LEGISLATIVE COUNCIL

Tuesday 19 November 2002

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

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following questions, as detailed in the schedule that I now table, be distributed and printed in *Hansard*: Nos 54, 58 and 59.

PUBLIC SECTOR EMPLOYEES

54. **The Hon. A.J. REDFORD:**

1. What was the total number of unattached public sector employees in South Australia as at 15 October 2002; and
2. What was the salary range in which they fell?

The Hon. T.G. ROBERTS: The Premier has provided the following information:

The honourable member has asked for information related to the total number of unattached public sector employees in South Australia 2002 as at 15 October 2002. The only 'unattached' employees in the Public sector are in the Unattached Unit managed by the Commissioner for Public Employment.

As at the 15 October 2002, ten employees were paid through the Unattached Unit. (Of these, the remuneration cost of two employees was fully recovered from other organisations while more than fifty percent was recovered for a further two employees.)

Twelve other employees have a right to return to the Unattached Unit if necessary at some time in the future. Of these, nine employees are currently working in agencies on a contract basis and three are on leave without pay.

Of the ten current Unattached Unit employees as at 15 October 2002, four fall within the following salary range:

Salary Range	Number
$65 000-$69 999	2
$70 000-$74 999	1
$75 000-$79 999	0
$80 000-$84 999	0
$85 000-$89 999	2

The total remuneration of the remaining five current Unattached Unit employees as at 15 October 2002 was:

Total Remuneration	Number
$110 000-$119 999	3
$120 000-$129 999	0
$130 000-$139 999	1
$140 000-$149 999	0
$150 000-$159 999	0
$160 000-$169 999	1

AUSTRALIAN DANCE THEATRE

58. **The Hon. DIANA LAIDLAW:**

1. (a) Did the Artistic Director, General Manager and Board of Australian Dance Theatre (ADT all agree to relocate to the Adelaide Railway Station Building; and

(b) If so, what were the agreed terms including rental payments?

2. What fit-out costs were incurred in accommodating ADT at the Railway Station Building; and

3. (a) Was the approval of both Arts SA and the Adelaide Festival Centre Trust sought and/or given prior to ADT's subsequent move to the Wonderland Ballroom at Hawthorn earlier this year, or was this move undertaken in breach of contractual agreements with the Adelaide Festival Centre Trust; and

(b) If so, will the trust be seeking compensation, and, if not, why not?

4. (a) What were the costs associated with the relocation of ADT to Hawthorn, including the installation of the new sprung floor; and

(b) What part of these costs were met by ADT or other sources?

5. (a) What were ADT's financial results for 2001, including the level of funds received from both state and federal government funding sources; and

(b) What is the company's estimated income and expenditure this year, including the level of funds received from both state and federal government funding sources?

6. (a) How many performances did ADT schedule in South Australia, nationally and overseas, last year?

(b) How many performances did ADT schedule in South Australia, nationally and overseas, this year?

(c) What is the company's performance program for next year?

7. (a) Has ADT lost Major Performancing Arts Company status; and

(b) If so, what are the repercussions for the company both financially and in organisational terms?

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

1. (a) Yes

(b) Rental payments were agreed to be $60 000 per annum for office accommodation and two dedicated rehearsal spaces.

2. The total cost of refurbishment of the Railway Station Building for the State Theatre Company, Australian Dance Theatre and Windmill companies was $1 248 800. Because some spaces are shared, it is not possible to apportion the costs precisely to each company.

3. (a) ADT informed Arts SA and the Adelaide Festival Centre Trust of its intention to seek alternative accommodation, once the first rehearsal space was deemed to be unsuitable as a dance space. After consideration, this course of action was agreed by all parties.

(b) Arts SA and the AFCT have been seeking an alternative tenant, to replace ADT. Windmill and the State Theatre Company have successfully negotiated with the AFCT and Arts SA to move into the vacated office space for an agreed additional rental.

4. (a) The costs for the fit-out of the Wonderland Ballroom at Hawthorn (including a new sprung floor) was $215 000.

(b) Arts SA provided a once-off grant of $215 000 to pay for the full costs of the fit-out.

5. (a) The 2001 financial result for ADT was a surplus of $6 912, with SA Government funding of $910 817 and Commonwealth Government funding of $227 804.

(b) The company's estimated end-of-year result for 2002 will be income of $1 831 663 and expenditure of $1 767 248, with SA Government funding of $925 153 and Commonwealth Government funding of $231 390.

6. (a) For 2001, the company undertook 19 performances in SA, 23 performances interstate and 19 performances overseas.

(b) For 2002, the company is undertaking 12 performances in SA, 11 performances interstate and 15 performances overseas.

(c) For 2003, the company will be performing a new work at WOMAD, working in regional and remote areas of SA for the Come Out Festival, performing at the Melbourne Festival, as well as undertaking two overseas tours to UK/Japan and the Holland Dance Festival/Europe.

7. (a) From the beginning of 2002, the company transferred from the Major Performing Arts Board to the Dance Board of the Australia Council.

(b) The Commonwealth Government funding level to the company has remained the same. The major change for the company is that it is required to apply to the Dance Board each year for funding and decisions are made through the peer assessment process. For 2003, the Dance Board has granted the company $232 000 which is comparable with the funding received for 2002.

CABINET, COMMUNITY MEETINGS

59. **The Hon. A.J. REDFORD:** Has any polling been conducted by the government prior to community cabinet meetings?

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

There has been no polling conducted by the current government prior to community cabinet meetings. I do not know whether or not the former government commissioned polling either before or after its country and suburban cabinet meetings.

PAPERS TABLED

The following papers were laid on the table:

By the President—

Reports, 2001-2002—
District Council of Barunga West.
Employee Ombudsman.

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

Reports, 2001-2002—
Dairy Authority of South Australia.
South Australian Captive Insurance Corporation.
South Australian Sheep Advisory Group.
Veterinary Surgeons Board of South Australia.

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

Reports, 2001-2002—
Adelaide Convention Centre.
Adelaide Entertainment Centre.
Bookmark Biosphere Trust.
Charitable and Social Welfare Fund (Community Benefit SA).
Department of Environment and Heritage.
Department for Transport, Urban Planning and the Arts.
Dog Fence Board—South Australia.
Environment Protection Authority.
Food Act Report—Department of Human Services.
Guardianship Board of South Australia.
Independent Gambling Authority.
Local Government Finance Authority.
Office for the Ageing—Department of Human Services—South Australia.
Office of the Liquor and Gambling Commissioner Gaming Machines Act 1992.
Office of the Public Advocate.
Pharmacy Board of South Australia.
Reserve Planning and Management Advisory Committee.
South Australian Tourism Commission.
South Australian Victoria Border Groundwaters Agreement Review Committee.
State Heritage Authority.
SAIIR Rail Regulation.
The Department of Water, Land and Biodiversity Conservation.
Waste to Resources Committee (WRC).
Water Well Drilling Committee.
Wildlife Advisory Committee.
Coastal Strip Plan Amendment Report.
Regulations under the following Acts—
Air Transport (Route Licensing—Passenger Services) Act 2002—Administrative Process.
Liquor Licensing Act 1997—Dry Areas—
City of Marion.
Clare.
Victor Harbor—New Year.
Motor Vehicles Act 1959—Accident Towing Roster Vacancies.
Local Government Act 1999—Local Government Superannuation Board—Family Law.
Rules of Court—
Supreme Court—Supreme Court Act—Anomalies.

By the Minister for Correctional Services (Hon. T.G. Roberts)—

Department for Correctional Services—Report, 2001-2001.

EQUAL OPPORTUNITY

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to equal opportunity and anti-discrimination made by the Hon. Michael Atkinson.

MURRAY RIVER

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to water resources and the Murray River made by the Hon. John Hill, Minister for the River Murray.

MUSIC HOUSE

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to Music House made by the Hon. John Hill, Minister Assisting the Premier in the Arts.

QUESTION TIME

OFFICE FOR ECONOMIC DEVELOPMENT

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Deputy Premier, a question about the Office for Economic Development.

Leave granted.

The Hon. R.I. LUCAS: I was contacted this morning by a person very close to the Economic Development Board who passed on some information which I can only hope is not truly indicative of the government's thinking in relation to staffing of the Office for Economic Development and the Economic Development Board. This morning, I was told that the government is currently considering a proposal to provide up to 50 full-time staff to provide assistance to the Economic Development Board.

As I outlined yesterday, the government's first policy was to abolish the Department for Industry and Trade but, upon the government's assuming office, that policy changed to renaming the Department for Industry and Trade the Office for Economic Development. However, I am now told that not only might there be an Office for Economic Development, perhaps under another name, but also another agency will be established to provide this advice and assistance to the Economic Development Board. Rather than getting rid of the old Department of Industry and Trade, as was the original policy, there would now be two new departments, agencies or offices, depending on whatever name you want—

The Hon. Diana Laidlaw: Plus a new minister.

The Hon. R.I. LUCAS: —maybe with new ministers—possibly to provide advice to the government on this issue. Will the Deputy Premier assure us that there is no truth in the story that the government is considering providing up to 50 full-time staff to provide advice and assistance to Mr Robert Champion de Crespigny and the Economic Development Board?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I will pass that question on to the Deputy Premier and bring back a response.

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 Anangu Pitjantjatjara.

Leave granted.

The Hon. R.D. LAWSON: This council has already heard that on 7 November a new executive and a new

chairman of the Anangu Pitjantjatjara were elected at an annual general meeting attended by the minister, and that that meeting and the voting processes of it have been referred to the Electoral Commissioner for investigation. Mr Chris Marshall has been engaged for some months as a consultant to the AP Executive, working on organisational restructure and community development. I have been informed that on Monday 11 November, Mr Gary Lewis, the newly elected chair of the AP Executive board, endeavoured to persuade certain members of the executive to sign a letter terminating Mr Marshall's appointment with the AP.

On 13 November, Mr Lewis requested an employee of the Pitjantjatjara Council—and I interpose, note the 'Pitjantjatjara Council' not the 'AP Executive'—to have Mr Marshall physically removed from the lands. On 14 November, Mr Lewis personally presented to Mr Marshall a letter signed by Lewis instructing Marshall to leave the lands and revoking his permit to remain on the lands. My questions are:

1. Will the minister deny that ever since his appointment as minister he and (with his support) members of his staff have had as an objective the removal of Mr Chris Marshall from his consultancy with the AP Executive?

2. Does he support the actions of Mr Lewis in seeking to have Mr Marshall removed from the lands?

3. Just exactly what is it that the minister has against Mr Marshall in his capacity as a consultant?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): In reference to the investigation, I think I replied yesterday that I would seek a report from the returning officer or the commissioner, and that is the situation. Until I receive a report, I will not be instigating any investigation into the outcome of the election, but accepting the result as a change of executive, which was agreed to by both sides of the divide. A process was put in a place where each community—I think I explained this before—nominated a representative who would then be elected or that position would be endorsed by the full meeting.

That was duly carried out, and the 10 representatives of the communities were elected as part of the executive. That was separate from the vote taken by the full annual general meeting, which was attended by approximately 300 people. I am not sure whether all those people voted, although, from memory, the vote, which was 109 to 127, indicated that not all those who attended that gathering voted. The meeting was certainly better attended than the previous annual general meeting, when I think between 80 and 85 people elected the incoming chair and executive.

I tried to work with Chris Marshall in his changing role and capacity in regard to his responsibilities as an adviser to the AP Executive. On a number of occasions, Mr Marshall will agree that I certainly went out of my way to try to get an accommodation of views between the Executive of the Pitjantjatjara Council and the Executive of the AP Council (which included himself as director and adviser) by holding meetings in my office soon after we were elected.

As I have reported in this place before, we were quite close to an agreement on a way to proceed, which would have saved a lot of trauma had there been agreement on the position that the government had adopted, that is, to try to get the executives of both the AP Council and the Pitjantjatjara Council to combine their resources—namely, both executives agree to the combination of AP services and Pitjantjatjara Council projects. The government's position was for the resources of both bodies to be combined to service particularly the human services area of the Anangu Pitjantjatjara people in that area. That was not possible.

I still held out hope for future discussions with Mr Marshall, in his role as adviser, and the AP Executive, which included, at that stage, Owen Burton and others. I held meetings in Alice Springs, and again we were very close to an agreement on a way to proceed; however, those discussions broke down. I then engaged the services of Mr Mick Dodson to try to negotiate an arrangement between the two groups, and I withdrew on the basis that, as minister, I was unable to tie up any workable agreement. The government and I worked on the basis that Mick Dodson might be able to negotiate a better outcome, given that we were so close to an agreement.

Honourable members have read, I have tabled, and the select committee has looked at the report prepared by Mr Dodson, who made some accusations and some observations in relation to the way in which the AP Executive was structured and the way in which human services and other delivery processes were being hampered by the methods of administration in the lands.

That is the history of the programs in which I have been involved and which I have put in place. I certainly had no personal vendetta against Mr Marshall. I was critical of Mr Marshall's strategies and tactics in not trying to unify both the Pitjantjatjara Council and the AP Council. I was critical of the withdrawal of the AP Executive's principled position of only operating on the Northern Territory side of the border.

I made observations and spoke to a wide range of people, who said that the only way any deliberations and outcomes could be concluded for the Anangu people (the Yankunytjatjara and Pitjantjatjara people, who are collectively known as Anangu) was to have a tristate structure—that is, Western Australia, South Australia and the Northern Territory—that recognised that people move between the two states and the territory. The service provisioning would have to include cooperation between the two states, the territory and the commonwealth. That was the basis upon which I was proceeding. I do not have any personal views. I think Chris Marshall is probably an able administrator but I certainly had criticisms of the basis on which they were working to get a solution to the human services delivery program in that particular area.

As to the third question, I do not think I harbour any grudges against anyone who works in those remote regional areas because it is very difficult to get administrators and people to support any programs being put forward in those regional areas. I certainly think that it is the case in some communities—which those people who are brought in to restructure and draw groups together themselves recognise—that those people have use-by dates, and in some cases their presence becomes a factor militating against unity. I suspect that Mr Marshall has perhaps reached that position, but it is not for me to say that. It is up to the Anangu Pitjantjatjara Executive to make that decision.

I understand from what I have been told that there was a proposal for Chris Marshall's contract to end early. That is, he was going to be paid out. His contract finishes in December. I understand that the negotiated position reached was for him to finish his contract, paid in full, in Alice Springs, away from the lands, so that the executive could meet over different issues.

The government is putting together a package of programs and is trying to work collectively with ATSIC, the Pitjantjatjara Council and the AP Executive to try to still reach a

program of uniformity where we can include all of those organisations and elected bodies that represent the interests of all Anangu because of the dangerous situation that exists up there in relation to the exposure, particularly of young people and young adults, to petrol sniffing, drug and alcohol abuse and a whole wide range of health problems associated with human services delivery.

