the understanding, competence, knowledge and training of freedom of information officers is important to ensure that we have a system that works appropriately.

Last year's bill also required greater detail to be stated when agencies refused FOI applications. This was a measure

in aid of accountability. A number of other amendments relating to local government issues were important, and there were a significant number of procedural improvements.

We turn next to this bill that the government has brought to the parliament. It seeks, firstly, to restrict the information, in particular the documents, that members of parliament can obtain. Therefore, it is designed far from expanding access to a strict access by increasing the fees and imposing fees which do not presently exist. So, the first thing this government does in the interests of honesty, accountability and openness is make it more difficult for members of parliament to access information under FOI. I indicate at the outset that this measure will be strenuously opposed by the opposition.

Members interjecting:

The ACTING PRESIDENT (Hon. R.K. Sneath): Order!

The Hon. R.D. LAWSON: The next measure that this government takes is to restrict the right of appeal which currently exists under the Freedom of Information Act. Presently, it is possible to appeal to the District Court both on merits and on legal grounds against a determination. However, this government seeks to restrict the appeal to the District Court to legal grounds only. In other words, this is another measure that is being taken for the purpose of restricting opportunities and rights under the existing legislation.

Thirdly, by this bill the government seeks to exclude from the act documents relating to the estimates committees. So, once again, it involves documents which under the current legislation are open to be disclosed under freedom of information and of which I can say the opposition has made full use—and entirely appropriately because the legislation acknowledges it. However, this government obviously does not like the fact that there is an effective opposition seeking to use freedom of information applications to obtain documents. This government decides to restrict access not only of members of parliament but of anybody to documents relating to the estimates committees.

The Hon. R.I. Lucas interjecting:

The Hon. R.D. LAWSON: This government, in the interests of openness and accountability, extends from 30 years to 80 years the period during which personal information can be accessed by third parties under the Freedom of Information Act. A vast amount of information and a vast number of documents, which are currently accessible under the Freedom of Information Act after 30 years—

The Hon. R.I. Lucas: Always been available!

The Hon. R.D. LAWSON: —and which have always been available, are now no longer available. They have been buried in the vaults for another 50 years, for another half century—

The Hon. R.I. Lucas: If it passes.

The Hon. R.D. LAWSON: If this bill passes. Curiously, reliance is placed for this extraordinary extension upon determination guidelines issued by State Records of South Australia on 25 February 2002. At a time after the election and before the new government was sworn in, officials introduced a number of determination guidelines upon which the government purports to rely.

In fact, this particular change warrants quite close examination. So far as I can see, the State Records Act does not justify the imposition of this 80-year ban on certain personal information being made available. This government chose, by regulation and for reasons best known to itself, to extend from 30 years to 40 years that particular information. It now brings in a bill to extend that 40 years to 80 years—it doubles.

Members interjecting:

The PRESIDENT: Order! All members will come to order. The Hon. Mr Lawson has the call.

The Hon. R.D. LAWSON: There has been a great deal of interest in recent times in relation to the 'Bringing Them Home' report, an inquiry conducted by the federal government into the past practices of governments relating to the removal of Aboriginal children. The information upon which that investigation and that report has relied is very largely personal information—information relating to the family circumstances of individuals.

If this law passes, this government wants to bury documents, such as the 'Bringing Them Home' report, for 80 years beyond the life span of the individuals who might be affected. This government wants to prevent bona fide historical research; it wants to prevent historians having access to government records relating to important issues for 80 years. There will be no access to any information which at all bears upon any individual. I know that archivists and—

The Hon. T.G. Cameron interjecting:

The Hon. R.D. LAWSON: Indeed. It is interesting to see the way in which the federal government approaches these matters and the policies adopted by the National Archives of Australia under the Archives Act of 1983. The web site of the National Archives of Australia states:

> Under the Archives Act of 1983, the National Archives is responsible for providing public access to commonwealth government records that are more than 30 years old. Once a record (or a part of it) reaches 30 years of age, that record (or part) comes into the 'open period'. The public has a right to apply to see any record in the open period, wherever it is located. . .

The 30-year principle, which applies, of course, to the minutes of the war cabinet and to secrets of state, is one that is well accepted in archival circumstances. There might be reasons why it is appropriate in particular circumstances not to provide public and open access to information concerning individuals. There might well be circumstances, but we say that it is inappropriate to apply a blanket exemption, a blanket exclusion, to all documents for 80 years. This government has put forward a very heavy-handed, ill-considered amendment to suppress information, all under the guise of being open and accountable.

It is interesting to note the approach the National Archives takes to issues of this kind. Under the heading, 'Personal Information', the web site of the National Archives of Australia states:

> Most personal information has lost all sensitivity after 30 years but some may require exemption for at least the lifetime of the individual (for example, medical histories, details of personal relationships, police or security dossiers).

That is a fair enough proposition. If the government wanted to introduce a measure of this kind it could have adopted the sorts of practices that have been adopted by the commonwealth authorities rather than bringing in this blanket and ill-considered suppression of information for an extraordinary length of time. The opposition will be strenuously opposing the imposition of this blanket provision. Indeed, the government is responsible for the archives. It should bring forward a more sophisticated mechanism if it wants to have parliamentary support for it: it should not be relying upon some document prepared during the caretaker period and issued at a time when there was no ministerial control of the State

Records Act. The government's 80-year prohibition on personal documents will be opposed by the opposition.

