LEGISLATIVE COUNCIL

Tuesday 7 December 2004

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

PROFESSIONAL STANDARDS BILL

Her Excellency the Governor's Deputy, by message, assented to the bill.

PAPERS TABLED

The following papers were laid on the table:

By the Minister for Industry and Trade (Hon. P. Holloway)—

Commissioner for Consumer Affairs—Report, 2003-04
Regulations under the following Acts—
Liquor Licensing Act 1997—Long Term Dry Areas—Dimjalla Skate Park
Public Finance and Audit—Dissolution of XTAB
Summary Offences—Vehicle Immobilisation

By the Minister for Mineral Resources Development (Hon. P. Holloway)—

Regulation under the following Act—
Petroleum Act 2000—Transmission Pipelines

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

Reports, 2003-04—
Dried Fruits Board of South Australia
Institute of Medical and Veterinary Science
State Electoral Office of South Australia—Local Government Activities
Regulations under the following Acts—
Tobacco Products Regulation Act 1997—Smoking Bans
Water Resources Act 1997—South East Prescribed Wells Area
Rules under Acts—
Local Government—
Local Government Superannuation Scheme—Portability
By-laws—Corporation—
Burnside—
No. 1—Permits and Penalties
No. 2—Moveable Signs
No. 3—Local Government Land
No. 4—Roads
No. 5—Dogs
No. 6—Waste Management
Joint Committee on the Impact of Dairy Deregulation on the Industry in South Australia—Final Report and Recommendations—South Australian Government Response.

WESTERN MINING CORPORATION

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I lay on the table a copy of a ministerial statement on Western Mining Corporation made earlier today in another place by the Premier.

MOUNT GAMBIER HOSPITAL

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I lay on the table a ministerial statement on the Mount Gambier Hospital review and accompanying report made earlier today by my colleague the Minister for Health.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The Hon. G.E. GAGO: I bring up the report of the committee on waste management.

Report received.

OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION COMMITTEE

The Hon. J. GAZZOLA: I bring up the report of the committee for the year 2003-04.

Report received.

QUESTION TIME

CROWN SOLICITOR'S TRUST ACCOUNT

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the Minister for Industry and Trade, representing the Attorney-General, a question about the stashed cash affair.

Leave granted.

The Hon. R.I. LUCAS: Members will be aware that yesterday the Auditor-General tabled the delayed agency audit report for the Attorney-General's Department. On page 39 of that report there is reference to the movement in funding levels in the Crown Solicitor's Trust Account—what has become commonly known now as the 'stashed cash account'. The Auditor-General makes reference to the fact that, in the past 12 months, some $58 million in receipts were going into the Crown Solicitor's Trust Account; and in the same financial year (the last financial year) payments of $53.4 million were going out of the account; that is, over $111 million in financial transactions going into and out of the Crown Solicitor's Trust Account last year.

Mr President, you will also be aware that the Attorney-General's position (if it is believed or accepted) is that not only did he not know of the $111 million being moved in and out of that account but he did not even know the Crown Solicitor's Trust Account existed. The second thing that the Auditor-General refers to is that as at 30 June 2004 the balance in the Crown Solicitor's Trust Account was $10.308 million. I place on record the reference in the Treasurer's audited statements in the earlier Auditor-General's statement, and I refer to statement G, 'Deposits lodged with the Treasurer'. The Crown Solicitor's Trust Account is a deposit account held with the Treasurer, and the Treasurer's accounts report the balance as not being $10.3 million but reports the account balance for the same date (30 June) as $12.4 million—that is, a discrepancy of $2.1 million.

I also refer to a confidential briefing from Mr Martin McCarthy, the Finance Manager in the Crown Solicitor's office, dated 14 October 2004—a document now released under freedom of information requests from the Liberal Party. Mr McCarthy, the Finance Manager, indicates that, in his view, the balance as at 30 June in the Crown Solicitor's account is not the $10.3 million reported by the Attorney-General or the $12.4 million reported by the Treasurer, but, indeed, $10.1 million as reported by the Finance Manager in the Crown Solicitor's office. My questions are:

1. Will the Attorney bring back urgently a reply in particular explaining the reasons for the $2 million discrepancy between the accounts as reported by the Treasurer's

statements of 11 October and the accounts that have been reported by the Auditor-General in his report yesterday?

2. Is it still the Attorney-General's claim that he was unaware of over $111 million in financial transactions going into and out of the Crown Solicitor's Trust Account in the last financial year?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I think my colleague the Treasurer summed it up beautifully yesterday when he said that the opposition continued to flog a dead horse, and that is exactly what it is doing here—flogging a dead horse.

Members interjecting:

The PRESIDENT: Order! We will have dead silence.

The Hon. P. HOLLOWAY: I will refer those figures to the Attorney-General and bring back a reply. Obviously, the reason why yesterday we received the Auditor-General's Report was his need to go back and re-examine those accounts following the adjustments made as a result of transactions by certain senior public servants within the Attorney-General's Department. One would think that that is the main reason for the discrepancy, but obviously that is for the financial people in the Attorney-General's Department to confirm or to provide detail on. I will obtain their response.

The Hon. J.F. STEFANI: I have a supplementary question. Will the minister seek an assurance from the Attorney-General that immediate action has been taken to reconcile the figures? If so, can he advise which officers will be involved in doing such a reconciliation?

The Hon. P. HOLLOWAY: I do not know whether the honourable member has been following the history of this matter but, clearly, this process began when the new Chief Executive Officer of the Attorney-General's Department became aware of the 'transactions' that were taking place in the Crown Solicitor's Trust Account, and the Attorney-General's office was informed. That was not in time for the adjustments to the accounts, and it has all been explained to us. That is why the Auditor-General delayed his report for the Attorney-General's Department—so that they could be taken into account. Obviously, the Auditor-General has now signed off on those accounts, because the appropriate action has been taken in relation to them. I would have thought that what course of action has been taken is very well known.

The Hon. J.F. STEFANI: I have a further supplementary question. Will the Attorney bring back to parliament a complete explanation of the reason why the discrepancies occurred and of the transactions that led to the discrepancies being recorded in the financial statements, as alluded to by the Leader of the Opposition?

The Hon. P. HOLLOWAY: A select committee is investigating this exhaustively, and the leader has produced some of the documents. A number of witnesses have already appeared before the select committee, but I obviously cannot refer to that evidence.

The Hon. R.I. Lucas: You just did!

The Hon. P. HOLLOWAY: Well, I can refer to the existence of a select committee. I think I am entitled to do that much; however, I cannot refer to the detail. The point I make is that the Economic and Finance Committee of the House of Assembly has been investigating this matter for longer than the select committee in the Legislative Council. Indeed, that goes to the heart of the impact of the Crown Solicitor's Trust Account upon the accounts of the state. If the honourable member cares to read the transcripts, which I believe are now in the public domain, he will see a very good and detailed explanation about what happened from the officers concerned.

Members interjecting:

The Hon. P. HOLLOWAY: Well, I am not certain that that is the case, but I will refer the question to the Attorney-General and see whether there is any further information. However, I make the point that both a select committee and the Economic and Finance Committee are undertaking inquiries looking into these very matters. There are scarcely any details that have not been provided in relation to this issue but, if further information is required, I will get it from the Attorney.

The PRESIDENT: Just before I call on the Hon. Mr Lawson, I need to make an observation about supplementary questions. They are becoming far more frequent than they have ever been in the past and, whilst that is not necessarily a bad thing, I am noticing that some of the questions are starting to have a lot of explanation in them and references to the question and allegations that are being made, which are not even proven to be facts. When the minister says that he is going to refer the question to the minister and bring back a reply, there is very little that can be asked as a supplementary question, unless it is a technical matter. I shall be looking at this much more closely in future, and I ask all members to remember their responsibilities in that supplementary questions must arise from the answer given by the minister.

ABORIGINAL LANDS TRUST

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

Leave granted.

The Hon. R.D. LAWSON: On 22 July this year, the two last annual reports of the Aboriginal Lands Trust were tabled by the minister. The excellent reports signed by the chair, the distinguished George Tongerie A.M., J.P., note the activities of the trust over the past couple of years. Members may be aware that the Aboriginal Lands Trust holds titles of 61 properties spread throughout the state. The report shows that the income of the trust was over $2 million in 2001 but has now been reduced; it was $1.7 million in the next couple of years, then $1.5 million in the most recent annual report, which led for the first time to a deficit of some $216 000 from its ordinary activities.

The chair notes in his report that, for the past six years, funds from the Natural Heritage Trust of the commonwealth government to undertake Landcare projects on Aboriginal controlled land have been the principal source of income. That income has actually exceeded the amount of the operating grants provided by the state government. The chair states:

> The Trust acknowledges the impact both socially and culturally [of the commonwealth grants] . . . in the area of land management.

He also notes that those grants will terminate with the Natural Heritage Trust coming to an end in its present form. The report also notes that activities are being undertaken on Wardang Island. My questions are:

1. What steps is the state government taking to ensure that the income of the Aboriginal Lands Trust is maintained, given the fact that the Natural Heritage Trust program is being terminated?

2. Can the minister report on activities on Wardang Island by the Aboriginal Lands Trust and the local community, given the fact that it has long been suggested that tourist development would take place on the island and that such development would greatly benefit the local Aboriginal community?

3. Is the minister able to indicate the degree of state government support for the Aboriginal Lands Trust into the future?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): The government, through my office and DAARE, is looking at a review of the ALT. We are looking at the way in which lands administered by the Aboriginal Lands Trust are administered and whether employment opportunities can be created from the best use of that land. The honourable member would know that a number of communities have farm land associated with Aboriginal Lands Trust administration, and we are looking at the head leases and the subleases. We have recently spoken with the Aboriginal Lands Trust about its role and function. I can give a guarantee that the activities on Wardang Island, which I think were introduced under the previous government, will continue, as well as exploring opportunities that might present themselves in either tourism and/or other activities associated with Wardang Island.

I understand that a number of caveats on the island or the activities associated with land use have to be lifted or corrected before the island itself might become an investment centre for potential investors. I think the previous tourism minister had some proposals to put to both the community and investors, and I believe that is still bubbling around out there. So, there is interest. Wardang Island itself is quite an attractive island; islands seem to promote some sense of mystery. The land itself is no different from the land surrounding Point Pearce, but, because it is an island, people tend to believe that it could possibly lend itself to a marina, for instance, or other activities. Those sorts of things are being looked at by the community. Further, I understand that a clean-up undertaken in respect of past mining activities is still being completed. I understand that box thorn removal, or noxious weed removal, is either being finalised or has been finalised. So, that is work in progress.

I will have to take on notice the question about the lands trust's income being maintained and bring back a reply. I understand that some funding has been reduced, and I think the honourable member referred to commonwealth funding. We are supporting the Aboriginal Lands Trust to take an active role in working with communities. Since we have been in government, we have been working with John Chester, who is doing an excellent job, and certainly Uncle George Tongerie is doing an excellent job in chairing the Aboriginal Lands Trust. We have worked with them in relation to the Oodnadatta area, where there are questions about land ownership, control and leasing arrangements. We are working with them on the head lease and the sublease at Iga Warta. At Port Augusta there are issues around ALT land and common care land by Aboriginal communities up there. Over the years, some practices have led to difficulties in getting a uniform position in relation to the administration of those lands, and we are trying to work our way through that, and that is a work in progress.

On the question of whether income is being withdrawn from the commonwealth and whether that would be maintained or whether it would be a service that would not be proceeded with, it may be that land management questions around environmental use and protecting those activities may be curtailed, which would mean that we would not have to offer any funding to complete that form of support. I will look at that and give the honourable member a reply.

MURRAY RIVER

The Hon. CAROLINE SCHAEFER: I seek leave to make an explanation before asking the minister representing the Minister for the River Murray a question on fish passages.

Leave granted.