We hope to be able to continue that exploratory work to try to get all parties around the table to agree on a way to proceed, because those people on the ground realise, as all members of the select committee have noticed and as other members who have visited would recognise, that if something is not done, the health and well-being of all the people who live in those particular areas is certainly at risk.

MINISTERS, REGIONAL RESPONSIBILITY

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

Leave granted.

The Hon. J.S.L. DAWKINS: All members would be aware that earlier this year the government designated the Hon. John Hill, member for Kaurna, as the Minister for the Southern Suburbs. It has subsequently made plans to open an office of the south. It has also been announced in recent days that the government has launched an office of the north, at Edinburgh, with the Hon. Lea Stevens, member for Elizabeth, being appointed as Minister for the North.

Since these announcements, I have been contacted by residents in the western suburbs of Adelaide asking whether the government is planning to give equal treatment to that sector of Adelaide. Does the government plan to open an office of the west, and designate ministerial responsibility for that metropolitan region? If so, will the government consider doing the same for the eastern suburbs?

The Hon. T.G. ROBERTS (Minister for Regional Affairs): These questions relate to urban and peri-urban areas of the metropolitan area, but my responsibilities do not carry to the setting up and the formation of these offices. I am sure they are good questions to pose to the current minister responsible, and I will do that and bring back a reply.

PETROLEUM SAFETY AGENCY

The Hon. G.E. GAGO: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about petroleum safety.

Leave granted.

The Hon. G.E. GAGO: Recently the minister announced the issue of several exploration licences for offshore petroleum along the Great Australian Bight. One of the most important concerns raised in the debate regarding this exploration is the risk of a major disaster and its associated management, given that the jurisdiction is divided between the state and the commonwealth. Can the minister advise the council on how the state government intends to resolve these issues?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): The Ministerial Council for Minerals and Petroleum, at its second meeting, which was held in Perth on 13 September, agreed to the creation of a national offshore petroleum safety agency. This agency is due to be created in 2004 and will have responsibility for safety both in commonwealth waters and in the offshore waters three miles out from the land-based line. In addition to major hazard management, the agency will also be responsible for occupational health and safety on offshore exploration and production facilities.

The Hon. A.J. Redford: Is it a commonwealth agency or a state agency?

The Hon. P. HOLLOWAY: It will be a commonwealth agency because it is in commonwealth waters. The events that create risk to the environment are in very large measure the same events that create a risk to humans. This is especially true for events of major consequence. There is thus a good reason for the safety agency to be given responsibility for, at the very least, providing advice to environmental agencies on the events that could potentially harm the environment. Discussions are ongoing regarding whether the agency may have, at a later date, responsibilities for risks to the environment.

The creation of an independent agency raises major issues of effective governance of the agency. It is essential that the agency be subject to effective oversight that creates drivers for both effectiveness and efficiency. Although industry and the commonwealth will fund the agency, state ministers will be represented on the board. There will also be a statutory requirement for a ministerial review of the operation of the authority at fixed intervals. Support for the formation of the agency demonstrates that the governments of the relevant states—Western Australia, South Australia and Victoria, which have significant offshore resources—and the commonwealth have a commitment to continually improving the safety and environmental management of the offshore petroleum industry which in Australia is already at a very high standard.

McEWEN, Mr R.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I table a ministerial statement made by the Premier in another place on Rory McEwen's decision to join cabinet.

WOMEN AND ALCOHOL

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Aboriginal Affairs, representing the Minister for Health, a question about the issue of targeting young women to drink alcohol.

Leave granted.

The Hon. SANDRA KANCK: There appears to be an increasing tendency for some hotels in this state to encourage young women to drink unsafe levels of alcohol through the provision of so-called happy hours. My attention was drawn recently to the example of one particular city hotel which offers young women up to four free shots of vodka in the course of one hour as part of that hotel's happy hour. Presumably, from a marketing viewpoint, the presence of the young women will in turn draw young men into the hotel, and the cost of providing the free vodka to the young women will be more than offset by the spending of the young men.

An article in the *Medical Journal of Australia* in March last year revealed that, across Australia in 1997, 995 women died of alcohol related causes, and pro rata one can assume that, in South Australia, close to 100 of those deaths occurred in this state. Twenty per cent of those deaths were from what the article refers to as acute conditions such as car crashes, assaults and pancreatitis, as compared with chronic conditions

such as cirrhosis and breast cancer. The medical journal says that acute alcohol-caused conditions occur largely among young people aged 15 to 29, which is clearly the group being targeted by these hotel happy hours. My questions are:

1. Does the minister consider that hotels promoting such happy hours are acting in a socially responsible way? If not, does the government have any powers to prevent such promotions?

2. Does the government have any plans for new public education campaigns to discourage what the *Medical Journal of Australia* describes as 'high-risk drinking'?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I am aware of some of those happy hour advertisements and certainly the results of binge-drinking among young people are a major problem. I thank the honourable member for her questions and will refer them to the minister in another place and bring back a reply.

MENTAL HEALTH POLICY

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 Health, a question about mental health policy.

Leave granted.

The Hon. A.L. EVANS: The *Australian* newspaper of 17 August 2002 reported that the South Australian Ombudsman, Mr Eugene Biganovsky, had investigated, firstly, the use of security guards to bedwatch mentally ill patients in hospital and, secondly, the practice of the Royal Adelaide Hospital of shackling mentally ill and intellectually disabled patients due to a chronic shortage of psychiatric nurses. In response to his report, the late director of mental health in South Australia, Dr Margaret Tobin, said that the matters raised by the Ombudsman had been incorporated into departmental policy and that it was anticipated that these policies would be fully implemented by the end of 2002. My questions are:

1. Which of the matters raised by the Ombudsman have been incorporated into departmental policy?

2. Does the government currently provide mandatory training to public sector employees—such as police officers, medical staff, youth workers, correctional services officers and housing managers—who are more likely to have contact with members of the community with mental illnesses? If not, why not?

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

B-DOUBLE ROUTES

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Regional Affairs, representing the Minister for Transport, a question about B-double routes.

Leave granted.

The Hon. D.W. RIDGWAY: It was brought to my attention yesterday that the B-double route between Sedan and Murray Bridge—in fact, I should not call it a B-double route because there is no B-double route between Sedan and Murray Bridge, but there is from the Sturt Highway to Sedan. It is known as Route OD4.

For those of you who are not aware, B-doubles are articulated vehicles up to 25 metres in length. If a truck driver ends up in Sedan and he wishes to travel to Murray Bridge there is no possible way he can do so. If he uncouples his two trailers and leaves one on the side of the road he is in breach of the law because you are not allowed to uncouple B-doubles on the side of the road. The only alternative route to the South-East is the Sturt Highway via Loxton, and then down through Pinnaroo which, of course, increases the travelling time, the risk to the public and the damage to the roads. My questions are:

1. Why is the road not gazetted?

2. Will the minister review the B-double routes to allow the maximum efficiency for transport and public safety for all South Australians?

The Hon. T.G. ROBERTS (Minister for Regional Affairs): Is that all B-double routes?

The Hon. D.W. RIDGWAY: Yes.

The Hon. T.G. ROBERTS: I will refer the question to the Minister for Transport in another place and bring back a reply.

SCHOOL FEES

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I lay on the table a copy of a ministerial statement on the subject of school fees made by the Minister for Education and Children's Services in another place.

DROUGHT RELIEF

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about drought assistance.

Leave granted.

The Hon. CAROLINE SCHAEFER: Some time ago this government announced $5 million for drought relief; $1 million of that was to go back into FarmBis from where it had been taken in the first place. That leaves $4 million which, I am sure we all agree, will not be enough money to effectively relieve individuals. Some will be used to set up a feed and seed register and quite a bit of it will be used in administration, and so that money will stay centralised in PIRSA head office.

What can make a difference at times like this is some infrastructure assistance for communities. Some time ago I received a copy of a letter from the South Australian Farmers Federation lobbying the minister on behalf of the Karoonda council. The minister and the Premier visited the Karoonda council, so they should be aware of the dreadful state of the roads in that district. Apparently, some roads are so covered with sand drift that they are impassable unless graded at least twice a week. I have heard of incidents in bad weather of their needing to be graded daily, which is a huge drain on the local government of the area. In at least one of those cases—and, I believe, more—those roads are school bus routes, and that poses a considerable safety hazard to schoolchildren and the parents who need to travel along those roads. My questions to the minister are:

1. What steps will the government take to assist local government with the cost of road repair in these exceptional circumstances?

2. Will the government consider putting some drought assistance money or some extra money towards a practical community project such as assisting local government to keep its local roads open?

3. What reply has been given by the minister to either the Karoonda council or the South Australian Farmers Federation on these matters?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): When the government set up the Premier's task force to look at what support would be given in relation to the drought which parts of this state are facing, it was given a very wide membership. It was chaired by the Chief Executive of the Department of Primary Industries, Jim Hallion, and it also included Mr John Lush and Mr McBride of the South Australian Farmers Federation, the mayor of the Karoonda East Murray council, and a number of other community and departmental representatives. When the government made the package available, that group determined what its priorities for spending would be.

When the Premier and I visited Karoonda and the northern regions of the state, we were made aware that sand drift on roads was a problem in those areas. Of course, that issue was passed on to the committee. However, the Adverse Seasonal Conditions Task Force (in its recommendations) did not specifically provide for road maintenance in that region. I point out that, as part of the $5 million package, the task force considered that $50 000 should be made available for additional road maintenance in the Central North-East. Clearly, having looked at all the information, this issue was given that priority.

Further significant assistance was made available to improve and further develop sustainable farming practices in the Murray-Mallee region. When the Premier and I visited the Murray-Mallee we looked at some of the demonstration farms which employ 'no till' farming practices. In some of those areas there are stable crops—certainly they are poor crops and those farmers will have very low returns this year, but at least their soil will not be drifting around the countryside—and I think it is quite remarkable when one looks at some of these better farming practices just how much better the land stands up in times of drought.

A priority of the committee—one which I endorse—is to ensure that the money that we are spending—and, let's face it, the state does not have a lot of spare money—is used to develop and improve sustainable farming practices. It was clearly a priority of that committee, and I would endorse the practice of giving priority to the improvement of those farming systems, which will, in the long run, reduce or totally mitigate the problem by developing more sustainable systems.

It may be that the situation in relation to drift across roads has deteriorated since we visited there. I have corresponded with the council, and at one stage we canvassed the possibility of those councils having access to local government disaster funds. I am not sure whether there is any priority for those funds to be used in this way, but it might well be that they qualify. Certainly, the suggestion has been made that if local government believes that it has a case it could apply for assistance under that category. Certainly, the government would be prepared to revisit the issue if this problem has deteriorated but, of course, it would have to come out of the $5 million package that the government has made available for drought assistance.

So, the government certainly has concerns about what is happening with councils in relation to those roads but, really, we believe the most important thing is to give assistance to improve farm management practices so that, in the future, this is much less likely to happen.

The Hon. CAROLINE SCHAEFER: I have a supplementary question. How much of the $5 million has been allocated, and on what?

The Hon. P. HOLLOWAY: As I indicated at the time, $1.5 million of the package was made available in direct farm grants, but farmers have been asked to register their interest in that. How that money is divided will be determined early next year when all the applications are in, and I made that clear at the time. However, we have allowed for some immediate payment in relation to water carting for domestic purposes, because that would be an immediate need. Essentially, the $1.5 million in direct farm grants was specifically targeted at replacing seed next year and also for restocking properties, because we believe that they are the priorities.

As I think I mentioned in answer to a question from the honourable member the other day, I notice that the Deputy Prime Minister has also stressed the importance of restocking. That is where we believe this assistance will be best employed, both from the point of view of farmers themselves and for the future of the state. So that money will essentially be made available next year, although there is some immediate payment. I believe that one or two applications may have been received in relation to that component, but it could be used for water carting in emergency situations.

The other part of the package, of course, includes $150 000 for grants to community projects. They were small projects, and I will take it on notice and see what applications have been received in relation to that. The package also contained $240 000 to support further development of sustainable farming systems in the Murray Mallee—that is what I referred to earlier; $150 000 to fast-track the development of drought tolerant crops; $200 00 to extend the results of research undertaken through the Central North-East Farm Assistance Program; $300 000 to further support sustainable management and in building community capacity in the range lands; $140 000 to develop and extend livestock management best practice in drought affected areas; and $50 000 to assist farmers in managing frost. That was a particular problem in the Murray Mallee, and one of the conditions for a case for exceptional circumstances in the Murray Mallee is at least two years' frost impact in an area. Some of those farmers were affected by frost in the 2001 year.

This year, of course, in many cases, they have had a total wipe-out of their crops. So, the two year qualification period depends on the fact that there is frost in those areas, and we have made available $50 000 to assist farmers to manage frost. There was also $50 000 for additional road maintenance in the central north-east, which I referred to; and, finally, $720 000 has been set aside as the business support component for exceptional circumstances assistance, which would be a 10 per cent state share for the areas of the Murray Mallee and central north-east should exceptional circumstances be declared in those areas.

As I pointed out the other day, commonwealth officials have visited the state to assist in the application for exceptional circumstances in those two areas, and that is currently being undertaken with the farmers concerned. I must say that one of the difficulties we have in relation to preparing exceptional circumstances assistance is the lack of data that we have in some areas, particularly in relation to rainfall. We do have a few sites in the region that provide rainfall

statistics, but, unfortunately, we do not have sites that keep statistics as comprehensive as those in other states, which does not assist our getting our applications favourably considered when there are such big hurdles to jump. We are attempting to get that information and deal with that at the moment.

Finally, there was $150 000 for grants to community projects, if I did not mention that before. The government has made available $5 million in that way. I would certainly not dispute the statement made by the shadow minister that $5 million will have limited impact, given that the loss of crops in the grain sector alone will reach $1 billion, and of course those costs will be multiplied throughout the regional areas of this state. Of course, other assistance is given. The government also provided $200 000 as part of its assistance to Farmhand, and I believe that some of that money will almost certainly be available to farmers in this state. Of course, if the government is able to get its exceptional circumstances programs approved, and we are hopeful that that will be the case, then that will greatly increase the assistance that will be available to enable us to get through this very difficult drought year.

The Hon. R.K. SNEATH: I have a supplementary question. In the minister's travels across South Australia, how would he compare the north-east pastoral district with the Murray Mallee; and what is the current assistance given to the north-east pastoral area?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): In my view, certainly the north-east pastoral district is the area that has probably been most severely affected in this state, and I think most people would agree with that. The north-east pastoral district, of course, was an applicant for exceptional circumstances assistance some years ago, because it had suffered flooding at one stage when this massive amount of rainfall had fallen over a 24-hour period with almost no rain at any other time, and of course fences and other infrastructure had been washed away. There is no doubt that there are parts of the north-east pastoral district which have had exceptionally low rainfall, in some cases, the lowest ever recorded. We saw some information that showed that areas in that district have had the lowest rainfall since 1908, which is when rainfall statistics were first recorded on some properties in that region.