We believe it is appropriate that the exemption which currently applies to the Essential Services Commissioner should be removed, and that only information which is obtained by the Commissioner on a confidential basis and which is so declared under part 5 of the Essential Services Commission Act be excluded from freedom of information and that other material which the Essential Services Commissioner might have (for example, consultants' reports, details of travel and conferences and other issues) should be FOI-able in the same way as any other public authority.

On this score, it is interesting to note that the Essential Services Commission Act 2002, which was only very recently passed in this parliament, provides that certain information (that is, information under part 5 of the act) is not liable to disclosure under the provisions of section 30(6) of the Freedom of Information Act. The parliament has said what is not FOI-able, but other material which the Essential Services Commissioner has should be open to application for disclosure. We will be moving an amendment during the committee stage to ensure that the Essential Services Commissioner is subject to this act. That will have the effect of overriding the provisions of regulations made on 31 October but only tabled in this chamber this very day.

We believe it is more appropriate for provisions of this kind to be in the legislation rather than introduced by the side wind of an exception through regulation which is not subject to the usual parliamentary scrutiny. There is a proposed amendment to section 4(6) of the Freedom of Information Act which, like the other measures to which I have referred, is designed to restrict the availability of documents by changing a definition. It is our belief that this is entirely inappropriate.

We have adopted the principle that, where this bill restricts access—whether of members of parliament or members of the community—we will not support those restrictions. If there are any cases—and there are some—where it might be argued that access has been extended, the Liberal Party is prepared to embrace any such extensions. One important area is the objects of this legislation, and I think that it is fair to say that there has been a bit of fiddling with the objects. Last year, we amended the objects by expanding them and making it more plain that the fundamental object of this act is to make information available. In a small way, the current bill seeks to change the language in a way which is not satisfactorily explained. However, the Legislative Review Committee proposed that the objects of the act be very widely stated, and it proposed to use as a model the New Zealand Official Information Act.

Last year, the Hon. Ian Gilfillan introduced a bill which contained these objects. I mention that the Hon. Angus Redford was the chair of that committee and a great champion of its recommendations. He has convinced his colleagues that we would be better off having as the objects of this act the wide and expansive objects which were adopted in New Zealand—in slightly different circumstances it is admitted. However, we believe that the objects in New Zealand fairly reflect what our Freedom of Information Act should say and ought be embraced by a government which, if as it claims it is, is committed to openness and accountability.

Let us see the colour of the money of the government on this issue. If the Premier's rhetoric about freedom of information is to be believed, the government will certainly support these expanded objects. The current regulations provide a cost limit of $350, beyond which certain provisions of the act can be adopted. It is our view that that limit (set as it was in 1992) is now inappropriate and has not kept up with inflation, and we will be seeking to have incorporated in the legislation a provision which increases that amount to reflect the current value of that amount of money.

We also believe that it is appropriate that the government should not be able to use the threat of costs and legal costs against any person seeking to appeal against the refusal of an agency to grant access. We believe that it is appropriate that this be a no cost jurisdiction and that individuals are not terrorised by the threat of having a substantial award of costs against them.

In the committee stage we will move an amendment to ensure that the threat of costs is ineffective because, for example, as in the worker's compensation jurisdiction, an award of costs cannot be made against a person even though the application is not successful unless the application is deemed to be vexatious. In committee we will also move amendments which will prevent the government using the threat of high costs to limit FOI applications.

Recently, it has been reported that agencies are claiming that they are incurring substantial costs, usually from crown law or other advice either of a legal kind or of an executive kind, and then saying that the cost of complying with this or that request is much inflated and will divert the resources of the department. We believe that the spirit of the existing legislation was that the cost of complying with requests was the cost of the clerical time in finding the documents, photocopying them and sending them, and we will be moving an amendment which embraces the principle that the cost of advice or executive time is not to be included for the purpose of restricting access. Accordingly, I indicate that, during the committee stage of this bill, we will move amendments which will eradicate from the legislation those offensive elements which I have described.

The Hon. G.E. GAGO secured the adjournment of the debate.

HOLIDAYS (ADELAIDE CUP AND VOLUNTEERS DAY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 October. Page 1225.)

The Hon. R.K. SNEATH: I refer to some of the arguments that the Hon. Angus Redford put in his speech. It was nice to hear that he supports the bill, although he intends to move an amendment to it. He said that the relevant councils and the Mount Gambier Racing Club strongly support this bill and that these three bodies have all lobbied this government, and indeed the former government, with the support for many years now of the local member.

The Hon. Mr Redford said that his involvement extends back to early 1998, when he took a paper to the Liberal parliamentary party room. He said that the party room asked the then minister (Hon. Michael Armitage) to prepare a paper for its consideration, and that paper was presented to the party room in August 1999. The Hon. Mr Redford went on to say that he raised the issue again with the new minister (Hon. Robert Lawson) on 24 March 2000. It certainly shows the last government's response to these issues and the time it took it to get around to doing anything. It took this new government

to introduce this bill after a short period of lobbying in Mount Gambier and surrounding districts.