The Hon. CAROLINE SCHAEFER: An initiative of the Murray-Darling Basin Commission, therefore funded by each of the signatories to that commission, has been the construction of fish passages along the barrages and weirs of the Murray. These passages allow particularly smaller fish to pass upstream and downstream in order for scientific study and also for those species to spawn in the lower reaches of the river. I have been contacted by the Southern Fishermen's Association, which is concerned that the minister has refused to allow the normal 1.6 gigalitres of water required for the fish passages at Tauwitchere and Goolwa. This flow of water is required at this time of the year, in particular, for scientific study by SARDI. The minister has apparently refused to allow that water to flow through the fish passages. I quote from the association's letter, as follows:

> It is imperative to release water needed to operate the fishways before this year's photogenic period is over. Usually this is by the first or second week of January 2005. The optimal time would be spring/early summer. The data for monitoring of fish species and numbers migrating between the Coorong and Lakes needs to be collected by the SARDI scientists, to leverage further funding for fishways, which will provide natural migration for many important non-consumptive species. All these fish are very important, have high conservation values and linkages to the estuarine/freshwater ecosystems.

I understand that the 1.6 gigalitres comprises off-licence water, that is, acquired water from existing licences with the 10 per cent quota reduction already taken out. The breakdown of this specific 1.6 gigalitres is 800 megalitres from the Department for Environment and Heritage, 400 megalitres from National Parks and 400 megalitres from SA Water. This is water that is set aside for environmental flow purposes and is not part of the water allocation for irrigators along the Murray.

The Southern Fishermen's Association, together with a number of other stakeholders, including the Ngarrindjeri people who have become involved in this, feel this is an urgent matter and requires reconsideration by the minister. One of their major concerns is that a message will be sent to the Eastern States refusing to allow any water for specific environmental initiatives, which will weaken South Australia's future arguments with the Murray-Darling Basin Commission. The Southern Fishermen's Association has written to the Minister for the River Murray asking for an urgent meeting with her and minister Hill to further discuss her decision, but to this date the association has received no reply. As I have said, the optimal time is almost over and it is imperative that, if these flows are to take place, the water has been allowed to flow before 25 January. My questions are:

1. On what grounds has the Minister for the River Murray refused to allow the release of this water from the environmental flows allocation?

2. Does the Minister for Environment and Conservation agree with her decision?

3. Will the request for a meeting with minister Hill and minister Maywald be met, and if so will they do so as a matter of urgency?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer that question to the Minister for the River Murray as a matter of urgency.

ICT SECTOR

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Industry and Trade a question on the ICT sector.

Leave granted.

The Hon. CARMEL ZOLLO: The ICT sector in South Australia covers information technology, telecommunications, electronics and digital media, and is ever expanding. It currently employs over 17 500 people, not including ICT professionals working in other areas. The ICT sector is an area that will contribute to increasing our state's exports. My question to the minister is: what is the state government doing to ensure that the ICT industry grows to its full potential?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): The ICT sector, together with electronics, is very important to the state. As the honourable member has just said, it provides significant employment opportunities to South Australians. It also contributes $850 million annually to South Australia's exports as well as an additional $917 million in interstate trade. The total industry turnover for 2003-04 was $3.5 billion, but it is anticipated that this will grow to about $5 billion by 2005. Much of the growth in this sector will come as a result of exporting, and the prediction is that South Australia's ICT industry will achieve double digit growth over the next five years. The South Australian government is assisting the ICT industry by promoting innovation, ICT skills, training, high speed broadband development and assisting market access through programs such as the MAP scheme. But it is ultimately the industry itself and its ability to develop innovative products and appeal to the global marketplace that will deliver the benefits of the ICT revolution to the Australian community.

I recently attended the Secrets of Australian IT Innovation Competition. The Secrets of IT competition is a prestigious national competition open to the entire ICT industry, including electronics companies and organisations. It is supported by all state and territory governments and Australian government agencies, the Department of Education, Science and Training, the Department of Industry, Tourism and Resources and Austrade. The South Australian Department of Trade and Economic Development provided funding and organisational support for the Secrets competition to ensure that our innovative South Australian ICT companies have the opportunity to gain recognition for their innovations on the national and global stage. Winners were given cash prizes—$10 000 for first, $7 000 for second and $5 000 for third—to allow them to participate in international events, where they can present their technologies to targeted audiences. The competition is an important initiative of the Committee for Marketing ICT for Australia (CoMICTA), which seeks to identify Australia's best new ICT innovations and promote them overseas.

This is the third year that the Secrets of Australian IT Innovation Competition has been held. The inaugural Secrets competition was run in conjunction with the World Congress of IT in 2002 in Adelaide and attracted 217 national applications. Some 10 South Australian ICT companies were national winners, which was 27 per cent of the total. In 2003, the second Secrets competition attracted 197 entries, with six winners from South Australia, or 35 per cent. This year, the South Australian ICT companies continued to dominate this prestigious national competition, with almost 40 per cent of winners out of the 184 entrants being from South Australia. That is an outstanding result, when we have less than 8 per cent of the population of the nation.

The Secrets competition highlights Australia's ICT talent and celebrates our highest levels of ICT innovation. It gives the South Australian industry the opportunity to demonstrate its ICT creativity and showcase it to the world. The competition aims to identify innovative Australian ICT companies and provide them with opportunities to exhibit their wares at domestic and international forums. One of the most valuable outcomes for the winners each year is the chance to participate in a coordinated ICT industry promotion. Its widespread support both in South Australia and across Australia is a clear sign of how important the ICT sector is to the growth and prosperity of Australia's and South Australia's economy and way of life.

The Secrets competition helps to identify the ICT companies which are initially in niche markets but which have the potential to grow into and dominate mass markets, both locally and globally. It provides many benefits for those who take part in the competition. The South Australian winners of last year's competition have reported that they have secured more than $4 million of new export business since November 2003.

This competition also helps the industry by increasing the profile of local entrepreneurial ICT companies and their innovative products, increasing export sales in investment and innovative ICT companies and promoting South Australia internationally as a state with leading edge innovation and creativity. Companies that export are proving that they have what it takes to compete in the international marketplace, and in doing so they develop skills and technologies that also benefit their domestic operations.

When we see an example of a company that has progressed from being a domestic player to supplying global markets it is an encouragement to others that they can also make that transition. Exports have a multiplier effect not just for the exporting companies but also for our state economy as a whole. The benefits of exports do not lie solely in export dollars, job creation and domestic business growth, although these are important enough in themselves. There are also significant spin-offs in the form of high levels of pay, increased profits, better trained staff, greater expenditure on research and development and improved business performance.

The Rann government is keen to continue the development of an internationally competitive ICT industry, and the Secrets competition plays an important role in helping to achieve that goal. Again, I add my congratulations to those very successful South Australian companies.

The Hon. IAN GILFILLAN: As a supplementary question, will the minister ensure that the government takes every step to promote open source opportunities for South Australian companies in this area of activity?

The Hon. P. HOLLOWAY: I should talk about open source software. It is really up to those with the expertise in that area to determine for themselves whether or not there are other markets. I do not think that it is the government's role necessarily to be telling these very innovative companies how

they should do their business. I will consider the proposition of the honourable member. I will seek some advice as to whether or not there are any impediments in relation to the open software market and bring back a reply.

The Hon. J.M.A. LENSINK: As a supplementary question arising from the minister's previous reply, how can the minister be proclaiming growth, expansion and increased competitiveness in the local market when large and significant players—such as EDS and Motorola—are shedding large numbers of staff to places such as Malaysia and India and losing critical mass programmers, help desk staff and middle management; and what is the government doing to ensure that South Australia keeps the critical mass and corporation knowledge that the previous government obtained for South Australia?

The Hon. P. HOLLOWAY: The previous government outsourced the expertise that was within the Public Service to private companies and, to that extent, the state lost control of what was happening. My answer was all about those small innovative companies that have the potential to grow, and a number of them are around. Some companies are making games for the world market, such as Ratbag software, as well as companies involved with the film industry, such as Kojo and the like. Many successful companies are growing and, through the competition, that is what the state is keen to promote in relation to its own software provision.

It is a matter for my colleague the Minister for Administrative Services. The honourable member would be well aware that, as I understand it, the contract signed by the previous government is up for renewal in the fairly near future, and I do not wish to make any comment in relation to those commercial negotiations. They are not my responsibility and, even if they were, it would be inappropriate for me to make any comment in relation to that matter.

In relation to businesses shifting offshore to those countries, inevitably that will be driven by the high value of the dollar. Like every minister for industry and trade in this country, I would much prefer to see the Australian dollar at levels a little lower. It will unquestionably put significant pressure on many of our export industries. The mining sector is a particular case where its commodities are priced in US dollars.

Obviously, the rapid rise of the Australian dollar against the US dollar is hurting those exporters—and I think the Prime Minister has made comments along those lines, and I would certainly agree with his comments in that area. I do not agree with much of what he says, but I certainly agree with his comments that the rising Australian dollar is of some concern. However, there will always be some shift off. As the Hon. Carmel Zollo said in her question, the important thing is that employment overall in the sector has been growing, and maybe that indicates that the number of smaller companies that are growing is outweighing any structural change that is taking place in the larger IT companies and, indeed, the figures would show that, when it is growing with such rapidity.

GENETICALLY MODIFIED FOOD

The Hon. IAN GILFILLAN: I seek leave to make an explanation before asking the Minister for Industry and Trade a question about the impact on South Australian trade of the GM free status.

Leave granted.

The Hon. IAN GILFILLAN: Yesterday's *Advertiser* on page 21 had a small article entitled 'GM labels on poultry mislead shoppers'. It actually indicates how Baiada Poultry Pty Ltd and Steggles have both been instructed by the ACCC to delete the GM free label on their product. The interpretation of this is that two of the major poultry companies in Australia have clearly made a decision that the market is looking for and giving priority to product which can be labelled 'GM free'. At this particular time, the Office of the Gene Technology Regulator is considering granting the right for Bayer CropScience to plant genetically modified cotton in South Australia in the Riverland. I refer to their submission in which they say that in their application they intend to use the cotton product for uses 'including human food use' and also 'as stockfeed'.

The two shires in which they are seeking approval are Loxton-Waikerie and Renmark-Paringa. The OGTR has indicated in its written assessment that states can have bylaws that prohibit the commercial release of certain GMOs on marketing grants. My questions are:

1. Given the market sensitivity, does the minister agree that further growth of any GM crop will further risk the GM free status of South Australia in marketing our product?

2. Will he prevail upon his colleague the Minister for Agriculture, Food and Fisheries to rule out genetically modified cotton being grown in South Australia as either a trial or limited planting on the basis of its risk to South Australia's trading advantage in being GM free?

The minister may also like to pass on to his colleague the following questions:

3. Does the minister not see the contradiction in allowing the cultivation of genetically modified crops in South Australia while the state is supposed to be GM free?

4. Does he believe, given the water intensive nature of cotton growing and the increasing strain on the Murray River, that cotton should be grown in South Australia?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): In relation to the second question asked by the honourable member, personally I agree with his comments about water, given that this state has been seeking higher value uses of water. In other words, we have been trying to ensure that water should be used for its highest value added purpose. The viticulture industry is a very good example of that. The reasons why we do use water so much more efficiently and to a much higher level of value adding than other states is that the horticulture and viticulture industries in this state use water to a much higher value than the rice and cotton industries in the other states.

I am giving my opinion on that matter, but it is really a question for the Minister for Agriculture, Food and Fisheries to consider, and I will refer it to him. As to whether or not growing GM cotton would impact on our trading advantage, all I can say is that I know that other states with strong anti-GM policies in relation to food crops (and I am talking about Western Australia and New South Wales) have permitted GM cotton to be grown and have done so for many years. As a personal observation, it seems to me that the great concern about GM crops relates to food crops, rather than to cotton crops. However, that is a personal opinion and it is not an issue that—

The Hon. Ian Gilfillan interjecting:

The Hon. P. HOLLOWAY: Well, the issue is that it is still hypothetical at this stage, and I will take it away and consider it. The other day, I read in the press some advocacy for growing cotton here, which I must admit rather surprised

me. I will give that question some serious consideration. Obviously, it is primarily an issue for my colleague the Minister for Agriculture, Food and Fisheries, but there is an aspect that relates to trade, and I will look at that. I am not sure that I can add much more. Food labelling is the responsibility of the health minister, although, as the agriculture minister, I attended the food safety standards ministerial meetings. Of course, the question of the labelling of food, in particular—

The Hon. Caroline Schaefer: It is a shame they do not have you on that. You were a very good minister for agriculture, food and fisheries.