Of course, some areas in the Murray Mallee had very good crops in 2001, but I would say that certainly a significant number of farms in that area suffered frost in both 2000 and 2001. For those places in particular, unfortunately they had been unable to build-up their financial reserves during the good years to tide them over the current difficult period. I believe that they are the two areas of the state that have been most adversely affected, although arguably some areas in the north of the state near the Flinders Ranges and also on the eastern parts of Eyre Peninsula have also been fairly badly affected.

Whereas the whole state has suffered from drought and whereas crops over most of the region of the state, with the possible exception of Kangaroo Island, will be greatly reduced (now down to about four million tonnes, unfortunately), nevertheless undoubtedly the greatest impact is in the north-east pastoral district and the Murray Mallee.

DOG CONTROL

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about the dog control 10-point plan.

Leave granted.

The Hon. R.K. SNEATH: I understand that the recently announced dog control 10-point plan has received more than 500 submissions, with widespread support for the proposed toughening of dog control measures. My question is: can the minister inform the parliament of the issues raised in the response to the government's dog control 10-point plan?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his very important question. I know that he takes a keen interest in the dog control measures that the government has put in place (particularly with respect to the health and safety of young people) to protect people from dogs that are unleashed and dangerous.

Many of the submissions to the dog control 10-point plan call for some sections of the legislation that we were putting together to be tougher than was originally proposed. Public and stakeholder submissions call for:

- the protection of children under the age of 10 who are left alone with a dog, instead of the proposed age limit of six;
- a uniform approach to fines for wandering dogs, regardless of their size;
- an investigation into controls on backyard breeders to be conducted in conjunction with the RSPCA;
- a strong emphasis on school education programs about dogs and the dangers that some of the breeds present;
- tighter measures on dog registration identification, including collars, registration tags, microchips and freeze-branding of guard dogs;
- expiation of fines for having an unregistered dog to include the cost of registration, together with extension of the time available for payments to a month; and
- examination of the option of setting up an independent tribunal on dog-related issues.

Many of these problems are being played out in the community on a daily basis, and certainly the media has been carrying photographs of young people in particular who have been savaged by some of these breeds. It is generally acknowledged that it is not the breed that is the problem; in some cases, it is the neglect by the owners in relation to their training methods and the supervision that they provide.

The submissions that I read out will all play a part in the drafting of new dog laws to be introduced in state parliament in the next few months, and I am pleased that the public response, including that of community representatives, to the 10-point plan has been favourable. For example, Adelaide City Councillor Anne Moran has joined her colleague Michael Harbison in supporting the plan, saying:

> These new concessions have gone a long way to making people on the streets much safer.

We all know that Councillor Anne Moran's husband was savaged by a dog recently in the streets. We are trying to deal with the problems associated with dogs and the dangers that they present. Hopefully, the legislation, the submissions and the consultation that have been carried out will assist us, without seeming to be too draconian on those who do the right thing in relation to their dogs and the community.

FREE TRADE AGREEMENT

The Hon. IAN GILFILLAN: I seek leave to make an explanation before asking the Minister for Agriculture, Food and Fisheries a question about the free trade agreement with the United States.

Leave granted.

The Hon. IAN GILFILLAN: There has been considerable publicity in the media in the past week or so regarding the move towards and acceptance of a free trade agreement to be negotiated between Australia and America. Mr Bob Zellick is in Australia with a preview of the negotiations. In some of the material printed, the following has been stated:

> Australia is willing to consider United States' demands for unfettered investment access and relaxed labelling for genetically modified food in exchange for opening up new markets for Australian farmers under a free trade deal.

Further, the demands include an end to Australian government screening of US investment proposals, a relaxation of quarantine laws and changes to Australia's single desk grain marketing bodies. A further report, in the *Sydney Morning Herald* in this instance, states:

> To placate its farmers the US has demanded changes to quarantine in Australia's single desk marketing bodies for key grain commodities—to the ire of Australian farmers.

I would echo 'to the ire of Australian farmers'. I think that is an understatement. I also would emphasise that the word 'demand' features through this supposed negotiation for a free trade agreement.

On Tuesday 14 November 2000, the then shadow minister (Hon. Paul Holloway), in relation to the Barley Marketing (Miscellaneous) Amendment Bill, had this to say:

> If there was deregulation of the export market, that would mean that the Australian Barley Board would have to compete with barley marketers from other states, and that would mean that they may not be able to guarantee that they would be able to purchase in the market the quantities required so they would have to be more conservative in their marketing.

The barley board and I certainly believe that the single desk powers over export barley do enable a premium to be reached for the barley growers of this state, and that in turn puts more money into the state economy. From my point of view, that is certainly a good thing. That is why essentially the opposition has always supported the single desk powers for barley, at least until such time as the whole market is changed. I would assume that the same argument with even more emphasis would apply to the single desk for marketing wheat, and it has generally been recognised that those international markets need strong unified marketing forces to get the best deals. I ask the minister:

1. Does he still hold the view that single desk marketing is of significant advantage to South Australian grain growers?

2. Does he believe that single desk marketing is supported by the vast majority of South Australian grain growers?

3. What will he do to protect single desk marketing against the assault by the United States in trade negotiations?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): In relation to the assault on the single desk, it is not just the US farmers who might wish to assault that; the NCC within this country also has made it clear for some time that it is opposed to the single desk, particularly in barley. The honourable member is probably aware that at this current time a review of the single desk barley marketing act is under way. That is required under legislation. I think I answered a question about that from one of my colleagues the other day, perhaps last week.

Certainly it is my view that, if a premium can be demonstrated in relation to the existence of a single desk marketing body, why would not a government support it? It would mean that we as a community, and farmers in particular, would be better off as a result. Of course, that issue will be looked at by the review body that I announced last week. The body established to implement that review is chaired by Professor David Round from the University of Adelaide and also involves the NCC nominee, Mr Ian Kowalick, from the former premier's department, as well as a nominee from the grains council. I guess we should await the outcome of that review to see whether in their view a premium still exists as a result of the single desk arrangements that we have for barley.

But the honourable member raised the general issue of a free trade agreement with the United States. There is no doubt that, as with any trade agreement, there is the potential for great benefits for both parties within trade agreements, but there are also downsides. Clearly the US is trying to negotiate a position that would give their farmers all the upsides and ours all the downsides. One would hope that our federal government on our behalf would be seeking the reverse—that they would be seeking to negotiate the best position for our farmers and manufacturers.

I guess we should not focus entirely on farm commodities, although that would clearly be the hottest part of the debate on any US free trade agreement. It will certainly be where a lot of the heat will lie in the debate. But it is not only about agricultural commodities, of course: there are manufactured commodities. The honourable member quite rightly points out that the federal government, in negotiating these agreements, will need to be very vigilant that, as a result of any negotiations, we do not trade away net benefits for this country. With issues such as quarantine and so on, I suspect that there are going to be some very protracted and difficult negotiations ahead.

One always hopes that, when it comes to issues of biosecurity and safety, the decisions will be based on scientific grounds. In other words, we hope that the decisions will not be made for political reasons but for the best scientific reasons. So, if there is a genuine risk to our producers, to our commodities, as a result of the introduction of any disease, that should be based on scientific principles rather than upon trade negotiations. It is important that the potential of a free trade agreement with the US be investigated but it is true, as the honourable member warned us in his question, that we, and in particular the commonwealth government negotiating this, need to be mindful that there are downsides as well as upsides in any agreement, and I suspect that a lot more water will flow under this bridge before an agreement is finally negotiated.

The Hon. IAN GILFILLAN: I have a supplementary question. In light of the urgency of the situation, I ask the minister: am I correct in assuming from his answer that he is not going to make direct advocacy to the federal government to protect the single desk marketing of our grains?

The Hon. P. HOLLOWAY: We have to wait for the report because we have to deal with the single desk for barley in the context of the national competition policy, and that policy has made it quite clear that this state has to demonstrate that there are public interest benefits under national competition policy, otherwise we run the risk of being

penalised payments under the competition policy, and that is the context in which we are addressing the issue at the moment. In relation to the broader issues of trade, any negotiated trade agreement would have to have net benefits for this state. If benefits such as biosecurity risks and single desks are traded away, there would certainly need to be net benefits coming into this country, and all of us would want to be satisfied that any agreement so negotiated was in net terms of benefit to this country. We will certainly be watching the negotiations in that regard.

It is my understanding that, at the Primary Industries Ministerial Council, the commonwealth minister, Mr Truss, gave some initial briefings in relation to this, and one would expect that the commonwealth officials will keep in close touch with state officials and state ministers in relation to any negotiations that the commonwealth may undertake, because it is a very important issue for this country. As I said, potentially there are benefits but there are also significant costs.

The Hon. IAN GILFILLAN: I have a further supplementary question. Am I correct in interpreting that that has probably been the longest verbiage on record to say that, yes, I am correct in my original assumption that he will not be advocating directly to the Prime Minister for single desk?

The PRESIDENT: Minister, is that a yes or no answer?

The Hon. P. HOLLOWAY: I really think that I have already answered the question.

PRISONS, CAPACITY

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about the accommodation capacity in the state's prisons.

Leave granted.

The Hon. J.F. STEFANI: Since its election, the Labor government has announced strong measures dealing with law and order issues. These policy measures will undoubtedly impact on the already stretched prison resources that the minister has recognised as having no spare capacity to receive prisoners. Members would be aware that, shortly after his appointment as Minister for Correctional Services, the Hon. Terry Roberts warned that, if the current trends were to continue, the government would probably be required to build another gaol. Observers have predicted that, as a result of the new law and order initiatives to be implemented by the Labor government, the current trend would not only continue but further increase the demands for prison accommodation at the present facilities. My questions are:

1. Can the minister advise what forward monetary provisions have been made by the Labor government to address the need for another gaol?

2. Has the minister undertaken any investigation in relation to this matter? If so, where is the likely location of the new gaol?

3. What community consultation process will the minister implement?

4. Can the minister advise the estimated cost for the provision of a new gaol facility?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I had better stand up before I get another question! I thank the honourable member for his question. His memory is very accurate with regard to what I said in relation to the difficulty in which we found ourselves when we first arrived in government. There was very little extra capacity in the system for any increase in crime trends.

The Hon. Ian Gilfillan: Did the Attorney-General realise that?

The Hon. T.G. ROBERTS: I think the policy that the Attorney-General was putting together was in consultation with other members of the cabinet, and he was aware that the capacity that we were left with by the previous government to manage our prisons was nil or negligible. I think the extra capacity we had was no more than 15 or 20 beds, which has since shrunk to the extent that, on some weekends, prisoners have been held in the watchhouse.

There is little or no capacity within the system to manage a whole range of issues which need attention. In a multifaceted institution, such as a prison, a whole range of prison services are needed to ensure flexibility, so that the different categories of prisoners are kept in the type of prison that protects them—from each other in some cases—and protects the community from any break outs.

With regard to the questions about funding, the government is looking at a whole range of issues in relation to the problems associated with the women's prison. We have issues associated with the potential closure of the Magill Training Centre for young people, which is not in my portfolio area but in that of the honourable member, Steph Key, in another place—

The Hon. Sandra Kanck: The honourable Steph Key!

The Hon. T.G. ROBERTS: No, I said 'the honourable member. . . in another place'. The tools needed by management for flexibility in the prison system are not there at the moment, and I pay tribute—and I think honourable members on the other side would join me in this—to John Paget and the dedicated staff and officers in South Australia. A lot of the money that should have been spent in the prison system half a decade ago, at least, was not spent, and the management and the officers of the prisons within this state have had to manage on very slim budgets for a particularly long time.

We are trying to put together an assessment process which will put some budget figures together to allow a more flexible approach to the management programming within our state's prison system. It is necessary to bear in mind that South Australia is one of the few states which has so many regional prisons in relation to the prison population, with prisons in Port Lincoln, Cadell, Port Augusta, Murray Bridge and the privately-run prison at Mount Gambier. The regional prisons are very small in comparative terms and, because they are spread out around the state, they do take up a lot of administrative funding. It would be simpler and less expensive if more of the prison population were in larger prisons in the metropolitan area.

I do not advocate the closure of regional prisons. I think that, in many cases, small is beautiful as far as rehabilitation is concerned because of the way in which well-trained prison officers can build up relationships with prisoners. I think those rehabilitation programs are much better. I am not saying that all small prisons in regional areas will remain after we assess what funding is required in the long term. I guess the answer to the honourable member's very well-researched and important questions is that, if we are to change the configuration of the prison system, that will be done with community consultation and it will include any potential change for regional prisons. If we decide to change the configuration of prisons within the metropolitan area or to move any prison that will be done in consultation with local government and the local community.

Regarding investigations, I can say that discussions are going on in terms of how to proceed, how to provide funding and how to do an assessment of the trends. We would not like to see an increase in crime at this stage which could bring about a marked shift in the numbers of people entering our prisons because, as I said, our prison system at the moment is at or near capacity. This removes the flexible tools that are required by prison managers to get the best possible outcomes. We are looking at not only prison structures in the future but also rehabilitation programs which, in the main, have been left out of budget assessments over the years. We hope to address some of those problems as well.

REPLIES TO QUESTIONS

FARMBIS

In reply to **Hon. CAROLINE SCHAEFER** (16 October).

The Hon. P. HOLLOWAY:

1. FarmBis will continue to support:

Training programs where at least 70 per cent of the learning outcomes map to level 4 and above rural business management, and occupational health, safety and welfare competencies of the national agriculture and horticulture training package.

Other training programs, including production management, where at least 70 per cent of the learning outcomes map to level 5 and above competencies of the national agriculture and horticulture training package. Essentially this means that technically focused courses must be upgraded to include planning, financial and business strategies related to the production technology.

As part of the recent drought assistance package the Premier announced there would be a significant increase to the FarmBis budget and the state planning group will shortly announce increased subsidies for producers undertaking risk management, strategic planning and whole farm management training that assists them to better plan and manage adverse events such as drought, frost and market fluctuations.

2. FarmBis is a demand driven course where producers identify their training needs, choose the provider they wish to deliver the training and the time and place of training. Most courses are conducted close to a participant's home.

3. Most training is now developed and implemented by providers in partnership with industry bodies and regional groups. The providers/groups promote their courses through advertisements in local and state wide media and industry and group newsletters. FarmBis has a hotline (1800 182 235) where an officer will help producers contact providers servicing their industry and region. In partnership with the Agriculture and Horticulture Training Council of SA a short course directory for primary producers website (www.ahtcsa.com.au) is supported and promoted by FarmBis.

In addition a very effective communication and promotion strategy offers providers and other key stakeholders up-to-date information about the FarmBis program and FarmBis related articles and press releases are produced and frequently appear in local and statewide media.

