LEGISLATIVE COUNCIL

Monday 18 November 2002

The PRESIDENT (Hon. R.R. Roberts) took the chair at 2.15 p.m. and read prayers.

CROCKER, SIR WALTER, DEATH

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): As Leader of the Government in the Legislative Council, I move:

That the Legislative Council expresses its deep regret at the recent death of Sir Walter Russell Crocker KBE, formerly Lieutenant-Governor of South Australia, and places on record its appreciation of his distinguished public service, and as a mark of respect to his memory the sitting of the council be suspended until the ringing of the bells.

I move this condolence motion to mourn the passing and celebrate the life of a great South Australian. Sir Walter Crocker KBE CBE, former Lieutenant-Governor of South Australia and senior Australian diplomat, died late last week at the age of 100 years. Sir Walter's life stands as a shining example of public service and outstanding leadership. Appointed Lieutenant-Governor by the Dunstan government in 1972, Sir Walter held that office for nine years. This role was the culmination of a career spent in the service of Australia and the world community.

Sir Walter was born in 1902, coming from a pioneering family which settled in South Australia in the 1840s. He was brought up on a property near Terowie, attending Peterborough state school until the age of 14 years. After gaining his matriculation with the assistance of a tutor, Sir Walter went on to study at the universities of Adelaide, Oxford and Stanford.

During World War II, Sir Walter became a lieutenant colonel in the British army, and was awarded the French Croix de Guerre and the Belgian Odre du Lion. At the end of the war, Sir Walter joined volunteers, called for by Lord Casey, then Governor of Bengal, to carry out relief measures along military lines during the great famine then ravaging that part of India.

In 1946, Sir Walter was invited to set up and head the Africa section in the newly established United Nations secretariat in New York. He joined the diplomatic corps in 1952. Sir Walter was ambassador and high commissioner to many nations in his 18 year diplomatic career, including India, Canada, Indonesia, Ethiopia, Uganda and Kenya.

Sir Walter has been described as a man 'ahead of his time', and in 1972 signed the famous 'Myer letter', which called for a change of government at that year's federal election. According to journalist Stewart Cockburn, Sir Walter was denounced in the early 1960s as a 'crypto-communist' for advocating the diplomatic recognition of Mao Tse Tung's China. In an interview with Stewart Cockburn in 1982, Sir Walter described, quite presciently, the future of world affairs, saying:

My fear is that we shall be lucky if we are here in 20 years' time. By 'we' I mean the bulk of the human race. . .

There's a terrible flaw in man's character. He cannot, or will not, work out a sensible system of international relations which, it has become increasingly obvious for a century or more, this one world requires.

He pays lip service to international institutions such as the defunct League of Nations and the scarcely flourishing United Nations Organisation, in both of which I happen to have worked, dedicated to the ideals of collective security. Yet, for reasons of crude nationalism, or modern tribalism as you might call it, he refuses to surrender enough of his national sovereignty to make such institutions work.

Sir Walter's legacy can be a renewed understanding of our place in the world community, especially as we as Australians face a future in which we are not immune from attack. Sir Walter's life should be remembered as one of service and courage. He has been described as a radical with a sense of form, and his service to the local community, along with his preparedness to speak out on issues of global importance, provide an example not only to members of the political community but to all South Australians. Sir Walter Crocker is survived by two sons, Robert and Christopher, four grandchildren, his nephew, John, and his two children. Our sincere condolences go out to them.

The Hon. R.I. LUCAS (Leader of the Opposition): I rise on behalf of Liberal members to support the comments made by the Hon. Mr Holloway. Sir Walter Crocker was indeed a distinguished South Australian and a distinguished Australian. As the Hon. Mr Holloway has indicated, his impact was felt not only in his role in public life in South Australia but internationally as well. The Hon. Mr Holloway has referred to the statements made by Stewart Cockburn. A number of members have been provided with a copy of the article that Stewart Cockburn wrote about Sir Walter Crocker in the *Advertiser* at the time of his retirement after his period of nine years of service as Lieutenant-Governor. The article is headed 'A gentleman without labels'. Stewart Cockburn began his article with the following statement:

It is a measure of the richness and complexity of his character that Sir Walter Crocker has defied all efforts to stitch neat labels on him.

As the Hon. Mr Holloway has said, during Sir Walter Crocker's period of public service, those who agreed with his views endeavoured to stitch some favourable labels onto him and those who just happened to disagree with his views on particular issues at the time tried to stitch some unfavourable labels onto him, but nevertheless, through all that, certainly he was highly regarded and well respected by the majority in the community.

When he was appointed as Lieutenant-Governor—I think it was the then afternoon newspaper, the Adelaide *News*, interviewing Mr Walter Crocker (as he was then in 1973)—Mr Crocker was quoted as saying that he definitely did not see himself as succeeding Sir Mark Oliphant as Governor of South Australia, and that he did not intend to be a controversial Lieutenant-Governor. He said:

My role will be simply to deputise for the Governor when he is away. I see no turning away on the part of the public from the post of Governor. The present Governor has received as much public interest and respect as Governors of my youth.

During that period of the 1970s, I was not in parliament but I was working in politics and certainly a number of the senior members of the then Liberal opposition had a fair amount to do with Mr Crocker, later Sir Walter Crocker, during that particular period, and certainly their commentary on Sir Walter Crocker mirrored the statements in the summary that Stewart Cockburn wrote in his *Advertiser* article at the end of the nine years of service.

In addition to the distinguished diplomatic service that Sir Walter Crocker provided in many different countries, some of which was mentioned by the Hon. Mr Holloway, his service extended through a number of community organisations, including his service to the education sector, in

particular in the higher education sector. He was an acting vice-chancellor of the ANU in 1951. He served in a number of capacities in the higher education sector and in a number of other community organisations, including the Australia-China Association to which he provided distinguished public and community service as well.

Liberal members in this chamber join with the Hon. Mr Holloway and members of the government in acknowledging Sir Walter's many years of distinguished public service, and our thoughts and sympathies are with his family and friends on this particular occasion.

The Hon. IAN GILFILLAN: On behalf of the Democrats I indicate support for the motion. I am doing so because I, in fact, did know Sir Walter through connections primarily with the Parklands Preservation Association, of which he was the founding patron and a strong supporter. I could not help but reflect that at his funeral at St Peter's Cathedral this morning he had specifically asked for no eulogy, which is very reflective of the humility of the man. I would say that he is one of the most outstanding people that we as South Australians have had in his contribution over his very long life. It also brought home rather starkly the serious disadvantage of living to 100, in that very few people are still alive who knew him in his prime and who could really relate first-hand the magnificent contribution he made in so many fields. So, for this record, we have to revert to what has been written decades ago.

Sir Walter was never one to boast of his achievements. He was always the most enthusiastic and interested conversationalist. I met him and had some quite interesting conversations when he lived adjacent to the East Parklands, conversations which stimulated my enthusiasm again for protecting the Parklands. He then moved to the Grange, so it was a little further to visit him. However, I was one of many people who visited him not as a sense of duty but as an extra area of pleasant company and stimulating conversation which was rewarded by a cup of tea, which he insisted on preparing himself. When he lost his reading vision about three years ago, that was a fairly hazardous occupation, but it only added to the nuance of the situation—to have varying amounts of milk in the tea poured by Sir Walter. I doubt whether any other members have, and it is a rare honour to be able to share that with the chamber. On behalf of the Democrats and on my own behalf I am pleased to put on the record that it has been a privilege to know Sir Walter, and I am very pleased that we are acknowledging one of the great South Australians.

The Hon. SANDRA KANCK: I did not know Sir Walter, but he was a member of Sustainable Population Australia, of which I am the South Australian president. Clearly, he was a man with a very active mind. When our last newsletter came out just a couple of months ago, he wrote a letter to the editor praising the organisation for getting it right on this issue and, at the same time, expressing his criticism of the ABC for failing to deal with this issue. At the time that he suffered his recent stroke SPA was in the process of organising to meet with him, to interview him and put an article about him into our newsletter. Even after he had had the stroke, he made contact and said that when he had recovered, he would still be eager to do that interview. It is very clear from what we have heard today that this was a man who thought very much in terms of the big picture, whether it be about diplomatic relations with China, the Adelaide parklands, or the need for Australia to limit its population.

The Hon. A.L. EVANS: On behalf of Family First I would like to add my comments. I also did not know him, but I am always inspired by a South Australian who comes from an area that is insignificant perhaps and yet who breaks through onto the world stage. Hearing the comments today and reading of his past elsewhere, it is always a challenge for the rest of us to rise above what we could have been to something that really impacts on our society. South Australia has lost a great man, but he has left an example for others to follow.

Motion carried by members standing in their places in silence.

[Sitting suspended from 2.31 to 2.45 p.m.]

PAPERS TABLED

The following papers were laid on the table:

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

Reports, 2001-2002—
- Attorney-General's Department incorporating the Department of Justice
- Commissioner for Consumer Affairs
- Legal Practitioners Conduct Board
- Listening Devices Act 1972—Vide section 6B(1)(c)
- Passenger Transport Board
- Public Trustee
- Report to the Attorney-General—Claims against the Legal practitioners Guarantee Fund
- South Australian Equal Opportunity Commission
- Suppression Orders—South Australia—Report to the Attorney-General made pursuant to Section 71 of the Evidence Act 1929
- Telecommunications (Interception) Act 1988—Vide Section 6(c)
- TransAdelaide

Statistical Returns for the South Australian General Elections—9 February 2002—State Electoral Office—Report.

INDUSTRIAL RELATIONS REVIEW

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I table a ministerial statement on the report of the review of the South Australian industrial relations system made by the Hon. Michael Wright in another place.

The Hon. Diana Laidlaw: Does it say which one the government is rejecting?

The Hon. T.G. ROBERTS: It doesn't go that far, I don't think.

SALISBURY LEVEL CROSSING ACCIDENT

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I table a ministerial statement on the tragic rail crash at Park Terrace made by the Hon. Michael Wright in another place today.

CRIMINAL LAW (UNDERCOVER OPERATIONS) ACT

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I table a ministerial statement on the Criminal Law (Undercover Operations) Act 1995 made by the Hon. Michael Atkinson in another place.

QUESTION TIME

OFFICE OF ECONOMIC DEVELOPMENT

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the minister representing the Deputy Premier a question on the subject of the Office of Economic Development.

Leave granted.

The Hon. R.I. LUCAS: Members will recall that, prior to the election, the then Labor opposition promised to abolish the Department of Industry and Trade. Soon after the election, that policy was transformed into a policy of renaming the department as the Office of Economic Development. I have been contacted by a number of people in the past couple of weeks indicating concern that, some eight months after the installation of the new government, virtually none of the senior executive positions have been confirmed in the Office of Economic Development.

Members will recall that, soon after the installation of the new government, the government announced the first restructure of the Department of Industry and Trade into the Office of Economic Development, and the new position of Chief Executive Officer of the Office of Economic Development was filled with the appointment of Dr Roger Sexton. The two levels of appointment beneath that were circulated to departmental staff, namely, chief operating officer and strategic investment coordinator and, at the level below that, nine senior executive positions were listed for the proposed Office of Economic Development. I am told that nominations were called for all those positions, and with the possible exception of one or maybe two of those 11 positions, virtually all of them remain unfilled some eight months after the installation of the new government.

I am now told that the government, even before it has actually implemented the first restructure of the Office of Economic Development, is now about to embark on a second restructure, or a restructure of the first restructure that was never actually implemented. I am told that that restructure will mean different levels of executive positions, and that all those persons who have already been through a nomination process for the first restructure of executive positions may well have to choose either to go through it again or to give up in despair.

People who have contacted me in the last couple of weeks have indicated that morale within the Office of Economic Development is at an all-time low. They have indicated to me that a number of hard-working senior and middle level officers within the department are now contemplating taking packages or leaving the department. A number of them certainly have indicated that they feel undervalued by this new government and the new structure, and a number of them feel that their skills are not being utilised at all under the new structure. In fact, one particular commentary was put to me as follows:

> This establishment of the new Office of Economic Development is a mess and neither Foley nor Sexton know what is going on at all.

My questions to the minister are:

1. Will he confirm that, eight months after the government was elected, the vast majority of senior executive positions in the critical department or Office of Economic Development have still not been filled by this government?

2. Will he confirm that the first restructure, which as I indicated would result in there being a chief executive, two executives underneath that, and at the next level nine senior executives, is now being scrapped and is to be replaced by another restructure? If so, will the minister indicate the reasons for the restructure of the restructure?

3. When does he believe that he will be in a position to ensure that all senior executive positions in the department or the office will actually be filled?

4. Can he confirm the suggestion within the office or department that it may well be that it will be into the second year of this government before all the senior executive positions are actually filled in the critical department of Office of Economic Development?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I will refer those questions to the Deputy Premier in another place and bring back a reply.

BIOTECHNOLOGY

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Agriculture a question about biotechnology in primary industries.

Leave granted.

The Hon. CAROLINE SCHAEFER: As I am sure is the case with many other members here, I was unable to ask some of the questions I would have liked to ask due to a lack of time during our questioning of the Auditor-General's Report. At the start of the Auditor-General's Report, there is a statement headed, 'Functional Responsibility and Structure', and I assume that, of course, is of Primary Industries. It states:

> The department is strengthening its capacity across the demand chain to enable the realisation of emerging market opportunities in the food, fibre, resource and energy sectors, including biotechnology opportunities derived from primary industries.

Can the minister outline how the department will strengthen these opportunities within the parameters of the budget? In particular, can he give examples of how he will be strengthening biotechnology opportunities, given his recent request to the federal government for a slowing of the use of genetic modification in grains technology in South Australia?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): First, in relation to the latter point made by the shadow minister, I have asked that those companies proposing to introduce GM canola at a commercial level hold off until the appropriate protocols are in place. I would have thought that most members of this parliament, and most members of the farming community for that matter, would agree that it is important that we have those proper segregation protocols in place before we ever contemplate the introduction of GM crops into this state. While there are great opportunities that can come from the introduction of GM technology—and I think it is appreciated widely that there is the potential for great benefits—there is also the potential to lose markets overseas, particularly given that GM technology has been used as a non-tariff trade barrier by some countries.

It is a fairly tricky issue at the moment, and, as I have pointed out on numerous occasions in answer to questions about GM technology, it is not so much the health and environmental impacts that will be looked at by the Office of Gene Technology regulator that are the problem but it is the market issues that are going to be the most difficult and crucial questions that we need to ask.

In relation to the first part of the question about biotechnology and primary industries, one example is that shortly

after it this government came to office it secured the funding for the Australian Centre for Plant Functional Genomics. The previous government had done some work on this, and I pay a tribute to the extent that it had done work to attract that centre to the state, but, of course, there was no funding for it.

An honourable member interjecting:

The Hon. P. HOLLOWAY: No provision had been made in the forward estimates for that particular centre. However, the government did secure the funding for that project. SARDI will be closely involved in the work done at that centre. Indeed, some of the money that was provided previously in relation to the activities of SARDI in the plant field will be integrated with the Australian Centre for Plant Functional Genomics. So, there are a number of ways in which SARDI will be advancing this state in relation to biotechnology. SARDI is, of course, one of the leading players in plant technology and, early in the term of this government, we were able to finalise details to establish Australian Grain Technologies (AGT), the new plant breeding company for this state, one of just three in this country, whereas previously there were 11. In SARDI we also have significant expertise in animal technology and, of course, that is an area where SARDI was able, some years ago, to breed Matilda, the first cloned sheep.

There are some significant skills within SARDI in relation to those areas, and the state will be advancing in those ways. My colleague, the Minister for Science, has already made statements in relation to the future of biotechnology. In fact, I notice another of my colleagues is circulating just today details of a seminar in relation to biotechnology, and I would advise members with an interest in this very important area to go along to that, and they can hear for themselves just what is being proposed in this area.

The Hon. CAROLINE SCHAEFER: How does the minister justify the statements we have just heard with regard to gene technology in South Australia with the letter signed by three of his colleagues prior to the election promising no GMs in South Australian to the conservation groups?

The Hon. P. HOLLOWAY: I am not quite sure exactly what the honourable member is referring to in her question; all I can say is that the policy that I have outlined in relation to crops is the policy on which the cabinet has made a decision in relation to responsibility for GM technology. My colleague the Minister for Health (Hon. Lea Stevens) is the lead minister in relation to the GT Council and matters regarding health; my colleague John Hill, the Minister for the Environment, has responsibility for matters that relate to the environment; and I, as Minister for Agriculture, Food and Fisheries, am responsible for issues relating to the market and crop growth.

The government has put considerable effort into addressing the issue of growing GM crops. As I have explained to the council on a number of previous occasions, there are certain requirements under the commonwealth Gene Technology Act with which we must agree. Health and environmental issues are determined under that act by the Office of the Gene Technology Regulator. There is a responsibility for the states in relation to the marketing issues to do with crops, and for the reasons outlined in previous statements this government has established a select committee of the House of Assembly to examine many of the issues relating to the marketing of GM crops, because at this stage of the GM debate I would suggest this is really where most of the complicated issues lie.

I am sure that that committee will contribute to the debate in this area, but a number of other studies are also being undertaken by the industry. The grains industry itself is currently conducting a major study in relation to segregation issues. A lot of work needs to be done in these areas before any of us would wish to give a green light to the commercial planting of crops which might have an irreversible impact on any future decision we might make in this area.

ELECTRICITY SUPPLY

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I lay on the table a copy of a ministerial statement made in the House of Assembly by the Minister for Energy in relation to the generation reserve outlook for the 2002-03 summer.

INDUSTRIAL RELATIONS

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs, representing the Minister for Industrial Relations, a question about the review of industrial relations.

Leave granted.

The Hon. A.J. REDFORD: Earlier this year, the Minister for Industrial Relations requested Mr Greg Stevens to undertake a review of the South Australian industrial relations system to be completed on 15 October. Last week, the review was made available to the public. In response, the government announced a review of the review recommendations or, as the minister said today, an assessment. This reminds me of a good scriptline in the ABC show *Yes, Minister* in that not only has the government announced a review of the review but the reviewer himself has recommended a review. In this case, I refer to the recommendation of the reviewer, Greg Stevens, that a review be conducted of sections 119 and 129 of the act. In this case, we have a review recommending a review which is being reviewed by the government.

The Hon. Diana Laidlaw: Do you think they know what they're doing?

The Hon. A.J. REDFORD: Well, the review groupies association has described it as an act of pure genius. On a serious note, we now run the risk that, while the recommendations are being put into a bill and the bill goes out for public consultation, employers and investors will put their plans on hold, jeopardising economic growth. An example of this is the recommendation that there be inserted in the act a broader definition of 'employee' and that some contractors be deemed to be employees. These are very important issues in the context of our industrial relations regime and the future of investment in this state.

In this respect some of the recommended measures have been adopted in Queensland, a state whose economic performance has plummeted over the past couple of years. In the light of this, my questions to the minister are:

1. When will the government respond to this review and advise which of the 35 recommendations it accepts and which it does not?

2. What is the estimate of the cost that South Australian taxpayers will incur if the recommendation regarding increased scrutiny of contractors is accepted?

3. What has been the increased cost to Queensland taxpayers as a result of the increased scrutiny?

4. How is this process any different from the alleged 'ad hoc nature of business done by the former government when

it comes to industrial relations' as promised to parliament by Minister Wright on 7 May this year?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer those important questions to the Minister for Industrial Relations in another place and bring back a reply.

The Hon. DIANA LAIDLAW: Will the minister say whether or not the report was taken to cabinet prior to the Minister for Industrial Relations announcing that the government would or would not accept some of the recommendations, or did the minister make that decision on his own?

The Hon. T.G. ROBERTS: I will refer that important question to the minister in another place and bring back a reply, knowing that he will not transgress the rules about information to cabinet.