The Hon. P. HOLLOWAY: You are always better when you are gone! The issue of food labelling has been around for many years—probably at least a decade. Obviously, in order to have successful food labelling, it is necessary for all states to be involved, given that we are just 8 per cent of the population. It really is important for the efficiency of the food industry that we have common labelling. A lot of discussion has taken place, and New Zealand has been involved in relation to food labelling laws. From my experience on those bodies, it is a highly complex and difficult subject because of the many issues involved.

I will refer the question to the Minister for Health to see whether she can provide any further information in relation to food labelling for feedstock in the chicken meat industry. I will obtain that further information for the honourable member and bring back a reply.

The Hon. IAN GILFILLAN: I have a supplementary question. Does the minister agree, or not agree, that the growing of genetically modified crops, whether it be cotton or canola, damages the potential for South Australia to trade as a GM-free state?

The Hon. P. HOLLOWAY: We had a long debate about this during the Genetically Modified Crops Management Bill, and the reason we introduced that bill was the fear that growing GM crops may disadvantage us. Part of the process of that bill was to set up an advisory committee to examine all these issues and to ensure that we could segregate the food chain. I am sure that the honourable member, who was a leading participant in that debate, is well aware of the issues that were discussed at that time.

Obviously, the reason we introduced that bill, which has a three-year transition period, was that we recognised the potential to damage our markets if we were perceived to be rushing into the GM food chain without taking proper precautions to segregate the non-GM food chain. Clearly, that was implicit in the government's decision to introduce the bill. However, ultimately, whether or not the growth of GM crops here is a negative for our market is something that clearly will be determined by the advisory committee.

CHILDREN IN STATE CARE INQUIRY

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Attorney-General, questions about the inquiry into children in state care.

Leave granted.

The Hon. A.L. EVANS: I was contacted today by a gentleman who is a former ward of the state. He raised concerns regarding the chief investigator to the commission. This week it was reported that the chief investigator, who is a close friend of convicted paedophile and former magistrate Peter Liddy, holds power of attorney for Mr Liddy. Today in *The Advertiser* it was reported that the inquiry's commissioner, Ted Mullighan, was asking all sexually abused wards of the state to come forward to tell their story. Given the nature of the commission's work and, in particular, the work to be undertaken by the chief investigator in taking evidence from child abuse victims, my questions are:

1. Will the Attorney-General confirm reports that the chief investigator holds Mr Liddy's power of attorney?

2. If so, will the Attorney-General take action to remove the chief investigator from his position? If yes, when will this action be taken?

3. How will the Attorney-General ensure that any other current appointments to the commission, as well as any future appointments to the inquiry, do not have any conflict of interest or personal associations that would inhibit the work of the commission?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer those questions. I am not sure whether it is the Attorney-General, because I think that most of the work for the—

The Hon. R.I. Lucas: It's him again.

The Hon. P. HOLLOWAY: No; I think it might actually be the Minister for Families and Communities. He certainly handled the debate. I will refer those questions to the relevant minister and bring back a reply.

CULTURAL RESPECT FRAMEWORK

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about the cultural respect framework.

Leave granted.

The Hon. J.S.L. DAWKINS: A new cultural respect framework for Aboriginal and Torres Strait Islander health has been launched to assist health sector organisations in their work with indigenous people. The framework is a national initiative of the Australian Health Ministers Advisory Council Standing Committee on Aboriginal and Torres Strait Islander Health. It was launched in October by the Department of Health's CEO, Mr Jim Birch. The framework identifies cultural respect and the recognition, protection and continued advancement of the inherent rights, cultures and traditions of Aboriginal and Torres Strait Islander peoples. My question to the minister is: what role did the Department of Aboriginal Affairs and Reconciliation play in the development of this framework?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his question. As far as I am aware, my office did not play any role in the formation of the framework inside the health portfolio. DAARE provides advice and has a framework that was set up some time ago to be a framework of cooperation within and across government. I can refer that question to the health minister and bring back a reply to find out how much of the DAARE framework was used in the formation of the cultural respect framework that the honourable member is referring to.

LAND TAX

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Industry and Trade questions about land tax.

Leave granted.

The Hon. T.J. STEPHENS: In response to my question yesterday, the minister stated:

I wish I were one of those people who are lucky enough to pay additional land tax, because it would mean that I am far wealthier this year than I was last year.

My questions are:

1. Can the minister advise the council whether the people who are so lucky include a Mr Burgess who has had his site value doubled but his land tax bill increased by 325 per cent and who has had to take a loan from his family to pay his land tax bill?

2. Will the minister advise how this has made his ability to make ends meet better than it was last year?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I am sure that any additional land tax, regardless of percentages, would be far less than the increase in the value of the property over that year. I would challenge the honourable member, or any member opposite, to produce an example where that is not the case, because they will not be able to do it.

CORRECTIONAL SERVICES

The Hon. G.E. GAGO: I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about rehabilitative initiatives by the Department for Correctional Services.

Leave granted.

The Hon. G.E. GAGO: In the past few days, I have noticed some reports in the media regarding Canadian rehabilitative experts who are in South Australia to help the Department for Correctional Services. I understand that the Department for Correctional Services has a focus on rehabilitation programs for higher risk, complex need prisoners and offenders. Will the minister tell us how the Canadian experts will be helping the department?

The Hon. T.G. ROBERTS (Minister for Correctional Services): The honourable member is quite correct. I have spoken in this chamber about the cooperation between people from the Canadian and South Australian correctional services departments and my office in relation to the Canadian programs. I would recommend that honourable members opposite who have an interest in correctional services avail themselves of the opportunity, if they ever go to Canada, to meet with the correctional services department over there to discuss some of the issues and solutions they are providing for rehabilitation programs within their correctional services system. However, the Canadians are not the only ones who are looking at recidivism and trying to use models for correcting behaviour; in the UK, they also have models. However, the Canadian cooperation we have been able to achieve at little or no cost has been not only a surprise but a pleasant surprise. At the moment, two Canadian officers are in Adelaide working with Correctional Services in demonstrating and explaining a model for rehabilitation.

As honourable members would recall, in 2003 the government provided the Department for Correctional Services with an additional $5.5 million over four years for rehabilitation programs for higher risk, complex need prisoners and offenders. The priority set by the government was for the department to focus on sex offenders, violent offenders and appropriate rehabilitation programs for Aboriginal people. A strong emphasis was also placed on accountability and the quality and evaluation of these programs, and that is what we are doing in the models we have chosen and are adapting.

Most members would also recall that, following an extensive search to find a suitable sex offender program that would suit the needs set out by the South Australian government, the Department for Correctional Services managed to secure the rights to introduce a range of sex offender programs that have been adopted by the Canadian prison system. These programs have been proven to reduce the likelihood of reoffending. Under these programs, 12 sex offenders at a time will be required to understand and take responsibility for the consequences of their own actions. Preliminary prisoner assessments have been undertaken, and identified prisoners from around the state have already been transferred to Yatala Prison in readiness for these programs. The program is expected to commence early in the new year, both in prisons and community corrections.

This international alliance between Canada and South Australia enables South Australia to acquire and maintain the best available programs and have them delivered by highly skilled and committed practitioners while providing training for local people. As part of the negotiations, South Australian correctional authorities managed to secure the services of two international experts in the treatment of sex offenders to provide intensive training to Correctional Services staff who will be delivering the program.

Dr Pamela Yates and Dr Edward Peacock from Canada Correctional Services arrived in Adelaide last week and are currently working with correctional staff to ensure they have the necessary skills to deliver high quality programs. Dr Yates and Dr Peacock will be in Adelaide for the next two weeks and I extend a warm welcome to them. I have no doubt their visit to South Australia will be of great benefit to those in the Department for Correctional Services who will be working in this sensitive area.

Those who have seen the interviews with Dr Pamela Yates and Dr Edward Peacock will agree that they are impressive leaders within their field, and South Australia is lucky to build up a collaboration program with Canadian corrections. While visiting Canada to look at some aspects of the programs there, I felt that the fraternal feelings in correctional services between commonwealth countries and other developed countries throughout the world are gratifying. It is good to see some of the people who work in corrections sharing information and ideas on difficult areas and aspects of the correctional system in a fraternal way to bring about better results and to make their countries, our country and this state safer places, and at the same time be seen as more humane in the way we rehabilitate prisoners to try to bring about a safer society.

The Hon. A.J. REDFORD: I have a supplementary question. Following these programs, will the minister set and identify specific targets regarding recidivism?

The Hon. T.G. ROBERTS: I am sure that the measurement of results and other aspects of the programs will be part of the assessment process as we go. I have not spoken to the organisers of the program, but there will be a point at which we will be able to measure results. I think 12 months may be too early, but it is possible that after 18 months or two years we will be able to measure results, which I can report back to this chamber. Through the public reporting processes, I can table any results that may have brought benefits to this state. If we are not able to show benefits, I am sure the public of South Australia will be interested in that, as well.

DISABILITY SERVICES

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Disability, a question regarding vacation care for children with disabilities.

Leave granted.

The Hon. KATE REYNOLDS: Today I hosted a briefing with the Association for Children with Disabilities SA Incorporated in the chamber of Old Parliament House. The lack of services to care for young adults with a disability has reached crisis point. The school year finishes this week and, while thousands of families are able to access vacation care, most families with a school student with a disability are not. We heard from Sarah Rischmueller, the chairperson of that organisation, and three parents, Julie Fyfe, Mary-Anne Murphy and Doug Nicholas, who shared very candidly how the exclusion of their children from vacation care services impacts on their lives and those of their families.

Julie is the mother of Cameron, who is 13 years old. He is autistic and visually impaired. He has no speech skills, he has extra high sensory needs, he communicates via behaviour that is not always good, and he has a tough life. As a sole parent, so does his mother. Mary-Anne is the mother of Nicholas, who is 16 years old and has Down syndrome. She says he is a beautiful, calm, easy-going lad when things are going his way, but Mary-Anne was recently forced to resign from her job because she could not be sure that she could access care for Nicholas when she needed it. Doug is the father of Tom, who is 13 years old. Tom has severe and multiple disabilities. He uses a wheelchair, he has no speech skills, he is visually impaired and he is totally dependent on others for every facet of his daily living.

In this last week of the school year, these parents outlined, in a way that left the audience in no doubt about the difficulties they face, the unmet needs for both their children and their families. Clearly there is crossover between federal and state government responsibilities. As the Minister for Education, who addressed the forum, said, there is crossover in this state between education, disability, health and youth portfolios. You might be interested to know, Mr President, that the Minister for Disability also was invited to address the forum, but I was advised by email that 'this matter does not fall within the responsibilities of minister Weatherill but, more appropriately, minister Lomax-Smith'. Yet we heard today from parents, and from the Minister for Education, that a cross portfolio approach is needed.

Mr President, chapter 14 of the Layton report (which, you will be pleased to know, I have not forgotten) is entitled 'Children and young people with disabilities'. Recommendation 82 states that respite options be extended, including before and after school hours care and vacation care, especially for adolescents, so that families have real choices and children and young people are provided with professional accredited care options. You will remember, Mr President, that the Social Development Committee reported, after the supported accommodation inquiry, in November 2003. Recommendation 11.2 of that inquiry of this parliament states:

> The Minister for Social Justice and the Minister for Education jointly coordinate a whole of government approach to funding and service framework for providing after school and vacation care for children and young people with disabilities.

My questions are:

1. Will the Minister for Disability convene a meeting of the four ministers to develop a coordinated approach to providing vacation care for students with a disability and, if so, when? If not, will he say who should convene this meeting?

2. What action has the minister taken to progress recommendation 82 of the Layton report?

3. What action has the minister taken to progress recommendation 11.2 of the Social Development Committee's inquiry into supported accommodation?

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

CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL

In committee.

(Continued from 25 November. Page 683.)

Clause 1.