4. Most applications are lodged by training providers or groups, but individuals may apply. Application forms and supporting guidelines are published on the FarmBis website (www.pir.sa.gov.au/farmbis). The turn around time is quite rapid and approvals are usually granted within the month of a bonafide application.

DROUGHT RELIEF

In reply to **Hon. DIANA LAIDLAW** (22 October).

The Hon. P. HOLLOWAY: The Premier donated $200 000 from the South Australian government to the National Farmhand Foundation on 11 October 2002. In the spirit of a national appeal the donation was made without qualification, to support all primary producers, including share farmers and farm contractors, in drought affected areas across the country.

I have been assured that all applications for assistance through Farmhand will be assessed under the same national criteria and allocations will be made on those criteria to people in the greatest need. South Australians in need will be considered alongside their fellow farmers from elsewhere in the nation, however, only after the allocations have been made will we know how much of the Farmhand funding will go to South Australians, or any other state or territory.

With regard to the question of road maintenance in the central north east, the fund allocation of $50 000 will be directed through Transport SA. Negotiations are currently taking place to identify the exact location of the additional maintenance work.

STEM CELLS

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

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

South Australia committed to a nationally consistent approach to regulate assisted reproductive technology and related emerging technology, which includes research relating to human embryos. This was a position adopted by all jurisdictions at the June 2001 COAG meeting, prior to my government's gaining office.

At the COAG meeting in April this year, it was agreed that the commonwealth, states and territories would introduce nationally consistent legislation to ban cloning and other unacceptable practices and noted that the commonwealth intended to introduce legislation by June 2002.

The agreement here was for national consistency. State legislation was not specifically mentioned. To ensure national consistency, either national legislation needs to apply across all jurisdictions with mirror legislation in all states or a model bill needs to be replicated in all jurisdictions. Premiers and chief ministers agreed only to introduce nationally consistent legislation at a state level. The commonwealth flagged its intention to introduce legislation by June 2002 rather than to develop a model bill. The Gene Technology Act 2000 is a recent example of this approach.

Both major parties at the federal level declared this a 'conscience' vote. I have announced any state legislation would also be a 'conscience' vote for Labor MPs.

Commonwealth legislation over-rides state legislation unless a clause is included that requires otherwise. Because some states have very restrictive legislation and others operate under National Health and Medical Research Council guidelines, which are strict but not as prohibitive as our legislation, to achieve national consistency requires those states with legislation to move towards a less restrictive regime, and those without to accept a more restrictive regime.

As the honourable member has noted, the commonwealth bills are being debated in the senate at present. When they are passed, and this may not be until next year, the Minister for Health will introduce complementary state legislation. This cannot be done until we see what the final commonwealth legislation is.

At that stage both houses will have the opportunity to debate these important issues.

MUSIC HOUSE

The Hon. DIANA LAIDLAW: My preference would be to ask a question, but filibustering by ministers has meant that I must resort to a personal explanation on the subject of Music House.

The PRESIDENT: Is this a personal explanation on something that has been referred to you which you wish to refute?

The Hon. DIANA LAIDLAW: Yes. In fact, I would like to say a lot more, but standing orders do not allow me to do that in a personal explanation.

Leave granted.

The Hon. DIANA LAIDLAW: I refer to the ministerial statement on Music House made by the Hon. John Hill (Minister Assisting the Premier in the Arts) in the other place today and tabled in this place earlier during question time. All that the minister related in his statement is correct. However,

I wish to register my distress and disgust at the management of this fine facility. I also wish to distance myself from the inference by the minister that, in some way, I may have been responsible for this organisation's going bust. I raise this concern because of the minister's statement:

> Its board was appointed personally by former arts minister Laidlaw.

For the record, I appointed an interim board while it formed its constitution. AGMs have since been held and new members have been appointed to the board. I have not been minister since March this year. The minister's own statement indicated that at June this year there was $403 852 in the bank, so it was left in a healthy state. The agonies that have arisen since have arisen during his stewardship, and I look forward to raising a whole lot of questions about his management of this fine facility and how, together with the board, I feel that so many people have been let down.

BIOTECHNOLOGY

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I seek leave to make a personal explanation.

Leave granted.

The Hon. P. HOLLOWAY: Yesterday, in response to a question asked by the Hon. Caroline Schaefer I stated on page 1336 of *Hansard* that:

> . . . 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.

To clarify that, SARDI is resourced to undertake a resource and development program in plant biotechnology. The activities of this research and development will be integrated with that of the Australian Centre for Plant Functional Genomics. I think that gives a more correct description of the facts.

SHOP TRADING HOURS (MISCELLANEOUS) AMENDMENT BILL

In committee.

(Continued from 12 November. Page 1236.)

Clause 1.

The Hon. R.D. LAWSON: The observations I make are general comments and apply to the totality of this bill. Members will recall that a select committee was established to provide an opportunity to examine the industrial relations issues which arose in consequence of this bill and, in particular, for the industrial parties to prepare a template enterprise bargaining agreement for consideration by, in particular, small businesses which do not have ready access to such enterprise agreements.

The development of this agreement was to ensure that small businesses would be on a level playing field with some of the larger businesses, especially in the supermarket area, which enjoy the benefit of enterprise agreements, many of them nationally negotiated. When the select committee met, the parties had not developed such a template. However, on 11 November an agreement was finalised and circulated for discussion amongst organisations representing a large section of small businesses in this state that are affected by shop trading hours legislation.

Suffice it to say, the template enterprise agreement did not in the view of those organisations present small business with a level playing field. In those circumstances, the investigations that have been undertaken by the select committee for some considerable time have not resulted in benefit to small business. This means that if this bill passes in its present form they will not enjoy the benefits of a level playing field. In those circumstances, the Liberal opposition will not support this bill.

The Hon. DIANA LAIDLAW: I do not share the views that have just been expressed by the shadow attorney-general. I will not vote with my colleagues on this matter; I will support the passage of the bill. I want to give some reasons for taking this position. First, the bill introduced by the government is limited in its proposal for additional shopping hours in this state, and I think that the consumers and the state will generally support them. Secondly, the bill includes matters that I introduced in a private member's bill on 10 July this year in the form of the Retail and Commercial Leases (Trading Hours) Amendment Bill.

Thirdly, for 20 years I have consistently supported more flexible shopping hours in this state, and every time they have been proposed they have been strongly resisted—whether it is red meat sales, the sale of electrical goods, or Saturday afternoon and Thursday night trading. One constant in every proposal has been resistance from certain sections, and it has always been my observation that following an extension to shopping hours we have generally seen little drama in the commercial shopping sector. Certainly, the dire warning of the collapse of small business has never come to pass, and I am interested to see that, notwithstanding all the protests against every extension that has ever been proposed and passed in this place, the small business sector continues to hold some 24 per cent or 26 per cent of market share in this state, which is much higher than anywhere else. So, all the doom and gloom has never been realised, in my experience and observation.

Fourthly, I supported the decision to go to a select committee to work out some industrial issues—in particular, weekend rates of pay—because of claims of unfairness, and I believe that the select committee and the new template EBA are steps in the right direction. I suspect that any template would never meet the needs of everybody across the sector, because they do not want their needs met. They do not want change. No matter how hard everybody tried, I think the agenda is to never accommodate their concerns.

I indicate, as well, enormous disappointment with the Australian Retailers Association. It has pushed hard and long for an extension to shopping hours and for more flexible hours, but in the meantime I think that it has done very little in terms of exercising its responsibility towards the smaller retailers and to the parliament as a whole on the industrial front. It could have addressed a lot of these industrial issues long ago and represented its members, particularly small businesses, far more effectively through amendments to the awards, which need not have been taken up in every instance. Knowing its agenda for extended and more flexible hours, it could have advanced an enterprise bargaining agreement template years ago.

Instead of doing what I believe it is charged to do in terms of the industrial record, the Australian Retailers Association has sat back and waited for parliament to negotiate what was the ARA's business to negotiate, and I have been very disappointed in the way in which it has conducted itself. It is certainly very happy to have survey after survey and put the heat on members of parliament, but it is not prepared to do what its members pay it to do—apart from the big boys in

town—and that is represent their interests in an industrial sense and every other sense. If I was a small business person, I would cancel my Australian Retailers Association membership and leave it alone; but, that is the choice of the small business person, as it is their choice to open or not to open at the present time, notwithstanding this legislation.

I have accommodated my party as it has sought to work its way through this legislation and to gain the best in terms of template legislation. The majority of my colleagues happen to believe that what has been negotiated and realised is unsatisfactory and I respect their view, but I do not share that view.

The Hon. M.J. ELLIOTT: This issue has been around for a long time, and I am sure that it will be around for a long time to come, unless we change the way things work. I note the comments of the Hon. Diana Laidlaw that the ARA should have done more in terms of helping small retailers. There are a lot of issues that deserve to be addressed before we continue to make changes to shop trading hours. They are issues that I raised during debate on the second reading and when I moved to have a select committee look at other issues. That motion was defeated, but a separate select committee was set up.

If there is a change in trading hours, will it change market share? If it does—if there is an increased monopoly—what are the consequences for competitors, what are the consequences for suppliers and what are the consequences for the price of goods with further hours deregulation? There have certainly been speculation and claims made on both sides, and some of those came before the previous committee, but consideration of those issues was not in the committee's brief. Those issues deserve to be looked at.

I am of the view that we should have stronger trade practices legislation and anti-monopoly legislation at the national level, and we should do it before the market share of Coles and Woolworths gets any bigger. They are pretty brutal in their competition. I was told recently of a case where Bi-Lo had a small store in McLaren Vale operating seven days a week. Bi-Lo approached Foodland and said, 'We would like to buy you out.' Foodland was not interested, so Bi-Lo said, 'We will build a big store next door.' Foodland could see the writing on the wall and Bi-Lo bought it out and now owns the two supermarkets operating in McLaren Vale. There is a great deal of competition in that town in terms of buying groceries! Bi-Lo has one store operating seven days a week and one store opening for standard hours, so it has the market nicely cornered. That is a microcosm of what is happening in retail in South Australia and Australia at present. Woolworths has gone into petrol retailing, and Coles, I understand, is about to do the same. Both retailers are now brutalising the liquor trade in a similar fashion, and I am uncertain where they will stop.

If they get further market share from the simple act of changing trading hours without the issue of the monopoly being addressed, I think we will have been remiss in our responsibilities. That is before entering the argument about the merits of trading hours in their own right. If there are other consequences, we need to be aware of those consequences and decide whether or not we are either prepared to accept them or address them. I have not heard much debate in this place about other consequences or an expressed willingness to address those other consequences. I note that the other select committee has met on one occasion. It is now four weeks since the previous select committee reported on shop trading issues.

The first meeting of the committee is not set down until 29 November. The government has complained about the speed at which things are moving, but there does not seem to be much speed in trying to get this committee together to address what are important issues to me before I would ever consider supporting this sort of legislation. When the government goes around complaining, I do not have any sympathy for it whatsoever: it has made its bed and it can lie in it. I hope that committee will be given a hurry along and that it will look at all the issues before it in more depth than the previous committee which was on an impossibly short deadline. I think anyone who reads the report would have to admit that one of the consequences of the short sitting time was that the committee could not form a conclusion on some of the issues it was asked to address.

I thought that was pretty damning. The indications may be that the bill is about to fail—I will wait to see—but at this time it deserves to. That does not mean that there cannot be change in the future. I think that anyone sensible, having addressed the issues at which the next select committee is to look, would recognise that businesses will close as a consequence of longer trading hours. I mean, all the delis that have disappeared as a consequence to change in trading patterns—

The Hon. Diana Laidlaw: All the delis!

The Hon. M.J. ELLIOTT: I said, 'All the delis that have disappeared.' Might I stress that honourable members would be surprised at what percentage of delis have gone. I am sure that more than 50 per cent would have gone in the last 10 to 15 years. Many of those will have gone broke: they will not have left with their mortgages and houses intact as a consequence. If there is to be change, it needs to be measured and gradual. I am sure that, if trading hours changed gradually, lengthening into the night and progressively expanding into the weekends over a long period, the impact upon small retailers would not be so great because they can make a decision now whether they want to be here in 10 years knowing that it will be fully deregulated or at a certain level of deregulation. However, as I said, that is really a debate that I am prepared to have only after the other issues have been addressed.

The Hon. R.D. LAWSON: I should mention that the final report of the select committee on this bill recommended that the industrial parties be given further time in which to prepare an acceptable template agreement, and that recommendation (which is the fourth dot point on the final recommendations) suggested that the parties should have until 30 June. However, what has happened in the meantime is that the template has been developed, produced, circulated and found to be wanting. In those circumstances, the additional time, namely until 30 June, is no longer required and the proposed amendments from the select committee cease to be operative.

The other matter which was the subject of consideration by the select committee was additional Sundays trading. The government, by proclamation or regulation, has allowed the additional trading Sundays for this year and that matter is no longer of pressing urgency. I should also have said in my opening remarks that the failure of the government to entertain extensive prior consultations with the industry in this case has been highly detrimental to the government's desire to push this measure forward.

A number of witnesses in the select committee said that, when the government's announced shop trading hours proposals were made public, they were surprised because the particular measures which had been proposed by the government had not been canvassed with all sections of the

industry. Therefore, the minister responsible for this legislation has a lot to answer for in terms of the consultation that was undertaken before the bill was introduced.

The Hon. T.G. ROBERTS: After all this time, it is disappointing to see the bill lying on the *Notice Paper* without too much progress at a time when change was required and where a clear indication was being called for by the people in the retail and wholesale industries and consumers. They were all looking for some indication of directional change which might have led to benefits in this state and which brought about some modest reforms. The package, which was negotiated widely within the industry, after all, was only a modest package; it was balanced. There was certainly extensive consultation with peak bodies.

The groups that were consulted included the Property Council of Australia, Coles Myer, Business SA, the Australian Retailers Association, Harris Scarfe, Harvey Norman, Woolworths, Big W, David Jones, Drake Food Markets, the Shopping Centre Council of Australia, the Australian Retailers Association, the SDA, State Retailers Association and IGA, Foodland and Drake included together in one meeting, and the National Competition Council, consumer representatives, the Newsagents Association, Radio Rentals, Keith Bowden Electrical, the Motor Trades Association, Truscott Electrical and so on. All these people were consulted and so were many others.

It was a process designed to get as much input as possible so that the modest changes that were to be implemented could have been implemented with an acceptance that may have led to an easier passage through both houses. Unfortunately, as speakers have recognised, each time any changes to shopping hours become an issue at a parliamentary level there appears to be those who would take advantage of circumstances in one away or another. Obviously any changes to hours will mean changes to market share, and certainly the government has been cognisant of not making any wholesale changes to hours but making modest changes so that those adjustments can occur. We did try in the first select committee to get a consensus, bearing in mind that it was not the government's idea to set up either of the select committees but to participate in them.