WATER SUPPLY

The Hon. CARMEL ZOLLO: My question is directed to the Minister for Agriculture, Food and Fisheries. Can the minister inform the council whether the government intends to introduce restrictions on the use of water for agricultural purposes or for Adelaide residents in order to restore the water level in the lower Murray River?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): My colleague the Minister for Environment and Conservation has indeed indicated that we will not introduce restrictions this year. But the drought, which is making its presence felt right across this country, is starting to impact on the state's water resources and there is, of course, a strong likelihood that it will continue well into next year. Its impact on the lower Murray area of this state is particularly severe. I am advised by the Minister for Water Resources that the water level in the lower lakes has fallen to just 35 centimetres, a level not seen since it fell to 33 centimetres in 1983. This is the second lowest level on record, with the lowest being recorded in 1967 when the lakes' depth fell to just 11 centimetres.

There is no doubt that the drought, especially in eastern Australia, combined with massive extractions from the Murray River to aid irrigation, have made it harder for South Australia. If the government thought that water restrictions would solve our water problems, they would be introduced. However, we believe that water restrictions are not the answer at this point of time. SA Water has estimated that a ban on sprinklers and car washing could reduce demand by approximately 10 per cent but, even if we were to cut Adelaide's water use by 20 per cent, the water level in the lower lakes would rise less than half a centimetre and improve salinity by less than 1 per cent of a predicted salinity level of 1100 EC units as measured at Milang. A restriction of 20 per cent on irrigation diversions would also have a severe and dramatic impact on the viability of the state's major dairy, wine, grape and horticultural industries. The Department of Primary Industries (PIRSA) estimates that the potential cost of such a reduction this summer would be in the order of $30 million in lost production.

Such restrictions are not deemed necessary at this time because our state uses, on average, less than 9 per cent of its annual Murray River allocation of 1 850 gigalitres. Adelaide's consumption from the river ranges from 90 gigalitres to 165 gigalitres each year, depending on rainfall and other environmental factors. Extractions in 2002-03 are likely to include 220 gigalitres for irrigation purposes, 165 gigalitres for Adelaide's consumption, 10 gigalitres to supply regional towns and 800 gigalitres lost through evaporation. This means that five times as much water is lost through evaporation as is used by all of Adelaide. Because of the loss through evaporation, it is difficult to make a major impact on salinity and water levels in the lower lakes by introducing restrictions on the water supply without drastically affecting industry and regional South Australia.

I am advised that SA Water's prediction is that it will pump approximately 165 gigalitres from the Murray River for metropolitan Adelaide in 2002-03, which is very high because of the dry conditions in the Mount Lofty Ranges, but it is still within the Murray-Darling Basin cap for metropolitan Adelaide. If the drought persists, the state may have up to 30 per cent less water available next year. Conditions then will demand strong efforts to curb our water use and it is likely to include restrictions right across the state. The government will continue to urge all South Australians to be careful with their water use and will continue to negotiate with our upstream partners interstate to find ways of putting more water back into the Murray River.

ATTENTION DEFICIT HYPERACTIVITY DISORDER

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs, representing the Minister for Health and the Minister for Employment, Training and Further Education, a question about ADHD.

Leave granted.

The Hon. M.J. ELLIOTT: On 29 June 2000, the Australian Democrats successfully moved for a parliamentary inquiry into government services for an impact of ADHD on the South Australian community. This followed a DETE and DHS working party report into the disorder between 1997 and 1999, as well as the Department of Human Services task force investigation in 2001. The Social Development Committee inquiry brought together the findings of those working groups, submissions of international experts, departmental representatives and members of the public. One submission told of how a handful of mothers of children with ADHD were trying to run a statewide ADHD support group with no ongoing funding from the state government.

I remind members that the diagnosis and treatment of children with ADHD has risen from fewer than 100 South Australian children in 1991 to around 5 000 this year. The inquiry made some 12 recommendations, and on 5 June the government tabled an interim response to the inquiry, and in that, would you believe, established a working party to consider those recommendations. My questions are:

1. Given the many delays and the importance of every passing month in a child's development, will the minister inform the families of children with ADHD when they can expect a response from the ADHD working party?

2. Does the government intend to provide funding to the two ADHD support groups mentioned in the report? If so, what steps have been taken; how much funding is proposed; and when will it be available?

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

HUMAN SERVICES DEPARTMENT

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Social Justice, a question about administrative processes in the Department of Human Services.

Leave granted.

The Hon. A.L. EVANS: I recently received a brochure from the Department of Human Services concerning its special investigation program. The brochure outlines the roles of the special investigations unit and explains how the rights of the children and the carers are provided when there is need for an investigation to be undertaken. My questions are:

1. Where an appeal has been lodged by a carer, will the minister provide information as to the number of appeals that have ruled in favour of the carer?

2. Where the decision is in favour of the carer, does the department reimburse the reasonable costs of expenses incurred by the carer? If not, why not?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer those important questions to the Minister for Health in another place and bring back a reply.

HINDMARSH SOCCER STADIUM

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Recreation, Sport and Racing, some questions about the revenue received for the use of the Hindmarsh stadium.

Leave granted.

The Hon. J.F. STEFANI: In recent months, a private consortium held a soccer competition at the Hindmarsh stadium. The competition, which was organised over a period of approximately 10 days, was called the Adelaide Festival Cup. My questions are:

1. Will the minister advise how many matches were played at the Hindmarsh stadium during the festival cup series?

2. How many days was the Hindmarsh stadium used?

3. How much did the stadium management charge the organisers for each match played at the Hindmarsh stadium?

4. What was the total amount invoiced?

5. What is the amount which has been received?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer those questions to the Minister for Recreation, Sport and Racing in another place and bring back a reply.

The Hon. A.J. REDFORD: I have a supplementary question. Did the organisers receive any other funding from any other government source in relation to the festival?

The Hon. T.G. ROBERTS: I will incorporate that question in a list of questions to be supplied to the Minister for Recreation, Sport and Racing and bring back a reply.

FOOD SA

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about South Australian food promotion officers.

Leave granted.

The Hon. T.J. STEPHENS: In his report, the Auditor-General identifies 'new product development and marketing of information expertise' as one of the key responsibilities of the Department of Primary Industries. Along with advising the council of the total budget allocation for Food SA, can the minister advise whether Food Adelaide will be directly involved in the selection and placement of the two additional export officers to be located in London, China or Hong Kong? Indeed, will the officers still be appointed? Will these officers remain dedicated to the promotion of South Australian food products? If so, will they still have the same staffing and resourcing capabilities? If not, can the minister explain this change in funding priorities?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): Food SA, a unit within my department, administers a program that is carried out largely by PIRSA and also by the Office of Economic Development. A small component is also carried out by Transport SA. Those are the three agencies involved; however, the programs are delivered principally via the OED or PIRSA. In relation to the honourable member's questions about overseas officers, I will have to get that information from the OED. I do not have that information with me, but I will take those questions on notice and bring back a reply.

REGIONAL COMMUNITIES CONSULTATIVE COUNCIL

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Regional Affairs a question about the Regional Communities Consultative Council.

Leave granted.

The Hon. J. GAZZOLA: Previously, the minister announced that the Regional Communities Consultative Council will be formed to give him advice and feedback directly from the regions. I understand that a key part of the initiative is to ensure that the council has an independent chair and not a politician in the chair. Can the minister advise whether there has been any progress in the selection of a chairperson? When will the new body be operating?

The Hon. T.G. ROBERTS (Minister for Regional Affairs): I thank the honourable member for his important question and his interest in regional affairs. I indicated that we were working on it and, with prompting from the opposition, we are able to bring forward a reply, and that is what I am doing now. That is the role of government. I can announce that Mr Dennis Mutton has accepted my invitation to be the independent chair of the regional council. He was highly sought after and, certainly, he was not easy to get, because he is a very busy person. However, I am sure that members on both sides of the council will welcome that appointment. I was not able to make that announcement last week because we had to receive confirmation.

The Hon. Caroline Schaefer interjecting:

The Hon. T.G. ROBERTS: No, it is not that. We are not so well organised as to do two-part question and answers. There are many other areas that we have to wrestle with. For those who do not know, Mr Mutton is a former chief executive of PIRSA and therefore has a very good understanding of the workings of government. He will be a great advocate for and a supporter of regional South Australia. The other members of the council will be announced later this week and, as we speak, they are being notified. We are

finalising those appointments at this moment. The members come from a wide variety of backgrounds from all over the state. Some were on the former regional development council, and some are local government figures and representatives from community groups, churches and regional development boards.

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: I said I would consult. In the coming months, the RCCC will meet on the advice of the chairperson, and I anticipate that the council will meet approximately four times per year around the state. At each regional meeting of the council, as I have stated before, five local representatives will be invited to join key sessions to make the most of the visits in those regions. The activities will commence as soon as that is organised, and I look forward to meeting members of the opposition in their electorates and Legislative Councillors—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: There will be formal meetings that they will not be able to attend, but I think the invitation for the first meeting went to the shadow minister—

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: —and I am sure other members would like to attend. Unfortunately, once the formalised part of the programming is set up, the meetings will be closed to all but members and chairpersons only, plus invited participants.

TORRENS TRANSIT

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Aboriginal Affairs, representing the Minister for Transport, a question about Torrens Transit bus routes.

Leave granted.

The Hon. SANDRA KANCK: Under competitive tender for bus services, Torrens Transit operates one-third of the bus services across metropolitan Adelaide. The operators of Torrens Transit have grown the patronage on its services by 7 per cent since 2000. A recent public seminar organised by People for Public Transport was told that Torrens Transit has informed the government that, with a 1 per cent increase in its base funding, it would be able to achieve permanent growth on existing routes, but such funding has been refused.

The current operating guidelines under the Passenger Transport Board have put an effective freeze on growth and expansion of privately operated services. If Torrens Transit, for instance, wishes to extend its current service by one kilometre, it must scrap one kilometre of the existing route. Labor stated during the lead-up to the election that it would:

> Work with service providers, local government, industry, community and union representatives to increase public transport patronage by delivering accessible, affordable and efficient services.

It went on to say it would:

> Where required, review bus transport boundaries to ensure provision of fair treatment for public transport users.

My questions are:

1. Is the Labor government committed to increasing patronage of public transport in Adelaide? If so, why has it frozen any expansion of passenger transport routes in Adelaide?

2. As per the election promise, has the Premier appointed a high level cabinet committee consisting of the Treasurer, the Minister for Government Enterprises and the Attorney-General to examine every government privatisation lease or outsourcing contract? If so, has the committee investigated passenger transport contracts and ways to maximise use of passenger transport in metropolitan Adelaide?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer those important questions to the Minister for Transport in another place and bring back a reply.

The Hon. J.F. STEFANI: I have a supplementary question. How many times has the committee met, if any?

The Hon. T.G. ROBERTS: I will incorporate that question into the other questions and bring back a reply.

GOVERNMENT ANNUAL STATEMENTS

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation prior to asking the Minister for Aboriginal Affairs and Reconciliation a question regarding annual government statements.

Leave granted.

The Hon. DIANA LAIDLAW: On 3 June, I asked the minister the following questions:

> Will he confirm or deny advice that I have been given that this government has abandoned both the preparation and publication of the women's statement and the annual arts statement for cost cutting reasons, notwithstanding the government's alleged commitment to open, accessible and accountable government?

I highlight that both these statements were tried and tested tools by the former government and welcomed by the wider community as annual statements that were effectively an audit of agency activity across government to benefit women and to promote the arts and the work of artists by agencies in fulfilling their functions. I was told in a reply from the minister on 4 July the following:

> The Minister for the Status of Women will table the Women's Statement in parliament at a later date and copies will be posted on the Office for the Status of Women, the Women's Information Service and SA Central web sites.

I was also informed that Arts SA has been preparing the 2001-02 Arts Statement over the last few months, but the format and style of the publication is yet to be considered. Those statements were given to me in the parliament four months ago, so four months later I ask again:

1. Can the minister advise when the women's annual statement will be presented to the parliament, and what is the reason for the delay so far?

2. When will the arts annual statement be released to the parliament, and what is the reason for the delay to date?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will take those important questions on notice and refer them to the relevant ministers and bring back a reply.

PLANNING REGULATIONS

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Urban Development and Planning, a question on the planning regulations.

Leave granted.

The Hon. D.W. RIDGWAY: In the 17 October issue of the *South Australian Government Gazette* I noted a change in the planning regulations as follows:

Variation of Schedule 2

3. Schedule 2 of the principal regulations is varied by inserting after clause 1 the following clause:

1A.(1) Any excavation or filling (or excavating and filling) of land within the area of a council specified in the schedule to this clause which involves the excavating or filling (or excavating and filling) of a volume of material which exceeds 50 cubic metres in total, but not including the excavating or filling (or excavating and filling) of land—

(a) incidental to the ploughing or tilling of land for the purpose of agriculture; or

(b) incidental to the installation, repair or maintenance of any underground services; or

(c) on or within a public road or public reserve; or

(d) in the event of an emergency in order—

(i) to protect life or property; or

(ii) to protect the environment where authority to undertake the activity is given by or under another Act;

The district councils in which this regulation is enforced include the Coorong District Council, Kingston District Council, Naracoorte Lucindale Council and the District Council of Tatiara.

On further investigation, when you consider 50 cubic metres of excavation, housing blocks are affected by the limit of 50 cubic metres, as well as the common effluent drainage scheme in the Bordertown industrial estate. I installed a simple swimming pool in my property some four or five years ago, and we excavated more than 50 cubic metres of soil. In relation to clay pits, I am sure that the Hon. Mr Holloway would be well aware of the claying that is done on non-wetting sandy soils today, and, of course, a clay pit is vastly larger than 50 cubic metres. Of course, you can apply to have permission to excavate more than 50 cubic metres and obtain a licence granted by the South Eastern Water Conservation and Drainage Act.

My questions to the minister are: what was the intention of asking the South Eastern Water and Drainage Act Board to administer applications for housing blocks, common effluent drainage, swimming pools and clay pits? Why was this done, and when will the minister move to disallow this regulation?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will take those questions on notice and refer them to the minister in another place and bring back a reply.

The Hon. CAROLINE SCHAEFER: As a supplementary question, is it coincidental that the councils mentioned, as far as I can tell, cover exactly the same area that is to be debated under the bill for compulsory acquisition of drainage land in the Upper South-East drainage area and, if so, why is that?

The Hon. T.G. ROBERTS: I will refer that question to the minister in another place and bring back a reply also.

The Hon. J.F. STEFANI: As a further supplementary question, does this regulation apply to any other area in South Australia and, if so, which areas?

The Hon. T.G. ROBERTS: I will refer that question to the minister in another place and bring back a reply also.

HOME SAFETY AUDIT

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Health, a question about falls prevention.

Leave granted.

The Hon. IAN GILFILLAN: Falls are the leading cause of injury-related death and morbidity in older people. In 1997 there were 985 deaths in people over 65 years and 32 000 injuries resulting from falls. This was higher in 1998, with more than 1000 Australians aged 65 and over dying as a result of accidental falls and 50 000 episodes requiring hospital care.

There are many aspects to an effective strategy for the prevention of fall-related injury in older people. Aspects of an holistic approach to reducing fall-related trauma in older people would incorporate ensuring a safe home environment, for example, grab rails; non-slip floors; good lighting; maintaining individuals' muscle strength and bone density; encouraging appropriate medication management; and promoting regular eye checks.

One program that is currently running in Victoria is the free home safety audit. This free service, funded by the Office of Housing in the Victorian Department of Human Services, is a positive way of encouraging people to maintain their independence in their own homes with the support of family and friends. Quite clearly, this is recognised not only as a humane but extremely cost-effective way of ensuring that healthy older people stay out of hospital and in their own homes. The audits, which are conducted by Archicentre, assess risks to safety including risks of falls, fire, security, visibility and mobility. The audits also look at health concerns from dampness, ventilation, heating and cooling as well as amenity issues of structure and facilities.

Ms Christine Teichert, the South Australian state manager of Archicentre, suggested a similar program would be of great value to older South Australians. It does not currently exist in the state. My questions are:

1. Is the minister aware of the free home safety audit program in Victoria?

2. Does she agree that such a program would be of benefit to older Australians?

3. Will the minister adopt a similar program for South Australia?

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

OFFICE OF REGIONAL AFFAIRS

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Regional Affairs a question about the Office of Regional Affairs.

Leave granted.

The Hon. J.S.L. DAWKINS: It is now some months since the creation of the Office of Regional Affairs, incorporating the former office of regional development and certain sections of the Department of Industry and Trade. In that period of time the office has been operating under the stewardship of an acting director. Will the minister indicate when a permanent director of the Office of Regional Affairs will be appointed?

The Hon. T.G. ROBERTS (Minister for Regional Affairs): The Office of Regional Affairs has been operating with an acting director. The final interviews will be conducted some time in the next week or fortnight, but I can be more specific with a referred reply. I would hope that, after the final interviews with all applicants are conducted, a decision will be made.

ANANGU PITJANTJATJARA

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.

Leave granted.

The Hon. R.D. LAWSON: Mr Neil Bell is a former Labor member of the Northern Territory parliament and is currently a legal officer employed by the Anangu Pitjantjatjara. He has, this day, written to the State Electoral Commissioner complaining of the activities of the Minister for Aboriginal Affairs and Reconciliation at the annual general meeting of the Anangu Pitjantjatjara held on the 7th of this month. Mr Bell writes to the Electoral Commissioner as follows:

> . . . I request that you investigate the circumstances surrounding the division [which occurred at the meeting] and the subsequent secret ballot on the question of approval of the preselection process and behaviour of the minister. In my view, by his clear support of a subgroup of the members of Anangu Pitjantjatjara, he was exerting influence on the electoral process. I understand that, while the division was being taken, he said to Mr Alderman of your office [the office of the Electoral Commissioner] that the side he was supporting had won the vote and that it should be declared by Mr Alderman.
>
> At more or less the same time, the leader of the sub-group supported by the Minister, Gary Lewis, who was subsequently elected chairman of AP, was verbally and aggressively pressuring individuals to vote against the motion and at times physically forcing them to move to the left of the chair. . . The secret ballot was decided against the wishes of the Minister and his sub-group and the Executive Board was elected according to the pre-selection process supervised earlier by [the State Electoral Office]. However, the next vote, also by secret ballot, resulted in Mr Lewis winning the election as chairman. To what extent this result was affected and effected by the behaviour above described is a matter deserving of investigation.

Mr Bell poses the following questions:

> 1. Was bias shown by of the Minister for Aboriginal Affairs and Reconciliation in the [manner shown]?
> 2. Was there bullying and intimidation of AP members in respect of the voting procedures?
> 3. Was the voting at the annual general meeting free and fair?

My questions to the minister are:

1. Has he seen Mr Bell's letter to the Electoral Commissioner?

2. Is it true, as alleged in the letter, that the minister (by his behaviour) sought to influence the result of the election?

3. What does he propose doing about the letter from Mr Bell to the Electoral Commissioner?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): Yes, I have seen the letter. The letter was sent to my office, to the shadow minister—I understand a carbon copy was sent to you—

The Hon. R.D. Lawson: Yes, and one to Randall Ashbourne.

The Hon. T.G. ROBERTS: And one to Randall Ashbourne. I have seen the letter—

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: Did I seek to interfere in the ballot by my presence? I explained last week voluntarily (without questioning from Mr Bell) that I stood on one side of a line drawn during a ballot that was going to be an indicated show of hands or a public vote. I also reported to this council that I disagreed with that, given that the change of direction (from a public show of hands and a public display of support on such a difficult question regarding the people on the lands where continual division has been fostered since at least 1996 in relation to this issue) was going to be confusing. Subsequently, a secret ballot was held and scrutineered.