The Hon. Mr Redford was correct when he said that the Mount Gambier Gold Cup Carnival was a drawcard to the area and that the council believes that this important event deserves recognition. It is also supported by Limestone Coast Tourism through the regional manager, Mr Ian Waller. The Mount Gambier Racing Club and the local member for Mount Gambier have done a lot of work lobbying the last government and this government—not that it did it any good with the last government. I had the privilege of being invited to the Mount Gambier Cup this year and was there when the minister announced that he would be presenting this bill to parliament. I assure the council that that announcement was very well received.

The Hon. Angus Redford also went on to ask whether the minister intended to table the correspondence that supported his assertions in another place that there was a lack of consistency of support. In this regard he was speaking about his amendment and the lack of support for the holiday to be given to the Port Lincoln area in relation to either its racing carnival or some other event being held there. This trial is not for racing alone; it could set a precedent for country areas to have a holiday in place of the Adelaide Cup holiday for events other than racing. It is important that members know that.

We understand that the opposition supports the concept contained in the bill. However, it has some unresolved issues about why the concept should not extend to the West Coast, and a question about the impact on the awards. The bill is about delivering the opportunity for choice to an area that has sought that opportunity for many years, such as the Mount Gambier district. Clause 7(5) of the bill resolves the issue in relation to the awards. The South-East area, and the Mount Gambier Racing Club in particular, have been passionate advocates for this issue. The South-East is the only area that has consistently sought this opportunity; other parts of the state have only dealt with this issue in response to the discussion paper. The South-East stands alone in putting this issue on the table.

This issue is well known in the community of the South-East, and the concept was strongly supported by responses to the discussion paper in that area. Support was expressed by the Mount Gambier City Council, the District Council of Grant, the Mount Gambier Racing Club and a petition covering some 359 people. The West Coast community was divided in its response to the discussion paper, and there was no response from the Port Lincoln council. Response from other councils within the area were mixed, with support shown by the Streaky Bay and Ceduna councils.

The Lower Eyre Peninsula council, which covers a large area (I understand that the biggest town in that council area is Cummins, but it covers a large small business area and a large, well populated rural area), and the Elliston council did not support the substitution of a holiday. These two councils are proposed to be included by the amendment that has been moved by the Hon. Angus Redford. The Port Lincoln Racing Club expressed support for the proposal, and Tourism Eyre Peninsula supported substitution, but not necessarily on a racing day I understand.

No petitions were received from the Port Lincoln area, as had happened in relation to the Mount Gambier area. The response indicates that consultation and debate on this issue within the Mount Gambier region has developed significantly. This provides the opportunity to explore the capacity for public holiday substitutions in this area in an informed manner. Debate and consultation in the West Coast region has been limited and, therefore, the government believes that, at present, it would not be suitable as a pilot.

We have had considerable debate in this council about the consultation that the government should engage in with representatives of areas that would be affected by any legislation that we pass. Here we have two councils, in particular (and not all have responded), that do not want to substitute the holiday.

An honourable member: It's not compulsory.

The Hon. R.K. SNEATH: It is important, if we were to substitute the Adelaide Cup holiday with a holiday at Port Lincoln, so as not to confuse business. If the minister is given more time to consult with the districts involved, there is a fair chance that they will be granted a holiday up the road after there is a trial in Mount Gambier, if that is what they want.

Is it not important that the whole of the West Coast, or those people who would be affected, should be consulted and come to some agreement on whether or not they want a holiday? This is indeed important. It is just like the former government now to argue, 'No, in this case we don't really need to consult them.' You would have thought that Mrs 70 per cent, the member opposite, would have consulted. She will probably slip back to about 55 per cent if this amendment gets up, because she will upset some of those councils and the people who live in those districts. Anyone who supports this amendment will also have those people to answer to. When they are ready and the proper consultation is done, then, and only then, should such an amendment be made. I am sure that after proper consultation and when the district knows what it wants and informs the minister, the minister will come back to this council with the relevant bill to accommodate them.

The Hon. CAROLINE SCHAEFER: The Hon. Bob Sneath's contribution is puzzling to me as a former resident of the area. There are a number of councils on Eyre Peninsula and a number of racing clubs. As I understand it, the Port Lincoln Racing Club has strongly lobbied for the opportunity to introduce just such a holiday. As has been pointed out by way of interjection in this place on a number of occasions, this amendment is entirely voluntary. Port Lincoln is slightly further by road from Adelaide than is Mount Gambier and its structure is very similar. There would be very few people, I imagine, who travel from either Mount Gambier or Port Lincoln for the Adelaide Cup and, if they do, they will continue to do so. But this gives the people in those regions the opportunity—and that is all it is: an opportunity—to decide for themselves when they will take that public holiday. I think it is quite discriminatory that one such isolated region would have the opportunity to introduce this holiday and another such isolated region would not have the same opportunity.