The first select committee tried to get some compromise between the major players to see whether we could agree to some hours that would meet the requirements of the ministerial position. The select committee tried to canvass a consensus so that it could make a recommendation which had a broad appeal to the people who had the responsibility for shop openings and service delivery and for consumers who were looking for some change, particularly to the summer hours and which also met the requirements of the hospitality and tourism industries.

So, yes, I am disappointed that the first attempt has failed. Perhaps the second select committee will come up with an answer to the issues that some honourable members are seeking, that is, issues associated with some of the social outcomes that have been discussed in the first select committee, the anti-monopoly issues that the Hon. Mr Elliott raises, and some of the impacts on changes to shopping hours. Perhaps if the opposition forces feel that further discussions and negotiations are needed regarding templates for changed working relationships, penalty rates and so on, I would encourage them to talk with the peak bodies and the organisations that represent consumer, retail and wholesale interests to try to get a consensus before we come back into parliament and agree to disagree on a way to progress what should be regarded as a reasonably simple issue. Some of those issues can be addressed in the forums where they need to be addressed—amongst those who have vested interests in outcomes.

Clause passed.

Remaining clauses (2 to 20) and title passed.

Bill reported without amendment; committee's report adopted.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I move:

That this bill be now read a third time.

The council divided on the third reading:

AYES (7)

Gago, G. E.	Gazzola, J.
Holloway, P.	Laidlaw, D.V.
Roberts, T. G. (teller)	Sneath, R. K.
Zollo, C.	

NOES (12)

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

Majority of 5 for the noes.

Third reading thus negatived.

OMBUDSMAN (HONESTY AND ACCOUNTABILITY IN GOVERNMENT) AMENDMENT BILL

In committee.

(Continued from 18 November. Page 1362.)

New clause 2A.

The Hon. R.D. LAWSON: When the committee last met, I had moved an amendment to seek to define more accurately those agencies to which this legislation applies. I had suggested that the agencies be limited by a description of their functions. However, during the course of the—

The CHAIRMAN: I think the minister actually has an amendment prior to yours, Mr Lawson.

The Hon. R.D. LAWSON: I am talking about the amendment I was moving, describing where we were yesterday.

The Hon. P. HOLLOWAY: I am sorry for the confusion, but I will take the advice of the Clerk and move my amendment to the long title, and then we will pick up where we left off yesterday. I move:

New clause, page 3, after line 6—Insert new clause as follows:
Amendment of long title

2A. The long title of the principal Act is amended by striking out 'departments of the Public Service and other authorities' and substituting 'agencies'.

This amendment amends the long title of the act to reflect the change in terminology in the act from 'authorities' to 'agencies'. Currently, the long title provides that the Ombudsman Act is:

An Act to provide for the appointment of an Ombudsman to investigate the exercise of the administrative powers of certain departments of the Public Service and other authorities; to provide for the powers, functions and duties of the Ombudsman; and for other purposes.

As the bill removes the reference to authorities and links the Ombudsman's jurisdiction to agencies, we believe that it is appropriate to amend the long title of the act to reflect this change. I think that is fairly self-explanatory and I seek the support of the committee.

The Hon. R.D. LAWSON: I certainly indicate support for the amendment to the long title which is purely mechanical and accurately describes this act as it will be after the bill is passed.

New clause inserted.

Clause 3.

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

Page 5, after line 11—Insert new subsection as follows:
(3a) A regulation under subsection (3)(a) cannot take effect unless it has been laid before both houses of parliament and—
(a) no motion for disallowance of the regulation is moved within the time for such a motion; or
(b) every motion for disallowance of the regulation has been defeated or withdrawn, or has lapsed.

As I mentioned a little earlier, yesterday I was proposing amendments to limit the concept of agency to which the act applies by specific reference to the functions which the agency was performing, namely functions conferred under a contract for services with the crown. However, as a result of the committee discussions yesterday and subsequent discussion with the Hon. Mr Elliott, I have had developed the amendment standing in my name.

This amendment will provide a significant measure of protection. The fear which I and members of the Liberal Party had was that the government of the day could, by regulation, proclaim any agency, company, business, trust, etc. to be an agency to which this act applies. Accordingly it would have made it possible for the Ombudsman, under section 14A of the act as it will be enacted, to conduct a royal commission as it were into the activities of a particular company. It was suggested that perhaps that was an extreme view. However, this bill gives the government of the day very significant powers.

As a result of my discussions with the Hon. Mr Elliott, I have agreed to his suggestion that any such regulation extending the concept of agency should be subject to a form of parliamentary scrutiny, which is rather unusual. Any regulation which will have this effect under my amendment will not come into operation until it has been laid before both houses of parliament and no motion for disallowance is moved within the appropriate time or carried. This will mean that both houses of parliament will have a significant opportunity to prevent any government overreaching on this provision.

Members will know that the usual regulation disallowance power enables the government to make a regulation, for the regulation to come into operation and for parliament, after it has come into operation, to have an opportunity to disallow the regulation. That very often causes confusion in the community. It means disruption and dislocation to businesses. However, what is proposed is that the regulation will not come into force until the parliament has had an opportunity to pass an opinion on the appropriateness of the regulation.

I note that the minister has put on file an amendment to similar effect, and I am glad that the government has acknowledged the wisdom of this proposal. I am indebted to the Hon. Mr Elliott for suggesting this approach.

The Hon. P. HOLLOWAY: In the debate yesterday, as the deputy leader of the opposition has pointed out, concern was expressed about the scope of new paragraph (e) of the definition of 'agency' to which this act applies, and the potential to declare any body to which the Ombudsman Act applies as an agency. As stated then, paragraph (e) 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 limbs of the definition, there would be a mechanism to bring the body within the scope of the act.

It is accepted that, on a literal interpretation of the provision, it would be possible to declare any body or person to be within the Ombudsman's jurisdiction. However, I have been advised that a narrower interpretation of the provision is more likely to prevail. In general terms, there must be a sufficient and proper nexus or relationship between a regulation-making power and its purported exercise. That comes from a decision in Tanner v South Australia 1988, 53 SASR, at page 312.

Therefore, there is a strong argument that there would need to be a sufficient and proper connection between a person or body to be covered and the general purpose of the act before a regulation could be validly made. Against this background there are sound arguments against the regulation-making power being used in such a broad manner that it might encourage a person adversely affected by such a regulation to challenge it as being ultra vires. Without clear authority to prescribe any private organisation whatsoever, a cautious approach would need to be taken to guard against any possible challenge to the regulations. I point out that no regulations are promulgated unless accompanied by a certificate certifying that the regulations are within the regulation-making powers conferred by the specified act.

As noted by the deputy leader, I have placed on file a similar amendment to that made by him. Whereas the information that I have just given indicates that it is probably unlikely that any government could misuse that regulation power, nevertheless if this puts it completely beyond doubt, then we are happy that this issue can be resolved and the bill can proceed from here.

The Hon. M.J. ELLIOTT: I am pleased to see that the suggestion I made last night has been picked up. There were difficulties with the opposition's original amendment in that, in seeking to try to constrain the ambit of who might be brought into the act, it put a severe constraint upon the operation of the audit clause, and more than I am sure was intended. It seems to me that this particular amendment seems to address the opposition's initial concern without having the unintended consequence.

Amendment carried; clause as amended passed.

Clause 4 passed.

Clause 5.

The Hon. R.D. LAWSON: I am not proceeding with my amendment in light of the earlier amendment.

The Hon. A.J. REDFORD: I have some questions in relation to this clause. I note that there is a definition of 'administrative act' contained within this bill. New section 14A(1) refers to administrative practices. Is there any reason why there is no definition of 'administrative practices' in the bill?

The Hon. P. HOLLOWAY: I am advised that it was discussed at the time with parliamentary counsel but it was considered to be unnecessary.

The Hon. A.J. REDFORD: Why?

The Hon. P. HOLLOWAY: Some suggestions were made by another body that the term 'administrative practices and procedures' needed to be defined. This issue has been discussed with parliamentary counsel, which takes the view that such amendments are not necessary. The phrase 'in the public interest' is already used elsewhere in the Ombudsman Act (at section 26). As in the Freedom of Information Act, it would be counterproductive to define it because the decision maker has to exercise judgment in considering what constitutes the public interest in specific cases, rather than relying on set criteria. I am also advised that terms such as 'practices and procedures' and 'administrative practices' appear in other legislation without definition, and because a number of other acts have those terms and they are not defined, one assumes that they are generally well understood in legal circles.

The Hon. A.J. REDFORD: Not in this legal circle, Mr Chairman. What other acts is the honourable member referring to?

The Hon. P. HOLLOWAY: I would not have that information at hand but I could correspond with the honourable member if he is prepared to accept that undertaking.

The Hon. A.J. REDFORD: Is the minister able to tell us what might constitute a review of an administrative practice and procedure as opposed to a review of a policy by a government agency or department?

The Hon. P. HOLLOWAY: I will read from the Ombudsman's annual report for 2000-01, which I hope will help to answer the question. It states:

> To what extent should the Ombudsman take on a general role of auditing administrative systems? There is only little opportunity for the Ombudsman to audit administrative action generally. Firstly, there may be an investigation at the Ombudsman's own initiative. This investigation could be triggered by detection of a pattern of earlier complaints pointing to systemic issues requiring further investigation. Secondly, the Ombudsman may assist agencies in establishing improved systems of complaint handling or provide some general advice based on his reported experience, which may assist in the improvement of administrative action.

Those comments, as I said, were made by the Ombudsman on page 34 of his 2000-01 report, so it is essentially to implement those comments of the Ombudsman.

The Hon. A.J. REDFORD: Will the government give an undertaking to not impede any review conducted pursuant to new section 14A on the basis that, on the government's determination, it is a review of a policy as opposed to a review of an administrative practice and/or procedure?

The Hon. P. HOLLOWAY: The act talks about administrative practices and procedures, and that is obviously what the government would expect if this new section is inserted. That is what we would expect the Ombudsman to undertake. One would not expect the Ombudsman to undertake any action that was outside that definition.

The Hon. A.J. REDFORD: What if he did? In your opinion, what would you do?

The Hon. P. HOLLOWAY: We have just said that the definition of administrative practices and procedures is, I gather, well understood in other legislation. It is a bit hard for me to answer a hypothetical question. I find it hard to envisage the sort of situation where that might come about. But, then again, I would have to go further and say that I find it pretty hard to think of any situation where I might want to, in any way, interfere with something the Ombudsman wanted to do in any case. I cannot recall any cases. I guess that in relation to the Freedom of Information Act, which we will be debating later, the Ombudsman would take certain action, but I do not recall—

The Hon. A.J. REDFORD: Why don't you pick one that you know—for example, the allocation of crayfish licences? What will happen if the government has a policy to do it in a certain way but the Ombudsman determines that the policy is, in fact, an administrative practice and procedure? How is that to be determined? Who is right, and who is not?

The Hon. P. HOLLOWAY: We can only go on what the Ombudsman is talking about, and I understand they relate to general consumer issues. I guess that, if the Ombudsman was looking at matters other than that, it would be a matter of discussing it with him. It is much the same situation as with the Auditor-General. If the Auditor-General wishes to take information, he has fairly wide powers to do so and, certainly as far as this government is concerned, we wish to cooperate with those statutory office holders in carrying out their functions.

This act complies with the request of the Ombudsman to meet certain needs, as he sees them, which are, we would have thought, part of good administrative practice and will lead to better administration. That is essentially why we are bringing this in. I certainly do not envisage a situation where we would be getting into fights with the Ombudsman about these sorts of things. We have had an Ombudsman for almost 30 years, and I think one would have to say that the contribution of the Ombudsman to good administrative practice and good government has been very substantial. This bill seeks to improve that. If there are issues from time to time, where we disagree with the determination of the Ombudsman, as there might be with other public officers like the Auditor-General, we accept that, in the same way that we accept that by and large, on balance, they have a very difficult job to do and they do it very well on the whole.

The Hon. A.J. REDFORD: This could be a long day. Let me explain so that the minister understands this. The bill extends the ambit, in terms of 'administrative act', beyond the public sector to what has traditionally been described as non-public sector groups. To what extent can the Ombudsman, pursuant to new section 14A, review their practices and procedures? What check is there to prevent a review that might go beyond an administrative practice and procedure?

The Hon. P. HOLLOWAY: I am advised that new section 14A(2) provides:

> The provisions of this act apply in relation to a review under subsection (1)—

which we have just been debating—

> as if it were an investigation of an administrative act under this act, subject to such modifications as may be necessary, or as may be prescribed.

So, there is that provision under new subsection (2), as I understand it, to, if necessary, modify or constrain such reviews.

The Hon. A.J. REDFORD: We are getting the minister there, Mr Chairman. Given his extensive knowledge of this legislation, I am sure that the minister would understand that the Ombudsman has the powers of a royal commissioner. There is nothing in the provision that indicates that, in a general review of an administrative practice and procedure of what has traditionally been thought to be a non-government agency, that is ongoing, at large and subsumes some extraordinary powers that a royal commissioner would enjoy. Can the minister comment on that?

The Hon. P. HOLLOWAY: The Ombudsman certainly has very wide powers but, as I have just pointed out, new subsection (2) provides that in relation to the reviews

contained in new section 14A(1), which we have been debating, it can be constrained under regulation, under the terms of new subsection (2).

The Hon. A.J. REDFORD: With respect, that is not a satisfactory answer. It is an extraordinary increase in power on the part of an unelected official in dealing with what has traditionally been the private sector. I refer back to the review of a government agency. I think the minister said earlier that, if the Ombudsman should seek to conduct a review pursuant to new section 14A(1), the government will not seek to prevent the Ombudsman in so doing, on the basis that it might be, in the government's view, a review of government policy.

The Hon. P. HOLLOWAY: If the Ombudsman were to go beyond administrative practices and procedures into the policy area, clearly that would be outside the scope of new section 14A(1).

The Hon. A.J. Redford: What would you do?

The Hon. P. HOLLOWAY: I guess that would be a matter of taking it up with the Ombudsman in the first instance. It is a matter of him adhering to the act as we must, as ministers of the Crown. I am also advised that, if there is any doubt, one should refer to section 28 of the existing act, as follows:

> Where—
> (a) an investigation has been commenced or is proposed under the act; and
> (b) a question arises as to whether the Ombudsman has jurisdiction to conduct the investigation,
> the Supreme Court may, on the application of the Ombudsman, an agency to which this act applies or the principal officer of such an agency, determine the question and make any orders necessary to give effect to the determination.

So, section 28 of the existing act does provide some determination should it reach that stage which, hopefully, it will not. We do not have information about whether or not that provision has ever been used before, but I suppose we could find that out. I would not expect that it has been used very often, if at all.

The Hon. A.J. Redford: I don't know whether it has ever been used, but—

The Hon. P. HOLLOWAY: Certainly not from the government's perspective, I should say. It may have been used by individuals because it does give them the same protection.

The Hon. A.J. REDFORD: Will the government give an undertaking that it will not exercise its rights pursuant to section 28?