Regarding the second question of whether I interfered in the vote, I certainly did not. I had to make a decision about where I stood on that particular day. I decided to sit under a tree where it was as cool as it could get—the temperature was in the vicinity of 36 to 37°. Where many people had to stand or sit in the sun, it was probably well over 40°. I did not move from that chair for some considerable time, but when the vote was being taken I made my view known to at least one or two people who were conducting the ballot, but certainly not in the way in which the honourable member describes.

What will I do with the letter? I will request a report from the Electoral Commissioner, Mr Tully, or the electoral officer who conducted the ballot. I would certainly be interested in his report before I acted or did not act on any of the recommendations, depending on what they are, and I will certainly not make any predictions about that. However, I will look at the implications of Mr Bell's letter in relation to his accusations, because they are fairly aggressive accusations in relation to the outcomes. They are serious allegations and I think parliament deserves a full report.

The Hon. R.D. LAWSON: I have a supplementary question. Will the minister support a fresh election, untainted by outside influences?

The Hon. T.G. ROBERTS: As I said, I will wait for the outcome of the report of the Electoral Commissioner.

BICYCLES

The Hon. IAN GILFILLAN: I would like to make a brief explanation before asking you, Mr President, a question about bicycle parking.

Leave granted.

The Hon. IAN GILFILLAN: It is abundantly clear to anyone who rides a bike that in front of Parliament House there is no facility for reasonable parking of bicycles. We are in the process of encouraging more people in our community to commute by bike, and what better way is there to call on parliament, for various reasons, than by bike? I know consideration has been given to the storage and placement of bicycles inside the building by either members or staff. I ask you whether this matter has been raised, and, if it has not, will you please raise it with the intention of providing adequate, secure bicycle parking arrangements at the front of Parliament House?

The PRESIDENT: I thank the honourable member for the question. It is a matter that I have taken particular notice of myself. There are a number of people in the building who ride bicycles. It has been an ad hoc arrangement. It is something that I am personally concerned about. I have observed a number of times people riding bicycles in the building. There are some occupational, health and safety hazards with that. There is a need for a system for those people who wish to ride bicycles. It is a matter which I intend to take up with the Joint Parliamentary Service Committee so that we can come up with appropriate procedures not only for the storage of bikes but also for moving bicycles around within Parliament House. I shall bring back a further report after the JPSC meeting.

DISCRIMINATION LAWS

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Social Justice, the Hon. Stephanie Key, a question about a review.

Leave granted.

The Hon. A.J. REDFORD: I noted with some interest last week that the Hon. Stephanie Key announced a review to modernise discrimination laws. Coincidental with the attendance of the former United Nations High Commissioner for Human Rights, Mary Robinson, the government, in a joint announcement by the Attorney-General, Michael Atkinson, and the Minister for Social Justice, Stephanie Key, announced this review. In announcing the review it was described as:

> . . . an important step on the path to fulfilling the government's pre-election commitment to ensure all South Australians are protected against unjustified discrimination.

Indeed, it went on to state:

> The current laws will be examined to identify legislative arrangements that can be improved, providing more effective protection—including protection for same-sex couples.

I note in reading the lengthy Stevens report that I referred to earlier in question time that there were also significant aspects to that report which referred to discrimination and equal opportunity in the workplace and, indeed, a number of recommendations were made. The press release went on to state, in relation to a working group that would be put together, that it would prepare a framework paper for consideration by the two ministers. It goes on to state:

> The public will also be encouraged to comment on the paper. . . I expect that a draft framework paper will be available for public comment by mid 2003.

In the light of that, my questions are:

1. Does the minister agree that there has been some overlap and duplication in so far as a review of discrimination laws is concerned when one has regard to the extensive statements made in the Stevens report?

2. Who is to chair this review?

3. What is the difference between a draft framework paper and the framework paper for consideration by the two ministers, and why will it take some eight months to prepare a draft framework paper for public comment?

4. Will the same sex legislation in so far as superannuation is concerned currently before this place be deferred until members in this place have had the opportunity to consider the result of the review announced last week by the Minister for Social Justice and the Attorney-General?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer those questions to the minister in another place, but I would hazard a guess that it would be up to the manager of the business of the house to determine the way in which a bill proceeds or the way in which negotiations around a bill would proceed. But I will refer those questions to the Hon. Stephanie Key in another place and bring back a reply.

STAMP DUTIES (GAMING MACHINE SURCHARGE) AMENDMENT BILL

Bill recommitted.

(Continued from 12 November. Page 1244.)

Clause 3.

The Hon. P. HOLLOWAY: I move:

That it be a suggestion to the House of Assembly that it amend the clause as follows:

(New section 71EA), page 3, after line 14—Insert new definition as follows:

'family group' means a group of persons connected by an unbroken series of relationships of consanguinity or affinity;

(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 between members of the same family group by way of gift; or

(c) a transaction between members of the same family group for which there is no consideration of a commercial nature.

The committee will recall that when we debated this matter last week, there was some considerable discussion in relation to an amendment moved by the Leader of the Opposition to clause 71EF. During that debate, the Leader of the Opposition indicated that he might be prepared to look at part of that amendment in relation to the gifting provision. That amendment was accepted but there were, of course, a couple of members who were absent during that particular vote so I sought the recommittal of this clause so that further consideration could be given by the government to that matter.

The gaming machine surcharge is important to the government's budgetary position, and consequently the legislation needs to be passed. The government is still of the view that the legal effect of the proposed exemption for a transaction for which there is no consideration of a commercial nature in the current form, as it was in the leader's amendment which was subsequently passed last week, will cause difficulties in administration and provide scope for creating an environment in which the surcharge would not be payable. I made that point in earlier debates.

The government has given further consideration to the opposition's proposals and we have sought to come up with a compromise position which is included in the amendment which I have moved. I believe that this amendment will not significantly weaken the structure and effect of the surcharge. The government was concerned that any compromise to the surcharge to the extent proposed by the opposition may have had a negative effect on the revenue. However, considering the examples provided by both the Australian Hotels Association and the opposition, the government is of the view that, in relation to changed family circumstances, it is possible to reach that compromise position by restricting the further exemptions proposed by the Leader of the Opposition to transactions between members of a family group.

I point out that, in the current provisions of the Stamp Duties Act 1923, section 7(15) contains a definition of 'family group', which means a group of persons connected by an unbroken series of relationship of consanguinity (that is, connected by blood) or affinity (that is, connected by marriage). It is the government's view that restricting the opposition's proposal to this defined group will remove the impact of the surcharge in respect of the discretionary trust scenarios raised in the debate without seriously compromising the government's budget position, and consequently I would seek the support of the committee for my amendment.

The Hon. R.I. LUCAS: The Liberal Party's preferred position is the amendment that it moved. The government's amendment does endeavour to address the examples that the opposition and the industry highlighted as inadequacies of the current drafting of the legislation but, as I indicated in my

second reading contribution, there are a number of other aspects of the operation of these particular provisions, which, from the Liberal Party's view, will be onerous in their impact on family arrangements and company arrangements and which, as I said, will mean that, even when a hotel's associated gaming licences are not sold, the gaming machine surcharge provisions will be actioned.

Without going over all the detail, the set of examples provided by legal counsel to the opposition and to the industry have highlighted, in particular, the shape of family trust arrangements, and particularly those drafted more than five to 10 years ago. I am advised that contemporary legal advice has solved this particular set of problems, but the old family trust arrangements, as I indicated, had a situation where, for example, the hotel proprietor may well have in their trust arrangements specifically indicated family companies by way of name, and if those family companies need to slightly amend the names of the family companies, then the gaming machines surcharge provisions will be activated, even though the family or the hotel proprietor has not sold the hotel and associated gaming licences. For exactly the same reasons that we have highlighted the problems in relation to the family group arrangements, there will be exactly the same problem for a family in the circumstances that I have outlined.

I am told by lawyers experienced in this area of family trusts that the drafting of modern family trust arrangements incorporates provisions which talk about classes of companies, whether that be a class of companies that the particular family member controls or has greater than 50 per cent ownership of, or something along those lines, and does not specifically list the names of the family companies. The government's amendment will not address those particular problems, but it does at least address the concerns that the industry and the opposition have raised in relation to the family group arrangements.

I am advised that a number of members of this committee, although they have not spoken, have indicated their willingness to support the new government amendment as opposed to the amendment that passed the committee last week, and so, ever the realist, I will not delay the operations of the committee by dividing on it. However, suffice to say, we are at least pleased to see that the combined action of independent members, the opposition and the industry has meant that the government has given ground by moving this amendment, and that certainly is an improvement on the original drafting of the legislation.

It does not go as far as the Liberal Party would have wished, but we do not wish to delay the proceedings. My final point—and I know this has been the view put to members of the committee—concerns the inference that in some way the budget provisions would be jeopardised by this particular amendment. The government's advice on this has been entirely inconsistent. The government's original response was that very few of these examples ever see the light of day; that is, that Revenue SA very rarely (I think that was the phrase) sees these types of cases put before it for stamping. If one accepts that that is a true and correct record of the advice of Revenue SA to the government, then clearly there could not have been much in the way of any provisioning for revenue from the gaming machine surcharge arrangements in relation to this particular set of circumstances.

The subsequent advice to members has been that this would open up a loophole. As I said, that is inconsistent with the advice that was originally given. If the government had wanted to maintain the latter position—it does not have to now, of course, as the amendment will go through—it would have had to show (and it has not done so) how this provision would have opened up any loophole in the arrangements. Following questioning last week, and again today in the explanation, no specific evidence has been provided by the government from Revenue SA as to how these provisions would have led to any opening up of loopholes in relation to the stamp duty arrangements. The reason it could not was that the gaming machine surcharge arrangements are distinct and by themselves.

The stamp duty arrangements, as they relate to the sale of a hotel and gaming machine licences, as I discussed last week, are unaltered by the opposition's amendments. That particular piece of information was never rebutted by the government and its representatives, and the reason it was not was that it could not be. The drafting specifically catered for the stamp duty provisions to continue to be levied in the examples to which I referred last week. Even if there had been these sorts of arrangements, with changes in the family trust structures, I think that, in some cases, stamp duty of up to half a million dollars, and certainly a quarter of a million dollars, was going to be paid. What we were talking about was whether, in addition to the stamp duty arrangements, there was going to be a gaming machine surcharge as an additional impost over and above that.

As I said, the drafting did not allow in any way any changed interpretation of the gaming machine surcharge arrangements to flow over into the stamp duty provisions. Anyone who has (fortunately, or unfortunately) been exposed to stamp duty law will know that anyone who argues that it is entirely consistent in its application right across the board, from page 1 onwards, is delusional. The stamp duty law has been the result of decades of parliamentary and court decisions, and certainly no-one can argue that it is entirely consistent in application right across the board.

My time as treasurer for four years was full of advice from Revenue SA that highlighted the inequities and inconsistencies that had arisen as a result of the interpretation of stamp duty law by parliamentarians, parliaments and courts. We recognise the numbers, and we are grateful that there has been some improvement in the drafting of the legislation.

The Hon. P. HOLLOWAY: In concluding this debate, I wish to make a couple of comments. First, I omitted to mention that the General Manager of the Australian Hotels Association had written to the Treasurer in the following terms:

> I am writing to advise you that the Australian Hotels Association SA supports the government's amendment to clause 3 of the stamp duties amendment bill, which addresses our concerns in relation to family trusts. We believe the amendment is sensible and appropriate, and we would like to thank the government for deciding to amend the bill in such a way. Once again, we would like to stress that our aim was never to disrupt the passage of the bill. We have accepted that the government is committed to collecting the surcharge and are pleased that this issue has been resolved.

One other point I wish to make in response to the comments of the leader is that, as I pointed out in my remarks the other day, the government will monitor the legislative provisions to ensure that there are no unintended consequences. I also said last week that, with the complexities of the provision 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. So, there is the capacity to address those matters raised by the leader in his earlier remarks.

Finally, the leader says that stamp duty law is full of inequities and inconsistencies; I guess we will now have one more. I thank the members of the committee for their support, and I am pleased that this matter has, ultimately, been satisfactorily resolved.

Suggested amendment carried.

The Hon. P. HOLLOWAY: I move:

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 between members of the same family group by way of gift; or

(c) a transaction between members of the same family group for which there is no consideration of a commercial nature.

This amendment is obviously consequential upon the first, and I think I have covered the arguments adequately in my previous remarks.

Suggested amendment carried; clause as amended passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

NATIVE VEGETATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 October. Page 1146.)

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank honourable members for their contribution to the debate on this bill. I acknowledge that, despite some differences on the detail, honourable members generally support the bill. I understand that there are some amendments to come. This is a positive reflection of the support that is required for native vegetation in this state—something that other states would do well to follow.

The government recognises that this bill largely follows a bill introduced by the previous government in November last year. That bill was passed in another place but lapsed before it was debated in this place, following the change in government. The government has made some changes to that bill in order to further strengthen the protection of native vegetation. Again, it is a positive reflection of bipartisanship on this issue that opposition and independent members in another place have supported most of the changes.

The main differences in the detail still causing the opposition concern appear to relate to the maximum level of fines; the mechanism for securing an environmental gain, when gain is to be achieved outside the property where clearance is to occur; the appropriate court to hear administrative appeals; and the powers of authorised officers to collect evidence in relation to alleged unauthorised clearance.

I will make a few points in relation to these issues before the bill moves into the committee stage, where I understand that it will proceed only as far as clause 1. The government will continue to seek an increase in maximum fines for unauthorised clearance from the present $40 000 to $100 000. Only those who break the law will be liable for these fines. Our aim is to provide a greater deterrent for unauthorised clearance. Honourable members may be interested to note that the level of fines in the Western Australian clearance control legislation currently before their parliament includes significantly higher fines for clearance without a permit. These range from up to $250 000 for an individual and $500 000 for a body corporate. If the clearance causes significant environmental harm, the maximum penalty is $500 000 for an individual and $1 million for a body corporate.

The Hon. Caroline Schaefer has expressed concern that the proposed increase in fines under the Environmental Protection Act may be used in relation to unauthorised clearance. Under this legislation, the maximum penalty proposed for causing serious environmental harm is $2 million. It is conceivable that the level of unauthorised clearance that has occurred may be such that it would be more appropriately dealt with under that act; a major pollution spill could be a case in point. However, I can advise the honourable member that a person would not be prosecuted under both acts. It will be a matter for the prosecution to determine which legislation is the most appropriate to use.

The opposition has expressed a desire to reinstate the environmental credits scheme included in the 2001 bill as a means of securing environmental gain in return for clearance approval where this gain is not possible on the property where the clearance is proposed to occur. I advise the council that the government does not oppose the environmental credits per se. However, it is a new concept that has not been tried elsewhere in Australia and, as such, it is the government's view that the mechanism should be developed outside the legislation.

The government will continue to support the Environment, Resources and Development Court as the appropriate court to hear administrative appeals provided for by this bill. This ensures that all civil matters relating to this legislation are dealt with by the same court. The government will also continue to ensure that authorised officers have sufficient power to collect evidence in relation to unauthorised clearance.

The Hon. Mike Elliott has advised that he has raised some issues in relation to brush cutting and it is understood that the honourable member will move to amend the bill to include provisions for regulating controls on brush cutting. The government believes this is a positive move and it will support the honourable member's amendment. I thank members again for their contributions.

Bill read a second time.

In committee.

Clause 1.

The Hon. CAROLINE SCHAEFER: I merely wish to point out that the opposition supports probably over 90 per cent of this bill. We will vigorously defend the new environmental credits scheme and hope that some of our colleagues in this place will look at that as an innovative first for South Australia, as the minister rightly pointed out, and as a method of encouraging whole communities to become involved in the preservation of native vegetation in a positive way and in a commercial sense. So, we will be vigorously supporting that system. The two major clauses that we will have a great difference on is the right of a third party to intervene in legislation. However, there is considerable goodwill for the passage of the bill, and I look forward to debating it further.

Clause passed.

Clause 2 passed.

Progress reported; committee to sit again.

STATUTES AMENDMENT (STAMP DUTIES AND OTHER MEASURES) BILL

Adjourned debate on second reading.

(Continued from 22 October. Page 1147.)

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank the Leader of the Opposition for his contribution and for his support for the provisions contained in the bill. As I understand it, the honourable member has concerns with two main areas of bill: firstly, as it relates to the merger of financial institutions, where no legal document exists; and, secondly, in relation to the amendments to the Payroll Tax Act 1971, which deal with superannuation contributions. I will deal with each matter in turn.

The leader has asked for clarification as to why the stamp duty provisions, which he refers to as the Clayton's contract provisions of the Stamp Duties Act 1923, do not ensure that stamp duty is payable when two financial institutions merge. The provision that the leader refers to is section 71E of the Stamp Duties Act and was, as the leader suggests, introduced to prevent persons avoiding paying stamp duty by ensuring that no written agreement existed between them, even though property was in fact changing hands. The leader is interested to know whether it is possible for the merger of two financial institutions to occur without any written documentation between them.

I am advised that the mergers of financial institutions are provided for under the Financial Sector (Transfer of Business) Act 1990, which is a commonwealth act, and, in South Australia, the Financial Sector (Transfer of Business) Act 1999. I understand that, where two financial institutions voluntarily merge under the commonwealth legislation, the transfer of assets is given effect to by the issue of a certificate by the Australian Prudential Regulation Authority (APRA). Where there may be legal documentation between the two parties to the merger, the document that effects transfer of assets from the two bodies to the new merged body is the certificate issued by APRA.

The government has received advice from the Crown Solicitor that the certificate issued by APRA is an instrument for the purposes of the Stamp Duties Act and therefore section 71E does not apply to such mergers, as that section applies only to situations where transfers are effected without such an instrument. Further advice is that the APRA certificate is not a dutiable instrument under the general conveyance provisions of the act.

In answer to the leader's further question, Revenue SA advises that it is unaware of any case where financial institutions have merged their operations without any form of written documentation. Whilst two financial institutions may enter into a written understanding setting out their intention to merge their operations, such documentation is not liable to duty. The state and commonwealth legislation that facilitates such mergers provides that all the assets and liabilities of the transferring body become respectively the assets and liabilities of the receiving body, without any transfer, conveyance or assignment. Hence, any written document, apart from the APRA certificate, does not give effect to the transfer, conveyance or reassignment of any financial institution assets. The amendments to the Stamp Duties Act in this bill therefore operate to ensure that the transfer of assets effected by the APRA certificate are subject to stamp duty in the first instance by the insertion of a new section 71F into the act to deal specifically with such matters.

The second area in which the honourable member has sought clarification is the amendment to the Pay-roll Tax Act in relation to superannuation benefits. This is necessary as a result of the decision of the Supreme Court in the case of Hills Industries Limited v Commissioner of State Taxation. If I understand him correctly, the leader has asked for an explanation as to why the Commissioner of State Taxation and the government believe that the Pay-roll Tax Act should operate in line with the proposed amendments and, if the act were to be interpreted differently, what potential problems the commissioner might see either in this or other areas. I shall attempt to place on the record a simple explanation of the case and its possible effect on the payroll tax base.

In 1994 the then Liberal government introduced amendments to the Pay-roll Tax (Superannuation Benefits and Rates) Amendment Act 1994 that brought within the payroll tax base employer contributions to recognise superannuation funds. The second reading speech from the then treasurer said the reason for doing this was that employer contributions are a form of remuneration for labour, and it was therefore not appropriate for their payroll tax treatment to be different from other forms of remuneration. I am advised that wages and salaries paid in respect of employee contributions to superannuation schemes were then already included in the payroll tax base, and that the intended effect of the amending act in 1994 was to ensure that all superannuation contributions would be subject to payroll tax.