The Hon. T.G. ROBERTS: I thank members for their contributions and suggestions for change to the bill. I have spoken to the Hon. Angus Redford and I understand that we have some ground on which we can agree, and we will discuss that when we move through the clauses of the bill. During the debate on this bill on 25 November a number of issues were raised by members opposite which I undertook to pursue. Three issues that were raised included proposed new search legislation and its affect on legal visitors; access of remand prisoners to work and the maintenance of their businesses; and home detention and the application of the minister's criteria.

Under existing procedures legal representatives are required to submit to preliminary search measures that may include walk-through and hand-held metal detectors, similar to those that are used at the front doors of this parliament. They may also be exposed to drug dogs or asked to open folders and documents for officers to fan through. At this point I would like to apologise to the dog handlers. I made an off-hand comment about one dog perhaps having a cold or having a bad day. I made that comment in a light-hearted way. The dog handlers in this state are very professional. They have been a great adjunct to our armoury in relation to making sure that drugs do not get into our prisons. I would hope that, in good spirits, they accept my humble apology for not being as serious as I should have been when I made that remark.

In the unlikely event that officers become suspicious of a legal visitor, he or she may be restricted to non-contact visits. No other more intrusive method of searching is imposed on a legal visitor unless there are very good grounds for suspicion, and then the approval of the prison general manager or the duty manager is required before a contact search can be undertaken.

Correctional officers do not undertake strip searches of visitors. Under the new provisions the search procedure for legal representatives will be no different. The department also ensures that remandees who need to maintain businesses while they are in prison are not prevented from doing so. In effect, the current policy is that remand prisoners will, within

reason and with the approval of the general manager, be permitted to carry out essential activities that are necessary to maintain their existing businesses.

Although some conditions apply, these are simply to ensure security and good order in the prison. Any reasonable activities are allowed. In regard to the issue of home detention, the honourable member wanted an indication of the ministerial criteria that may be adopted. He also wanted the current criteria for home detention to be changed to allow persons who had been in prison for death by dangerous driving to be allowed home detention. Having given due consideration to the issues raised by the honourable member, we agree that the priority is for the minister to establish criteria for persons applying for home detention.

During the course of undertaking further research on this issue, officers of the department were advised that new section 37(2)(a) may be interpreted as to fetter the minister's power to set criteria. To avoid any ambiguity about the issue, I am proposing a change to the bill to make it quite clear that the government has the right to set criteria. New section 37(2)(a) will be deleted, as will lines 25 and 26, which refer to the right of the minister to set criteria. New section 37(2a) will be replaced with a new paragraph (d) which will read:

> any limitations determined from time to time by the minister, which may include, without limitation, the exclusion of prisoners sentenced for a specified class of offence or any other class of prisoners from release on home detention.

Legal opinion is that this change will ensure that the power of the minister to set criteria is maintained and, within that wording, that the criteria can require the chief executive to consider the seriousness of the offence and other issues such as the concerns of victims. I advise the honourable member that I expect that relevant criteria will exclude prisoners who have been imprisoned for homicide, terrorism and sex offences from being eligible for home detention.

The Hon. A.J. Redford: What about death by dangerous driving?

The Hon. T.G. ROBERTS: It is something else we can consider. I am prepared to consider the issue of homicide in this regard after the bill has passed. The proposed amendments strengthen the legislative basis for the government to ensure that a class or classes of prisoner are not eligible for home detention. This contributes to public safety and is a responsible legislative measure, as members would all agree.

The Hon. A.J. REDFORD: I thank the minister for his comments. I will not deal with any of the specific issues until we get to the relevant clauses, but I thank the minister and all his colleagues for the indulgence they have given me over the past few days, having regard to the birth of my son—seven pounds 14, 50 centimetres long, and his name is Ridho; and wonderfully serviced by the staff, particularly the nurses and the midwives, at the Women's and Children's Hospital who have done an absolutely fantastic job.

Clause passed.

Clauses 2 to 5 passed.

Clause 6.

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

> Page 5, lines 25 to 28—Delete these lines

I seek to ensure that there is proper parliamentary scrutiny of a corresponding law in another jurisdiction. I understand that the government agrees with this amendment. A good example where it might be important is a recent issue that arose with a prisoner coming from the United Kingdom, when we did not really have an opportunity to consider the environment within which prisoners are dealt with in the United Kingdom where, for some extraordinary reason, they have completely unsupervised parole, which is something we would not have imagined happening here. That will give us the opportunity to avoid the sorts of problems which we saw only a couple of weeks ago.

The Hon. T.G. ROBERTS: I thank the honourable member for the amendment. The government will accept it in the spirit that it was made. To add to that, at a state level, since I have been minister (and I suspect during the time of the previous minister) the state correspondence and time frames which have been set generally have allowed for discussions and correspondence to occur in a timely way and paying due respect to the administrators of prisons to allow them either to make accommodation available or not available, depending on the decision made. The time frames with the states have always been quite good. One hasty recommendation was made by the commonwealth, which we were not able to pick up but, as far as state jurisdictions are concerned, there is good cooperation and all the transfers have been made with commonsense being the prevailing backdrop.

However, there has been an occasion (the only occasion) regarding the international transfer of a prisoner when the time frames and the lack of conditions in relation to our responsibilities on this side due to an international agreement were not adequate. Those time frames have not been adequate to deal with those issues and, subsequently, the refusal was made in a very public way.

Amendment carried.

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

> Page 5, lines 33 and 34—Delete these lines and substitute:
>
> 'corresponding law' means a law prescribed by regulation to be a corresponding law for the purposes of this section;

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 7.

The Hon. A.J. REDFORD: I thank the minister for his comments in relation to work by prisoners. I note his statement to the effect that the authorities will not seek to impede those persons who are incarcerated and not yet convicted, at least, from pursuing, to a reasonable extent, their business activities. It is on that basis that the opposition does not oppose or seek to amend this provision. I make this general comment, and it is probably a theme that I will develop in more detail over the next 12 months. My observation is that one of the biggest problems in corrections at the moment is that far too often far too many prisoners are on remand and classified as being on remand. The minister is aware that they fall into two categories: those who are in gaols because they have been arrested but have not yet been put to trial or convicted; and a substantial number who have been convicted but have not yet been sentenced.

As I travel around the corrections system, I know that this causes enormous management problems in terms of dealing with those remand prisoners. We need to come up with some method of distinguishing between remand prisoners who have been convicted and remand prisoners who have not. I think that the latter category deserves special attention and treatment because, at the end of the day, under our system of justice they are presumed innocent and should be treated consistent with that presumption. Those who have been convicted but not sentenced ought to be treated as though they are not remandees, subject to some of the difficulties in terms of managing a prisoner and not knowing the length of

sentence. Certainly, the opposition and I will look at that issue over the next 12 months. However, I acknowledge that there are some real issues relating to the general categorisation of prisoners as remandees and not distinguishing between those who have not yet been convicted and those who have.

The Hon. IAN GILFILLAN: I think that the minister is preparing to make a comment, which I welcome. I agree with the observations made by the Hon. Angus Redford, and I think that they are well put. However, I add that I think it is important to emphasise that there is every reason to have a system for sentenced prisoners on remand or incarcerated, bearing in mind that they will eventually be released.

I think that the view that any work performed in there is against the ethic or principle of imprisonment is counterproductive. A manager may well have a reason to look favourably on a request for work, whether or not it is remunerated—that is a detail of determination and judgment. However, I do hope that the minister will inculcate into the managers of the system that this can be used productively and constructively so that the eventual release of the prisoner into the community will put the prisoner in a better situation as far as integration and no further offending is concerned, if there is sensitivity and consideration of this, rather than just an attitude of blanket prohibition.

The Hon. T.G. ROBERTS: In reply to the Hon. Ian Gilfillan, the pre-release lodgers do have facilities for that, but they are generally not available inside the prisons. I can add that, from personal observation, a number of people with administrative and managerial skills have passed their skills onto other prisoners in a way that must be admired as part of their rehabilitation and making the lives of other prisoners more easily adaptable to learning when they get out. I thank those people who do that. In relation to the Hon. Angus Redford's suggestion, it is one that we can look at. We are already looking at why South Australia has the highest percentage of remandees in Australia, and that is a court sentencing process, which might have something to do with the way bail is set. Certainly the two categories of remandees need to be looked at and managed within our prison system, as the honourable member has suggested.

Clause passed.

Clauses 8 and 9 passed.

Clause 10.

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

Page 6, after line 28—
Insert:
(3) Section 37—after subsection (5) insert:
(6) The annual report submitted under this Act by the Chief Executive Officer in respect of a financial year must include particulars of—
(a) the number of searches conducted under subsection (1a) in respect of each correctional institution during the year; and
(b) the number and general description of items prohibited by the regulations detected in the institution during those searches.

In moving this amendment I make some general comments, because I understand that the government is supporting this amendment. The government, in responding to some concerns that I raised on behalf of OARS regarding the searching of prisoners, indicated that there would not be arbitrary searching of prisoners and that it would not be abused by those in authority. One has to assume that, by and large, officers in the correctional services department will behave in such a fashion. However, there may well be occasions where either they do not behave in such a fashion, and I suspect that that would be very rare, or, alternatively, that prisoners might perceive that they are behaving in such a fashion, and I suspect that that might be more common.

Rather than trying to legislate in a prescriptive fashion, which would substantially diminish the sorts of discretions that we are seeking to give to prison officers here, it is the opposition's viewpoint that the best way to deal with this is to make it a little more transparent and more open, and something that can be put in the annual report so that people such as the Hon. Ian Gilfillan and myself can look at it and see whether or not there are any patterns that are undesirable that might be emerging. Certainly it would enable organisations such as OARS and other prisoners' aid organisations to supervise or at least scrutinise what is happening. It would be nice to come up with a form of wording that would ensure that no arbitrary decisions were made by prison officers. However, the problem is that once you start doing that you finish up managing the gaols from parliament, and that is impossible. Hopefully, this is something that will achieve a nice balance in that sense.

The Hon. T.G. ROBERTS: The government does not have any objection to that principle, as espoused by the honourable member. Flexibility is the key not only in this regard but also for searching as well. The honourable member's comments have been taken on board, and we will look at that issue.

Amendment carried; clause as amended passed.

Clause 11.

The Hon. IAN GILFILLAN: The Democrats, in our second reading contribution, looked with serious concern at new section 37AA—drug testing of prisoners—where the first subsection provides:

The manager of a correctional institution may require a prisoner to undergo a drug test in any of the following circumstances. . .

A fairly expansive list follows, and when we come to (e), it provides:

in any other circumstance that the Chief Executive Officer thinks fit.

I made it plain during the second reading debate that we believe that this is an unacceptable licence provided to the chief executive officer. If there are circumstances other than those listed, the legislators, the government, or whoever is going to put this forward, should identify them. It is very easy for us to forget that prisoners are still members of our community and that they have civil rights. Drug testing is an intrusion on the normal expectation of privacy in our community. As far as I know, the government did not respond to our criticism of this provision. I am interpreting this, with some years of experience, as the government not being prepared to consider deleting it from the bill. However, if what I am saying does strike a responsive cord with the minister and/or the opposition, I would be prepared to look at supporting this clause in an amended form, with paragraph (e) deleted.

The CHAIRMAN: I do not know how whether that could happen without moving an amendment.

The Hon. T.G. ROBERTS: I can indicate to the honourable member that we would not want to remove that paragraph, if only to give discretion in relation to people on home detention, where there may be need for either a random or ordered drug test for other purposes. If there were no provision for unforeseen circumstances, or to broaden the issue, it may be so prescriptive as to prevent that from happening. I would not like to see it as a management tool

(and I think the honourable member is probably getting to that point), where it could be used indiscriminately or used authoritatively in a way to discriminate. I would hope that it would not be used in that way, but there may be circumstances where authorities outside the prescribed areas may want to carry out a drug test.

The Hon. A.J. REDFORD: I was at Cadell the other day with the Hon. John Dawkins. There is a set of units at Cadell where the living conditions for the prisoners are pretty good and they are given a great deal of autonomy in those particular units.

The Hon. Ian Gilfillan: Which units are they?

The Hon. A.J. REDFORD: These are at Cadell. I would have to say that the prisoners are treated quite humanely and there is a very positive atmosphere amongst the prisoners in terms of how they behave and the sort of work that they are doing in the orchards and around the place.