The Hon. P. HOLLOWAY: I think it would be unwise for any government to say that it would never exercise its rights. Those rights are put there in legislation for extreme cases. Obviously, we hope that we will never have to use them, and we think it would be unlikely, but I think it would be a bit rich to say that we would never use a provision in a piece of legislation.

The Hon. A.J. REDFORD: The difficulty is that there are occasions when in the eyes of some people it is a matter of policy but in the eyes of others it is an administrative act or procedure. I draw the honourable member's attention to a matter in which he was deeply involved a couple of years ago, and that was the way in which the government allocated craypot licences. I think the Legislative Review Committee conducted an inquiry into this matter as did the Ombudsman. The Ombudsman's recommendations could have gone far beyond the basic practice of how you would allocate a limited number of craypots, and he could have come up with the recommendation made by the Legislative Review Committee, which was basically that no limitation on the number of pots was needed and that it would not make any difference to the number of crayfish that were taken.

In that circumstance, in the eyes of some it is an administrative practice and procedure but in the eyes of others it is a matter of policy. There are occasions when one looks at an administrative practice and procedure—and you find errors or problems associated with it—where the answer is a recommendation that might impact on government policy. The difficulty with this is how does an ombudsman ensure that he does not cross that line and incur some sort of a section 28 application from the government?

The Hon. P. HOLLOWAY: I am advised that an issue could potentially arise in relation to an administrative act, and that is of course defined in section 3. My point is that the issue that arises there is the difference between policy and an administrative act. As I understand it, these issues have been around for a long time, and the difference is fairly well understood. Maybe the honourable member is right in that at the margin there will be administrative practices and procedures that might start to blur into policy and at some point they might overlap. I guess it is a matter of good judgment.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: It is, but the point I make is that it is not new. I guess that is implicit in what the honourable member is saying—there is nothing new about this—but I am sure that the current Ombudsman would be well aware of this difference and would take it into account. Of course, there is section 28 of the act, to which I just referred, should it ever be necessary to resolve these matters in a court of law.

The Hon. A.J. REDFORD: Proposed new section 14A(2) provides that the provisions of the act apply in relation to a review subject to such modifications as may be prescribed. In what circumstances would the government prescribe a modification to an investigation of an administrative act pursuant to proposed new section 14A(1)?

The Hon. P. HOLLOWAY: I am advised that what we are looking at here under proposed new section 14A(1) is a generic review rather than an individual look at a particular case. We are talking about administrative audits (a generic review) and I am advised that, if and when this clause is passed by parliament, it is envisaged that we will look at all the implications that might arise from this provision to see what would be appropriate.

The Hon. A.J. REDFORD: That is about as clear as mud. You must have some idea of the modifications you are going to prescribe by way of regulation in terms of a review of an administrative practice or procedure. There must be some principle. It is a good starting point.

The Hon. P. HOLLOWAY: There are a number of provisions in the current Ombudsman act relating to such things as the time within which complaints can be made, certain complaints not to be entertained, etc., conciliation procedures, and all these sorts of things. It is my understanding that if this bill passes—and if this section in particular passes—officers will work through with the Ombudsman those parts of the act to see what might be applicable in relation to the question of administrative audits. That will be done if this section is passed.

The Hon. A.J. REDFORD: Can I get an undertaking that there will not be any prescription to reduce the Ombudsman's powers in so far as access to witnesses and/or documents is concerned in relation to this provision?

The Hon. P. HOLLOWAY: All I can say is that it certainly is not proposed at this point. I do not think I am authorised to give an undertaking, but my advice is that it is not proposed to do that. Who can say what will come up when it is reviewed, but it is not envisaged that that would be the case? That is not why new sections 14A(1) and (2) are proposed. Essentially, they are to facilitate the Ombudsman's new role and, if the bill is proclaimed, it will need to be worked through with him as to how this might work in practice.

The Hon. A.J. REDFORD: This could easily be used to close down an inquiry without necessarily having the matter agitated pursuant to section 28. I am not sure whether this is all that clever a piece of law-making. I must say that it is a bit of a Clayton's general review into administrative acts as far as I am concerned, but I do not seek to make any other point in that on that.

The Hon. R.D. LAWSON: Can the minister indicate whether the Ombudsman has intimated to the government whether there is any particular administrative audit that he wishes to undertake, and, if so, will the minister indicate which agency the Ombudsman seeks to have made the subject of an administrative audit?

The Hon. P. HOLLOWAY: I think I answered that question the other day. I believe the Ombudsman is already undertaking what one might describe as an audit in relation to the complaint-handling mechanisms of the public sector and also for councils. So, I gather that he is already looking at this, and I guess this clause makes it absolutely clear for the future that the Ombudsman is, in fact, able to conduct audits of this type.

The Hon. R.D. LAWSON: The minister referred to the latest annual report of the Ombudsman, particularly at page 34, where it is noted:

> There is no general provision for the Ombudsman to conduct administrative audits. However, I have prepared some general guidelines which may provide a basis for self-evaluation and improvement.

I assumed that the guidelines to which the Ombudsman referred are those set out on pages 36 to 40 of the report, which is described as a check list of good administrative practice. However, on looking at the matter closely, it is not altogether clear that they are the guidelines to which the Ombudsman referred. Is the minister able to confirm that these are the Ombudsman's proposed guidelines? If he is not able to do it now, could he undertake to let me know in due course?

The Hon. P. HOLLOWAY: My understanding is that, in fact, it is that check list that he is referring to and, indeed, that is what I was trying to get across before—obviously unsuccessfully—in relation to the Hon. Angus Redford's questions. I can specifically confirm that with the Ombudsman, but it is my understanding that is what he was referring to, and certainly that is what the government is seeking to give him the powers to do in relation to new section 14A. But, if the member would like that confirmation from the Ombudsman, I can do that.

The Hon. R.D. LAWSON: Yes, I would appreciate confirmation through the minister of that fact.

Clause passed.

Clause 6.

The Hon. A.J. REDFORD: My question to the minister in relation to this clause is: what money has the government made available to the parliament to resource the Statutory Officers Committee?

The Hon. P. HOLLOWAY: At this stage there has been no specific allocation.

The Hon. A.J. REDFORD: If the presiding officer determines that there needs to be an increase in resources, will the government supply those additional resources?

The Hon. P. HOLLOWAY: It would be a matter for determination with the relevant officers. I think I made some comments about that in my second reading speech.

The Hon. A.J. REDFORD: Yes, you did. At page 1325 on 14 November you said:

> It is a matter for negotiation with the presiding officers to determine the resources for the committee.

The Hon. P. HOLLOWAY: I guess there would be some negotiation with the presiding officers and, if it is determined that more resources are justified, it will be up to the minister responsible to put that through cabinet.

The Hon. A.J. REDFORD: With the greatest of respect, Mr Chairman, this is not good enough. We have this bizarre situation going on with the occupational health and safety committee whereby we do not have a research officer and the secretary is fully engaged dealing with other issues, so we are simply not resourced. The process of getting the resources takes weeks and months, as I am sure other honourable members in this chamber would agree. We have to go through a convoluted process of writing to the Speaker, the Speaker writes back to us and we write another letter and, in the meantime, weeks and months go by. What is the minister proposing to do to ensure that that sort of charade does not happen in terms of providing the Statutory Officers Committee with appropriate resources?

The Hon. P. HOLLOWAY: As I indicated in my second reading speech:

> While the extended function will be important, I would not see it as being a highly labour-intensive role requiring, for example, a full-time research officer.

It will be a matter of negotiation, and I guess it is a matter of what resources are available. But, clearly, it is implicit in my response that there may be the need for some additional resources; however, those resources will not be large. I have been a member of the Statutory Officers Committee since its inception, which I think was back in 1995 or 1996, and it has never met, so I think that underlines the point that it has not been a highly intensive role. The reason it was set up—

The Hon. A.J. Redford: Has it got a secretary?

The Hon. P. HOLLOWAY: Yes, it has a secretary. If the honourable member wants to go into its history, I recall that it was set up after some negotiation at the time with the Hon. Trevor Griffin after a lengthy debate I think in relation to the Electoral Act and whether the Electoral Commissioner should be subject to the Statutory Officers Committee. If I recall correctly, the Hon. Trevor Griffin, in the end, appointed the Electoral Commissioner before the bill was proclaimed, and that is why the committee was not involved in that particular appointment. But the Statutory Officers Committee, as in 1994, only has the role of appointing the Auditor-General, the Electoral Commissioner and the Ombudsman—I am not sure whether there are others, but that is my recollection—and, of course, the bill was proclaimed immediately after the then attorney-general appointed the Electoral Commissioner, if my memory serves me correctly, but I would have to check that. So that is the somewhat chequered history of that committee, but it certainly—

The Hon. A.J. Redford: It is not chequered. It just has had nothing to do, so it hardly exists.

The Hon. P. HOLLOWAY: Exactly, which is why—

The Hon. A.J. Redford: Now you have a reason to meet and you cannot tell us what resources you are going to give it.

The Hon. P. HOLLOWAY: The fact that it has not met for a number of years I think underlines the point that I made that it will not be a high labour-intensive occupation. But it will need some resources and, as I said, that is why it will be a matter for negotiation to determine exactly what those resources will be. Clearly, it is implicit in my answer that whatever resources are deemed to be necessary will be provided.

The Hon. A.J. REDFORD: I am grateful for that explanation, because it took me a while to understand it. But, as I understand the minister's position, it is that, if the parliament can justify additional resources, it will not have to find those resources internally because additional resources will come from Treasury to cover the cost.

The Hon. P. HOLLOWAY: If that is the outcome of the negotiations, that will be the case.

The Hon. A.J. REDFORD: I thank and congratulate the minister for that, and I suggest that a similar undertaking—although it is nothing to do with this bill—should be forthcoming in relation to the occupational health and safety parliamentary committee, which is also ridiculously under-resourced.

Clause passed.

Title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

STATUTES AMENDMENT (CORPORATIONS—FINANCIAL SERVICES REFORM) BILL

Adjourned debate on second reading.

(Continued from 21 October. Page 1132.)

The Hon. IAN GILFILLAN: I indicate the Democrats' support for the second reading of this bill. However, we do have one matter of quite substantial concern which I will come to a little later in my contribution. Last year, we dealt with a number of bills that substantially amended legislation relating to the operation of corporations. That legislation was part of cooperative state and commonwealth measures that sought to have state and territory parliaments refer power over corporations law to the commonwealth. This followed problems with the previous legislation that arose as a result of the High Court ruling in Wakim and, more importantly, Hughes, which brought into question the ability of commonwealth agencies to enforce state laws in certain circumstances.

Since that time, further amendment has been made to the commonwealth legislation that requires us to update our own. The bill amends the Authorised Betting Operations Act 2000, the Broken Hill Proprietary Company's Indenture Act 1937, the Broken Hill Proprietary Company's Steel Works Indenture Act 1958, the Casino Act 1997, the Cooperatives Act 1997, the Corporations (Ancillary Provisions) Act 2001, the Liquor Licensing Act 1997, the Motor Vehicles Act 1959, the Racing (Proprietary Business Licensing) Act 2000 and the Stamp Duties Act 1923. The bill also amends the Corporations (Ancillary Provisions) Act 2001 to address the problem that arises from delays in updating state legislation after commonwealth legislation has been altered. It is proposed that we empower the Governor (that is, the government) to make regulations to amend provisions in relevant state legislation.

The Democrats are generally opposed to government by regulation and are cautious of the moves proposed in this bill. There seems to be a growing need to have state legislation that tightly interacts with commonwealth legislation. I think this is a result of applying our constitution, which is largely a 1901 model, to the realities of the 21st century. Notwithstanding that, there is much to be proud of in our constitution, which does set up a regime of state and commonwealth jurisdictions that are less relevant today than in 1901.

As I recall, when we debated the corporations bills last year, the then minister indicated that the provisions would be reviewed in five years, with the aim of finding a better solution to the jurisdictional problems and that that may require constitutional change. Will the minister, in his second reading response, comment on the current state of play in that regard?

I note that the delegation of power to the Governor (that is, the government) is stipulated as very limited and tightly constrained. The minister said that this power is limited to:

- an amendment to state legislation to be effected by a regulation must be necessary as a consequence of amendments to the Corporations or ASIC Acts [Australian Securities Investment Corporations Act];
- an amending regulation may not deal with any other matter (except matters of a transitional nature consequent upon the amendment to the Corporations or ASIC Acts); and
- an amending regulation will automatically expire after 12 months (unless revoked or specified to expire at an earlier time).

The Democrats do not consider this move to be a long-term solution to corporations law in Australia. We oppose it. However, we will support the second reading of the bill, as indicated earlier, so that we can engage in some constructive work at the committee stage.

My final observation is that we have been very nervous of stretching the capacity of any government to institute law by regulation. I sit on the Legislative Review Committee where one of our tasks is to ensure, as you would well know, Mr President, that regulations which come before us and the parliament do fit within the head powers of the enabling legislation. From my understanding, there may or may not be necessarily a head power for the government to make a regulation. In fact this bill, if it is enacted in its present form, would authorise the government to make a regulation without any head power in an act anywhere.

It seems to me to be undesirable that we should condone that practice. It may only be a precept for a certain set of circumstances, in which case the whole procedure needs to be looked at intently so that we can replace it with some other regime. I indicate yet again that we will support the second reading, but we will be looking very critically at what alternatives could be put in place to what we see as an unacceptable extension of the regulation making powers that this bill, if it becomes law, would give to the government.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank honourable members for their contributions, and I appreciate the support that the bill has received thus far. I understand that the honourable member has some concerns, which we will attempt to address, and those concerns have been put on record.

This bill does four things. It makes minor technical amendments to a number of state acts which are consequential upon the commonwealth Financial Services Reform Act

2001, which made extensive amendments to the Corporations Act. The FSR Act repealed chapters 7 and 8 of the Corporations Act, which dealt with securities and futures, and replaced them with a new chapter 7, which sets down a new regime for regulation of financial services and markets.

The amendments are necessary because terms and concepts relevant to the old chapters 7 and 8, which are used in state legislation, have been replaced with new terms and concepts; for example, 'listed on a stock exchange' has become 'quoted on a financial market', and 'futures' has changed to 'derivatives'.

The bill makes minor technical amendments to state acts which are consequential upon the reference of corporations power which came into effect on 15 July 2001 but which could not be made at the time, for example, primarily amending references to the 'Corporations Law' to the 'Corporations Act 2001'. It validates any invalid act or omission between the commencement of the commonwealth FSR Act, 13 March 2001, and the commencement of these consequential amendments. The bill amends the Corporations Ancillary Provisions Act 2001 (one of the bills enacted to give effect to the reference of corporations power) to empower the Governor to make regulations to amend the provisions of state legislation that rely, or refer to rely, upon provisions of the Corporations Act or ASIC Act of the commonwealth, or terms, expressions and concepts defined in those acts which are amended by the commonwealth.