In the Hills case, however, the effect of the court's decision was that the payment of employer's superannuation contributions for employees where the relevant fund has assets in excess of expected future claims, and therefore did not need employer financial contributions for the fund to meet its obligations—a contribution holiday—did not constitute wages liable to payroll tax. I understand that this was the case even though employees had sacrificed part of their salary in favour of further superannuation payments from their employer. The relevant superannuation amounts were therefore part of the employee's standard wages yet were held by the Supreme Court not to be subject to payroll tax.

The judgment in the case itself is complicated and I am advised that the case turned on whether the crediting of members' accounts by the trustee of the fund in relation to the salary sacrificed wages was covered by the definition of a superannuation benefit contained in the act, even though the employer contributed no actual monetary payment to the fund on account of the fund's enjoying the contribution holiday.

Revenue SA advises that the Supreme Court held that the crediting of an amount to a member account did not constitute the payment of money to a superannuation fund or the setting apart of money as a superannuation fund mainly due to the fact that the assets of the funds as held by the trustee were not increased by the crediting of the amounts. The Commissioner of State Taxation and the government believe that the decision in this case has resulted in an unintended consequence that has undermined the relevant provisions—that is, most superannuation payments, whether they be employer or employee contributions, are subject to payroll tax whilst some other payments will not be, simply because a superannuation fund is enjoying a contribution holiday.

It is the government's view that the intention of the act is to bring into the payroll tax base all superannuation payments. In the Hills case, money that would have been paid to employees as normal wages was salary sacrificed and, as a result of the fund in question enjoying a contribution holiday, it was not subject to payroll tax. This clearly creates an uneven playing field which undermines the principle of a broad-based and equitable payroll tax revenue stream. I again thank the leader and other members for their indications of support for the bill.

Bill read a second time.

In committee.

Clause 1.

The Hon. R.I. LUCAS: I thank the Hon. Mr Holloway for his explanation on behalf of Revenue SA in relation to the questions that I put at the second reading stage. I again indicate the opposition's support for the legislation. I must say that I remain unconvinced or of an open mind in relation to our reasoning on the payroll tax issue. Nevertheless, in this particular area, I am cautious about making change without being absolutely sure that unintended consequences or loopholes are not opened. So certainly having heard at first flush the explanation from Revenue SA, I will reflect on it and further consider it. It may well be an issue we can debate again over the coming months or years, but I do not intend to delay the debate in this committee stage for that discussion.

Clause passed.

Remaining clauses (2 to 30) and title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

Adjourned debate on second reading.

(Continued from 21 October. Page 1132.)

The Hon. IAN GILFILLAN: I indicate that the Democrats will support the second reading of this bill. It is substantially the same bill as was introduced by the previous Liberal government. There are, however, some additions and subtractions. The bill is a wide-ranging piece of legislation which amends the following 12 acts: Acts Interpretation Act 1915, Administration and Probate Act 1919, Criminal Law (Sentencing) Act 1988, Domestic Violence Act 1994, Evidence Act 1929, Expiation of Offences Act 1996, Partnership Act 1891, Real Property Act 1886, Summary Offences Act 1953, Trustee Act 1936, Trustee Companies Act 1988 and Workers Liens Act 1893.

Amendments to the Acts Interpretation Act 1915 will remove ambiguity regarding the legislative provisions that refer to an act or part of an act. They also will include reference to a statutory instrument under that act or part of an act. The Administration and Probate Act 1919 is amended to require only Australian assets and liabilities of the deceased person to be disclosed where someone applies for administration or probate, or the sealing of any administration or probate granted by a foreign court. For the purposes of this bill, where the assets or liabilities are of unknown situation or are partly Australian then they are deemed to be Australian.

The amendments to the Criminal Law Sentencing Act 1988 deal with the situation where a person is unable to continue a community service order due to obtaining gainful employment. Particularly, it deals with cases involving multiple offences. The act is amended to bring the section into line with other parts of the act by adjusting the fine payment structure. There is a new amendment to the Domestic Violence Act which will expand the definition of the expression 'member of the defendant's family'. The new definition will include 'a child who normally or regularly resides with the defendant', as well as a child of whom the defendant. . . has custody as a parent or guardian'.

The forms of oaths and affirmations are brought into line with each other with amendments to the Evidence Act 1929. The bill also clarifies the situations in which enforcement orders under the Expiation of Offences Act 1996 can be appealed. Amendments to the Partnership Act 1891 seek to protect partners in firms from the wrongdoings of other partners. The chief secretary is to be replaced in the Public Assemblies Act 1972 and the Real Property Act 1886 by the Minister for Justice and the Attorney-General respectively. Amendments to the Summary Offences Act 1953 will allow fines of up to $2 500 for breaches of regulations under the act. This is particularly welcome because, as the Attorney-General points out, this will apply to the copying of video tapes of intimate and intrusive searches of detainees by police.

The proposed amendments to the Trustee Act 1936 involves the procedure for dealing with applications for variation of a charitable trust. The bill seeks to raise the threshold of the value of the trust in relation to who may consider the application. It simply increases the threshold from $250 000 to $300 000, meaning that where the value of the trust is less than $300 000, the application may be dealt with by the Attorney-General rather than the Supreme Court, as is the case of a charitable trust of greater value. This will be a substantial saving for numerous charitable trusts. There are minor name changes to be made in the Trustee Companies Act 1988 and there is a clarification of jurisdiction in the Workers Liens Act 1893.

So, Mr President, you can see that it is a hard-working little bill, determined to do good wherever it touches its legislative hand and, therefore, the Democrats will be supporting it.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): The support of the Democrats is appreciated by the government in relation to the Statutes Amendment (Attorney-General's Portfolio) Bill. I thank honourable members for their indications of support for making a number of minor, uncontroversial but nonetheless important amendments to the legislation within the Attorney-General's portfolio.

The Hon. Robert Lawson has asked three questions about the bill, two of which relate to provisions which, having been included in the former government's Portfolio Bill—which lapsed on the calling of the election—have been omitted from the bill that is now before the parliament.

Part 3 of the previous government's bill contains amendments to the Criminal Law Consolidation Act, firstly, to clarify provisions dealing with mental impairment and, secondly, to insert a power to make regulations. I can advise the honourable member that the omitted clauses have been included in the Criminal Law Consolidation (Offences of Dishonesty) Amendment Bill 2002. Given the subject matter of the amendments, it was thought more appropriate that they be included in a bill dealing specifically with the Criminal Law Consolidation Act. The second omission is that of the amendments to the Public Assemblies Act, to replace references to the chief secretary with the Minister for Justice. I am advised that at the time the 2001 bill was introduced to parliament by the former government, the Public Assemblies Act was committed to the Minister for Justice, the then Attorney-General. The act is now committed to the Minister for Police and, as such, the amendments cannot be pursued in the Attorney-General's Portfolio Bill.

The third question asked by the honourable member relates to clause 12 of the bill which amends section 10 of the Partnership Act. The honourable member has queried how an amendment which is, in his opinion, so significant can be included in a portfolio bill. It is not clear why the honourable

member questions the appropriateness of including clause 12 in the Portfolio Bill, given that it is an amended version of clause 14 of the former government's Portfolio Bill which was passed by this place with the support of all members who spoke during the second reading debate. When this bill was debated in the other place no member raised any objection to clause 12. The honourable member has confirmed the opposition's support for the amendment. The only difference between clause 12 of the bill and clause 14 of the former government's bill is the addition of subclause (2)(b) which provides:

> A partner who commits a wrongful act or omission as a director of a body corporate is not to be taken to be acting in the ordinary course of business of the firm or with the authority of the partner's co-partners only because:
>
> (b) the remuneration that the partner receives for acting as a member of the body corporate forms part of the income of the firm;

Subclause (2)(b) merely adds additional protection to the amendment proposed by the former government. It has been included to address concerns raised by the Law Society that a partner who commits a wrongful act or omission as a director of the company could be found to be acting in the ordinary course of the firm's business or with the consent of other partners merely because of a financial arrangement entered into between the partners of the firm, which is nothing to do with the role of the partner as an independent director of the company. This reflects that both at law and in reality, directors' fees are paid for personal or directorial services, not for legal services even though, in some cases, the fees may be paid to the company or firm rather than to the director personally, as a result of the financial arrangement between the partners.

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

STATUTES AMENDMENT (HONESTY AND ACCOUNTABILITY IN GOVERNMENT) BILL

Adjourned debate on second reading.

(Continued from 14 November. Page 1327.)

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank members for their contributions. I will make some comments in relation to matters raised during the debate. First, in relation to the honesty provisions, the concept of imposing a general obligation to act honestly in the performance of duties is not new. Such an offence has existed since 1993 in the form of section 16 of the Public Corporations Act which applies to directors. What this bill does, quite properly, is extend the concept to all tiers of the public sector with a view to maintaining the highest standards of honesty across the whole public sector.

This is not just about fixing problems; it is about preventing them. Everyone knows that the law—and the criminal law, in particular—can be quite technical and that, in many instances, charges are never laid because the circumstances of the case cannot be neatly packaged into a specific offence or offenders are acquitted because one of the elements of the offence has not been made out. We have all heard of people getting off on a technicality.

As the law currently stands, reprehensible dishonest behaviour within the public sector which does not fit into an established category of offence will not attract criminal sanctions. Why else would parliament have enacted the honesty offence for directors back in 1993? It is unlikely, for example, that a public sector employee or contractor will have committed an offence by falsely claiming to a government inquiry that did not have power to take evidence on oath or compel witnesses—such as the First Software Inquiry into Motorola—that relevant documents have been destroyed. Similarly, a government employee who deliberately withholds information from the Crown Solicitor which results in incorrect advice as to whether a contract with the private sector exists and causes the government to purchase multi-million-dollar equipment when it would not have otherwise is unlikely to have breached the criminal law.

Finally, it is uncertain whether a ministerial adviser who deliberately fails to pass on information to his/her minister for political gain will have committed an offence. Yet, in every example, the conduct is far from trivial and would result in significant detriment to the public interest. The honesty offences contained in this bill remove ambiguities and technicalities and facilitate the prosecution of dishonest behaviour for what it is without having to squeeze it into an existing offence. I therefore dismiss out of hand any suggestion that the honesty provisions in the bill serve no purpose or are unnecessary.

I turn now to the Criminal Law Consolidation Act amendments. Clause 4 of the bill extends the definition of 'public officer' for the purposes of the Criminal Law Consolidation Act to include contractors, their employees and subcontractors and thereby extends the application of existing offences to cover them. It does not create any new offences. The extended definition of 'public officer' only applies in the performance of public sector work; it does not treat contractors as public officers when they are doing work for private sector clients. So, an employee of a local cleaning company that has a public school cleaning contract will only be a public officer when cleaning the public school, not when cleaning the private school down the road.

It is significant that the amendment contained in clause 4 in part actually protects contractors from the improper conduct of third parties. For example, the amendment makes it an offence pursuant to section 250 of the Criminal Law Consolidation Act for a person to threaten a contract gardener at Naracoorte High School to ensure that a school shed filled with equipment is left open. Similarly, where an applicant for an executive position in the public sector offers a bribe to the employment consultant engaged by government to fill the position, the applicant would be guilty of an offence pursuant to section 253 of the Criminal Law Consolidation Act.

Finally, a person who threatens to harm the child of a consultant who is managing a tender process on behalf of the government (unless the person is awarded the contract) will, by virtue of this amendment, be guilty of an offence pursuant to section 250 of the Criminal Law Consolidation Act. If a third party engages in such behaviour towards a public sector employee, he/she is guilty of an offence. It should be no different where a contractor is performing the same work.

The amendment also captures inappropriate behaviour on the part of contractors in connection with the performance of public sector work. So, to continue with the earlier examples, the employment consultant who accepts a bribe in connection with the filling of the executive position will also be guilty of an offence pursuant to section 253 of the Criminal Law Consolidation Act and the consultant managing the tender process on behalf of the government who sells confidential information gained from the tender process will be guilty of an offence pursuant to section 251 of the Criminal Law Consolidation Act.

If a public sector employee engages in such behaviour, he/she is guilty of an offence. It should be no different just because the work is carried out by a contractor. There is no logical basis for distinguishing between a bus driver employed by TransAdelaide, a nurse employed in one of our public hospitals, a prison officer employed at Yatala Labour Prison, and an AS2 on reception (all of whom are already covered by the offences relating to public officers in the Criminal Law Consolidation Act) and a public bus driver employed by Serco, an agency nurse working in a public hospital, a prison officer employed by Group 4 at Mount Gambier Prison, and a temp receptionist, all of whom will only be covered by the offences relating to public officers as a result of the amendment.

The amendment to the definition of 'public officer' ensures that there is no distinction before the criminal law in connection with the performance of work of a public nature. The focus is the public nature of the work that is being undertaken, not the status of the person who is doing the work, the type of work or its cost to government.

Clause 5 of the bill makes it an offence for a former public officer to improperly use information gained whilst in office. It should be noted that the definition of 'public officer' already extends well beyond public servants and includes judges and members of parliament. Accordingly, this amendment would make it an offence for former judges or members of parliament and not just public servants to improperly use information gained whilst in office. It should also be noted that a number of the other offences relating to public officers already include former public officers: for example, section 249 of the Criminal Law Consolidation Act which is concerned with bribery of public officers or former public officers.

Whilst much has been said about the definition of 'improperly' (which I stress already exists in the Criminal Law Consolidation Act), little has been said about the mischief that clause 5 of the bill seeks to cure. The definition of 'improperly' has been cast in such a way as to enable the offences to keep pace with changing community standards. I suggest that in most instances it is not difficult to determine whether use of information was improper. For those few cases at the margins, the appeal provisions in the Criminal Law Consolidation Act provide safeguards in the event that a jury verdict is so unreasonable as to result in an improper conviction.

There is no doubt that a police officer who sells information about a person's criminal history (something which happened in this state not that long ago) will have used that information improperly and is guilty of the offence of abuse of public office and yet, as things currently stand, upon resignation, sale of the same information (even the very next day) is not caught by that offence. Similarly, under the extended definition of 'public officer' in the bill, there will be no doubt that the contract gardener at Naracoorte High School who discloses confidential information about school security to facilitate theft of school equipment will have used that information improperly and will also be guilty of the offence of abuse of public office, and yet, unless the amendment proposed in clause 5 of the bill is passed, upon resignation the same act will not constitute abuse of public office. The amendment in clause 5 of the bill ensures that the loophole for improper use of information by a former public officer is closed.

I now turn to contractors, their employees and subcontractors. There appears to be some misunderstanding about the provisions of the bill relating to contractors, their employees and subcontractors. Whilst the bill as introduced in another place extended the definition of 'employee' for the purposes of the Public Corporations Act and the Public Sector Management Act to include contractors, their employees and subcontractors, the bill introduced in this place does not. The casual, part-time, once-only contract cleaner or plumber in a public school will not, contrary to suggestion, be deemed to be public sector employees.

The bill as introduced in this place proposes a new division 8 in the Public Sector Management Act that is specifically concerned with the duties of persons performing contract work across the whole public sector, including public corporations. The government consulted extensively in respect of this bill. Written submissions were received from stakeholders, including a number of government contractors such as EDS, United Water and SERCO. As a result of this consultation, amendments were made to the bill in another place, including those just mentioned, because the government is seeking to be inclusive.

The Hon. A.J. Redford: Will you table the responses? Can we see a copy of their response?

The Hon. P. HOLLOWAY: I will take that up later. Under new division 8, the obligations for persons performing contract work are, in essence, twofold. First, those performing contract work for the Crown or a public sector agency will be under a duty to act honestly in the performance of that work, and noncompliance will be a criminal offence. However, the provision will not apply to conduct that is trivial and does not result in significant detriment to the public interest.

As already discussed, the inclusion of such an offence will ensure that public sector contractors who act dishonestly in the performance of their public sector duties do not 'get off on a technicality'. Secondly, persons performing contract work for the Crown or a public sector agency will be required to disclose a conflict between the performance of that work and a pecuniary or personal interest but only where the conflict relates to a contract or proposed contract binding the agency or the Crown, except the contract for the performance of the contract work.

The end result is that the obligations for contractors under division 8 are less onerous than for others under the bill. There is no obligation to disclose pecuniary interest per se and there is no obligation to disclose a conflict of interest at large. What is required is disclosure of a conflict or potential conflict where it relates to a contract or proposed contract binding the government—in other words, where the government is going to be legally affected under a contract. That is not unreasonable. Importantly, the contract for the performance of the contract work has been specifically excluded from the operation of the conflict of interest provision to avoid confusion between duties owed to the contractor and duties owed to the government by an employee or a subcontractor.

Under division 8, where an employment agency is engaged to fill a senior executive position, the person handling the matter will be required to disclose, for example, that one of the applicants is his or her sister. On the other hand, it is highly unlikely that the contract gardener or cleaner at Naracoorte High School will be affected by the provision at all, given the nature of their work. As with the existing conflict of interest provisions in the Public Corporations Act and the other conflict of interest provisions in the bill, the interests of an associate of a person performing contract work will be deemed to be the interests of that

person. This will facilitate scrutiny and ensure transparency in all public sector dealings and decision-making processes.

There seems to be a misconception that inclusion of the interests of associates in this way will necessitate a Spanish inquisition into the personal and financial interests of parents, grandparents, children and so forth. This is just not so. All of the conflict of interest provisions in the bill make it clear that the provisions do not apply whilst the person remains unaware of the conflict or potential conflict.

I turn now to the Public Corporations Act. In addition to the honesty provisions, the bill imposes duties with respect to conflict of interests on employees and senior executives of public corporations. Contrary to what has been suggested, only the conflict of interest provisions applying to senior executives require disclosure of pecuniary interests as well as the disclosure of conflicts of interest. Employees are required to disclose a conflict of interest only if and when it arises. I seek leave to table a list of public corporations.

Leave granted.

The Hon. P. HOLLOWAY: Whilst every care has been taken to prepare the list, given the short time frame within which it has been prepared, it is not possible to warrant that it is exhaustive. The list includes public corporations that are corporates sole. It should be noted that the amendments to the Public Corporations Act will not apply to corporates sole unless they are declared to do so, since corporates sole, by their very nature, do not have directors and rarely have employees.

I turn now to the Public Sector Management Act. It is unclear whether the code of conduct issued by the Commissioner for Public Employment is currently enforceable against public sector employees other than public servants and whether in certain respects it is enforceable at all. The amendment in the bill removes any doubt on both counts. I am advised that the Commissioner for Public Employment will re-examine the existing code of conduct once the bill is passed by parliament to ensure that it addresses any additional or changed requirements. This will be done in consultation with the government, agencies and unions and may take a little time. As an interim measure, the existing code of conduct may be gazetted. This will be clarified at the time the bill is passed by parliament.

The bill introduces a new division 3 in the Public Sector Management Act, 'Duties of Corporate Agency Members'. Corporate agency members are, in essence, the directors of those statutory authorities that have not been declared public corporations because they are not trading enterprises. The government sees no basis for distinguishing between the directors of its boards in terms of standards of integrity based on whether or not the statutory authority engages in commercial activities. For this reason, the provisions in the bill applying to corporate agency members are modelled on the existing provisions in the Public Corporations Act applying to directors. I seek leave to table a list of statutory authorities to which division 3 applies.

Leave granted.

The Hon. P. HOLLOWAY: Again, whilst every care has been taken to prepare the list, given the short time frame within which it has been prepared, it is not possible to warrant that it is exhaustive. As will be evident, the list includes bodies such as the Art Gallery Board, the Environment Protection Authority and the Passenger Transport Board.

The bill introduces a new division 4 in the Public Sector Management Act, 'Duties of Advisory Body Members'. To clarify, the government does not propose amendments to this division. The government has consistently held the view that only members of high level advisory bodies such as the Economic Development Board should be bound by the honesty and conflict of interest provisions proposed in the bill, and it is for this reason that the definition of 'advisory body' is limited to those bodies where members are appointed by the Governor or a minister.