The Hon. J.S.L. Dawkins: And the dairy.

The Hon. A.J. REDFORD: Yes, I was very impressed with the dairy. The only way that they can get there is to prove that they are drug free and it is a privilege, and they can remain there only if they are drug free. From talking to the officers, I learnt that they did not have the capacity to be able to test as regularly as they would like, because apparently you can get one person on drugs in one of these units and then the next thing there is a problem in every single unit. It is an important tool in enabling these cottages to be kept drug free, and I am very positive about this.

I have a strong attitude about drugs in gaol. I think it should be zero tolerance, and the government claims that there is zero tolerance but, if we consider the methadone program, there is not zero tolerance, although some might argue that it is a legal drug; I do not. I think cigarette smoking should be banned in gaols. As they say in Singapore, it is not good practice to substitute one addiction with another. It is not good for persons who have addictive natures or are more susceptible to addiction to have any access to drugs while they are being rehabilitated. This is a very important tool, given that we have so many people in our gaols who are addicted to substances. I think that should be one of the primary rehabilitation roles of gaols, and abstinence is probably a good starting point. Some might disagree with that point of view.

The Hon. T.G. Cameron: It would be a good way to give up cigarette smoking, Angus.

The Hon. A.J. REDFORD: It would, as hard as that might be.

The Hon. IAN GILFILLAN: It does not look as though I will have support from the government or the opposition. It would be an improvement if these circumstances were prescribed in regulation so the Legislative Review Committee could look at them. Once again, my second reading contribution was slid over, because one of the matters that I discovered when I was looking at correctional institutions in Scandinavia is that there is a specific prison, and the privilege of being in that prison depends on a prisoner giving an undertaking to be drug free. When one does that, it is reasonable to have a drug test at any time to corroborate it. If they are found to be positive, they are out of that prison into other institutions.

It is an impossible goal to expect to have a totally drug-free correctional system in a society such as Australia. Singapore may go further down the track by threatening capital punishment, because it has experienced some pretty ruthless regimes, which I do not think members in this chamber would support.

The Hon. T.G. Cameron: Some would.

The Hon. IAN GILFILLAN: I will not invite the honourable member to name them. On behalf of the Democrats, I will vote against this clause in its totality, making absolutely clear that we are not opposed to a reasonable drug-testing regime, but we believe that there is an irresponsible aspect open to abuse in paragraph (e), and I want that clearly identified both in the record and the way we vote.

The CHAIRMAN: I think that is the only course of action in the absence of an amendment. We will have to vote on the clause as it is.

The Hon. A.J. Redford interjecting:

The Hon. IAN GILFILLAN: Sir, I seek your guidance on the suggestion by way of interjection from the Hon. Angus Redford. On behalf of the Democrats, if we were able to have a separate vote for paragraph (e), I would be able to vote for the rest of that clause, which I find unexceptionable.

The CHAIRMAN: Anything is possible, but it becomes a bit of a logistical nightmare, because we have a number of other clauses, and you are talking about a part of a clause. If you were to move that all the words in paragraph (e) after line 8 be struck out, that would suit your purposes. We would deal with your amendment, and then we would deal with the rest of the clause.

The Hon. IAN GILFILLAN: I move:

That all the words in paragraph (e), after line 8, be struck out.

Amendment negatived; clause passed.

Clause 12.

The Hon. T.G. ROBERTS: I move:

Page 8—
Lines 25 and 26—Delete these lines
Lines 37 to 41—Delete subclause (2a) and substitute:
(d) any limitations determined from time to time by the minister, which may include, without limitation, the exclusion of prisoners sentenced for a specified class of offence or any other class of prisoners from release on home detention.

I think this amendment takes into account the proposition that the Hon. Angus Redford put when last we were in committee, or during the second reading debate, or both. It takes into account classes or categories of prisoners who will be able to avail themselves of home detention based on a specific class of offence, and that may exclude them. I hope that takes into account the honourable member's concerns and that, in the spirit of tripartisanship, we can quickly move on.

The Hon. A.J. REDFORD: As I said in my second reading contribution, I was concerned that there was a transfer of power from the minister to the Chief Executive Officer, and that this was an issue of such importance that it should remain in the hands of the minister because of levels of accountability and the like. The minister's amendments address those specific issues. I support the amendments. As a consequence, if the amendments are supported by the committee, I will not be opposing clause 12.

The Hon. IAN GILFILLAN: I have had a chance to analyse this amendment only briefly. Lines 25 and 26 provide:

and the prisoner satisfies any other criteria determined by the minister for the purpose of this section.

Again, this is one of those open-ended aspects, which I am very pleased to see removed. However, it then goes on to provide the following:

(2) The exercise by the Chief Executive Officer of the discretion under subsection (1) is subject to the following limitations:

We are moving to delete the limitation 'a prisoner cannot be released on home detention unless', then there is (i) and (ii), and then, 'and the prisoner satisfies any other criteria determined by the minister for the purposes of this section'. So, we would remove that, which seems to me to be a good idea. However, we are then asked to put in the following:

any limitations determined from time to time by the minister, which may include, without limitation, the exclusion of prisoners sentenced for a specified class of offence or any other class of prisoners from release on home detention.

It strikes me that it is putting back in in more words the intention of the two lines that were deleted above. Surely this proposed inclusion is pretty much the same as criteria determined by the minister—'any limitation determined from time to time by the minister'. It says so. We are taking out and putting back virtually the same, using more words.

The Hon. A.J. REDFORD: Perhaps I can assist the minister by responding. One needs to look at what was in subclause (2a), which talks about what the Chief Executive Officer could or could not do. The removal of that provision, which was the one that I was most concerned about, is the biggest impact of the amendments. In the absence of that, what the honourable member says is absolutely correct: there is not a lot of difference between what we are putting in and what we are taking out in terms of the first amendment. However, there is a lot of difference in terms of taking out subclause (2a) and putting in proposed subclause (2)(d).

The Hon. T.G. Cameron: What is the difference?

The Hon. A.J. REDFORD: The difference is that the responsibility goes to the minister and not to the Chief Executive Officer. It is the Chief Executive Officer, under the provisions that are currently before us, whom the minister is now seeking to exclude. It states, 'without limiting the matters to which the Chief Executive Officer may have regard in exercising the discretion', and it goes on and states that the seriousness of the offence can be taken into account, and so on. Now, we take that out and say, 'The Chief Executive Officer is not having a role to play: the minister is.' That is the net effect of it.

The Hon. T.G. ROBERTS: The drafting was recommended by both crown law and parliamentary counsel as a way of dealing with the issue as described by the honourable member's recommendation and our discussion previously. Sometimes you are in the hands of parliamentary counsel, which does not appear or seem to be correct or accurate; however, we moved on their wise advice.

The Hon. IAN GILFILLAN: I will not make any gratuitous observation about being in the hands of parliamentary counsel. I have always found them very amenable and accommodating. Some are slightly more friendly than others but, on the whole, they are very helpful—probably one of the best parliamentary counsel teams in Australia; and, in fact, I make that claim. I do not wish to impugn the current minister, because I believe that his heart beats mostly in the right sort of manner, of a caring, compassionate Minister for Correctional Services. However, I am not happy with this sort of carte blanche approach: a minister may determine on his or her authority various matters that will actually determine the quality of detention and the quality of rehabilitation of prisoners. I would have been much happier had this been, at the very least, a matter that was prescribed so that it came before the Legislative Review Committee and, theoretically, parliament could look at these conditions before they were imposed.

The Hon. T.G. CAMERON: With all due respect to the Hon. Ian Gilfillan and his praise for our parliamentary counsel (and I do not disagree with him), would it have been possible for parliamentary counsel to draft a subclause more confusing and difficult for a lay person to understand? I can understand why the Hon. Angus Redford could pick that up and understand it immediately. I would urge parliamentary counsel when writing some of these clauses to try to write them in English that an ordinary person can understand. That is confusing. Remember: the object of the English language is to inform people, not impress them.

Amendments carried; clause as amended passed.

Clauses 13 to 14 passed.

Clause 15.

The Hon. A.J. REDFORD: I raised this matter in my second reading contribution and, in particular, the issues raised by the Law Society regarding searches of visitors to institutions. The Law Society was concerned that, as drafted, this measure would allow lawyers to be searched and that those searches would enable people to pierce legal professional privilege. In its response, the government said that it will acknowledge legal professional privilege and, generally speaking, will not search legal practitioners unless they have some solid evidence that the legal practitioner is up to no good. Unfortunately, there are examples where that has happened. I think that the minister's office pointed out that that had happened in the case of Morel. That is unfortunate. All I can say is that I accept the minister's assurances. As a legal practitioner, I have visited the gaols on many occasions and, with the possible exception of the Remand Centre that seemed to want to go out of its way to make it very difficult to see one's client, I found prison authorities to be pretty reasonable in the way they treated legal practitioners.

Certainly, I do not ever recall being subjected to a search of any briefcase of documents that I might have had. I am sure that if it does happen the legal profession will be the first to complain. It has never been backward in complaining before. It will come to our attention. It is with that in mind that the opposition will be supporting the provisions as sought. We accept the assurances of the government that lawyers would not be searched except in exceptional circumstances. I am mindful of the fact that, if searches of that nature produced any evidence (and there was not such an exceptional circumstance), in all probability the evidence would not be admitted by a court in the prosecution of any particular prisoner. I believe that some protections exist at common law that will ensure that the provisions are not abused.

The Hon. IAN GILFILLAN: That is another concern we share with the Hon. Angus Redford, and I would have referred to it in my second reading contribution. How would a member of parliament be treated on entry to a correctional institution? Would he or she be subjected to a random search?

The Hon. T.G. ROBERTS: At least one member of parliament is registered as a visitor, and they go through the same process as other professionals. I have raised the issue of Aboriginal support (people who visit gaols regularly) to be offered the same respect. However, I acknowledge that, from time to time, if there is evidence that there may be a breach of policy, persons may be subjected to a search. I think that people who regularly visit prisons for all good reasons and give of their time, energy and effort in pursuit of

rehabilitation and visiting prisoners go unnoticed and unrewarded.

We do need to pay due respect to them in our institutions, but there should always be the fall back position of a random search of all individuals, including members of parliament. I know that, when we visit, we have to hand in our mobile phones and, like any other member of the public, at least hand into the office anything that may be used as a weapon. Except on one occasion as an exercise, I have never been subjected to any more than that.

The Hon. IAN GILFILLAN: Things have certainly changed since my first interest in correctional institutions and visiting Yatala in the 1980s and other prisons. Members of parliament were certainly treated as an extraordinary phenomenon to appear and even want to go inside a prison, but as I recall we could visit without hindrance at any time of the day. We could request and the request would need to be granted to see any part of the prison. I felt it was a reasonable safeguard—it was not taken up by many of my colleagues—to ensure that there were not abuses of the proper management and conduct of a prison.

The Hon. A.J. REDFORD: I have always found them to be pretty sensible all the way through so far. I am sure there will be occasions when it will not happen, but I can assure members I will not be backward in squawking about it in this chamber if something like that should happen.

The Hon. T.G. CAMERON: My question is in relation to section 85B(5)(a)(i), which provides:

> (a) the person may be required—
>
> (i) to remove his or her outer clothing, (including footwear and headwear) but no other clothing

Will the minister indicate whether that definition, which includes footwear and headwear, would include a Muslim woman or a Sikh? Would they be forced to remove their headgear, which may be an affront to their religious beliefs? The question is: would a Muslim or a Sikh be forced to remove their headgear?

The Hon. T.G. ROBERTS: Australia, and South Australia particularly, does not have the same number of Muslim prisoners as perhaps the eastern states, and similarly with Sikhs. It is not something on which we have a policy but sensitivities would be taken into account, especially regarding the forcing of the removal. I think what would happen is that another guard or person would be present while that individual removed their headgear and then they would be allowed to put it back on. There would never be an order or an instruction for a Sikh to remove their headgear permanently, and similarly with a Muslim woman. It would not be a permanent removal.

The Hon. T.G. Cameron interjecting:

The Hon. T.G. ROBERTS: The sensitivity of the culture would be respected. It may not be headgear; it may be other apparel. That issue would be sensitively addressed by the people on duty. If there was an unusual circumstance, advice would be sought from wiser counsel.