This regulation making power is subject to the following strict limitations:

(a) the amendment must be necessary as a consequence of amendments to the Corporations Act, or the ASIC Act;
(b) an amending regulation may not deal with any other matter, except matters of a transitional nature consequent upon the amendments of the Corporations Act or the ASIC Act; and
(c) an amending regulation will automatically expire after 12 months, unless revoked or specified to expire at an earlier time. Regulations are still subject to disallowance as per usual.

Again, I thank honourable members for their contribution.

Bill read a second time.

In committee.

Clauses 1 to 6 passed.

Clause 7.

The Hon. IAN GILFILLAN: Clauses 17 and 18 both embrace a matter about which I have concerns. In the explanation, and in our understanding, it appears that they authorise the government, or the minister, to make regulations with no legislative head power. Certain conditions are spelt into it, but I would like the minister to go into a fuller explanation of the circumstances under which he sees this extraordinary measure would be used. For example, clause 18, proposed section 22A(2) provides:

> The Governor, on the recommendation of the minister, may make regulations providing that an affected reference in any act is to be construed as set out in the regulations.

I find some of this a little hard to follow, but perhaps it could be explained more simply, and justified.

The Hon. T.G. ROBERTS: When I was briefed on this bill for the first time, I had to ask the same questions to get the explanation right. The changing terminology that is used within the financial markets, as described in the first example, has meant terminology such as 'listed on a stock exchange' has become redundant and has become 'quoted on a financial market' because of changes to the financial institutions that operate within a given time period. Some terminology changes completely and some is modified. Some of the descriptions of some terms (such as 'futures', which has been changed to 'derivatives') are able to be changed without recourse to the act.

Where the commonwealth makes changes to its act, we can pick it up by regulation here. It has been made simpler. I do not think it will get out of control in any way, but it renders making those minor adjustments easier within our own legislation.

The Hon. IAN GILFILLAN: I thank the minister for that explanation, and I am glad to know that I am in the exalted company of the minister himself in having some concerns. Certainly, as it has been explained, if the regulation were seeking to conform in terminology detail of application, I would not have any concern, and I doubt whether anyone would. However, unless the minister can point out that the legislation confines the regulation to just that simple, practical implementation, the regulations that could be introduced under these circumstances could be a bit more vigorous than just terminology. Perhaps the minister can comment on that. I realise that we have the power for disallowance, which gives us the opportunity for a parliament to look at this matter. I am not sure whether the minister's adviser can point to any clause in the current bill which shows that these regulations will be restricted to more or less the mechanics and the implementation or the terminology.

The Hon. T.G. ROBERTS: The regulation-making power is subject to the following strict limitations:

(a) The amendment must be necessary as a consequence of the amendments to the Corporations Act or the ASIC Act;
(b) An amending regulation may not deal with any other matter (except matters of a transitional nature consequent upon the amendments to the Corporations Act or the ASIC Act); and
(c) An amending regulation will automatically expire after 12 months (unless revoked or specified to expire at an earlier time).

So, it does provide those restrictions plus the expiry date.

The Hon. IAN GILFILLAN: I thank the minister for that explanation. I did use those restrictions in my second reading contribution, so I am aware of them. This particular regulation power is specific to amendment to the Corporations (Ancillary Provisions) Act. Does the minister feel secure that this same measure may not be stretched? Is there argument to stretch it to other commonwealth-state legislative interplay?

The Hon. T.G. ROBERTS: My advice is that the amendments must be necessary as a consequence of amendments only to the Corporations Act and the ASIC Act, so it cannot be stretched to any other acts. It is only subject to the two described.

The Hon. IAN GILFILLAN: I really feel that the minister and his adviser have, as far as is humanly possible, answered my questions. I realise that the bill makes it quite restrictive, but I am nervous of the patterns that follow. It may be something that is unfair to ask the minister in this particular committee stage. If it is convenient in this interplay between the two state and federal acts, I am somewhat concerned that it may then become a pattern for further relationships and we will finish up with a plethora of legislation in which regulations are coming in, arguably to facilitate terminology and for convenient working, and I

would like to signal the Democrats' concern about this trend if that does eventuate.

The Hon. R.D. LAWSON: I also indicate the Liberal opposition's concern about the widespread use of this rather extraordinary mechanism of altering legislation by regulation. My question to the minister relates to part 7 of the bill, which provides the power to amend the ASIC Act and the Corporations Act by means of regulation. Have any other states adopted a similar legislative mechanism and, if so, which ones?

The Hon. T.G. ROBERTS: All states and territories have adopted or will adopt identical or near identical references. Up until 14 October, New South Wales, Victoria and the Northern Territory have enacted their bills, whilst in Western Australia the bill is in the council, similar to our situation. In Queensland, the bill is expected to be introduced this month. The bill is yet to be introduced in Tasmania as it would have been delayed by the election. The ACT has made a number of consequential amendments but is not adopting the regulation-making power. The ACT is in a different constitutional position to other jurisdictions, having never had the power to regulate companies.

The Hon. R.D. LAWSON: I do apologise, minister. My attention was momentarily distracted when you were providing that explanation and I did not fully understand it. Is the effect of what you are saying that no other jurisdiction has adopted comparable measures?

The Hon. T.G. ROBERTS: All other states and territories have done so or will do so, with the exception of the ACT which does not have regulation-making powers over the Corporations Act.

Clause passed.

Remaining clauses (18 to 46) and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

FREEDOM OF INFORMATION (MISCELLANEOUS) AMENDMENT BILL

In committee.

Clauses 1 and 2 passed.

Clause 3.

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

Page 3, lines 10 to 20—Leave out subsection (1) and insert:

(1) The objects of this act are, consistently with the principle of the executive government's responsibility to parliament—

(a) to promote openness in government and the accountability of ministers of the Crown and other government agencies and thereby to enhance respect for the law and further the good government of the state; and

(b) to facilitate more effective participation by members of the public in the processes involved in the making and administration of laws and policies.

(1a) The means by which it is intended to achieve these objects are as follows:

(a) ensuring that information concerning the operations of government (including, in particular, information concerning the rules and practices followed by government in its dealings with members of the public) is readily available to members of parliament and members of the public; and

(b) conferring on members of parliament and each member of the public a legally enforceable right to be given access to documents held by government, subject only to such restrictions as are reasonably necessary for the proper administration of government; and

(c) enabling each member of the public to apply for the amendment of such government records concerning his or her personal affairs as are incomplete, incorrect, out-of-date or misleading.

This amendment seeks to insert a modified description of the objects of this act. Already, considerable attention has been paid over the years to the statement of the objects of the Freedom of Information Act. There were objects initially in the act. Last year, as a result of amendments moved by the then Liberal government, the objects were modified in an important way, but not so as to modify the objects in any really significant way, but we certainly considered it was an important improvement. In this bill, the government seeks to alter the amendments in a number of ways which it seems to us are relatively minor.

However, the Legislative Review Committee in its report on the Freedom of Information Act recommended the adoption of an entirely new piece of legislation modelled on the New Zealand legislation. That legislation had a statement of objects which, whilst generally consistent with most of the principles encompassed in the objects of the South Australian legislation, expressed it rather differently and also introduced a notion of the principle of executive government's responsibility to parliament—an important principle.

In these circumstances, rather than accepting the minor amendments that the government is proposing, we decided to embrace the recommended objects which appealed to the Legislative Review Committee and which the Hon. Ian Gilfillan incorporated in the bill that he introduced in this chamber in 2000, I think. Similar objects were in the bill that the Hon. Nick Xenophon introduced, which was in virtually identical terms to that introduced by the Hon. Ian Gilfillan. By this amendment, we seek to embrace, especially in proposed new subsection (1), objects which are clear and which are explained in subsection (1a), where it is provided that the means by which these objects will be achieved are set out. We envisage that the existing provisions of section 3 of the act, namely subsection (3), will remain.

The Hon. IAN GILFILLAN: I move:

Page 3, lines 17 and 18—Leave out 'restrictions that are necessary for the proper administration of government' and insert 'such restrictions as are consistent with the public interest and the preservation of personal privacy'.

I will speak briefly to both amendments. I feel in many ways that this is a case, to a large extent, of a troika: there are three horses pulling in the same direction. With due respect to the government, once parties get into government, they tend to be more jumpy about freedom of information. However, essentially it is a tripartite approach in wanting to achieve genuine freedom of information.

I share a view that was expressed to me in conversation with the Hon. Robert Lawson (I do not know how formally this was the case) that objectives are not really the nuts and bolts of how an act is interpreted. So, I am not convinced that the exact wording in objectives will really lock in the proper exercise of freedom of information. It is really a culture change that we have to achieve to get that. However, having said that, I am more persuaded that my amendment is more effective in reflecting what was certainly the spirit of the report by the Legislative Review Committee, the prototype New Zealand legislation and the bill that I introduced, because it removes this identification that there can be restrictions that are necessary for the proper administration of government. That is a very loose and dangerous phrase, in my view, and that is why I have moved to take it out.

Unfortunately, I notice that paragraph (1a)(b) in the amendment moved by the Hon. Robert Lawson reads:

conferring on members of parliament and each member of the public a legally enforceable right to be given access to documents held by government, subject only to such restrictions as are reasonably necessary for the proper administration of government.

I argue that, essentially, my amendment is more effective in getting objectives to reflect more truly the real incentive for making freedom of information.

The Hon. A.J. REDFORD: I do not think I would be giving away any secrets if I disclosed that I have driven very much the amendment that is before this place moved by the Hon. Robert Lawson, and that I have been more successful in driving it on this occasion than in October and November last year, and there may be good reasons for that. I point out that one of the important things that the amendment to the objects as moved by the Hon. Robert Lawson does is set out some basic principles in so far as the relationship between the executive arm of government is concerned and its responsibility to parliament, and puts this whole freedom of information legislation in that context.

The Hon. Ian Gilfillan may recall that he introduced a bill into this place some two years ago. His bill incorporated what the Liberal opposition's amendments are in this case. In particular, the bill that the Hon. Ian Gilfillan moved on that occasion had these words:

The objects of this act are, consistently with the principle of the executive government's responsibility to parliament—(a) to promote openness. . .

There were some slightly different words from there on, but the principles are very much the same.

There has been some debate about whether the objects of an act or bill are simply a bunch of motherhood statements or whether, in fact, they have practical effect. In my view they have a real and practical effect and it is two-fold. First, they do have some impact in terms of public servants and freedom of information officers and how they will look at the context of this act, in coming to a conclusion. We all know—and I congratulate this government—that the government has continued to implement and enhance good and proper training of public servants, in terms of what this act means and what they are obliged to do.

The objects in terms of training and telling people what the message is from this parliament is fundamentally important. Secondly, and more importantly, courts actually do take into account the objects of an act. They may look at a specific clause in dealing with a specific issue and say, 'How do we decide this?', but there are many occasions when a court might say, 'There are two possible interpretations here and we have to pick one.' The courts will always go to the objects in the legislation, even before they go to a second reading speech, to determine what parliament's intention was in terms of the passage of a particular piece of legislation.

A good example of that was a case I was reading only yesterday. It was not a very high up case in terms of the judicial hierarchy, but certainly an important case in the Environmental Resources and Development Court, of McLennan and Holden Ltd, where submissions were being put in relation to an environmental prosecution of Holden Ltd. Mr Brian Hayes QC was urging the environment court not to record a conviction for various environmental offences. In that particular case, His Honour Judge Bowering referred to a case of Hemming and Neave, as well as another case of Piva and Brinkworth, of great fame in environmental courts, where he said that those authorities directed him to have regard to the object of the Environmental Protection Act.

In terms of the Ombudsman or a District Court dealing with any appeals in relation to this, the objects of the act, particularly where there is some doubt, can become quite significant and can cause an argument to turn one way or the other. So, in that sense, I think that our objects are preferable to those moved by the government on this occasion. In addition, it does a number of other things.

First, it sets out clearly the promotion of openness in government and the accountability of ministers of the Crown and other government agencies to the parliament. There are not many bills or acts of parliament in this country that specifically state that, and I think it is a good starting point. I draw the Hon. Mr Gilfillan's attention back to the constitutional debate we had a couple of years ago. Secondly, it recognises the responsibility of the members of parliament in their representative capacity to be the protector of the public interest. In that respect, it acknowledges their right to documents as part of our system of government.

The objects in the current act do not do that and the objects put by the government do not do that; but the objects as moved by the opposition do. I acknowledge that the amendment that the Hon. Mr Gilfillan has moved to the government bill can equally be moved in so far as our amendment is concerned. I am not sure how much it will add one way or the other because, clearly, there are a number of restrictions set out in the act, and I am sure the Hon. Mr Gilfillan and I would agree that it is preferable to have a simple test but, at the end of the day, even if those words stayed in our amendment—and I am not wedded to it one way or the other—I do not think it will make much difference.

The Hon. IAN GILFILLAN: I am quite kindly disposed to amending the opposition's objects. I would not support it with the current wording because I believe, as I have indicated before, the words 'necessary for proper administration of government' is very dangerous. It is an extraordinarily wide term which could be used as an excuse under a wide range of circumstances by a government which does not intend to fulfil freedom of information. I indicate to the opposition that were it to seek leave to move its amendment in an amended form which is, in effect, deleting the second part of (1a)(b), we would support that amendment and I would seek leave to withdraw my amendment.

The Hon. R.D. LAWSON: I should have indicated in my opening remarks that, as the Hon. Mr Redford reminded me, it was he who has impressed upon myself and all of his colleagues the significance of this amendment. I am delighted to acknowledge here the enthusiasm with which he has embraced the principles of freedom of information. He was a champion of it as chair of the Legislative Review Committee and has continued to press for improvements. I am delighted that my party adopted his suggestions.

I am also grateful to the Hon. Ian Gilfillan for the intimation which he made about a suggested amendment to the proposed amendment that stands in my name. I indicate that we would be happy to accommodate the Hon. Ian Gilfillan's suggestion, which is a good one and which does not undermine the important principles which the objectives are presenting. I should indicate for the benefit of the committee, however, that, whilst these objects are important, the courts have adopted a somewhat ambivalent approach to the application of them.

I refer, for the record, to a very helpful judgment of Judge Lunn in the District Court of South Australia in a case called IPEX Information Technology Group against the Department

of Information, Technology Services of South Australia, decided on 16 June 1997. This was an application, under the Freedom of Information Act, by a company which had unsuccessfully tendered for certain government work and wished to obtain details of the evaluation criteria which had been applied. His Honour said:

> Counsel for IPEX contended that section 3 of the act created a presumption in favour of disclosure in circumstances where the exemptions are to be given a narrow application, and that there should be a 'leaning approach' in favour of disclosure. The respondent [that is, the government] denied this.

His Honour Judge Lunn went on to say:

> Regrettably, a number of superior courts have made varying pronouncements on the point without apparent reference to what other courts have said on the topic.