However, the government does intend to move an amendment to the definition of 'contract work' in clause 18 of the bill to ensure that members of lower level advisory bodies, that is, those bodies whose members are not appointed by the Governor or a minister, are not inadvertently caught by the provisions applying to persons performing contract work in division 8 of the Public Sector Management Act. I seek leave to table a preliminary list of advisory bodies to which the provisions of division 4 are applicable.

Leave granted.

The Hon. P. HOLLOWAY: Work is still being undertaken in respect of this list, and it is expected to be refined. Section 56 of the Public Sector Management Act imposes obligations on public servants to disclose conflicts of interest. The bill repeals this and introduces a more comprehensive provision that imposes obligations in respect of conflicts of interest on all public sector employees. The government sees no basis for distinguishing between public sector employees in terms of standards of integrity based on whether or not the public sector employees are public servants. Consistent with this, the conflict of interest provisions proposed for employees under the Public Sector Management Act mirror those proposed for employees under the Public Corporations Act.

Sections 18 and 27 of the Public Sector Management Act respectively impose obligations on Public Service chief executives and the Commissioner for Public Employment (who is also a public servant) in connection with disclosure of pecuniary interest and conflict of interest. The bill repeals those provisions and introduces a more comprehensive provision for senior officials that imposes these obligations on all public sector chief executives, the Commissioner for Public Employment and others.

Again the government sees no basis for distinguishing between public sector senior officials in terms of standards of integrity based on whether or not they are public servants. Consistent with this, the pecuniary and conflict of interest provisions proposed for senior officials under the Public Sector Management Act mirror those proposed for senior executives under the Public Corporations Act.

In relation to awareness of obligations, the government agrees that, whilst the amendments will serve to punish, they will not operate to lift and maintain standards of integrity in the public sector unless people are made aware of their obligations. In this regard, I am advised that the Office for the Commissioner for Public Employment is working with agencies to develop and implement an ethics communication and education strategy across the South Australian public sector. This strategy will underpin the requirements of the code of conduct and will make clear the responsibilities of all public sector employees and managers. Consideration will also be given to mechanisms by which contractors can be made aware of their obligations. However, the government will oppose any amendment moved to prevent the operation of provisions where persons have not been formally put on notice about their obligations.

In conclusion, the government wants to instil a culture of honesty and accountability at all levels of the public sector

and these amendments form part of a strategy designed to achieve that. As a result of these amendments, all directors of government boards will be subject to the same obligations regarding honesty, conflict of interest, care and diligence, unauthorised interests and transactions. All public sector employees, depending on their level, will be subject to the same obligations regarding honesty and conflict of interest. All executives of public sector agencies that are bodies corporate will be subject to the same obligations regarding unauthorised transactions and interests. All members of high level advisory bodies will be subject to obligations regarding honesty and conflict of interest.

All persons performing contract work for government will be subject to obligations regarding honesty and conflict of interest. All persons performing contract work for government will also be subject to the offences relating to public officers in the Criminal Law Consolidation Act, as will members of the public in their dealings with them. It will also be an offence for former public officers to improperly use information gained whilst in office. All public sector employees will be required to abide by a code of conduct issued by the Commissioner for Public Employment. Finally, the standard of annual reporting by public sector agencies will be improved. I thank members for their indication of support.

Bill read a second time.

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

In Committee.

Clause 1.

The Hon. R.I. LUCAS: As I indicated in my second reading contribution, the opposition wants to take up in some detail a number of issues during the committee stage, and it is more likely to be a committee bill rather than a second reading bill. As I also indicated to the government last week, it is certainly the Liberal Party's view that, given the pivotal role to be played by the Under Treasurer in relation to this legislation, the parliament deserves the courtesy of the Under Treasurer's agreeing to appear to provide advice to the representative of the government in this committee on the issue. I have reiterated that view to the Hon. Mr Holloway this afternoon.

At the outset, I seek from the government its response, given the importance of this legislation and the pivotal role that the Under Treasurer will play, as to whether the Under Treasurer has agreed to make himself available, via of course the minister, to provide answers to the important questions that members will be wanting to put not only to the government but through the minister, as appropriate during the committee stage, to the Under Treasurer, who, under clause 6 of this bill as outlined in the second reading explanation from the government, has the critical role of making judgments about how this pre-election budget update report in particular will be constructed.

The Hon. P. HOLLOWAY: The government does not accept that the Under Treasurer of this state should be disturbed from the important work that he has to do in running the finance of this state to be brought before this committee to answer questions about this bill. I think it is a rather extraordinary proposition that the Leader of the Opposition is putting forward. When we debate bills about the Auditor-General, we do not request that the Auditor-General appear to give advice. When we pass bills about the Health Commission or any other department giving chief executives particular powers, we do not ask them to give advice to parliament. What we are seeking to do in the bill with what we call the 'pre-election budget update report' is to require the Under Treasurer of this state to undertake particular functions, and those functions are set out in clause 6 of the bill.

It is up to this parliament to determine what we require the Under Treasurer to do in relation to the pre-election budget update report, and we would expect that the Under Treasurer, as a public servant, would respond as he is required to do under the provisions of the act. I do not believe that it is appropriate that we should request the Under Treasurer to appear. If the Leader of the Opposition has any questions in relation to the operation of the bill, then we can seek advice from Treasury officers or we can seek advice from parliamentary counsel as to the provisions of this bill, but the government does not believe that there is any purpose to be served by having the Under Treasurer present in relation to these matters. It is quite unprecedented in my 11 years in parliament.

The Hon. R.I. LUCAS: The response from the Hon. Mr Holloway is a nonsense. In the current session, the Under Treasurer sat here for most of an afternoon awaiting questioning through the committee stage of the parliament, even though, I might say, given that it was delayed until the last day of the session, I had indicated to the government representative that I was happy not to have the Under Treasurer and other officers waiting around all afternoon, given the vagaries of the last day of parliament, and I was happy to convey questions by way of letter or take up opportunities in other legislation. The leader says that it is unprecedented for the Under Treasurer to appear here. That is not true. Having been the treasurer, I can instance a number of examples where the Under Treasurer—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: No, on issues in relation to the emergency services levy and appearing before parliamentary committees where he had to provide evidence. I would need to check my records, but certainly he provided me with a briefing on the Economic and Finance Committee reference on balanced budgets. He also provided me with a briefing when the Economic and Finance Committee took evidence on electricity matters, and it is my recollection that, on both of those matters, he appeared before parliamentary committees to provide answers.

I cannot recall whether it was he or the Deputy Under Treasurer John Hill who appeared before the Economic and Finance Committee at the emergency services levy inquiry. I know that it was not an uncommon set of circumstances that the Under Treasurer attended at Parliament House to provide advice to me, as the treasurer, and to the government. If we can dismiss this nonsense in some way, this would be—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: The Appropriation Bill committee stage—I have just given you that example.

The Hon. P. Holloway: The Appropriation Bill is somewhat—

The Hon. R.I. LUCAS: That is a bill—the committee stage of a bill. The Under Treasurer spent a good part of the afternoon and the early evening awaiting parliament's pleasure in relation to the—

The Hon. P. Holloway: That is about decisions that have been taken by the government. The Appropriation Bill is a very special case.

The Hon. R.I. LUCAS: The leader is changing the debate: he is now accepting that is not unprecedented, and I welcome that. As I said, there are many examples where the Under Treasurer has attended the parliament—and at the Appropriation Bill committee stage—and has also appeared before parliamentary committees. The longer this debate goes on, I am sure other examples will spring to my mind both of this Under Treasurer and former under treasurers having appeared before parliament.

The leader suggests that in some way this was an unprecedented practice, the breaking of a huge convention; that the Under Treasurer should never appear before the parliament but that it is fine for senior Treasury officers and senior departmental officers to do so. On some occasions, the Chief Executive Officer has appeared; Christine Charles as the head of Human Services has attended; as has Dennis Mutton, the former head of PIRSA, the minister's own department. I know Mr Jim Hallion, the former head of Industry and Trade, attended the parliament.

I am not sure why the leader takes the view that the Under Treasurer will be tainted in some way by coming to parliament to provide advice to the government on a critical issue such as this. Certainly, from my viewpoint, I reject absolutely the view that it is unprecedented in any way, and that it is unacceptable for the Under Treasurer to be asked, via the government, whether he is prepared to attend. If, from what the leader is saying, the Under Treasurer has refused, or the government is directing the Under Treasurer not to come (it is one or the other), the leader can stand up and—

The Hon. P. Holloway: He has not been asked to come, and I am not going to ask him, because I think it is inappropriate to ask him to do so.

The Hon. R.I. LUCAS: That is right—he is being directed not to come by the Leader of the Government in this chamber. It certainly raises an interesting question, if the Leader of the Government in this chamber has taken a decision off his own bat to say that he will not allow the Under Treasurer to answer questions via, appropriately, the government in this place—that is, provide advice to the government minister. Members are not in a position to put questions to the Under Treasurer, although that, of course, can be done via the Economic and Finance Committee or other parliamentary committees. All that is possible in this chamber is to ask ministers questions and to have that advice provided by—

The Hon. P. Holloway: Yes, and we will do that.

The Hon. R.I. LUCAS: You cannot. You have just indicated that you have refused. The Leader of the Government has refused to allow the Under Treasurer—

The Hon. P. Holloway: I am prepared to answer questions about this bill.

The Hon. R.I. LUCAS: That is all we are asking.

The Hon. P. Holloway: If you want to ask questions about this bill, we will seek to get answers for you from the Treasury officers who are here.

The Hon. R.I. LUCAS: Why else would we want the Under Treasurer here? We are not talking about accountability and Ombudsman legislation, or whatever it might be: we are talking about this particular provision. In this provision, for the first time a senior public servant (in this case, the Under Treasurer in the state) will be given the onerous responsibility of preparing and publicly releasing a pre-election budget update report. The shape and nature of that; how the Under Treasurer would intend to go about it; what advice, if any, the government, via the Treasurer or the government, might or not give the Under Treasurer before the preparation of such a report; and how the Under Treasurer may well view such advice from the government and from ministers are all critical matters for this parliament and for the community as we look at the notion of a pre-election budget update report.

We have not had such a report before. This is groundbreaking in relation to the South Australian financial accountability experience, as the government has sought to claim. From the opposition's viewpoint, we believe that it is entirely appropriate that, via the appropriate minister in this house, the Under Treasurer be available to provide advice to the minister.

I have indicated before—and intend to do so in this debate—where the advice of the Under Treasurer has been different on a number of important areas from the advice of senior officers within Treasury, within the appropriate finance and within other branches, it is not the advice of the senior officers of Treasury that will be the sign-off under clause 6 of this bill, as competent and able as they may be: it will be the view of the Under Treasurer in relation to these issues.

I remind the leader that one of the reasons for wanting to look at this in some detail is that the Under Treasurer himself on the 14 March update has indicated in terms of how he seeks to update the mid-year budget review or to update the budget situation by using the words 'our perception of what is likely to be politically acceptable'. As I have indicated before, he included a particular cost as a cost pressure, because he took the view that it might be politically unacceptable to a government to continue with the course that the government, via the cabinet and the Treasurer, had determined.

These are entirely new notions in terms of financial accountability. The notion of political acceptability, as judged by the Under Treasurer of the state, as being the ultimate determinant as to what is included in a pre-election budget update report, is, to my knowledge, unprecedented, in my experience of not being able to ascertain another under treasurer who, in other states and jurisdictions, has undertaken these things, who has indicated that he has gone about the task based on his perception of what is likely to be politically acceptable I assume to the government or to the community or both. Ultimately, only the Under Treasurer can explain what he believes he meant by the phrase 'what was politically acceptable to the government or what is politically unacceptable' either to the government, to the community, or to both.

As I say, as competent as senior Treasury officers may be, they are not in a position to get into the mind-set of the Under Treasurer and to speak on his behalf in relation to these critical questions. On more than one occasion (including the second reading), I flagged that, certainly from the Liberal Party's viewpoint, it does not intend to see the passage of the legislation until it has had a reasonable opportunity to obtain a view from the Leader of the Government—particularly via the Leader of the Government and the Under Treasurer—as to how this pre-election budget update report will be constructed.

I am not sure whether the government's position still is, therefore, that it is refusing the Under Treasurer to provide advice to the leader during the committee stage of the debate. I hope that it will be possible; certainly, if it is not, that in and

of itself might become an issue, which I would have hoped was not necessary.

The Hon. P. HOLLOWAY: The Leader of the Opposition refers to the Appropriation Bill, a very specialised bill. In the House of Assembly, estimates committees are held, and all ministers appear before their committee, and they have their advisers, including chief executives of the departments and other advisers, to answer questions in relation to the appropriation. That is a longstanding custom of the House of Assembly, and those committees have been in place at least 20 years. As a complement to that, we in the Legislative Council have our own estimates on the budget, when questions are asked and officers are available to provide information in the special case of the budget.

I repeat the point that it has not been my experience, in relation to the committee stage of any bill, to bring people before the parliament to ask questions in relation to that matter. Officers are available, as there are now from Treasury, to supply me with answers in relation to any matters that are raised on a bill, and similarly there are officers from the Office of the Parliamentary Counsel to give advice about the specific drafting of a bill. That is what we are talking about. We are talking about a bill that will require the Under Treasurer to commit certain functions, and those functions will be determined by this parliament and not by the Under Treasurer.

The Leader of the Opposition seems to have this need to try to justify his place in history, for some reason, by going back over the statement that was made by the Under Treasurer on 14 March. As I pointed out when I responded to the second reading, whatever one's view is of the statement issued by the Under Treasurer on 14 March, the fact is that neither that document, which was released by the Treasurer, nor the mid-year budget review were pre-election budget update reports, which we are discussing in this bill. I suggest that whatever the Under Treasurer did in March is completely irrelevant to the matters that are contained in this bill. We are talking about a new concept, a pre-election budget update, and that pre-election budget update will conform to whatever this parliament determines when we debate clause 6. It is up to us as parliamentarians to determine what the Under Treasurer should do in relation to that.

Whatever has gone into a different sort of report in the past is completely irrelevant to the matters that are before us now. The Leader of the Opposition is free during the committee stage, as are other members, to ask any questions they like in relation to this bill, and I will endeavour to do what I can to provide answers to those questions, but I do not believe it is necessary to bring down one of the state's most senior public servants to have what could be hours in this place providing me with answers about what this—

The Hon. R.I. Lucas: He is too important to come to parliament?

The Hon. P. HOLLOWAY: No, as the leader suggested, the Under Treasurer appears before committees and so on, if required to do so, on particular matters. I believe it is inappropriate to get the Under Treasurer to advise parliament during the committee stage of a bill about his functions. I believe that is unprecedented. When we amend bills relating to the functions of the Auditor-General, we do not get the Auditor-General down here on these matters.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: If he has an interest, he can correspond. I am sure that the leader will, from time to time, meet with the Under Treasurer and discuss these matters, but I believe that it is not necessary in relation to this bill to have the Under Treasurer here to answer questions about what we in this parliament determine should be put into a pre-election budget update. That is what we are discussing and not what the Under Treasurer may or may not have done in March this year.

The Hon. R.I. LUCAS: The leader's example in relation to the Auditor-General is again in error. In relation to the legislation currently going through the parliament, the Auditor-General has been corresponding with the Treasurer and the government and he has met with a number of members of parliament, both individually and collectively, to respond to questions—

The Hon. P. Holloway: Are you going to require him to sit in parliament when we debate the bill?

The Hon. R.I. LUCAS: The Auditor-General? I do not have a problem with that issue. The Auditor-General will argue that he is not a department, and I will leave that argument to be had with the Leader of the Government. He will argue that he is different from other public servants and should not be seen by the Leader of the Government as equivalent to the Under Treasurer or the head of any other department or agency. I will leave the Leader of the Government to have that discussion with the Auditor-General if he thinks that he is a similar example to the Under Treasurer, and I wish the honourable member good luck in that discussion.

The Under Treasurer should more appropriately be compared with chief executives of other portfolios and agencies, and in a number of cases in past parliaments, when the powers of a department and its senior officers have been changed, those officers have been involved in the committee stage of the parliamentary process by providing advice via government ministers in both houses of parliament. The Liberal Party and the government obviously have a difference in relation to that issue and it is not going to be resolved with further discussion. We will have to seek to resolve it by way of a vote on the floor during committee. There are a couple of issues that I can pursue in the normal process with senior Treasury officers, but I flag an intention to move that we report progress to allow the Under Treasurer and the government to reconsider, and to do the parliament the courtesy of making themselves available for this important committee debate.

As to the other aspect of the leader's argument that the mid-year budget review and the 14 March purported update are entirely unrelated to this issue, I can only say that the Leader of the Government is delusional. He certainly has no knowledge of what went into the mid-year budget review, he has no knowledge of what went into the 14 March update and he has no knowledge of what went into the pre-election budget update, if that is the view that he puts on behalf of the government. There is a consistency through all those three documents that ensures that they are, in terms of their approach, going to be able to be compared in terms of—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: We are required under statute and agreement to prepare mid-year budget reviews. I was told that there are provisions, under the UFS framework, that govern how we are meant to produce the mid-year budget review. There are provisions, I presume backed by legislation or agreements between the commonwealth and the state and territory governments, to enable comparability of the mid-year budget reviews. There is certainly a backing for the mid-

year budget review. In relation to how the 14 March update was done, I entirely agree—

The Hon. P. Holloway: It is an agreement and not a statute.

The Hon. R.I. LUCAS: I said it is either an agreement or a statute. Nevertheless, we are required to follow it, and we do, as part of our financial accountability arrangements. I entirely agree that the 14 March update that was done by the Under Treasurer is not governed by any law, agreement or otherwise, and that is the concern that the opposition had with the way the Under Treasurer went about the 14 March update for the new government, in particular after advice he provided to the former government on the state of South Australia's finances. And in particular, as I have said, because of the extraordinary phrases in his 14 March update where he says he will make judgments about political acceptability or unacceptability on the issues even, as I have pointed out before, where that is contrary to specific cabinet decisions and the Treasurer's decisions that were advised to him.

The Under Treasurer has taken the view that, even though cabinet has taken a decision and the Treasurer has given an explicit instruction that he is above that, on his judgment of political acceptability, he can amend the budget forecasts. It will be critical to the budget process in terms of the pre-election budget update anyway, not only for the budget process but also for the election process, as to what method of operation the Under Treasurer intends to follow for the 2006 pre-election budget update.

As I indicated in the second reading debate, whilst the opposition was entirely opposed to the way the Under Treasurer went about the 14 March update, we were assuming that the Under Treasurer will, in fairness to both sides of politics, undertake the pre-election update in 2006 in exactly the same fashion, that is, he will not feel that he will be bound by cabinet decision or Treasurer's direction, and he will make a judgment about—

The Hon. P. Holloway: He is bound by this legislation.

The Hon. R.I. LUCAS: But the legislation does not stop any of that. So he will not be bound by a cabinet decision or Treasurer's direction, and he will make judgments about what is politically acceptable or unacceptable on a particular issue. Now, that is what this chamber needs to know. For an incoming Labor administration commenting on an outgoing Liberal administration, that is the way the Under Treasurer operated. In the circumstances of a potentially outgoing Labor administration and an incoming Liberal administration, what we want to know is whether or not the Under Treasurer will approach the task in exactly the same way. That is, he will not feel bound by cabinet decisions or Treasurer's directions on the pre-election budget update.

The Hon. P. HOLLOWAY: If the current Under Treasurer is still there. We have no guarantee that the current Under Treasurer will still hold the position in three of four years. This bill is to apply to the future. Even if the current Under Treasurer is there in four years, and I personally hope he is, he will not be there forever. So it is important for this parliament, and for this chamber in particular, to determine exactly what the Under Treasurer should be properly required to do in relation to the preparation of the pre-election budget update.