The Hon. Ian Gilfillan interjecting:

The Hon. T.G. ROBERTS: As the honourable member has pointed out, my wise advice on section 85B(d) says that the search must be carried out expeditiously and undue humiliation of the person must be avoided. I thank members for their questions regarding other cultural sensitivities.

Clause passed.

Clause 16 and title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

MEDICAL PRACTICE BILL

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

The Hon. T.G. ROBERTS: I move:

That the Legislative Council do not insist on its amendment No. 52.

The Hon. A.J. REDFORD: The opposition supports the motion moved by the minister. The amendment I moved had some flaws, and my recollection was that the Hon. Sandra Kanck supported it only to keep the issue alive. When we discussed it subsequently, she was of the view that the government was correct and that I was wrong. Having had the effect of my amendment explained to me, I now concede that I was wrong. I support the minister's motion.

Motion carried.

PARLIAMENTARY REMUNERATION (RESTORATION OF PROVISIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 December. Page 726.)

The Hon. SANDRA KANCK: At the outset, I indicate that I do not believe that this bill deserves priority, given some of the other legislation we are expected to deal with this week. Nevertheless, I put on the record that, as MPs, I know that we all work extremely hard. Over 11 years, my experience has been that this job requires a minimum of 60 hours a week and, in weeks such as this, we can work 80, 90 or 100 hours. However, the community have a perception that the only time we work is when we sit. Unfortunately, my experience (and, I am sure, the experience of many other members) is that, even at a time when the rest of the community are on holidays, you will find MPs here working. It is a time when we meet with constituents and get out into the community and talk with them. Although the public have a very negative view about what we do (very often fostered by the media), we work hard for the money we are paid.

Our financial affairs are placed under scrutiny. For instance, we have to complete the annual register of interests, and the details of our salary, our allowances and our superannuation are all on the public record. I cannot think of another job that has that level of scrutiny attached to it. However, every time we are attacked for a pay increase, for instance, we will see *The Advertiser* come out with an editorial or an article critical of those increases. Interestingly, when I look at some of them, for instance, by *The Advertiser* journalist Rex Jory, he does not ever reveal what his salary and benefits are. It seems to me that there is a rule for the goose and a different one for the gander.

Despite the openness that exists about our pay and our various benefits, we continue to be maligned through the media about our motives and our trustworthiness. It appears to me that, over time, MPs wanting adequate recompense for the long and stressful hours that we work, and mindful of those media attacks, have sought to snuff out the spotlight of that media scrutiny by putting things like superannuation in place that give us a benefit that is higher than what the rest of the community gets. I wonder—

The Hon. T.J. Stephens interjecting:

The Hon. SANDRA KANCK: The Hon. Terry Stephens says that we are about to lose the extra benefit, so that is something that I did not know about. Given all the foregoing, I wonder whether it might be better overall to roll salary and all those allowances directly into our pay packets to allow MPs to make the decision as to how they will use it. They might decide that they want to pocket it all themselves; they might want to give it away to charities; or they might want to lease a car or rent out an electorate office, given that MLCs do not have one; or maybe they would employ extra staff. I know that there are inconsistencies.

Country members get an allowance for being here in the city, but my colleague the Hon. Kate Reynolds, for instance, who lives at Mount Pleasant, cannot get that allowance because she lives only 68 kilometres from the GPO, whereas the cut-off point to receive that allowance is 75 kilometres. Whilst some MPs get the full allowance, she gets nothing and is forced to stay in the city, sleeping at her sister's place on a camp stretcher on those nights that we sit late. Yet, the ridiculousness of it is that we can get a taxi voucher to get home after 10 o'clock at night, and our rules would allow her to spend an amount that would probably be equal to that living away from home allowance, if not more, to get a taxi to Mount Pleasant. Sometimes it seems to me that we need to have a little commonsense in the way all our allowances are actually used.

The bill that we have before us sees the provision of a car—I am told from reading the *Hansard*—at an annual cost of $7 000 per annum, which is a much more realistic proposition than the previous bill, which told the remuneration tribunal that, when it was making a determination about a car for an MP, it was obliged to grant that car on the ridiculously low terms of those applying to federal MPs of around $700 per annum. This is obviously a great improvement on that. The bill itself does not specifically state $7 000, so I am wondering where the detail on paper about that really is; for instance, is it something that we are going to find in regulations?

I know that, in seeking a taxpayer subsidised car, comparisons have been made with senior public servants who are able to get a car and, therefore, we should too. I am not convinced that we should be able to get a car just because someone else has one, but that is certainly the logic that many MPs have embraced. So that we can compare apples with apples, I would like the minister to answer the following questions:

1. At what salary level does a public servant become eligible for the provision of a car?

2. What is the annual figure that they pay for that car? Is it more or less than the $7 000 per annum that we are apparently going to pay?

3. How many public servants qualify for that scheme, and what percentage of eligible public servants then go on to use that scheme? My colleague the Hon. Kate Reynolds has just passed me a note that says 'salary or classification'. It might be fine for the minister to say something like ASO5 or ASO1, whatever classification it is, but it really does not mean anything to most. In answering my question I ask the minister to specifically spell out the salary level, rather than just the classification level.

4. Is any taxpayer subsidy in that scheme available for public servants? If so, how does it compare with what is in this bill?

Clause 5 of the bill allows MPs in paying for a car to do it by one of three ways: salary sacrifice, taking it out of the other allowances and expenses that we are entitled to, or making a direct payment to Treasury. I have always thought that the term salary sacrifice is somewhat strange, because the salary earner is not the person making the sacrifice: it is actually the taxpayer at large who makes that sacrifice. This bill does not define what salary sacrifice is, and I understand that it is done through an arrangement with the Australian Taxation Office whereby the recipient of the car or the service does not pay tax on that particular amount. If we are paying 40 cents in the dollar taxation, which is somewhere around about what I am paying at the moment—

Members interjecting:

The Hon. SANDRA KANCK: Okay; 50 cents. I do not pay—

The Hon. T.J. Stephens: What's your accountant's name?

The Hon. SANDRA KANCK: I don't pay huge attention to how much tax I pay. Let us say that it is 50¢ in the dollar, then. It is my understanding that on $7 000, through salary sacrifice, that will then be three and a half thousand dollars the ATO agrees you will not have to pay. I have someone shaking their head, so someone else knows more about salary sacrifice than I do. Perhaps the minister, when he responds to the second reading, could give us an explanation of how salary sacrifice would work in this instance.

The second method is to take it out of allowances and expenses to which we are currently entitled. I wonder where it would come from, given that we receive an expense allowance, a global allowance and a travel allowance. I would also like to know where the paperwork (the information in black and white) can be found that explains that. Given that the wording of the bill refers to them in the plural, will MPs be able to stipulate that it comes out of their expense allowance or their electorate allowance or their travel allowance? Again, there is nothing in the bill that gives any clarity as far as that is concerned.

I note that we do not get travel allowance unless we actually undertake travel. The electorate allowance is already substantially weighted to take account of the fact that we use our car for electorate business. Additionally, there is tax deductibility for the expenses we incur in running our cars; I know because I have gone through that process a few times in the past 11 years, where for three months I kept a record of all use of my car—where I have gone, what I have done and how long the journeys were. At present, 40 per cent of the use of my car is for my parliamentary work, so I am able to claim that as a tax deduction, and I assume other members also do the same thing.

If MPs go down the path of getting a car using salary sacrifice, will their electoral allowance, given that it is already weighted to take into account the use of a car, then be docked $7 000 to make up for that, or will it simply be a case where MPs can salary sacrifice and have the same amount appearing in all their assorted expense allowances and effectively double dip? Of course, for those who choose not to go down that path, it means that we are at a financial disadvantage. I know that the original bill introduced into the parliament by the Hon. Bob Such envisaged that not just cars but other services could be contemplated. Having an electorate office was one of those services, and I certainly maintain an interest in having an electoral office outside of this building.

Clause 5 specifically talks about any allowance or benefit. So, although all the talk in the bill has so far been about cars, if any of us were to go down the path of seeking to have an electorate office paid for by the Remuneration Tribunal,

given that a car will cost $7 000 per annum, will the minister advise the council what sort of payment we would be expected to outlay for an electorate office? I put on the record that I believe I am adequately paid, and I am not asking for a car using this methodology. In fact, I have a Toyota Prius on order at the moment (unfortunately, there is a four-month waiting list, and I will be getting it some time next month) and, when it arrives, I will be paying for it totally out of my savings. Nevertheless, I think an electorate office is something that would be much more valuable than a car to most MLCs.

Again, I understand from reading *Hansard* that when a member obtains a car, by whichever of these three methodologies that are envisaged in the bill, it will be for three years. However, I cannot find any reference to 'three years' in the bill itself. So, again I ask the minister: where is that information set out? I would like to know what happens if an MP wants to get a new car before the three years are up.

The Hon. Caroline Schaefer interjecting:

The Hon. SANDRA KANCK: The Hon. Caroline Schaefer says that it will take her only 18 months to travel 60 000 kilometres, and she would probably be looking for a new car at the end of that time. So, what happens if, after 18 months, an MP says, 'This car is on the skids, and I want another one'? Will they get one, and under what circumstances? I would also be interested to know what sort of car and what sort of price tag it would have on it. If we are looking at a car at $7 000 per annum over three years, are we talking about a car with a $21 000 purchase price, or are we talking about something more expensive? For instance, will there be a requirement that the car be Australian made, or even South Australian made? Will MPs be able to get a more expensive car than whatever is going to be set out for $7 000? I can imagine that an MP who lives out in a rural electorate may, for instance, want to have a 4-wheel drive. If they are going to get a car under this system, I would certainly want to see MPs consider getting a petrol hybrid, such as a Honda or a Toyota.

An honourable member interjecting:

The Hon. SANDRA KANCK: No, they're not South Australian. Of course, one has to weigh up whether or not one supports the local economy or whether one is supporting the environment, and that is something that will be difficult for MPs to do. I certainly would like to know. If a standard car is envisaged, I would like to know what it is. If an MP wants to go to a more expensive car, will they be able to pay $7 000 plus whatever? If there is a whatever, what will that be?

The Hon. T.G. Roberts: Fergusons put out a tractor that runs on pig fat.

The Hon. SANDRA KANCK: We could have cars that are run on bio-diesel. At this stage I indicate Democrat support for the second reading but I also indicate that I am very much waiting on the response that the minister gives to all those questions. I am looking forward not only to hearing the minister's answers but to having them in a written form so that my colleagues and I can look at those answers and assess what position we will be taking when we get to the third reading stage.

The Hon. NICK XENOPHON: I cannot support this bill. I think that the Hon. Sandra Kanck, the Hon. Julian Stefani and the Hon. Terry Cameron have outlined many concerns in respect of this bill and I look forward to the government's answers to the questions that have been posed, particularly the most recent questions of the Hon. Sandra Kanck.

Unlike the two previous bills that have dealt with this topic in relation to the allocation of motor vehicles for MPs, it has not been rushed through within 24 hours. That has been an improvement, which at least is pleasing. However, the principle remains the same. In relation to the history of this matter, I would have thought that the appropriate course to take would be for the Remuneration Tribunal, the independent tribunal set up to determine these matters, to deal with it. Last year, the tribunal wrote to members of parliament requesting that they provide details with respect to the use of motor vehicles in order that it could make a determination. As I understand it, six members provided those details to the tribunal. I was happy to do so.

The Hon. Sandra Kanck: I was one of them.