The Hon. T.G. ROBERTS (Minister for Regional Affairs): There was some discussion as to whether to progress this bill to committee this evening or leave it until tomorrow. There seems to be a hardening of the attitude in relation to opposition support for the amendment. The holiday substitution bill debate has progressed to a point where certainly we can put the bill into committee and its further stages, if that is agreed by the council. The situation as outlined by the Hon. Bob Sneath is fairly accurate in relation to the South-East—the Mount Gambier City Council, District Council of Grant—

An honourable member interjecting:

The Hon. T.G. ROBERTS: Mount Gambier Racing Club had been pushing for a long time, and the Hon. Angus Redford gave a fairly graphic description of the work done by many people, including Alan Scott and others back in the 1980s and 1990s when they were advocating a public holiday for the Mount Gambier Cup. The intention of the bill is that it is a pilot program for the South-East and the amendment broadens it to include other areas. I do not think the heavens will open up if other areas avail themselves of the possibility of substitution.

I understand that, even without the amendment, other regions would have recognised that if there were opportunities to be gathered for other tourism and recreational reasons for their community, their applications would have been considered by government over time. So, I think it is one of those issues that would have evolved to a stage where, with the levels of activity within those regions—for instance, Clare, the Riverland, the Iron Triangle, Port Lincoln and perhaps other parts of the West Coast—they would make application when they saw the benefits to the Mount Gambier region after substituting the holiday.

So, I think the level of competition for the hearts and minds of those in regional areas is probably not that necessary. We probably could have had some form of agreement on a way to proceed through this process. I will not hold it up any longer. We can put it through all stages. I think everybody has made their contributions, and I am expecting more contributions to be made in clause 1.

Bill read a second time.

In committee.

Clauses 1 to 6 passed.

Clause 7.

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

Page 4, after line 27—Insert new paragraphs as follows:

(c) the area of the City of Port Lincoln; and

(d) if a substitution has been made or is to be made in the area of the City of Port Lincoln, the area of—

(i) the District Council of Ceduna; and

(ii) the District Council of Cleve; and

(iii) the District Council of Elliston; and

(iv) the District Council of Franklin Harbor; and

(v) the District Council of Kimba; and

(vi) the District Council of Le Hunte; and

(vii) the District Council of Lower Eyre Peninsula; and

(viii) the District Council of Streaky Bay; and

(ix) the District Council of Tumby Bay.

In so doing, I endorse the comments of my colleague the Hon. Caroline Schaefer, who has spent most of her life living in the area and has a good and strong understanding of the needs of the residents of Port Lincoln and what—

The Hon. R.I. Lucas interjecting:

The Hon. A.J. REDFORD: The honourable member interjects and far be it from me to respond other than to say I nod vociferously at that. Indeed, so in touch are we on this side of the chamber with the Port Lincoln constituency I can report that my colleague the Hon. Terry Stephens attended the races at Port Lincoln last week. He reports to me that he spoke to a number of people about our amendment.

The Hon. T.G. Cameron: Did he run into Bob Sneath?

The Hon. A.J. REDFORD: No, he didn't run into the Hon. Bob Sneath. He was probably attending some obscure function somewhere, because we certainly have not seen him anywhere. The Hon. Terry Stephens also reported to me that he met with some prominent local government figures and they were all very supportive of this amendment. The Hon. Bob Sneath made some pretty valid criticisms. We were much slower in introducing this than I personally would have liked but—

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: I do. I can report to the Hon. Terry Cameron that there is some pretty good broadbased support for an extension of this measure to the Port Lincoln area. I do not want to hold this up. In fact, I want it to go through very quickly, but I do have one final point. I say this because—

The Hon. M.J. Elliott interjecting:

The Hon. A.J. REDFORD: Just like the Hon. Michael Elliott—and I know he is very keen on this—I want this government to be accountable in every respect. I did make a statement in my second reading speech and I will quote myself. I do not normally do that—

The Hon. M.J. Elliott: As you are wont to do.

The Hon. A.J. REDFORD: No, I try not to—

Members interjecting:

The Hon. A.J. REDFORD: —but I will quote myself.

The Hon. R.I. Lucas: You've found someone who'll agree with you!

The Hon. A.J. REDFORD: No, no. I said:

In relation to that context—

I am talking about the comments made by the minister in another place on this issue—

all I am asking for is for the minister to table the correspondence that supports his assertion in another place that there was a lack of consistency of support.

That is, support for this holiday. I would be most grateful if some indication could be given as to when we are likely to see the correspondence that the minister asserts shows a lack of consistent support for my amendment.

The Hon. T.G. ROBERTS: I oppose the amendment on the basis of the same argument put up by the Hon. Bob Sneath in relation to preparation and consultation. I will read into *Hansard* two letters. The first, to Trevor McRostie, Director, Workplace Relations Policy Division, states:

The District Council of Elliston have discussed the discussion paper Regional Public Holidays in South Australia. The position of the council is that it would be best to leave the Adelaide Cup Carnival and Volunteers Day as it is. Council felt that it is better to have one common scheduled holiday rather than having a multitude of different regional holidays.

David Hitchcock.