The Under Treasurer is required to use his best professional judgment in relation to those matters, and he is obviously required to take into account the decisions of cabinet and so on as part of the clauses of this bill. Subclause (6) of clause 6 provides:

> A pre-election budget update report—
> (a) must be based on the best professional judgment of officers of the Treasurer's department; and
> (b) must be prepared without political interference or direction.

But obviously the Under Treasurer will need to take into account those decisions that have been made, and I guess that is included in the earlier clauses 3, 4 and 5. Clause 5 provides:

> A pre-election budget update report—
> (a) must, insofar as is reasonably practicable, be prepared according to the financial standards that apply to a state budget.

If the Leader of the Opposition has some problem in relation to the matters that this current Under Treasurer or any future Under Treasurer might put into it, I guess it is up to him to seek to move some amendments as to those directions. We can carry the debate along the lines the leader has pursued all day, but what really matters is that, when it comes to the next election and all subsequent elections, the Under Treasurer of the day will be required to prepare a pre-election budget report in accordance with what we in this Council decide the Under Treasurer should do.

The Hon. R.I. LUCAS: When we get to the detailed debate on clause 6, as the minister has just referred to that clause, he will see that subclause (3)(c) provides:

> any other information or explanation that should, in the opinion of the Under Treasurer, be included in the report.

That is unencumbered by any restriction. It is just the opinion of the Under Treasurer as to what should be included, and subclause (4) provides:

> The information is to take into account, insofar as is reasonable in the circumstances—

and that is a judgment of the Under Treasurer—

> all government decisions and announcements and all other circumstances—

Nothing in relation to those particular provisions that the leader has read out, and that I have reiterated, would prevent the Under Treasurer from doing as he did on 14 March, that is, to ignore a cabinet decision and a Treasurer's direction, and on the basis of his judgment of political acceptability make adjustments to the forward estimates. If he felt that it was information or an explanation that should in his opinion be included in the report, if he felt it was, in his professional judgment, more accurate or appropriate or more politically acceptable that his view, as opposed to the cabinet decision or Treasurer's direction, be incorporated, then he could amend the books accordingly.

Without going over all the examples, the one example which I think is the most telling in all this is the example where the former government, backed by a cabinet decision and a direction to the Treasurer, had indicated that an agency like health or education that had overspent would not be rewarded for that overspending. They would have to repay that overspending over a four-year period. One would not seek the repayment in one year, because that would unnecessarily impact on the short-term delivery of services, but in our judgment you could not run a sensible set of financial accounts if agencies were going to be rewarded for overspending. That was a cabinet decision—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: No, that was a cabinet decision—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: That is not true. But good luck in relation to the hospitals, because in relation to hospitals,

it has been a decades-long problem in terms of the Health Commission trying to control the expenditure at the individual hospital level as opposed to their own expenditure. That is an issue for this government and future governments in terms of managing hospital budgets.

But in relation to this set of circumstances and that example, we had a situation where cabinet took a decision that those agencies' overspending was not to be rewarded. They had to repay over a four-year period. That was a cabinet decision. It was confirmed by way of a Treasurer's direction to the Under Treasurer, and it is that particular issue that the Under Treasurer gave the opinion on on 14 March, that in his view it was politically unacceptable and he therefore amended the forward estimates accordingly, as I said, contrary to a cabinet decision and contrary to the Treasurer's decision as well.

When we do get to the discussion on clause 6, we will have a greater opportunity to go through those particular provisions. Certainly, from the opposition's viewpoint, we record our disappointment that the Under Treasurer has either refused to attend or this government has refused to allow the Under Treasurer to attend at the appropriate point during the committee stage, and we will seek to report progress to allow the government and the Under Treasurer to further consider the opportunity for the Under Treasurer to provide advice to the parliament via the minister on how these critical provisions in clause 6 are to be interpreted by both the government and the Under Treasurer.

The Hon. P. HOLLOWAY: If the health department and education department have overspent then they had presumably breached a cabinet decision. I guess that a cabinet decision would allocate them a certain amount of money and, under the former treasurer, these departments had breached that in overspending. The former treasurer said he wished this government luck in trying to bring this expenditure under control because each year it keeps going up. It kept going up—presumably—through the whole eight years of his government's term in office which goes to prove a point that expenditure in these areas is very difficult to contain. But this idea that it is okay to let the health and education department overspend in a year which is an election year but then peg it all back in the future. After the election the money will be taken back off them.

If the Treasury was ineffective in getting those departments to adhere to the original budget parameters in the first place, what chance have they of getting them to adhere to even tougher ones into the future, to bring back that previous spending? I would have thought that in those circumstances the judgment of the Under Treasurer was probably pretty sound in saying, 'If we have failed to get it in the past, it is probably going to be difficult, if not impossible, to get it off them in the future.'

The Hon. R.I. LUCAS: The minister has replied that he is supporting the view that under this legislation the Under Treasurer could, in the circumstances outlined, disagree with a specific cabinet decision and Treasurer's decision.

The Hon. P. HOLLOWAY: What has clearly happened is that the departments have not adhered to an original cabinet decision. They have not adhered to their original budget in the first place. So, the under treasurer was no doubt using his best professional judgment, based on what the previous behaviour had been in relation to these areas, and the former treasurer, himself, has wished the new government luck trying to control the expenditure of the health system. He wished us luck in the future in trying to control it because it had been almost impossible to control in the past: was that not the point that the Under Treasurer was making.

The CHAIRMAN: This debate has been going on for some time—and I say 'debate' because this has been going on for some time. It was going on when the acting chair was here. Some of it is starting to get philosophical. I do not want to stifle the opportunity to get the bill through, but it does not appear that we are going too far. We are still on clause 1. We are now getting into debate and I would like to draw that debate to a conclusion and, if necessary, we will go through the clauses, clause by clause, until we get to a point where we get to clause 6, and we will make a decision at that point. I ask both sides of the committee to come to attention, if that is the best way of putting it, and focus back on the committee stage of the bill itself. We have had a long debate and it is quite inappropriate. I will allow the Leader of the Opposition to conclude his remarks.

The Hon. R.I. LUCAS: Certainly, from my viewpoint there is not much philosophy here. This is the brutal, practical impact of this legislation and the impact that there will be come the early part of 2006 when the pre-election budget report will be produced by the Under Treasurer. There is not much philosophy from my viewpoint, I can assure you.

To conclude, I indicate, first, that the claim from the Leader of the Government is wrong. Education overspending was actually 18 months to two years prior to the election: it was not in the last year. They were acquired over a four-year period which traversed the 2002 election to commence the repayment. So, it is incorrect. The example that I have given was not in relation to the whole of education and health. It talks specifically about the controls the Health Commission did have and, in some cases did not have, over the specific decisions that hospitals took. It was in that area that I wish not only this government but all future governments good luck in terms of managing expenditure of hospitals. It is an extraordinarily difficult task.

With that, I will leave the detailed debate of that until clause 6. I am happy to progress to the sections that relate to the charter of budget honesty which, as I indicated earlier, whilst it would be preferable to have the Under Treasurer here, I think we can get away with not having him here, relying instead on the senior Treasury officer's advice. Certainly, from the opposition's viewpoint, in relation to clause 6, it is absolutely critical that the Under Treasurer be invited to reconsider and make himself available.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

The Hon. R.I. LUCAS: With regard to the charter of budget honesty, subclause (3) provides:

> A new charter must be prepared within three months after each general election.

So, the general election will be held in March 2006. The charter will have to be produced before the end of June 2006. As I indicated in the second reading, the state budget documents will be produced around that time—May, June, July. What does the government believe that the charter will outline that is, first, not in the existing budget documents or, secondly, could have been included by way of amendment in the budget documents?

The Hon. P. HOLLOWAY: The point was made in debate in the other house that, at present, the budget papers do provide a significant amount of information but there are actually no guiding principles which underpin what is placed

in the budget. What this charter of budget honesty seeks to do is lay out the principles with which those budget documents have to comply. It also sets out how they would be reported. So, it is not so much perhaps what extra information will be reported as the fact that it will now actually be a requirement that a certain amount of information will have to be put on the record and it will have to be reported in a particular way. I think that is the key provision of that particular measure of this new charter of budget honesty.

The Hon. R.I. LUCAS: Governments of both persuasions—the former Liberal government and the current Labor government—have indicated that both accrual accounts and cash-based accounting for the non-commercial sector would be produced. Certainly, under the former government both accounts were produced, and, certainly, in this round of budget papers, both cash accounts and accrual accounts were produced. I am assuming that, at least for the foreseeable future, both accounts will be produced by the new government.

There are conventions and provisions which underpin the production of those accounts, particularly the accrual accounts, but also the period of time for the cash accounts for the non-commercial sector. Given that those provisions already exist, what, in addition to those, is to be outlined by the charter of budget honesty? To give another example, in this year's budget, in Budget Paper 3, the government outlined its fiscal strategy in relation to the accrual accounts over four years of this parliamentary term.

In the last budget of the Liberal government there was a reference to an objective in respect of the accrual accounts for the next four-year parliamentary term as well. In recent times, the budget papers have certainly incorporated elements of what I assume would be included in a fiscal strategy as well as elements of what would be included in a charter of budget honesty. So, what specifically is to be provided? Can the government cite a specific example of some information which will be included in the charter of budget honesty which is not currently provided?

The Hon. P. HOLLOWAY: The whole point of this is to give the charter a statutory basis. It is to set out exactly what information will be provided. I do not dispute what the leader says, that there is a significant amount of information that has been provided by past and previous governments in relation to the budget. This simply sets out in statute exactly what information must be provided.

The Hon. R.I. LUCAS: So the government agrees there really is no additional information of any significance that is being provided by the charter of budget honesty. All we are doing is wrapping up the existing information and legislatively requiring it even though it is already being provided. We are guarding against the possibility of some future government not continuing to provide information that is already being provided.

The Hon. P. HOLLOWAY: That is certainly one of the key objectives of this measure, but from time to time there could be changes in accounting treatment. We did not have accrual accounting four or five years ago, but we changed to that and that has become accepted. I guess what would happen with a charter of budget honesty is that any new government after an election would, if it wished to change the type of information or the accounting systems that are used, incorporate that into a charter of budget honesty so that it is all up front in relation to what is to be required.

The Hon. R.I. LUCAS: I am pleased to hear the government's response on that, because that has been the Liberal Party's position: that the charter of budget honesty was not really offering any new budget honesty at all. I remind the government of a paper produced by the Fiscal Strategy Unit of the Department of Treasury in September 2001. It is headed 'Review of alternative fiscal responsibility models in Australian and overseas jurisdictions'. I remind the government that the Treasury—and the Under-Treasurer as well, I guess—concluded that '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.' I think the government has just confirmed that.

As I said in the second reading debate, the only new element to this in terms of budget honesty—and that is a phrase that the government is using; I am not—will be the pre-election budget update report, which will be produced once every four years just prior to the election. For the remainder of the four years, in essence, we will see a continuation of the budget papers that we have at the moment with, as we see every year, some adaptation and some change. We will see a charter of budget honesty which gives a legislative backing for it, but there will actually be no new revelations in terms of budget honesty, transparency or accountability through the provisions of the charter of budget honesty.

The Hon. P. HOLLOWAY: I think the crucial point to understand here is that no longer will it be left to chance or to the complete discretion of the government of the day to outline the fiscal objectives that the government seeks to implement. The bill requires the government to disclose changes in its fiscal objectives by an amendment to the charter. Currently, any government could change the fiscal objectives from budget to budget and have total discretion over whether or not they inform the public and parliament.

This measure seeks to ensure that that requirement is there. As I say, the government is not at this stage seeking to change the information so much as to bring in this requirement that any change in relation to how budget or fiscal information is handled must be included in the charter of budget honesty so that there cannot be any capricious change in the way in which a government reports its accounts without that being made public and laid before the parliament.

The Hon. R.I. LUCAS: The minister has just indicated that this will prevent governments from changing elements of the financial accountability framework—or words to that effect. I invite the minister to look at proposed new section 4E which provides that the Treasurer may amend the charter or replace the charter with a new charter. Does the minister concede that the Treasurer can do that at any stage and that there is no oversighting of the Treasurer's or the executive arm of government's amendment of the charter at any stage, that it just has to be tabled in the parliament—there is no vote in the parliament—and the amendment takes effect under new subsection (3) when it is laid before both houses of parliament?

The Hon. P. HOLLOWAY: There is accountability if the government seeks to change the charter. There may be very good reasons why a Treasurer might seek to change the charter—the charter might be changed to increase the information that is to be reported—but the point is that the fact that it is to be laid before parliament at least gives some advice that there is to be a change. At present one has to wait until the budget papers come out. There might be some quite fundamental change in the way in which the budget is

presented as, indeed, some changes were made four or five years ago—if my recollection is correct—in relation to the way in which the previous government handled the budget. Those of us who looked with some interest to the budget papers did not know what happened until the budget papers themselves came out. At least now some advice will have to be given by the Treasurer if there is to be some change in this area, and that is really a fundamental part of accountability. We are saying that we have to be up front if there is to be any change to the charter.

The Hon. R.I. LUCAS: I again invite the leader to look at proposed new section 4E. Does the leader accept that the Treasurer can amend the charter at his or her own discretion—because it does not even say with cabinet approval—that the Treasurer can amend and revise the charter in exactly the same way as the Treasurer currently can make amendments to the budget documents in terms of the fiscal strategy principles that might underpin the budget? I seek a concession from the government that, in essence, the Treasurer's current position of being able to amend those things in the budget documents remains exactly the same; that it just means that he has to amend the charter and table the charter in the parliament.

The Hon. P. HOLLOWAY: If the Treasurer makes changes they must be publicly reported: that is the essential difference. Certainly the Treasurer can change the charter at any time—that is clear from proposed new section 4E—but what is new is that any change to the charter must be put before both houses of parliament. I suppose that is what you would call a restraint in relation to the behaviour of the Treasurer. If the Treasurer is going to act in a way that is more restrictive in relation to information, he is going to have to live with the flak that will inevitably come with the public knowledge that the information is to be changed in that way.

The Hon. R.I. LUCAS: There is exactly the same public discipline on a treasurer under the current arrangements. That is, with the—

The Hon. P. Holloway: Except at budget time, there are a lot of things happening.

The Hon. R.I. LUCAS: No, this will be around budget time, anyway. With respect to the budget papers, under the current arrangements, if the Treasurer makes amendments to the financial objectives of the budget documents and of the state, then they are certainly apparent in all the information provided in the budget papers. The Treasurer cannot do that without its being obvious to those who look at these particular issues. It would certainly be immediately apparent to the ratings agencies—for example, Standard and Poor's and Moody's and others who pore over the budget documents—and certainly the opposition and many others who follow the budget much more closely than do perhaps the majority of the population.

The Hon. P. HOLLOWAY: At present, it is entirely at the whim of the Treasurer what the Treasurer wishes to publish.

The Hon. R.I. Lucas: It will be in future.

The Hon. P. HOLLOWAY: Except that, if this new bill is carried, there will have to be a charter, the charter will have to be laid before the parliament and the government will have to comply with that charter. Certainly that charter could be changed, but I think there is a different level of accountability here. Changes cannot be made surreptitiously. They cannot just suddenly be slipped into a budget. Here it has to be done in a much more up-front manner. The government has to be accountable to parliament for any change. It specifically—

The Hon. R.I. Lucas: There is no vote on it.

The Hon. P. HOLLOWAY: It still has to be reported to the parliament: it is not just something that can be quietly slipped in as a change to the budget papers when there are a whole lot of other changes that come into force. Placing this in statute gives it a higher level of importance. It draws attention to this fact to an extent which is not the case at the moment, and I think that is significant in terms of accountability.

[Sitting suspended from 6.05 to 7.45 p.m.]

Clause passed.

Clause 5.

The Hon. R.I. LUCAS: The Premier and others in talking about this particular legislation have said a number of things, but I quote as follows:

> 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 absolutely tough fines and provisions against any government basically telling lies to the public about the status of the state's finances.

There are penalty provisions. The first penalty provision relates to clause 5, which has a maximum penalty of $10 000. Will the minister indicate under what circumstances the government would be facing tough fines, if at all, under this provision?

The Hon. P. HOLLOWAY: Instructions may be created to ensure that public authorities meet reporting requirements outlined in the charter. I refer, for example, to end of year reporting requirements, pre-election reporting updates, and so on. Inclusion of these requests in the instructions enables fines to be levied against those authorities that do not comply. The definition of 'public authority' in the act includes ministers.

I assume that the leader's question relates to the ministry and whether penalties apply. It follows that fines can be levied against ministers where they, as a public authority under the act, contravene or fail to comply with an instruction issued by the Treasurer.

The Hon. R.I. LUCAS: For the benefit of the committee, will the minister illustrate a simple example where, if he or she did not comply with something, a minister would be fined? Also, under the various statutes that apply to ministers, who would pay the fine of a minister? Is this something the government has decided would come out of the personal pocket of a minister, or do the various immunities that apply to ministers mean that the government would, in essence, be fining itself?

The Hon. P. HOLLOWAY: One would hope that it never reaches the stage where a minister would be fined. If we reached the stage where a minister was to be fined for some non-compliance with a Treasurer's instruction, one would wonder what future that minister might have in a ministry, anyway, but that is my own conjecture in relation to the matter. I think this provision makes it quite clear that the potential is there for a penalty to be applied, and it is therefore expected that ministers of the government and public servants who are subjected to Treasurer's instructions should, indeed, comply with those instructions.

The Hon. R.I. LUCAS: The minister has not answered the question. The minister has just confirmed that a minister can be fined up to $10 000 for not complying with instructions as set out under these provisions. My question is simple: if a minister is fined $10 000, what is the policy of this government in relation to that minister's paying the fine? Is

the minister required to make that payment out of his or her own remuneration package, or is it the government's policy that the fine will be paid by the minister's department or by the government under some other indemnity?

The Hon. P. HOLLOWAY: I imagine that would be decided at the time. I am certainly not aware of any specific policy in relation to that. Again, I make the point that one would have thought that if any minister did not comply with the directions of the Treasurer in such a way that they would be subject to these sorts of fines their future in the ministry would be doubtful, anyway.

The Hon. R.I. LUCAS: I understand the position the minister has put in relation to the end result of a minister's not complying with the Treasurer's instructions. I might remind the minister that the present Treasurer is currently refusing to answer a question as to whether he complied with all the Treasurer's instructions in his conduct of the investigation and appointment of consultants with respect to the National Wine Centre.

As the minister knows, a question has been in the estimates committee since July of this year. As I indicated by way of further question, my advice within Treasury is that the Treasurer has not complied with either the Treasurer's instructions or the Commissioner for Public Employment guidelines in his handling of the issue, but which ones I am not sure. I understand the minister's strong view that, should the Treasurer be found not to have complied with the Treasurer's instructions, he does not have a future in the ministry. The leader has taken a strong position, and one can understand that. However, it is now on the public record—twice—and we will, obviously, be able to return to that in future. I thank the leader for his view on that issue.

Nevertheless, the question has to be answered if members are to be asked to vote on this bill. If the minister is saying that a minister of the Crown can be fined up to $10 000 for not complying, this committee is entitled to know whether that means that the government's policy is that the individual minister has to pay the fine, or whether it is a situation where the minister's department, portfolio or office meets the cost of the fine. I think it is entirely reasonable, given that the Premier has indicated that this is tough legislation and there will be 'absolute tough fines', to quote the Premier.

The minister said that the reason the Premier has stated that is that the minister can be fined up to $10 000. I think we need to know what the government's policy is, and we need the minister to report progress and to bring the answer back to the committee. It is a reasonable question. It is the government's own legislation, and the minister should be in a position to answer whether or not the minister will be required to pay the fine himself or herself.