The Hon. NICK XENOPHON: So, with the Hon. Sandra Kanck, I know one-third of those who provided information to the tribunal. I wrote to the tribunal earlier this year in relation to what component of an electorate allowance comprises motor vehicle expenses. In response, I received emails from Caroline Hall, the secretary of the tribunal, dated 11 and 12 October 2004. I will run off additional copies for any members who would like one. I will put on the record some of the information provided to me by Ms Hall on behalf of the tribunal. The question I posed was essentially what component of the electorate allowance relates to motor vehicles, and she replied as follows:

> You have asked for copies of any previous determinations made by the Tribunal with respect to electorate allowances and the component of such allowances that relates to members' motor vehicle allowance. You have stated that it has always been your understanding that the allowance allows for the cost of running a vehicle and have asked for further information on any prior determinations.
>
> I advise that your understanding is correct and in fact for many years the Tribunal has included in its decisions comments such as follows:
>
> 'Electorate allowances are provided to compensate Members of Parliament for the expenses they necessarily incur in the performance of their duties. A significant component of the allowance covers the cost of running a motor vehicle in servicing of electorates. Other items of expense may include accommodation and travelling expenses (not otherwise covered), donations, subscriptions, telephone, printing, stationery and postage without attempting to give a fully exhaustive list.'

The email from Ms Hall goes on to say:

> The Tribunal has not however provided any further details in terms of the component of such allowances that relates to members' motor vehicle allowances in such determinations or reports. Therefore, unfortunately I am unable to provide you with any determinations or reports that will provide any more detail than 'a significant component of the allowance covers the cost of running a motor vehicle in servicing of electorates'.

Ms Hall offered to provide to me copies of various determinations that have been made, and in an email of 12 October she gave a run-down of various determinations made over the years with respect to members' allowances, and the like. For instance, in 1976, reading from her email to me, the tribunal increased electorate allowances having had close regard to submissions made by several members of parliament on actual expenses incurred by them in the last 12 months and the greatly increased cost of transport since the allowance was last reviewed. In 1983-84, the tribunal stated:

> Electorate Allowances were adjusted following examination of data/submissions before the tribunal and increased costs such as petrol and telephone.

In 1987, the electorate allowances were adjusted by the tribunal having had regard to the increased cost of owning, operating and maintaining a motor vehicle, as well as general

cost increases. The state wage case principles also provided for the adjustment of allowances to compensate for increased costs. I am more than happy to provide that to honourable members.

Early today I obtained copies of a number of determinations. In 1969, the Parliamentary Salaries Tribunal stated:

> It is clear that the electorate allowances were never intended to be merely a tax-free portion of a member's income, nor were they intended to be an unlimited expense account. If members are not prepared to furnish us with this information, they cannot justly complain if no allowance is made in respect of their particular electorate or if an allowance which seems to them to be too niggardly is made.

That related to a complaint of the tribunal that it did not get sufficient information from members of parliament in making its determinations. There have been many occasions when the tribunal, provided with that information, has done so. I commend the tribunal's determinations, at least for the historical interest. Mr President, you may be interested to know that the base salary for the President of the Legislative Council in 1966 was $5 000 with an electorate allowance of $1 200 and an additional salary of $2 100. That was some 38 years ago.

The PRESIDENT: Underpaid even then!

The Hon. NICK XENOPHON: I thought that might get a response from you, Mr President.

An honourable member: Proportionally, it is about the same.

The PRESIDENT: No, it's not: the proportion is much higher.

The Hon. NICK XENOPHON: I have not done any calculations on the cost of living increases and inflation in that period. The point I wish to make is that the process has worked over the years. The tribunal, as an independent arbiter of these matters, has looked at submissions of members of parliament. If it has received the information that there has been a need to increase allowances, it has done so. It has taken into account the cost of running a motor vehicle and what is needed to service an electorate. I would have thought that was the process that we should adopt. Simply having an administrative scheme goes against the grain of having an independent umpire to determine these matters, because I believe that the tribunal and its predecessors have a strong history of carefully considering the evidence and making determinations accordingly.

The Advertiser editorial of 25 November 2004 made the following point:

> The decision effectively removes the control and responsibility of determining members' car privileges from the remuneration tribunal, where they should rightly rest.

The editorial, in what may well be a forlorn hope, said:

> . . . public outrage will force members of the Legislative Council, the so-called independent house of review, to reject the proposal.

I do not agree at all with having an administrative scheme. Let the tribunal do its job. Effectively, this parliament is giving the red card to the umpire and not letting the umpire do its job.

I share the concerns of honourable members, including the Hon. Sandra Kanck, about the cost of this scheme. I think there is another issue with respect to fringe benefits tax. What are the implications regarding fringe benefits tax with respect to the total cost of the scheme? Do we have an estimate as to what this scheme would cost taxpayers? Also, if a member does not wish to avail themselves of a car under this scheme (and I will declare now that I will not be doing so, under this administrative argument), and if a member wishes to go through the process of the remuneration tribunal, what happens then? Does the government say that that can no longer occur? What happens with respect to the current provisions of the act, which effectively would allow for double dipping? Does the government acknowledge a need to delete section 4(A)(3) of the act, the provision that currently states that the tribunal cannot reduce a member's entitlements with respect to any determination made in relation to such a benefit? I think that fairly paraphrases it, and that was something that was dealt with in July last year.

Those are my concerns with respect to this legislation. I urge honourable members to allow this matter to be dealt with by the independent umpire. The tribunal has a long history of determining these matters over many years—its predecessors have dealt with these matters over many years—and I would have thought that was the fair way of going about this, rather than an administrative scheme where there is a lack of certainty with respect to what the costs will be for taxpayers. At least it will be defined if it is dealt with by the tribunal.

Clearly, the electoral allowances include a significant component for motor vehicles. What does the government say about this scheme effectively allowing double dipping? Why was a figure of $7 000 chosen and what was the rationale for that, rather than, say, the amount that a senior public servant is required to pay? As I understand it, that has been determined through Fleet SA, and there is a method to that, in terms of determining that it is a reasonable sum for MPs to pay. Will the conditions be similar to those for senior public servants with respect to the cars proposed under this administrative scheme? These are questions that I believe ought to be dealt with during the committee stage.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank honourable members for their contribution to the debate. I would like to begin by pointing out what this bill does. Essentially, this bill just reverses the changes that were made by the parliament to the parliamentary remuneration bill earlier in July this year. The Parliamentary Remuneration (Non-Monetary Benefit) Amendment Bill passed both houses of parliament in July. In essence, that bill required the remuneration tribunal to make a determination that provided members of parliament with a motor vehicle on terms, so far as possible, the same as apply to federal members of parliament. I will remind members what happened.

The Auditor-General, following passage of the legislation, informed the government that, in his view and based on advice that he had confirmed with the Australian Government Solicitor, the passage of the bill did not comply with section 59 of the Constitution Act. The government sought advice from the Solicitor-General, Mr Chris Kourakis, who confirmed the advice received from the Auditor-General. Following receipt of that information, the government announced its intention to recommend to the Governor the introduction of an administrative scheme to supply members of parliament with a vehicle, subject to a financial contribution from members participating in the scheme.

Essentially, what we are doing in the legislation before us is really nothing to do with that scheme, but a necessary first step before that scheme can be introduced, that is, to reverse those measures in the Parliamentary Remuneration (Non-Monetary Benefits) Amendment Bill, which were passed in July 2004. So, it will restore the text of the Parliamentary Remuneration Act 1990 to what it was immediately before

the commencement of the Parliamentary Remuneration (Non-Monetary Benefits) Act 2004.

The Hon. Sandra Kanck interjecting:

The Hon. P. HOLLOWAY: Clause 5—transitional provisions. We will deal with that. That is revoked. There is no clause 5 to this bill, as I see it. I am not sure to what the honourable member refers. This bill simply reverses the legislation that was put before the parliament in July 2004 to what it was. Some amendments were made earlier in 2004. In relation to a new scheme of vehicles, some information has been given but, as I said in my second reading explanation when I introduced the bill, details of that administrative arrangement will be finalised shortly. The scheme will be administered by Fleet SA and will be subject to a $7 000 financial contribution from the electorate allowance of each member who participates in the scheme.

That was all set out in the second reading explanation. The scheme is otherwise separate from and independent of the allowance determination process of the Remuneration Tribunal. My second reading explanation concludes as follows:

> In light of all the circumstances and in particular the proposal to implement an administrative scheme involving a significantly greater financial contribution for members of parliament it is proposed to repeal the Parliamentary Remuneration (Non Monetary Benefits) Amendment Act 2004 and to restore the law to the position which existed prior to the enactment of those amendments.

I have already indicated that, if this bill is passed, that will simply restore the parliamentary remuneration bill to what it was previously. The government announced that it would introduce an administrative scheme.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Yes, that is right. I was looking at the original bill. An amendment was moved in the House of Assembly.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Yes, there was an amendment in the House of Assembly. I will deal with that later. The point I want to make is that we are going back to what the scheme was with that addition. The Treasurer has indicated that, if this bill is passed, Fleet SA will be providing further details in relation to the scheme. Already there has been some information on the public record in relation to the basic outline of the scheme. I can go through that again.

The honourable member asked what sort of car MPs will be entitled to. I think that the information that has already been provided is that it would be a Holden Commodore Executive, Berlina or Acclaim or a Mitsubishi Magna or Verada. That would be the option for most members. For those members living in distant electorates, they have the choice of a Toyota Land Cruiser, Toyota Prada or a Nissan Patrol. In relation to where those cars are manufactured, the passenger vehicles, of course, are all locally manufactured. The four wheel drives are not but, as I said, they are for those members living in rural areas.

There is no provision for hybrid cars, although LPG is an option on the passenger vehicles. I think that that answers the question in relation to hybrid vehicles. This bill is not providing the vehicles for members: the vehicles are being provided by an administrative scheme under the Parliamentary Remuneration Act. The honourable member asked where in the bill does it say that the car is for three years. It does not. As I pointed out, it is an administrative scheme.

The Hon. Sandra Kanck interjecting:

The Hon. P. HOLLOWAY: I am saying that it is an administrative scheme. This bill does not contain any details about providing cars for MPs. We are reverting from the scheme we had previously. That is why there is nothing in the bill. The bill is not about that.

The Hon. Sandra Kanck: So, we pass the bill and get the details later?

The Hon. P. HOLLOWAY: No, this bill removes the provision. The government will introduce an administrative scheme, a scheme that does not require legislation. We are simply removing the old legislation. That is why it is not in the bill to do it, any more than there is a bill to provide public servants with motor vehicles, and I will come to that in a moment. The honourable member asked: where in the bill does it say that the car is for three years? It does not say that, but the proposal is similar to that which exists for public servants. The car would be for three years. I think that there is a certain mileage—60 000 kilometres is the standard, as I understand it, that operates in the Public Service.

The honourable member asked: what happens if an MP wants to change the car before that time is up? My understanding is that, unless there was some good reason to do so, tough luck; otherwise, of course, public servants or members of parliament who were getting government vehicles would be trying to update them all the time. The figure of three years or 60 000 kilometres applies now to public servants, and the proposal is that that would apply also to members of parliament.

There is no provision for MPs to change cars before the three years has expired unless the member is no longer a member of parliament. Obviously, in that case they would have to surrender the car earlier. This scheme is based broadly on that which applies to public servants. Public servants at any level are able to salary sacrifice to obtain a vehicle. That is government policy. Of course, whether it is in their interest to do so because of the financial arrangements is another question. Whether some people would wish to do that is problematical, but the scheme is available to all public servants.

The Hon. Sandra Kanck interjecting:

The Hon. P. HOLLOWAY: Any public servant.

The Hon. Sandra Kanck: Every and any public servant?

The Hon. P. HOLLOWAY: Yes, they can salary sacrifice a motor vehicle.

The Hon. Sandra Kanck: And they can get a car?

The Hon. P. HOLLOWAY: They can salary sacrifice for a vehicle. That was the question. Public servants at any level are able to salary sacrifice. Whether it makes sense for them to do so financially, obviously, is up to them to determine, and it may well not be, but that is another issue. I remind the honourable member (and this perhaps brings me to her last question) that salary sacrifice involves some sort of taxpayer subsidy. The definition of 'salary sacrifice' applies under the commonwealth act. It is really up to the Australian Tax Office to determine rules in relation to salary sacrifice. What happens in the state Public Service (both in this state and all around the country) and in the private sector, for that matter, is that all schemes in relation to motor vehicles tend to be driven by the requirements of the commonwealth taxation act. If the honourable member wants to find the definition for 'salary sacrifice', the best place to do so would be in the commonwealth tax act. In relation to the extent that there is a subsidy, that subsidy would come through the Australian Tax Office in relation to salary sacrifice schemes.