Another, to the Director of Workplace Services, Department for Administrative and Information Services, states:

Dear Sir/Madam

Re: Regional public holidays in SA

I refer to the letter and discussion paper forwarded to the council by the Hon. Robert Lawson QC MLC relating to the above issue, and advise that the information was presented to the District Council of Lower Eyre Peninsula's regular meeting held on 16 November 2001.

Following consideration, it was decided to inform DAIS that this council does not support the proposal to allow regional areas in South Australia to substitute another day for the public holiday known as Adelaide Cup Carnival and Volunteers Day. It is noted that the said holiday is presently observed throughout the state as the third Monday in May.

Thanking you for the opportunity to comment on this issue

Yours faithfully, Peter Aird, District Clerk.

The Hon. J. Gazzola: What about the City of Buckleboo? What did they do?

The Hon. T.G. ROBERTS: I do not have anything from Buckleboo, but I have had some consultation with other people in regional areas. They have raised issues of coordinating particularly SAPSASA and country netball, basketball

and football carnivals from time to time that coincide with the three day holiday. It is not something that cannot be overcome by discussion, but the points made by members on this side of the council in relation to the bill is that, had we moved this as a pilot separate from discussions and negotiations with other regions, they could very well be accommodated in other ways and, as members have said, they will probably do that. They will probably take up the negotiations and perhaps make their regions aware of some of the benefits that will accumulate as a result of the pilot program in Mount Gambier. They may want to transfer those benefits into their own community by substituting holidays within their own regions.

The Hon. M.J. ELLIOTT: I indicate that the Democrats will support the amendment. It seems to me that it is not compulsory, and I do not think people would assume that Port Lincoln would necessarily opt for the race day. It might opt for the Tunarama or some other period of time which might work for them even better. Given that it is optional, if the councils oppose it, it will not happen; if they decide to support it, then it will.

Amendment carried; clause as amended passed.

Schedule passed.

Bill reported with an amendment; committee's report adopted.

Bill read a third time and passed.

PUBLIC FINANCE AND AUDIT (HONESTY AND ACCOUNTABILITY IN GOVERNMENT) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1244.)

The Hon. R.I. LUCAS (Leader of the Opposition): The Liberal Party has indicated that it is prepared to support the second reading of this bill. We place on the record (as we did in another place) that during the committee stage of the legislation we will put a number of provisions to the test by querying exactly how some of these clauses are intended to operate and what in practical terms their impact will be. I want to indicate some of the general concerns that the Liberal Party has with some aspects of the legislation in order at least to place the government on notice as to some of the general areas of concern that we have.

In broad terms, the legislation seeks to commit future governments to the provision of a charter of budget honesty within three days of the commencement of the act and then within three months after every general election. That sounds a little bit like motherhood: who would not be against budget honesty, whether it be through a charter or any other process of achieving it? The opposition very much supports that as a budget objective. This charter is to be prepared by the Treasurer and must be tabled within six sitting days of its completion. The bill will also require the Under Treasurer to prepare and release publicly a pre-election budget update report within 14 days of the issue of writs for a general election.

I want to place on the record a review of fiscal responsibility legislation that was undertaken by the Commonwealth National Commission of Audit in 1996. That body looked at the whole issue of financial responsibility legislation and noted four things: first, governments have carried out responsible fiscal policies without fiscal responsibility legislation; secondly, legislation is the exception rather than the rule—that was certainly the case as at 1986-87 when this report was written; thirdly, adopting legislation is not, in itself, sufficient to lead to fiscally responsible behaviour, as responsibility cannot be legislated; and, fourthly, due to lack of experience and inherent complexities, there is no clear evidence to date to suggest that legislation leads to more responsible fiscal policy outcomes than would have occurred in the absence of such legislation.

Put simply, the key issue is whether governments act in a financially responsible manner whether or not there exists financial responsibility legislation. It is the Liberal Party's contention that the former Liberal government without financial responsibility legislation did act financially responsibly to tackle the financial problems that confronted the state. It brought down a state debt (in today's terms) of almost $10 billion to just over $3 billion and, by the end of its parliamentary term, balanced a budget in cash terms in the non-commercial sector, which was haemorrhaging with a deficit of some $300 million to $350 million a year.

They were difficult financial issues that had to be tackled; they were tackled by the former government; and they were tackled without the need for financial responsibility legislation. On behalf of the Liberal Party, I place on the record that the financial responsibility legislation that is likely to be passed by this parliament will not guarantee that this government, which is led by financially irresponsible leaders in the Premier and the Treasurer, will act in a financially responsible fashion.

In the past, Labor governments have demonstrated their capacity to manage budgets and to balance books. They have demonstrated their incapacity to speak honestly about budget issues. In just six months, we have seen virtually every major promise of a financial nature made by this government broken, shattered, fractured—whatever phrase one could use to indicate that this government has behaved abominably in terms of its financial responsibility and the promises that it made with regard to financial issues.

It is important to say again that this is not the view only of the opposition. The Commonwealth National Commission of Audit report in 1996-97 looked at all these financial responsibility legislative proposals, and found that adopting legislation is not in itself sufficient to lead to fiscally responsible behaviour. It also found that there is no clear evidence to suggest that legislation leads to more responsible fiscal policy outcomes than would have occurred in the absence of such legislation.