The Hon. P. HOLLOWAY: I can only repeat what I have said: to my knowledge, there is no particular policy on this. I am not sure whether the Premier has a view on this matter, but I would have thought that it is an issue that would have to be decided at the time; however, perhaps I need to consult with parliamentary counsel. If there were to be a prosecution, I am not sure who would launch it, in which case I guess it might well depend on the circumstances. I will seek some advice.

I assume that, if any action were taken, it would be in the Magistrates Court. Again, I make the point that I believe that the main reason this clause is included is that the penalty is to sound a warning, if one were needed, that any instructions under the charter of budget honesty need to be followed. One would hope and expect that the ministers and the public servants of whatever government, not only the current one, who are required to operate under the instructions would indeed comply with that. Certainly, from my point of view, I believe it would be highly unlikely that it would ever be necessary to enforce such penalties in relation to ministers.

As I said earlier, one would expect that they would be complied with. Cabinet has endorsed this measure, so cabinet is saying that this bill should be passed. Cabinet is saying—indeed, the parliamentary Labor Party and ultimately, hopefully, this parliament is saying—that these procedures should be complied with by ministers and that, therefore, any person who did not comply with what is set out here in paragraph (e)—

> requiring that procedures, set out in the instructions, be followed in order to ensure compliance with a charter of budget honesty under part 1A—

as well as risking the possibility that some penalty would be applied, would be clearly putting their position in a great deal of jeopardy. That, from my perspective, is the essential part of this clause. It is there to ensure that this charter of budget honesty should be complied with by all people, including ministers. In terms of charging ministers, the Leader of the Opposition would probably know a lot more about that than I would, given the experience of the previous eight years where some of these matters were more than a little hypothetical, as they are here. I am not exactly sure how one might determine those things but I can only repeat that—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, yes, it is, and the potential is there for a penalty. But, as I have said, it is envisaged, certainly under this government which I hope has some standards, that all ministers would comply with it and it would not be necessary for those penalties to be applied in practice, because it would be complied with. In the unlikely event that it was not, I imagine that, as well as a monetary penalty, all sorts of sanctions would be open to any minister who did not comply. But there are others: it is not just a question of ministers, I understand. Other officers would also have to comply with this. However, in relation to ministers, they have a special responsibility to the cabinet and the premier of the day to ensure that they uphold the law. Indeed, all sorts of other codes of conduct would also cover their behaviour.

The Hon. R.I. LUCAS: Mr Chairman, we could waste a lot of time this evening—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: No, absolutely. We would all like answers to the questions we ask in committee, and we are not getting them.

The Hon. P. Holloway: As I said, there is no specific policy. I have told you that.

The Hon. R.I. LUCAS: No. The minister said that he will need to speak to the Premier to see whether there is a policy. It is entirely appropriate for this committee to be told what the government's policy is in relation to this particular penalty provision. Given that clause 6, which is the controversial clause about which we spoke earlier, is the next and final clause—there is a further penalty clause, clause 7, which is not major—as I indicated before the dinner break, it is my intention to move that we report progress not only to enable the minister to get an answer to this question in relation to clause 5, as to what the government's policy is about ministers who are fined $10 000 and as to whether they pay for it or someone else pays for it so that we know what this penalty is that the Premier has been talking about, but also to

at least allow the Under Treasurer and/or the government to reconsider their current position regarding the Under Treasurer's appearance at the parliament this evening to provide advice to the minister. I move:

That progress be reported.

The committee divided on the motion:

AYES (11)

Dawkins, J. S. L.	Elliott, M. J.
Evans, A. L.	Gilfillan, I.
Laidlaw, D. V.	Lawson, R. D.
Lucas, R. I. (teller)	Redford, A. J.
Ridgway, D. W.	Schaefer, C. V.
Stefani, J. F.	

NOES (4)

Gazzola, J.	Holloway, P. (teller)
Roberts, T. G.	Zollo, C.

PAIR(S)

Stephens, T. J.	Gago, G. E.
Kanck, S. M.	Sneath, R. K.

Majority of 7 for the ayes.

Motion thus carried.

Progress reported; committee to sit again.

OMBUDSMAN (HONESTY AND ACCOUNTABILITY IN GOVERNMENT) AMENDMENT BILL

In committee.

Clauses 1 and 2 passed.

Clause 3.

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

Page 4, lines 9 and 10—Leave out paragraph (3) and insert:
(e) a prescribed agency,

The bill will introduce a new definition of 'agency to which this act applies'. It will include a person who holds an office established under an act; an administrative unit of the government; a council (and that includes a local council); any incorporated or unincorporated body established for a public purpose by an act or established for a public purpose under an act other than an act providing for the incorporation of companies, associations, etc.; an incorporated body established or subject to control or direction of the minister. It then continues with new paragraph (e) which provides that the agency to which this act applies will include 'a person or body declared by the regulations to be an agency to which this act applies, but does not include a person or body declared by the regulations to be an agency to which the act does not apply'.

This will mean that the government can, by regulation, extend the powers of the act to companies which have never, for the purposes of the Ombudsman Act, been regarded as an agency of the Crown or of the government to which this act applies. The government will have unfettered power to choose any particular company or business, partnership or trust to be an agency to which the act applies.

As I mentioned in my second reading contribution, this act gives extraordinary powers to the Ombudsman. It gives him the powers, in relation to investigation, of a royal commission. We believe there should be some limitation on the type of body which the government can, by regulation, incorporate within the definition. What is proposed in the amendment which I have moved, and in the amendment which I foreshadow, is the creation of a class of 'prescribed agency' which means a person or body responsible for performing functions conferred under a contract for services with the Crown or an agency to which this act applies and declared by regulation. We are not seeking to prevent the government, if it is so advised, from declaring a company which is performing outsourced services, such as EDS, United Water, or the companies contracted to—

The Hon. J.F. Stefani: HealthScope.

The Hon. R.D. LAWSON: —HealthScope—the Passenger Transport Board—

An honourable member: Serco.

The Hon. R.D. LAWSON: —Serco, amongst others—to perform public transport services. We are not seeking to prevent the government from including those companies, but we are saying that it should only be applicable to companies which are performing those sort of services, because the very purpose of this act is to give the Ombudsman power over outsourced operations. The bill, as drawn, allows the government to extend it beyond outsourced operations, and we seek by this amendment (and the next one that I propose moving), to ensure that there is a limitation, namely, that the company must be providing those services, and the language proposed to be used is entirely consistent with that which the bill itself introduces where it says in the definition of 'administrative act':

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 Hon. P. HOLLOWAY: The government opposes the amendment. In speaking to the amendment, it is probably best that I speak to at least the first two amendments and, indeed, the last two amendments filed by the honourable member are consequential. We might as well have the substantive debate once.

Paragraph (e) of the definition of 'agency' to which this act applies includes 'a person or body declared by the regulations to be an agency to which this act applies.' This compares with the current definition of 'authority' in the act that allows a body created under an act to be declared by proclamation to be an authority under the act. The formula adopted in the government's bill is based on amendments to the Freedom of Information Act, which was enacted by the previous government in 2001. Indeed, the Hon. Robert Lawson was the minister responsible for introducing that legislation.

Given that both acts cover similar types of agencies and are relevant to the Ombudsman's jurisdiction, the aim of the government's amendments is to try to achieve greater consistency in the definitions. It is acknowledged that the provision in the bill to declare a body as 'an agency to which the act applies' is wider than the corresponding provisions in the current act in that it is not limited to bodies created under an act. However, it should be noted that the bill requires a declaration to be made by regulation rather than by proclamation. The amendment proposed by the Hon. Mr Lawson would remove paragraph (e) from the definition of 'agency to which the act applies' and replace it with a reference to a prescribed agency.

Under the Hon. Mr Lawson's second amendment, a prescribed agency would be defined to mean a person or body responsible for performing functions conferred under a contract for services with the Crown or an agency to which the act applies and declared by the regulations to be an agency to which the act applies.

The government is concerned that the amendment moved by the Hon. Mr Lawson is too restrictive. The effect of the

Hon. Mr Lawson's amendment to paragraph (e) would be to restrict those persons or bodies that can be declared to be subject to the act. However, as stated, the aim of the revised wording in the bill is to achieve greater consistency with the definition in the Freedom of Information Act, a provision enacted by the former government. It was not included as a means of bringing purely private organisations within the Ombudsman's jurisdiction but rather to ensure that, if a body that should properly be covered by the Ombudsman's jurisdiction does not fall within the other arms of the definition, there would be a mechanism to bring that body within the scope of the act.

The amendment moved by the Hon. Mr Lawson might also send the wrong message as to the general approach being proposed by the government in relation to outsourced operations. The bill is intended to bring the outsourced functions performed by private organisations—as opposed to the organisations themselves—within the Ombudsman's jurisdiction. It does this by expanding the definition of 'administrative act' to include an act done in the performance of functions conferred under a contract for services with the Crown or an agency to which the act applies.

I hope that explains the government's position in opposing the amendment. We believe that it would make the clause restrictive and, in relation to those outsource functions, we are really concerned with the functions themselves and not with the companies.

The Hon. M.J. ELLIOTT: I am sympathetic to the argument for consistency with the FOI act. Perhaps it would be helpful if the minister could cite an example of a person or body which the government feels it would like to include under the purview of this legislation but which would be excluded by the amendment.

The Hon. P. HOLLOWAY: My advice is that the government does not envisage at this stage any organisations which might be picked up; rather, it is a matter of (if and when the bill passes) going through it to ensure that all agencies which are currently covered are, in fact, covered by the provisions.

The Hon. M.J. ELLIOTT: You cannot think of a single agency or person that you feel the government would want to cover that would not be covered by the amendment?

The Hon. P. HOLLOWAY: It is my advice that, from time to time, in his report the Ombudsman raises examples of issues that may be covered. This simply provides a mechanism by which that can be done. I will cite an example that has been raised by the Ombudsman:

> Agencies which are within the jurisdiction of the Ombudsman who have further established independent commercial arms operating in the interests of the agencies but with legal structures which do not fall immediately within the current provisions of the Ombudsman Act.

I refer, for example, to some university bodies such as Luminis Pty Ltd, Flinders Technology and Repromed. I am advised that there has been no decision as to whether or not those bodies should be covered, but I gather that it has been noted by the Ombudsman that those bodies are not covered. The government has not yet made a decision in relation to those bodies, but the point I make is that, from time to time, these do come up in the Ombudsman's report. All we are seeking to do here essentially is to allow the capacity to cover these bodies if the case warrants.

The Hon. R.D. LAWSON: Does the minister suggest that it is not intended to include, by regulation, companies which are presently performing outsourced services, such as Group 4, the operator of the Mount Gambier Prison, which has been the subject of comment from time to time by the Ombudsman?

The Hon. P. HOLLOWAY: At this stage, the government is just looking at covering the functions; not so much the organisation of Group 4 itself but the functions. In this case, presumably it would be the prison services at Mount Gambier, and they would report through the Correctional Services Department. That is the intention of it. In a sense it mirrors the debate that we just had on the Statutes Amendment (Honesty and Accountability in Government) Amendment Bill where we looked at the definition of 'contractors' and others. In the second reading reply, I addressed some comments in relation to that. It is the functions themselves that we are interested in, not so much the companies.

The Hon. M.J. ELLIOTT: That was as clear as mud; rather lengthy, but it took us nowhere. A question was posed about Group 4. Is the minister saying that, if the Department of Correctional Services outsources something to Group 4, it is intended that Group 4 should be treated in the same way as the rest of the department? Is that what he is trying to say?

The Hon. P. HOLLOWAY: Under the government's definition, the definition of 'administrative act' is expanded to include an act done in the performance of functions covered under a contract for services with the Crown or an agency to which the act applies. In that sense, we are increasing the Ombudsman's—

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: That is what the government is proposing be done—of course, we are now debating the Hon. Robert Lawson's amendment to that. With respect to the original government amendment, we were just proposing that it be the administrative acts that were associated with the outsourcing that be covered, that he would be able to investigate business of the companies purely related to those acts that are done in the performance of functions covered under a contract for services with the Crown.

The Hon. M.J. ELLIOTT: I am not sure whether or not, in the way in which this is constructed, the definition of 'administrative act' is enough to allow all outsourced work to effectively be covered. If it does, what further work does existing paragraph (e) do in terms of defining agencies?

The Hon. P. HOLLOWAY: We are really talking about two different things here. First, in relation to paragraph (e)—I assume that we are talking about the original bill?

The Hon. M.J. Elliott: Yes. I am trying to work out what the current bill is trying to do so that I can judge the amendment.

The Hon. P. HOLLOWAY: I understand. New paragraph (e) is a person or body declared by the regulations to be an agency to which this act applies. So, under regulation, that body can be added. That deals with the organisation itself. But then the separate definition of 'administrative act' that is defined under clause 3(a) refers to an act done in the performance of functions conferred under a contract for services with the Crown or an agency to which the act applies. So, in effect, they are both covered in different ways. The administrative act definition covers the outsource function, if you like, with the Crown—services with the Crown—then an agency can be incorporated by regulation under the definition of 'agency' to which this act applies under paragraph (e). They would really be dealing with, essentially, separate situations.

The Hon. J.F. STEFANI: I am not clear as to what this definition is trying to do. I am trying to think of a circum-

stance where, in practical terms, this could apply. I think of DAIS, for instance, as an agency, and I take it that it would be covered as a definition under 'administrative unit', meaning that it is a unit under the Public Sector Management Act, and DAIS then outsources the drawings of a particular project to an architect, or to a firm of architects, who are then required to produce certain documents which, in the course of construction, are the subject of a complaint and, as a result, the Ombudsman is called in, and he or she has the authority, or the power (this is what you are trying to do), to investigate the architectural company that is acting under contract to DAIS. Is that the scenario?

The Hon. P. HOLLOWAY: My advice is that that would be covered under the definition of 'administrative act', provided, of course, that the example the member is talking about was a contract for services with the Crown. Assuming it meets that definition, under paragraph (b) of the definition of 'administrative act', that would be covered within the bill.

I am also advised that there are restrictions that would apply if that were to go too wide or we considered that that would reach beyond what would be reasonable. You can see that 'administrative act' means (a) and (b) but does not include (c), (d) and (e). So it excludes: under (c), an act done in the discharge of a judicial authority; under (d), an act done by a person in the capacity of legal adviser to the Crown; and under (e), an act of a class declared by the regulations not to be an administrative act for the purposes of this definition. Greater minds than mine would have to think about that, but certainly it specifically excludes legal advice, so whether or not architectural drawings would be a class declared by regulations to be an administrative act is something that would have to be considered under (e).

The Hon. M.J. ELLIOTT: The term 'administrative act' is used in section 13 of the principal act. I am not sure that I fully understand the role of the term 'agency' as used within 'administrative act'. I am uncertain whether or not the amendment which is made to 'administrative act' is sufficient. It is more or less the question that I asked before. By defining the agency, it is seeking to capture some extra, but I would have thought that the change in the definition of 'administrative act' would have done that, in so far as it seems to me if it is not carried out by a government agency in the narrow sense of the word—if it has contracted the work out and outsourced it in some way—it would have been picked up by the change in the definition of 'administrative act'. There may be some other problem created by using the term 'agency' in the definition of 'administrative act'.

The Hon. P. HOLLOWAY: In relation to outsourcing, yes, the honourable member is right: the purpose of the act was to include those functions within it. That was actually the purpose of the bill.

The Hon. M.J. ELLIOTT: Which leads me to the question of what else are we seeking to pick up in the change to the definition of 'agency' in paragraph (e)? What else do we want to capture which we are not capturing by the change in the definition of 'administrative act'?

The Hon. P. HOLLOWAY: It is just a catch-all clause in case there are other bodies. I think I already gave examples in relation to Luminis and Flinders Technology. Again, I stress there has been no decision made in relation to them, but I gather the Ombudsman has referred to the fact that he does not have jurisdiction in those areas. If a case comes up it would be possible by regulation—which I guess would be subject to disallowance by this council—to extend the jurisdiction to cover agencies such as that. But it really is just a catch-all in case one of these agencies is discovered at some stage and it is considered appropriate to extend the Ombudsman's jurisdiction into that area.

The Hon. M.J. ELLIOTT: I note that it is being done by regulation, which gives either house the potential to disallow. But at the same time I pose the question that, if something comes up, what urgency is it likely to have, other than the Ombudsman noting there is something that he or she wishes to pursue but cannot? Is it possible that the government can regulate so that the Ombudsman can commence an inquiry before parliament has made a decision whether or not that is a suitable expansion? So I pose the question to the minister whether this power under the regulations might perhaps be applied in the way that some regulations are applied whereby it comes into force only after it has been before the parliament for the time necessary for a motion of disallowance to be moved.

The Hon. P. HOLLOWAY: That is a matter for the council to determine. However, I point out that paragraph (c) of the definition section in the Ombudsman Act defines 'authority' as 'a body created under an act and declared by proclamation to be an authority'. So, at the moment 'authority' can cover a body created under an act—that is the first requirement—but then declared by proclamation to be an authority. Whereas this amendment extends it to an agency, it requires it to be declared by regulation. So, in that sense it is more accountable to parliament than the current definition.

The Hon. R.D. LAWSON: I return to the minister's comment that we are not here looking at functions. However, what at the moment is covered by functions is the administrative act, because the administrative act, to be subject to the Ombudsman's jurisdiction, must be 'an act done in the performance of functions conferred under a contract'. So, that definition of an 'administrative act' is clearly limited by functions. However, the definition of 'agency' to which the act applies is not limited by functions. It is absolutely unlimited. The point of the amendment is that, just as 'administrative act' is limited by functions, so ought the capacity of the government to declare a body to be an agency to which this act applies be limited by functions. The minister is talking of Luminis and other small companies. However, all the rhetoric about this measure is about the major outsourced companies, about the capacity—

The Hon. J.F. Stefani: The quality of services.

The Hon. R.D. LAWSON: —yes—of individuals to complain about their water or their interaction with outsourced services such as health services at Modbury—

The Hon. J.F. Stefani: Pathology services.

The Hon. R.D. LAWSON: —yes, pathology services, the Hon. Julian Stefani interjects—and transport services; for example, Serco is performing a huge number of services. I would like the minister to rule out if it is not intended to declare those sorts of companies as agencies—

The Hon. J.F. Stefani: ETSA.

The Hon. R.D. LAWSON: There is an electricity ombudsman who has functions, and we accept that. If the minister is going to rule out those companies that we all thought would be covered by this, he should do it now.

The Hon. P. HOLLOWAY: Let me repeat what the Premier said in his second reading explanation:

> The Ombudsman Act, in its current form, applies to administrative acts of agencies—public service administrative units, other government authorities and local government councils. Clause 3 of the bill expands the definition of 'administrative act' to clarify the Ombudsman's jurisdiction in relation to outsourced operations.

'Administrative act' is expanded to clarify the Ombudsman's jurisdiction in relation to outsourced operations. The revised definition will ensure that the Ombudsman can investigate 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.

Then he goes on:

The bill also amends the definition of 'agency to which this act applies'. The new definition is based on the recent amendments to the Freedom of Information Act. Paragraph (d) of the new definition is wider than the existing definition of 'authority' and will bring some bodies within the Ombudsman's jurisdiction without the need to refer to them specifically in the Act, as is now the case with the universities, the Sheriff and incorporated health centres and hospitals. The definition will allow a person or body to be declared by the regulations to be an agency to which the Act applies or an agency to which the Act does not apply.

Members can clearly see there from the second reading explanation—'specifically in the act is now the case with universities, the Sheriff and incorporated health centres'—that the intention of the government is made quite clear. In answer to the comments made by the honourable member, it is the change of the definition of 'administrative act' that is essentially the principal change of the bill that the government is seeking to bring about, rather than the change to the definition in paragraph (e).