His Honour goes into a very thorough examination of the matter and I will not read all of what he had to say. However, he did say, most pertinently:

> In Searle Australia Pty Ltd v Public Interest Advocacy Centre (1992). . . the Full Court of the Federal Court held in relation to a similar provision in the Commonwealth Freedom of Information Act that there was no leaning in favour of disclosure and that what the High Court had said in Victorian Public Service Board v Wright was consistent with what an earlier Full Court of the Federal Court had said in News Corporation Ltd v NCSC:
>
> > 'In construing our Act we do not favour the adoption of a leaning position. The rights of access and the exemptions are designed to give a correct balance of competing public interests involved. Each is to be interpreted according to the words used, bearing in mind the stated object of the Act.'

Judge Lunn said that he considered that to be the correct approach to interpreting section 3 of our Freedom of Information Act.

His Honour also referred to a dictum of Justice Michael Kirby (then the President of the New South Wales Court of Appeal) in Commissioner of Police v. District Court of New South Wales (31 NSWLR). He said:

> There is one controversy on this point which was debated. . . It is whether the act has produced a shift or 'tilt' in favour of disclosure so that, in case of doubt, the court would favour the construction supporting disclosure over the construction which did not. Certainly, there are indications in section 5(3) [of the New South Wales legislation]. . . which would support such an approach. . . I tend to favour the view that the act, understood against its background and interpreted in conformity with the intention of parliament expressed in section 5 must be approached by decision-makers with a general attitude favourable to the provision of the access claimed. It is important that the decision-makers (and especially in tribunals and courts which set the standards) should not allow their approaches to be influenced by the conventions of secrecy and anonymity which permeated public administration in this country before the enactment of the act and its equivalents.

That is a commendable passage. However, Judge Lunn said—and I think correctly—the following:

> I interpret this as meaning little more than that the legislation has changed the secrecy and anonymity which prevailed previously, but insofar as it may be inconsistent with the approach endorsed in Searle's case I follow Searle's case as being a decision of a Full Court.

That was the case which decided that there was no leaning. So, notwithstanding the fact that the courts have not given what one might term as much weight as parliament would want in relation to objects—and they are only really relevant where there are ambiguities or uncertainties—we maintain their importance. I am grateful to the Hon. Ian Gilfillan for his indication of support subject to the deletion of certain words.

The CHAIRMAN: The Hon. Mr Lawson needs to seek leave to amend his amendment. I understand that, if the honourable member moves to delete certain words and replace them with the words suggested by the Hon. Mr Gilfillan, the Hon. Mr Gilfillan will not pursue his amendment.

The Hon. IAN GILFILLAN: I would not support just the deletion. The deletion is step one, and step two is to replace the deletion by the words 'subject only to such restrictions as are consistent with the public interest and the preservation of personal privacy'. If those words are included, I will seek leave to withdraw my amendment.

The Hon. R.D. LAWSON: I seek leave to amend my amendment as follows:

> Leave out 'subject only to such restrictions as are reasonably necessary for the proper administration of government' and insert in lieu thereof 'such restrictions as are consistent with the public interest and the preservation of personal privacy'.

Leave granted; amendment amended.

The Hon. P. HOLLOWAY: I wish to make some comments on the objects clause. The objects as they originally appeared in the Freedom of Information Act were legalisticly drafted. The government has attempted to clarify those objects. As I indicated in my second reading reply, the wording in relation to the objects is only to achieve a simpler and clearer statement of intent by 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.

I understand that what the opposition seeks to do is to follow the New Zealand objects. I made the point during my second reading reply that the New Zealand act is often spoken of as an example of good freedom of information legislation, but that act has many design features different from the South Australian act, so it would be inappropriate to mirror only the objects part of that act.

The government's preferred position is that no amendments to the government's bill be accepted, but we understand that, given the numbers and that the Hon. Mr Gilfillan has now accepted (with some modification) the opposition's objects, I will not call for a division. However, I place on the record that we believe that the objects as we have already amended them are appropriate.

Amendment to amendment carried; amendment as amended carried.

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

> Page 3, after line 27—Leave out 'object' and insert 'objects'.

This is consequential upon the previous amendment.

The Hon. IAN GILFILLAN: Agreed.

The Hon. P. HOLLOWAY: Given that the amendment is consequential, the government will not oppose it.

Amendment carried.

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

> Page 3, line 34—After 'assists' insert 'members of parliament and'.

This clause refers to members of the public. It provides that agencies are to give effect to this act in a way that assists members of the public to exercise their rights. Members of parliament are persons with responsibilities who frequently have occasion to make requests for freedom of information, and it ought to be spelt out in these principles of administration that members of parliament (in the same way as members of the public) are entitled to exercise the rights provided by the act.

The Hon. P. HOLLOWAY: The government does not believe that this amendment is necessary. Members of parliament, of course, use the Freedom of Information Act,

and have done so since it was introduced by Chris Sumner back in the early 1990s. I think that the point that needs to be made is that the Freedom of Information Act should exist for good government. It should be an act for all persons, not just for MPs. FOI, should not, in my view, be an MPs' plaything. It is about better governance, providing information and changing the culture, as has been said in previous debate. Why should we single out members of parliament in relation to this clause? I think it gives away, in many ways, the opposition's attitude towards this legislation—they keep on looking at it as being a plaything of MPs rather than as a much more important piece of legislation which needs to address some objectives in the broader public interest.

The Hon. IAN GILFILLAN: It does not cease to be a matter of wonder to me how creatures can change their caparison wonderfully once they move positions. I stay put like a stable rock and the others, as they flow left and right, change their image. How could the minister bald-facedly accuse this innocent group—

Members interjecting:

The CHAIRMAN: Order! Mr Gilfillan is on his feet.

The Hon. IAN GILFILLAN: How could the minister, in such a bald-faced way, accuse this group of innocents on this side of the chamber of seeking to manipulate freedom of information legislation? I find that amazing, and I hope the opposition is not too distressed by it. But, I indicate that it seemed a very fine and, might I say, somewhat pedantic point to object to members of parliament being included in the bracket with members of the public. After all is said and done, members of the public will have to pay through the nose if they get offside with an agency, so they will come to members of parliament. Members of parliament are servants of the public. It is a very appropriate amendment that has the strong endorsement of the Democrats.

The Hon. R.D. LAWSON: The suggestion of the minister that the opposition seeks to put itself above members of the public is preposterous. It is the government on this occasion that has chosen to single out members of parliament to remove from them certain statutory rights that they have hitherto had to obtain information—rights which the honourable member, as a member of the opposition, enjoyed, and enjoyed frequently.

The other day I was looking at a request that the Hon. Mike Rann made for the provision of hundreds, if not thousands, of documents in relation to a certain matter which he regarded as significant. The government seeks to take away from oppositions the rights that it enjoyed when it was in opposition. We believe that this amendment ensures that any government is reminded of the fact that, as the Hon. Ian Gilfillan says, members of parliament represent members of the public. They certainly do not see themselves as above members of the public.

The Hon. P. HOLLOWAY: In terms of what the bill does, I do not think it is going to make any difference whether or not this clause passes, but I defend my position and make the point that—

The Hon. R.I. Lucas: Openness and honesty!

The Hon. P. HOLLOWAY: 'Openness and honesty', the leader says. My situation in relation to freedom of information has not changed. Why should members of parliament be singled out? It does not achieve anything in terms of the bill.

The Hon. R.I. Lucas: When you were in opposition, it was all right. It was all right for you.

The Hon. P. HOLLOWAY: When I was in opposition I used the bill. Freedom of information is very important legislation. It was introduced, I remind the leader, by a Labor government, and now it is being reformed to make it more effective. We had to wait through eight years of the previous government's tenure before we could get some reforms to the Freedom of Information Act to make it more open and accountable, and we are doing so for the broader public good. If the Freedom of Information Act is to achieve its objectives and to lead to better government, it is not just about playing games in relation to those of us here. The goals and objectives of freedom of information are to promote openness in government and accountability of ministers of the Crown. But it is clear the numbers are not there. I wished to make that point and I think I have done so.

Amendment carried; clause as amended passed.

Clause 4.

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

Page 4, lines 19, 20 and 21—Leave out paragraph (g).

This amendment deletes a proposed clause which would provide:

> This act does not apply to documents or information held by an officer of an agency otherwise than in the person's capacity as such an officer.

It is clear that what is sought to be done by the insertion of this provision is to exclude certain documents. The principle that we adopted when approaching the government's amendments to the Freedom of Information Act is that we would not support any provision which further restricted the rights of members of the public and members of parliament to access documents. At the present time, the key section of the Freedom of Information Act is section 12 and it gives a right to access only an agency's documents. We would not have thought that it was possible, therefore, to argue under the existing act that documents which are clearly not an agency's documents but which are documents held by an officer otherwise than in his capacity as an officer could be accessed. For example, if a public servant is a betting person and has a TAB form in his or her back pocket, we would not have considered that it is in any way possible for anyone to access that document under freedom of information because that document is not an agency's document.

We are somewhat surprised and bemused by the suggestion that it is necessary to insert a provision of this kind. Certainly, the Legislative Review Committee, when it conducted a very thorough examination of the provisions of this act, did not deem it necessary, so far as I can recall, to recommend a change of this kind. I must admit that we are suspicious that by this restrictive measure the government is seeking to keep from public scrutiny documents which, under the current legislation, would be available. I seek from the minister an indication of the reasons behind this amendment.

The Hon. IAN GILFILLAN: It may help the committee if I indicate that the Democrats are sympathetic to the point made by the opposition. I make the observation that it is again rather fascinating that the Legislative Review Committee report has now become a paragon of virtue to the opposition and that in earlier history we were not taken quite so profoundly as the oracle of all wisdom in this matter, but it is a great source of comfort to those of us who are on the committee, as I am sure you would agree, Mr Chairman.

The Hon. P. HOLLOWAY: The government opposes the removal of this paragraph. As I am advised, the main purpose of this paragraph was clarity, that is, to make it clear. We have just dealt with an amendment to clause 3 where 'members of parliament' was inserted by members of the

opposition for just that purpose, that is, for clarity. There is certainly the implication all through the act that it is to apply only to official information held by an agency or officer in that capacity. It is not meant to apply to documents that are of a personal nature or that are held by the officer otherwise than in their capacity as such an officer—

The Hon. A.J. Redford: Isn't personal material already protected?

The Hon. P. HOLLOWAY: It probably is; essentially this is just to clarify it. I am advised that subsection (6) simply clarifies it; in other words, it makes it crystal clear that it 'does not apply to documents or information held by an officer of an agency otherwise than in the person's capacity as such an officer'. The honourable member can argue whether or not it is covered by other parts of the bill, but the purpose of new subsection (6) is to make it clear that the act applies only to official information held by an agency or officer in that capacity.

The Hon. A.J. Redford: Who asked for this? Was it the PSA?

The Hon. P. HOLLOWAY: It came out of the review. It has been made clear that this bill certainly took a lot of notice of the Legislative Review Committee. A series of discussions were held in relation to it, and one of the concerns that would have arisen was that this might inadvertently catch information of a private nature. Essentially it was just to clarify that position.

The Hon. R.D. LAWSON: Has crown law advice been obtained on the necessity for a provision of this kind and, if so, did that advice arise in relation to an application which has been made to this government for documents?

The Hon. P. HOLLOWAY: I am advised that crown law has given advice but it has not resulted from any case that has arisen.

The Hon. A.J. REDFORD: Over the break, would the minister be prepared to find out precisely who has requested this provision and the basis upon which they have requested it, because there may be other ways of dealing with it? From where I sit, it is a very broad provision. The minister may recall a situation where, from time to time, documents were handed around between different officers in the government before last, and there was some criticism of that; and the honourable member was one of the leaders of that criticism. What concerns me is new subsection (6), which provides:

> This act does not apply to documents or information held by an officer of an agency otherwise than in the person's capacity as such an officer.

If I am a public servant holding documents in my capacity as a police officer, and I obtain other documents that are not held in my capacity as a police officer but perhaps documents from another agency, suddenly those documents become exempt. There is a real risk it could be abused by officers handing around documents and they are not held by them as an officer in that capacity. If the minister can identify with some degree of precision—

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: —over the break; I am not asking you to do it now—what precisely is the evil that he is seeking to remedy by the insertion of this new subsection, then I am sure the opposition and the Hon. Ian Gilfillan will be extremely reasonable, as we always are. However, from where we sit we are just not sure what the minister is driving at. We are—perhaps unreasonably—a little suspicious on this side of the chamber, but we would like to see some clearer justification. We are lean and nosy like a ferret, as I have said on previous occasions. I am not being critical of the minister to this point; I am simply giving the minister and the government an opportunity to be more precise about the problems that they have.

Another example might be a public servant who holds information or documents that would disclose some course of illegal conduct and it is in the public interest for it to be disclosed but those documents are held in his or her capacity as an officer. That is another scenario where one might think that this new subsection could be used to protect malfeasance or misfeasance. I am not saying that that is the government's intent, and that is why I am suggesting in the nicest possible way, without any rancour, that perhaps, over the break, what the government is seeking to achieve needs to be made clearer to us.

The Hon. P. HOLLOWAY: I am happy to do that, but let me say that, if there were government documents of the nature that the honourable member mentioned, they would be somewhere in the system and presumably would be tracked down. This new subsection is clearly aimed at documents that are not in that category. For example, just off the top of my head, one of the interesting things I have discovered about being a minister in this place relates to the fact that we do not have electorate offices, unlike ministers in the lower house who have electorate offices, and therefore whatever goes through that office essentially is in their capacity as a member of parliament. Ministers in the upper house do not have electorate offices, so a combination of information comes through. However, it could be that my gas bill is sent in, for example, and it could get mixed up in a government matter—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: What do you mean? Do you mean that new subsection (6) should say that?

The Hon. A.J. REDFORD: Just so the minister understands, I am suggesting that, if he is talking about a personal document—that is, a mortgage bill, a gas bill, a Visa account, or something such as that that is purely personal—why is the new subsection not expressed in those terms rather than in the terms that are currently before this place? We do not need an answer from the minister this instant but, speaking for me, that is what I am particularly interested in.

The Hon. P. HOLLOWAY: Certainly the intent was to make it crystal clear that personal correspondence is not covered by this new subsection.

The Hon. R.D. LAWSON: Will the minister provide information about any recommendation that the Ombudsman might have made in relation to this issue, because, after all, the Ombudsman is the arbiter primarily responsible for dealing with contested applications under the act? Has the Ombudsman advised or informed the government in any particular case of a view that an amendment of this kind is necessary if certain documents are not to be otherwise disclosed?

The Hon. P. HOLLOWAY: I will take that on notice at this stage.

Progress reported; committee to sit again.

ADJOURNMENT

At 6.15 p.m. the council adjourned until Wednesday 20 November at 2.15 p.m.