One reads and hears such sickening rhetoric on many issues—but particularly on this issue, from the Premier and the Treasurer, such as the poor listeners of afternoon and morning radio have had to endure since April this year. On 7 May 2002, Premier Rann said:

> We are introducing legislation that will require by law governments to tell the truth about the state of the state's finances. This has never been done before, but there are absolute tough fines and provisions against any government basically telling lies to the public about the status of the state's finances.

At 3 p.m. on that day, the Premier again stated:

> We are introducing legislation that will require by law governments to tell the truth. . .

And the same quote was run again at 4 p.m. At 3 p.m. on 5DN, the Premier said:

> We are going to make it the law of the land in South Australia to make budgets tell the truth, so there will be no more cooking of the books. It will be the law of South Australia that we have to reveal

what is really going on inside the budget and in terms of the state of the state's finances.

There are numerous other sickening examples of the rhetoric that has been used by this Premier and this Treasurer to portray inaccurately the practical reality and the impact of the legislation that is before the parliament. No-one would oppose budget honesty, or a charter of budget honesty, or honesty and accountability in government. However, as some of my colleagues have stated in some of the other supposedly responsible honesty and accountability legislation, careful consideration of exactly what the legislation achieves compared with the claims that are made by the government and its ministers shows that they are a long way apart.

During committee we will have a greater opportunity to go through the detail of some of the provisions of the bill, and I will not address all of them in this second reading debate. In committee we will seek greater detail on the charter of budget honesty as to what is intended by the government to be the principles on which the charter is to be based and the matters to be included in the charter, which will be important issues. I will leave that detail to the committee stage, but I want to make an overall comment about the preparation of the charter as to what, in reality, it will offer that is different from what we already have.

A charter will have to be produced within three months of the passage of this legislation, but henceforth it will be within three months after a state election. The election will now be legislated for the third week of March and, if one assumes that the election will be declared within a week or two weeks at the most of that, at the start of April, it means therefore that the charter of budget honesty will be released some time at the end of June or the beginning of July. This year the budget was released in July. I understand that the Treasurer has been quoted as saying that next year's budget will be released in May, so we will have a charter of budget honesty being released at almost exactly the same time as the first budget after a state election.

The point that I have made in discussions with my colleagues is that there is not much that is covered in charters of budget honesty that could not be covered in the budget statements. In latter years we have received some five or six volumes of budget papers which outline the fiscal principles that governments believe they would like to follow. Last year's budget, under the former Liberal government, outlined a number of those principles, as did previous budgets. This year's budget from the new government outlined its principles, and so the question that needs answering is this: given that the budget documents will come out roughly three months after the next state election, what will be included in the charter of budget honesty at the same time that will be different from the information either: (a) already included in budget documents; or (b) that could easily be incorporated in a budget document?

Certainly the debate in another place did not shed any light in practical terms on that. We have seen the wordy rhetoric in the bill and we have heard the wordy rhetoric from the Premier and the Treasurer which, as I said, when one reads the bill bears no resemblance to what is in it, so the reality for the committee of this chamber, because we have the time and the willingness to explore these issues in detail, is to hear from the government and Treasury advisers exactly what will be included in the charter of budget honesty that has not already been included in budget papers, or could have been included in such papers by way of amendment.

I do not think too many members would want to read this, but I recommend the paper that was produced by Treasury in 2001 called the 'Review of alternative fiscal responsibility models in Australian and overseas jurisdictions', for those who are not sleeping well at night, prepared by the very capable officers within the Fiscal Strategy Unit of the South Australian Department of Treasury and Finance. It was evidence provided to the Economic and Finance Committee.

I refer to the executive summary of that report. I will not quote all of it (to the delight of members, I am sure), but this was Treasury's assessment of fiscal responsibility legislation:

> The South Australian government currently meets most of the fiscal reporting requirements established under other jurisdictions' fiscal responsibility legislation and, therefore, broadly captures the benefits outlined above without the legislative requirement.

So, the Under Treasurer made quite clear that most of the fiscal reporting requirements that had been established under other jurisdictions' legislative provisions were already being captured in South Australia without the legislative requirement. During the committee stage I will be wanting to explore with the government and Treasury advisers what specific provisions were not being captured within the fiscal reporting requirements of the South Australian jurisdiction that are now going to be caught up and provided for in the bill that we have before us. I say advisedly that there is clearly one difference, and that will be the provision of a pre-election statement, about which I will say something.

The Hon. P. Holloway: It is the most significant part of this bill.

The Hon. R.I. LUCAS: We will have a close look at that, and also look at the practical implications. I acknowledge that the pre-election statement is a new provision but, with the exception of that provision, what else is being recommended that is not already being done or could easily have been done in a slight amendment to existing budget documents? During the committee stage, I will go into some detail of the pre-election budget report on state finances, but I also want to address some of the issues during the second reading debate. At this stage I want to move quickly to the timing issues that relate to the pre-election report.