The Hon. R.D. LAWSON: Proposed section 14A on page 5 concerns the power that will be given to the Ombudsman to conduct reviews of the administrative practices and procedures of an agency to which this act applies. In other words, for the first time the Ombudsman is being given a general power, if he considers it 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. This is not limited to administrative acts in the same way as is section 13, as the Hon. Mr Elliott mentioned.

This is a roving commission with the powers of a royal commissioner to conduct a review of the administrative practices and procedures of any agency to which the act applies. That means that the government could, by regulation, declare BHP an agency to which this act applies. All my amendments seek to do is insist that this be only in relation to the functions conferred under a contract for services with the Crown or an agency to which the act applies. That is why in the foreshadowed amendment 'prescribed agency' will mean a person or body responsible for performing functions (and I am limiting it to functions) conferred under a contract.

The Hon. P. HOLLOWAY: I am advised that the Ombudsman has already undertaken some work in the area of administrative audits. It is understood that he is currently conducting an audit of public sector and local government internal complaints handling systems. Essentially, that is what this amendment to clause 5 is about. It is certainly not intended to expand that operation outside those sorts of areas where the Ombudsman would have a general administrative audit role.

The Hon. M.J. ELLIOTT: While I have been asking the minister what sorts of bodies he might like to include, I did think the Hon. Mr Lawson was drawing a pretty long bow when he suggested that BHP might be included. His amendment in relation to administrative acts may not be limiting but certainly, in relation to administrative audits, it may be. It seems to me that his definition of administrative audits may preclude looking at the administrative practices of outsourced agencies. For example, an agency that is engaged in the delivery of water where it reads the meters on an irregular basis might involve administrative practices and procedures that might be of interest to the Ombudsman. It seems to me that narrowing down the definition of paragraph (e) in the way in which Mr Lawson has moved might preclude some administrative audits that could be justified.

The Hon. P. HOLLOWAY: I suggest that clause 5 should be considered later. I know there is a series of amendments, but essentially we are first dealing with the definitions of administrative act and an agency to which this act applies.

The Hon. M.J. ELLIOTT: Yes, but the definitions apply to clause 5. We have to look at clause 5 at the same time because the change in the definition to paragraph (e) does seem to impact on the functioning of clause 5.

The Hon. P. HOLLOWAY: We are talking about the Ombudsman's powers. The whole act applies to an 'agency to which this act applies'. Certainly clause 5 is just one of them. It is a little confusing because the honourable member has about four amendments to this bill which are all related in some way. If one wished to address the issues in relation to clause 5, it may be possible to address that in a different way, but at this stage, first, we have to deal with the substantive debate about 'administrative act' and 'agency to which this act applies', and then look at any impact that might have on clause 5 separately.

The Hon. M.J. ELLIOTT: I am pretty certain that the amendment is not good. I do think that we have to look at all this together because paragraph (e) not only is important in terms of the application to 'administrative act'—in fact a change may not be particularly necessary one way or the other, other than the Hon. Mr Lawson's fear that, in some way, we will drag in all sorts of bodies such as BHP—but also it impacts upon the application of clause 5. We have to have our eye on that as well. Unfortunately, in seeking to be limiting in terms of how this act might be applied in some respects, I think it has been potentially over limiting in terms of application to clause 5, because I think that administrative audits may be sought to be applied to bodies which would not be included within the definition as would be the case if amended by the Hon. Mr Lawson.

The Hon. J.F. STEFANI: Does the minister foresee that this definition can be extended to local government councils where councils undertake some outsourced function of government agencies? Could that be one of the extensions?

The Hon. P. HOLLOWAY: The answer is potentially yes, because, if the honourable member looks at the definition of 'agency to which this act applies', he can see it means 'a council'. Therefore, a council is an agency to which this act applies. Then if one looks at 'administrative act' one sees that it means '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'. If the honourable member puts the two definitions together as they appear in the bill, that is, the definition of 'administrative act' and the definition of an 'agency to which this act applies', it would mean essentially, yes, to the honourable member's question.

The Hon. M.J. ELLIOTT: I am not sure that it is satisfactory. I am not happy with the amendment as it currently stands because I think that it is too limiting in terms of its application to clause 5. I am not sure whether the Hon. Mr Lawson has applied his mind to that, but at this stage I would oppose the amendment because of its impact on clause 5. If he feels there is another way of tackling the issue that he has sought to address in terms of perhaps a very broad application which was not intended, then I would invite him to apply his mind to it very quickly.

The Hon. R.D. LAWSON: Yes, in fact I am doing that and I do believe that it might be possible to accommodate the Hon. Mr Elliott. I do not have the words readily to hand which would enable that to be done. In these circumstances, I would ask that progress be reported to enable me to have a discussion with the honourable member shortly to see whether the matter can be accommodated.

Progress reported; committee to sit again.

STATUTES AMENDMENT (ENVIRONMENT PROTECTION) BILL

Adjourned debate on second reading.

(Continued from 14 November. Page 1329.)

The Hon. CAROLINE SCHAEFER: I understand that much of this bill was supported by the opposition in another place where it was vigorously and extensively debated, and it will continue to be supported in the Legislative Council. Much of the bill is the result of a report brought down by the Environment, Resources and Development Committee last year, and much of it was prepared in draft form by the previous government. As such, I imagine that it will be supported by all parties; however, a number of clauses caused the Liberal Party great concern, and we will either seek to amend or oppose them, as we did in the House of Assembly.

This bill should not be seen in isolation. It seeks to strengthen the powers of the Environment Protection Authority, and it seems to me to lessen the role of the former board. The authority has become a regulator and a policeman, and its educative, encouraging and advisory roles seem to have diminished consistently. In fact, there appears to be very little carrot but a very big stick when it comes to environmental matters in South Australia.

As I have said, this bill should not be read in isolation. Let us look back at some of the initiatives of minister Hill. On coming to office, he subsumed the entire natural resource group from PIRSA. He took control of the entire water resources department and moved all the employees of the EPA across to the new authority. We have before us a native vegetation act amendment which seeks to give the minister far-reaching powers and to double fines; and an Upper South-East drainage act which seeks to give the minister far-reaching powers of acquisition and to double fines. This bill savagely increases authority, doubles fines and greatly diminishes the requirement of knowledge by an offender, thereby making prosecution much easier.

We are also on notice that the minister has not finished yet. At a later date, he intends to introduce a subsequent bill dealing with a general review of the Environmental Protection Act, which includes an extension of the scope and powers of the ERD Court and the introduction of a further range of civil offences. The minister also intends to take power over and control of the Murray River in South Australia, and he is moving for the integration of natural resource management boards, thereby reducing the number in the community who have input to him. Via the marine planning initiative the minister has, or will have, considerable control over our oceans. He already controls our coastline.

As I have said, the Liberal Party is not necessarily opposed to many of these initiatives; some we applaud. In isolation, they do not look too bad but, collectively, we see a picture of an inordinately powerful minister with an Environmental Protection Authority that has more powers than the police and an ERD Court that has more powers than a civil court.

I am surprised that the ministers in this council have so readily handed so much control to one super ministry. I hasten to add that this is not a personal attack on minister Hill but rather a determination to involve the rest of South Australia and to warn people, via this speech, that we are developing two or three 'super ministries' without much input from the public and without even much input from the lesser ministries.

I also have concerns that the CEO of the new authority will be chair of the board. Ostensibly, this is to keep the workings of the authority at arm's length from the minister. However, under this legislation, the CEO of the authority is automatically the chair of the board, which is answerable to the minister. I must say that it is a very short arm's length and, to me, it sounds very similar to an excerpt from *Yes, Minister*.

The increase of fines to $2 million maximum for a body corporate and $1 million for an individual are excessive. It is argued that these fines are in line with Queensland at $1.5 million, the Northern Territory at $1.25 million and New South Wales at $10 million. However, these fines are all specific to corporate chemical or oil spills, not to general environmental breaches or to individual breaches.

However, the real crunch comes not with the doubling of the fine but when it is linked to the removal of the degree of knowledge required to commit an offence. Previously, an offender had to know that 'serious environmental damage might'—and I repeat 'might' not 'would'—result in order to be prosecuted. In this bill, the word 'serious' has been removed. A person can incur a maximum fine of $500 000 or a body corporate a fine of $2 million, even though they did not know that serious damage might occur.

We will oppose this amendment. Its main object is to lessen the onus of intent and, therefore, make prosecution easier. The reason that I was given was that there has never been a prosecution under 79(1). However, there have certainly been prosecutions under other sections of the act. So, I wonder whether there is natural justice, or indeed any justice, in this provision. Further, any economic benefit acquired by an offender must be paid to the Environmental Protection Fund. So, it would be possible to incur a $500 000 fine but make a million dollars. That person would then have to pay $1.5 million to the Environmental Protection Fund, even if they are unaware of serious harm. I see no attempt to educate or encourage, only to fine and police.

To make a comparison with another act dealing with protection of aspects of the environment (and I did seek to make comparison with a prosecution under civil law), it was suggested to me by my learned friends that I could not compare apples with lemons. I have therefore taken section 45 of the National Parks and Wildlife Act which sets out penalties for taking an animal, eggs or a native plant from within a sanctuary.

The penalties are as follows. In the case of an animal or eggs of an animal or a native plant of an endangered species, the maximum penalty is $10 000 or imprisonment for two years; in the case of an animal or eggs of an animal or a native plant of a vulnerable species, it is $7 500 or imprisonment for 18 months; in the case of an animal or eggs of an animal or a native plant of a rare species, the maximum penalty is $5 000 or imprisonment for 12 months; in any other case, it is $2 500 or imprisonment for six months. That does not compare with a fine of $2 million.

This bill doubles the fine for corporate offences. It does not take into account the size of the corporation. For a body corporate, each member of the corporation plus the manager is separately liable for the same penalty. This would mean that a one-person, one-director company would receive the specified penalty, but a multi-national company with 20 directors would receive 20 times the penalty.

This bill is far reaching, some would say draconian, in its powers. It gives an enormous amount of power to the Environment Protection Authority. I sincerely hope that it will be administered with decency and compassion. Having said all that, I thank the minister's department for the extensive briefings that I have been afforded. Despite the fact that I do not agree with much of this bill, I agree with its content and support the second reading.

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

FREEDOM OF INFORMATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 November. Page 1331.)

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank honourable members for their contributions. A number of issues were raised relating to the bill that require a response. I will address these one by one. I refer, first, to the scope of the bill. We have been criticised for narrowing the scope of the freedom of information legislation. I would like to reiterate that the government's bill is the most progressive in Australia. Most significantly, it is the only legislation in Australia that allows access to cabinet documents.

I now refer to the objects of the bill. The wording in relation to the objects is aimed to achieve a simpler and clearer statement of intent via the promotion of openness and accountability. It does not weaken the objects but provides clarity to the public and those responsible for administering the act.

The Legislative Review Committee report suggested that a cultural change was needed in the Public Service toward FOI. These amendments are aimed at fostering that cultural change by making the objects clearer and emphasising the principles to be applied by the executive in applying the act. The New Zealand act is often spoken about as being an example of good freedom of information legislation. The New Zealand act has many different design features from the South Australian act and it would be inappropriate to mirror only the objects part of the act.

As for fees and charges, much has been said about the charging of members of parliament and the fact that it will restrict the amount of information they can obtain. The government's bill merely places members of parliament in the same position as members of the community when it comes to making freedom of information applications. It will not restrict the amount of information they will be able to obtain, merely that they will be charged the same amounts as members of the public to obtain the information.

In relation to fees and charges, agencies are incurring legal costs in complying with the FOI requests. These costs are not being passed on to the members of the public, nor should they be. Fees and charges applicable to an FOI application are set out in the regulations under the FOI Act 1991. They state the amounts that an agency may charge an applicant in respect of the giving of access to the document. This does not include the cost of advice or executive time.

In relation to the restriction on rights of appeal to the District Court, I can offer the following advice. There are currently three merits review mechanisms for applicants in South Australia: internal review; external review to the Ombudsman or Police Complaints Authority; and appeal to the District Court. The introduction of review on a point of law only to the District Court is merely a mechanism to streamline the procedure and to bring to a close a very long and drawn-out process. It is not designed to unreasonably restrict appeal opportunities. There are ample merits appeal mechanisms available to an applicant and it is fitting that the courts deal with points of law only. In addition, it will bring South Australia into line with other jurisdictions in Australia in relation to a further appeal after external review. This was recommended by the Legislative Review Committee report.

The removal of the internal review process was investigated and consulted on at length. It was concluded that the internal review process works in favour of applicants and that the vast majority of internal reviews are resolved amicably between the parties. The internal review process is very brief—only 14 days. If this were to be removed and the applicant had no choice but to go direct to the Ombudsman or the Police Complaints Authority, their external review could be delayed for an indefinite period of time as it would increase the reliance on external review mechanisms.

The Legislative Review Committee report also recommended the removal of internal review procedures. The then government disagreed as it considered that internal review processes were a positive component of the current FOI Act and should be retained. In relation to the costs associated with appeal to the District Court, the District Court Act already provides that, in the relevant division of the court:

> No order for costs is to made unless the court considers such an order to be necessary in the interests of justice.

(See section 42G(2) of the District Court Act.) This is a substantial departure from the usual rule that costs follow the event, and meets the concerns sought to be addressed by the opposition's amendment.

The Legislative Review Committee report also recommended deemed consent. The following is a quote from the then government in its response to that recommendation, as follows:

> The government believes that the protection of legitimate third party rights and interests is an important element in any FOI scheme. As implementation of this recommendation could compromise this element, the recommendation is not supported.

The government agrees with that conclusion. The issue of documents held by private companies was raised in the Legislative Review Committee report of September 2000 and was rejected by the then government. Depending on the nature of the privatisation, insurmountable obstacles lie in the path of access to such documents, not the least being contractual obligations entered into by the previous government. For future contract renewals, however, the question of government access to the documents will be given careful consideration.

In relation to the estimates committee process and the restriction of access to estimates committee documents, I remind the council that the estimates committee process provides an extensive existing means for accessing information concerning the budget. As to documents affecting personal affairs, the introduction of the time period for

personal affairs information is solely to protect the innocent and vulnerable. The FOI Act only restricts the release of personal information if it involves the unreasonable disclosure of information concerning personal affairs.

It is not a blanket exemption and is only ever applied when disclosure would be unreasonable. Currently, personal information that, if released, would constitute an unreasonable disclosure could be accessed by anyone after 30 years has passed. In all other FOI legislation in Australia, and indeed New Zealand, unreasonable disclosure of personal information has no time limit imposed and, therefore, is exempt from disclosure for the lifetime of the record.

Agencies hold significant extremely personal information such as genetic information, child abuse files, health records, allegations of criminal activity, mental illness, and so on. To release this information does not serve the public good: it merely exposes individuals' private information. This is an initiative to protect those most vulnerable in our society. The public access determination guidelines are merely a guide for agencies to define, amongst other things, what would constitute an unreasonable disclosure of personal information. The State Records Act does not define the time limit for access—the individual agencies do. The regulation passed to extend the time period for the release of information concerning the death of Dr George Duncan was done to protect the personal affairs of witnesses interviewed by police at the time and the personal affairs of persons named during the inquiry.

The Hon. Robert Lawson's comments in relation to the 'Bringing Them Home' inquiry report are alarmist and wrong. The extension of the time period from 30 to 80 years for the release of personal information would not have hampered this inquiry because the restrictions to personal information apply only if the disclosure is unreasonable. Furthermore, the report was national in scope and exemptions similar to those proposed by this bill already existed in other states at the time of the preparation of the report and did not hamper it.

This government is progressing the initiatives of the previous government by continuing its services to the Aboriginal community. There is in place a memorandum of understanding with the Aboriginal organisation, SA Link Up, for members of the stolen generation to have access and counselling in relation to records about themselves. State Records' contribution to the 'Bringing Them Home' initiatives has been widely acknowledged as a valuable contribution by Aboriginal communities and researchers. The Hon. Robert Lawson—

The Hon. R.D. Lawson interjecting:

The Hon. P. HOLLOWAY: Well, the honourable member has not listened. The Hon. Robert Lawson comments also about the Commonwealth Archives Act 1982, which provides public access to commonwealth government records that are more than 30 years old. They have a very similar regime to ours in that detailed personal information is restricted from access up to the lifetime of a person, whereas we prescribe 80 years. Interestingly, their FOI act restricts access to personal information if disclosure is unreasonable. This restriction applies permanently. There is no time limit, as there is with our FOI Act.

This bill enshrines contract disclosure in legislation. It goes further than the contract disclosure policy in enabling access to contracts. The policy allows several exemptions from disclosure, for instance, where expenditure is less than $500 000. Our proposal does not incorporate a threshold and, therefore, all contracts will be available for disclosure.

In relation to the Essential Services Commission Act, this mirrors the decision of the previous government that chose to make the Independent Industry Regulator exempt from the FOI Act. The same good reasons advanced to support the exemption of the Industry Regulator, Lew Owens, pertain to his role as Essential Services Commissioner. No cogent change in circumstances has been advanced. The regulation referred to by the Hon. R.D. Lawson merely relates to the repeal of the Independent Industry Regulator Act 1999 and the introduction of the Essential Services Commission Act 2002, which replaces it.

The government's amendments to the Freedom of Information Act are part of the 10-point plan specifically designed to restore trust in government and the political process. I commend this bill to members and look forward to debate in the committee stage.

Bill read a second time.

SOUTH AUSTRALIAN METROPOLITAN FIRE SERVICE (FIRE PREVENTION) AMENDMENT BILL

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

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

That this bill be now read a second time.

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

Leave granted.

Pursuant to the *Statutes Amendment (Local Government and Fire Prevention) Act 1999* (assented to 18 March 1999), section 60B was added to the *South Australian Metropolitan Fire Service Act 1936*. This section gives councils the power to require the owner of land on which there is 'inflammable undergrowth or other inflammable or combustible materials or substances' to take specified action to remedy the situation within a specified time. Previously this power had been provided by council by-laws.

The section as drafted does not allow Councils to require the clearing of undergrowth until it has cured sufficiently to be considered to be flammable. Hence the danger of the outbreak of fire must already be present before the enforcement of remedial action can be commenced. This is considered by both the South Australian Metropolitan Fire Service (SAMFS) and the Local Government Association (LGA) to be unsatisfactory.

The logistics of inspecting all properties within a council district after the undergrowth has cured to a flammable state, issuing, where appropriate, rectification notices and policing compliance guarantee that the hazard will continue to exist well into the Fire Danger Season.

The Bill seeks to amend section 60B to enable councils to enforce clearance of any undergrowth that is likely to become flammable.

Liaison has occurred between the SAMFS and the LGA on this matter. Both organisations are anxious that this anomaly be rectified before the 2002-03 Fire Danger Season commences. Both the SAMFS and the LGA have agreed with this proposed amendment.

The Bill seeks to make a minor amendment to sections 45 and 51B and also to section 60B of the principal Act by the replacement of the word 'inflammable' wherever it occurs with the more contemporary word 'flammable' which has been in common use and, in particular, in fire service use for many years now.

I commend the Bill to the House.

Explanation of clauses

Clause 1: Short title

This clause is formal.

Clause 2: Amendment of s. 45

This clause substitutes the outdated reference in subsection (3)*(e)* to 'inflammable' with the word 'flammable' which is the preferred term in fire service use.

Clause 3: Amendment of s. 51B

As in clause 2, this clause substitutes the outdated references in subsections (1) and (2) to 'inflammable' with the word 'flammable'.

Clause 4: Amendment of s. 60B—Fire prevention on private land
This clause inserts the definition of 'flammable undergrowth' in section 60B with the effect of enabling councils to deal with undergrowth that is not yet flammable but likely to become flammable at a future point in time. The clause also updates further references in subsections (2) and (3) to 'inflammable' with the word 'flammable'.

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

ADJOURNMENT

At 9.21 p.m the council adjourned until Tuesday 19 November at 2.15 p.m.