Members will recall that at the start of this year the mid-year budget review was produced by Treasury in accordance with the way it was produced in previous years and consistent with national principles, and released part-way through the election campaign. As I indicated previously, it is normally released some time in mid to late February. Because of the election, I specifically asked for it to be brought forward so that it could be made available publicly prior to the state election. Treasury did undertake that task and was able to bring it forward and publish it publicly prior to the state election.

Under this bill, the Under Treasurer is to be asked to prepare and publicly release a pre-election budget update report within 14 days after the issue of writs for a general election. This will mean that, if an election is on the minimum possible time frame, which is some 25 or 26 days, the budget update report will be released some 11 or 12 days prior to the state election.

Given that we know that the election will be conducted in the third week of March, that means that in approximately the first week of March the pre-election budget update report will be released. I remind members of what I said a few moments ago, namely, that the mid-year budget review is actually released in around the third week of February. We are going to have a mid-year budget review being produced in the third

week of February, possibly just prior to the announcement of the election or maybe on the opening day of the election campaign, and then 14 days later we will have the pre-election budget update report.

I think one of the potential impacts of this legislation will be to leave the Under Treasurer in a very difficult situation. The mid-year budget review will be produced and released just prior to the election, and should the Under Treasurer, just two weeks later, release a pre-election budget update report which is different to the mid-year budget review released by the Treasurer then should that Treasurer and the government be re-elected, particularly knowing this government and Treasurer, I would not hold my breath if I was the Under Treasurer.

The Hon. J.F. Stefani interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Stefani says that he will get the chop. I do not know about that, but I would not like to be the Under Treasurer in those circumstances where a week prior to the election the Treasurer releases the mid-year budget review, and then two weeks later the Under Treasurer releases a pre-election budget update report which is different to the Treasurer's mid-year budget review.

One would obviously be asking the question as to why that might be the case but, as I said, certainly this government and this Treasurer have not been known for their loyalty to senior public servants, and I think it is fair to indicate that they have cut a swathe through senior public servants. In fact, prior to the election, they nominated publicly the senior CEOs that they were going to give the chop to.

In my view, it certainly places the Under Treasurer in a very difficult set of circumstances. Clearly, if the current Treasurer was not to be elected and the pre-election budget update report which had been produced and perhaps was consistent with the mid-year budget review released by the Treasurer two weeks before, if they knew the incoming Treasurer was to see that they were consistent and that the pre-election budget update report had not taken into account certain cost pressures along the lines that this current government and the Under Treasurer raised publicly in relation to the black hole report of 14 March consistent with the way that particular document was put together, then possibly a new government and possibly a new Treasurer would not be very happy that the Under Treasurer had produced a document for the next election in a fashion which was entirely different to the way the document had been produced for this 14 March supposed black hole claim that had been put together.

The Hon. Mr Holloway says that this was the main feature of the bill. I do not believe that he and other ministers have thought this through, and they may not be concerned as to the potential dilemmas that there might be for under treasurers in relation to this. They have other concerns in terms of what they have been told about the state of the budget and, as I have learned from a couple of their colleagues, the more they have learned as this period has gone on, the more they have queried what they were told by certainly the Treasurer in the first weeks after this government was elected in relation to the supposed position of the budget and the supposed existence of a budget black hole; and there is more to come out on that.

This Treasurer, the most secretive Treasurer we have ever seen, has been fighting FOI requests for months, but I am told that the noose is slowly closing around his neck and he will be required to release some information soon that will cause him some considerable grief in relation to some of the statements that he made to his own ministers about what he was told about the state of the budget. That is the set of circumstances we will have after this next election, and the Under Treasurer will be in an invidious position as to whether his pre-election update report will be either consistent or inconsistent with the report that the Treasurer releases in relation to the mid year budget review.

I will just expand on that. As members will know (and I can assure the government and Treasury officers that this will be an issue that we will explore during the committee stage of the bill), the process through which this government and the Under Treasurer produce the statement of 14 March will need to be explored in great detail as to whether or not that is how the Under Treasurer intends to produce the pre-election budget update report. I want to refresh members' memory of this infamous document of 14 March, which included the following statements under the heading 'Cost pressures'. This memo, from the Under Treasurer, states:

> We have included cost pressures where in our view it would be very difficult to avoid incurring some additional expenditure either because of the practicalities of the situation or our perception of what is likely to be politically acceptable.

The next page states:

> Treasury and Finance expects that hospital deficits in 2001-02 are likely to be unavoidable in practical terms, and restricting expenditure in later years may be politically unacceptable.

I have indicated—and I do so again—that the way that document of 14 March was constructed is completely unacceptable. However, given that the Under Treasurer constructed the document of 14 March in that way, the question that goes to the government—and it refused to answer it during the appropriation bill debate—and to the Under Treasurer, frankly, is whether, given that that is the way he considered a Liberal government's budget, he will be applying exactly the same principles to this Labor government at the time of the next state election.

The Hon. P. Holloway: You'll have to apply the principles that are set out in the act.

The Hon. R.I. LUCAS: The principles will allow that, so it is a question of whether he will or he won't.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: The principles are ambiguous, and he can either do or not do that. The question that needs to be answered—and we will only know this at the time of the next election and soon afterwards—is whether the Under Treasurer will apply exactly the same principles to the provision of an equivalent document to the 14 March document, that is, whether he will make judgments of what is likely to be politically acceptable. By way of example (and this is the one about which I was most concerned), the Under Treasurer and Treasury were specifically advised that the overspending agencies of health and education were to be required to repay their overspending over a four year period, and there was a cabinet decision to support that. There was a Treasurer's direction to do it, but the Under Treasurer made a judgment about what was politically acceptable or unacceptable and included that in the 14 March budget update.

Given that the Under Treasurer will now make these decisions independent of political interference—so the legislation provides—the question for the Under Treasurer, given that he has established that precedent—and, as I said, from my viewpoint that precedent should never have been established by the Under Treasurer—it is now open, transparent and accountable as to whether or not the Under Treasurer will apply exactly the same principle to the Labor government when it comes—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: The honourable member cannot direct. The Leader of the Government says he will do this or that. This legislation provides that he himself will make the judgments. It is not a question for the Leader of the Government—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: It is not a question for the Leader of the Government at all. Under this legislation, the Under Treasurer, without political interference from the Leader of the Government, the Treasurer or anyone else, is required to produce this report. What the opposition will be watching with much interest, I can assure the government and Treasury officers, is whether exactly the same principles will be applied to a Labor government as the Under Treasurer applied to the outgoing Liberal administration. That is why I think this is, again, placing the Under Treasurer in a difficult set of circumstances. The die has been cast.

The Hon. P. Holloway interjecting:

The ACTING PRESIDENT (Hon. J.S.L Dawkins): Order! The Leader of the Opposition has the call. The minister is out of order.

The Hon. R.I. LUCAS: The Leader of the Government said that he was asked to provide certain information by the Treasurer. I am glad that interjection is on the record because, up until this date, the Treasurer has denied that that was the case. I am pleased that the Leader of the Government has now put on the record that the Under Treasurer was asked by the Treasurer to provide certain information. That is contrary to what the Treasurer has been maintaining for some six months. The Treasurer has maintained—

The Hon. R.D. Lawson interjecting:

The Hon. R.I. LUCAS: Well, the Leader of the Government has let the cat out of the bag as a result of his discussion with his confidante, close friend and colleague, the Treasurer. He has now let out of the bag the fact that what the Treasurer has been saying in relation to this is not accurate and has not been accurate at all. As the Leader of the Government indicated earlier by way of an out of order interjection, this is the most critical part of the legislation, that is, the pre-election budget report.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: It will place the Under Treasurer right in the political spotlight.

The Hon. P. Holloway: As it did in Western Australia.

The Hon. R.I. LUCAS: I do not know whether it did in Western Australia. Certainly, the issue did. I am not aware of what happened to the Under Treasurer over there. I do not know the personal circumstances of the Under Treasurer and officers over there. What did not occur in Western Australia was that the Under Treasurer prior to that had written a document, which was then released publicly by the Treasurer and which indicated the document had been produced on the basis of his perception of what is likely to be politically acceptable. That is the matter about which the opposition, and certainly I as shadow treasurer and former treasurer, has most concern.

This issue should not be an issue of political acceptability judgments being made by Treasury officers. It ought to be on the basis of information which is available and which is known, and there must be some threshold level which would allow the Under Treasurer to make a judgment that a particular cost pressure is known with such a degree of certainty that there is no way around it. That was certainly not the case in relation to overpayment by government departments.

You have a situation where an Under Treasurer, having been directed by a Treasurer not to do something and having a cabinet decision telling the Under Treasurer not to do something, then saying in the 14 March document that he believed it was politically unacceptable for the government and the Treasurer to do what they were doing and then adjusting the books accordingly. As I said, if that is the way the books are to be produced for one government, the Under Treasurer will have to do exactly the same thing for this government.

If that is true, come the next election there could be a set of circumstances—one would trust—where cabinet makes a decision that an agency is not to get money for a particular spending priority or cost pressure, the current Treasurer has directed the Under Treasurer that that agency must repay that money over the next four years by deductions against their forward estimates, and the Under Treasurer (contrary to the Treasurer's direction and cabinet decision—to be consistent with the way this bodgie black-hole document has been produced by this government) will obviously need to overrule both the cabinet and Treasurer's directions and produce, in the pre-election budget update, a differing viewpoint in relation to what might have been signed off by, say, the Treasurer in the mid-year budget review just some two weeks prior to that.

As I said, most of what will need to be done will need to be done in committee. In my second reading contribution I did want to outline those broad principles about which we have some concern. I leave a question for the Leader of the Government. As I said, in a number of statements the Premier has indicated that, if it does not follow honesty and accountability in government legislation, tough fines will apply to the government. I seek advice from the government as to what specific provisions in this legislation would lead to the Treasurer or the Premier being fined for not following any provision within this legislation. Certainly, the claim made by the Premier is that the government faces tough fines if the legislation is not adhered to. I would seek that specific advice when we reach the committee stage.

The Hon. R.K. SNEATH secured the adjournment of the debate.

ADJOURNMENT

At 10.43 p.m. the council adjourned until Wednesday 13 November at 2.15 p.m.