I think that essentially answers the honourable member's questions. If there are any further questions, we will deal with them in committee. The important point is that any scheme that would apply to the motor vehicles of members of parliament would be an administrative scheme and any questions would be handled by Fleet SA. That information will be available to members of parliament shortly, and those matters can all be raised with Fleet SA at that time. I commend the bill to the council.

Bill read a second time.

In committee.

Clauses 1 and 2 passed.

New Clause 2A.

The Hon. NICK XENOPHON: I move:

After line 8—Insert:

2A—Amendment of section 4—Remuneration of members of Parliament

Section 4(5)(d)—delete 'subject to section 4A(3),'

In essence, this amendment is a test clause. It is consequential to removing section 4A(3) in the bill so that, in a sense, it is linked to that amendment and I regard it as a test clause. I will speak to both amendments because they are linked together and for the sake of dealing with this expeditiously. My concern is that, unless this amendment is passed, the current legislation will allow for double dipping of allowances of members in respect of the entitlements that have been contemplated. Section 4A(3) of the Parliamentary Remuneration Act provides:

Except as provided by subsection (2), a determination of the Remuneration Tribunal must not provide for any reduction in the electorate allowances and other allowances and expenses payable to members of parliament by reason of the provision of any non-monetary benefits to members or the provision of any monetary reimbursement in accordance with subsection (5)(b).

Subsection (4) provides that the tribunal must have regard to any non-monetary benefits provided under the law of the commonwealth to commonwealth members of parliament, and that the tribunal must determine, so far as is reasonably possible, the same benefits, terms and conditions as are applicable to the same or a similar non-monetary benefit provided under the law of the commonwealth to federal members of parliament.

There are two aspects to that. This amendment is pre-sequential to those, in a sense that this amendment is about ensuring that there will not be a double benefit to members; and it also takes away the fettering of the discretion of the tribunal which would require that the tribunal must have regard to any non-monetary benefits, in accordance with the terms of the benefits provided to commonwealth members of parliament. One of the questions I pose to members and to the government via its advisers is: if a member elects not to avail themselves of the administrative scheme proposed, where does that leave that member and the tribunal in respect of the existing act?

Does it mean that a member can say, 'We want to go back to the tribunal' and because of the provisions of subsections (3) and (4) of the current act effectively a member can avail themselves of that? To me that would seem to be anomalous in respect of the way in which the legislation is structured.

The Hon. R.I. LUCAS: Whilst others are considering speaking on this issue, on behalf of Liberal members I indicate that we oppose the amendment and the consequential amendment to clause 3. At the outset, I say that I think that the Hon. Mr Xenophon's notion of double dipping is curious. On behalf of Liberal members, I have indicated, and I do so again today, that I concede that this is an additional entitlement to members to assist them in undertaking their tasks as members of parliament. I say again, but I will not repeat the detail, that I am prepared to defend the range of salaries, entitlements and allowances with which members of parliament are provided to undertake what I believe is a difficult task.

We each come to this parliament with different financial backgrounds: some are much wealthier than others; some have access to second and third incomes; and others are not in that position. Nevertheless, it is an arduous task, and I have publicly defended the range of benefits and entitlements. I have done so in relation to superannuation, and I will do so again, but I will not go into the detail. The honourable member uses the phrase 'double dipping'. Only recently, the government provided an additional entitlement, the global allowance, to assist the Hon. Mr Xenophon, and all members.

The Hon. J.F. Stefani: Which I refused.

The Hon. R.I. LUCAS: The Hon. Mr Stefani refused it, but I do not think that too many other members have. The government made an administrative decision to provide an additional entitlement to members to assist them in undertaking their tasks: an extra $12 500 per year—$50 000 over a four-year term and $100 000 for an eight-year term.

The Hon. T.G. Cameron: But please report it accurately. It was not 'in addition': it was an additional payment in lieu of.

The Hon. R.I. LUCAS: The Hon. Mr Cameron rightly points out that it was in lieu of an arrangement, which varied depending on what entitlement you got, for postage and stationery.

The Hon. T.G. Cameron: Some members might have been worse off.

The Hon. R.I. LUCAS: That is right. Some members might have been worse off, others might have been better off, and it might well have averaged out. Preceding that, of course, at various stages previous governments have provided members of parliament with entitlements in relation to global allowances. It has been more formalised in the past couple of years with the new arrangement but, at varying stages, governments, present and past, have provided additional entitlements to members, by way of stationery, postage and those sorts of things, to help them to undertake their tasks. For example, access to mobile telephones has happened in relatively recent years.

That is an additional entitlement to undertake a task. Either recently, when it was formalised, or more recently, when it was provided in some cases, I certainly did not call it 'double dipping' (and I am sure that other members did not), and I did not say that, by giving the global allowance entitlement, there should be a reduction of the electorate allowance. When this was first debated, I said that I accepted that this was an additional entitlement and that I was prepared to defend it on behalf of my colleagues. I believe that there will be an additional cost, and I think that, on that occasion, the Hon. Sandra Kanck wanted to know whether it would be cost or revenue neutral, or whatever it is. I could not put a sum on it, because it would depend on who takes it up. The Hon. Sandra Kanck and the Democrats will not take up the offer, nor will the Hons Julian Stefani and Mr Xenophon, and I suspect that some members of my own party will not. So, the cost will depend on the number of people who take up the entitlement.

I do not claim this to be a revenue neutral issue. I am being open and accountable about our position. We see it as an additional entitlement, and we are prepared to defend it. We accept that there will be an additional cost, but I do not know what that will be, because it will depend on how many members take it up. However, I do not accept the notion that this is an issue of double dipping. It is a decision that will be taken by the government (and members of the Liberal Party support it) to provide a car for members at a higher cost than was originally envisaged, namely, $7 000 instead of $750. There will be an additional cost to taxpayers; we accept that, but we are not in a position to know the level of that cost.

Another point I make to the Hon. Mr Xenophon, in particular, in terms of its being a curious notion, is that, as the Leader of the Government has indicated, this bill repeals the previous bill—that is, it removes it from the statutes. Last time, the Hon. Mr Xenophon's position was that he opposed it, and I suspect that now he opposes the government's trying to get rid of it, although I do not know that that is the case. The honourable member will explain his position on this legislation in greater detail, but I understand that his previous position was that he opposed the provision of a car through the mechanism being envisaged, namely, going to the tribunal. This measure now stops that proposal, and I would have thought that the honourable member would, therefore, agree with it.

The bill indicates that, separate to legislation (it does not require legislation), the government will introduce a scheme administratively to provide a car to members. With that, I indicate on behalf of Liberal members that we do not support this amendment or the consequential amendment to clause 3.

The ACTING CHAIRMAN (Hon. J.S.L. Dawkins): Before calling the Hon. Mr Xenophon, I remind members that the level of conversation is becoming too high.

The Hon. NICK XENOPHON: I am afraid that the Leader of the Opposition has fundamentally misunderstood or, dare I say, misrepresented my position, but I would like to think that—

The Hon. R.I. Lucas: Or both.

The Hon. NICK XENOPHON: Or both; he acknowledges that it might be both. Previously, with respect to MPs allowances, this parliament has virtually given a directive to the tribunal that in the exercise of its discretion—and my objection was never that the question of a motor vehicle would go off to the tribunal—it should consider whether a motor vehicle should be given on certain terms to members of parliament. However, the discretion of the tribunal was so fettered in being able to say what the goalposts were as the parliament was changing the goalposts, even though the tribunal has had a long history of considering allowances and the part played by members of parliament in servicing the needs of the electorate. That was the long history and the long series of precedents over many years that the tribunal had in dealing with such matters.

So, the objection was to the legislation that was structured in such a way that fettered unduly—and unfairly, in my view, and the view of some other members here—the discretion of the tribunal. That to me was always the issue. But the point I have raised with respect to this amendment is, effectively, what work does this section now have? What work does all of section 4A of the Parliamentary Remuneration Act have if this parliament is taking away—if that is what it is purporting to do—the power of the tribunal to award a motor vehicle? There is a reference there to commonwealth—

The Hon. T.G. Cameron: Is it doing that?

The Hon. NICK XENOPHON: The Hon. Terry Cameron says, 'Is it doing that?'

The Hon. T.G. Cameron: It is like stripping the commission of its powers.

The Hon. NICK XENOPHON: The Hon. Terry Cameron says that it is a bit like stripping the Commission of its powers—presumably the Industrial Commission. That is the question that I pose to the government. That is my reading of it, and I would genuinely value the views of the Leader of the Opposition in relation to this as to what it actually does, because—

The Hon. R.I. Lucas interjecting:

The Hon. NICK XENOPHON: I note the Hon. Mr Lucas' remarks, but, essentially, my concern is that by fettering the tribunal's discretion to reduce an allowance by virtue of another benefit, it would be seen as double-dipping. I know that the Leader of the Opposition has taken exception to that and that he sees it as an additional benefit. How do the existing provisions of the remuneration act sit with section 4A, in particular, relating to non-monetary benefits? How does that sit with the changes being proposed by the government? I believe that it is a legitimate question as to how the two would work together.

The Hon. T.G. CAMERON: I think it is probably appropriate to make a few comments on what the Hons Rob Lucas and Nick Xenophon said. The debate is getting increasingly murky and more confusing all the time. It seems to me that we have a few different opinions in relation to this, and I want to outline where I stand. Will I support the Parliamentary Remuneration (Restoration of Provisions) Amendment Bill as it stands? I thought I made that fairly clear when we debated the bill last time; my position was that I would support the parliamentary tribunal making a determination on whether or not we deserve a car, and I still hold that view.

I do not want to get involved in an argument about the intervention by the Auditor-General and this opinion from the Solicitor-General which is apparently a secret and which should be made public. My position is that this matter should be dealt with by the Parliamentary Remuneration Tribunal and that some other way of achieving that outcome should be found after the Auditor-General and Solicitor-General's intervention, not to mention the politically opportunist path that the Premier has sent us on. My position is that I will probably be opposing this bill.

I want to state my position in relation to another matter. Should MPs be given a car as part of their duties? I would have to say that, as an old trade union man who spent 10 years as an industrial advocate in the Industrial Commission and Industrial Court, in my opinion, on any reading of the evidence put forward, a car forms an integral part of an MP doing his duty. There would be no doubt that, if I were a member of that tribunal, I would support members of parliament getting a car under the provisions that are outlined. The current provisions for members of parliament are inequitable. They are just not fair and they do not apply across the board equally. If you happen to be the Hon. Nick Xenophon putt-putting around town in his little motor vehicle, I would suspect that he would get a very limited tax deduction against his electorate allowance. However—and I will not name them—if you happen to be another member of parliament driving around in a $200 000 motor vehicle—

Members interjecting:

The Hon. T.G. CAMERON: I do not know. There may not be a member of parliament in a $200 000 motor vehicle.

Members interjecting:

The Hon. T.G. CAMERON: It is his right to drive whatever motor vehicle he wants to.

The Hon. J.F. Stefani: It was $100 000, and it is 20 years old.

The Hon. T.G. CAMERON: What are you talking about?

The Hon. J.F. Stefani: The car I drive.

The Hon. T.G. CAMERON: I was not referring to the honourable member; his car is not worth $200 000.

Members interjecting:

The ACTING CHAIRMAN: Order! The Hon. Mr Cameron will return to the bill.

The Hon. T.G. CAMERON: I was not referring to the Hon. Julian Stefani. I do know motor vehicles, and his car would not be worth more than $30 000 or $40 000. I am not referring to his motor vehicle; I am referring to other motor vehicles, and let us say that they are all worth in excess of $100 000. So, the Hon. Mr Stefani can relax, because I am not talking about him.

The Hon. J.F. Stefani interjecting:

The Hon. T.G. CAMERON: It's a lovely old car; the honourable member drives a number of beautiful cars into Parliament House. I do not know whether they are all taxpayer—

The ACTING CHAIRMAN: Order! The honourable member will direct his remarks through the chair.

The Hon. T.G. CAMERON: The honourable member does not want me to go down that path, does he? So, this $200 000 vehicle could be leased, and on $200 000 you would probably get a deduction of about $30 000 or $40 000 a year. That would soon write off your $15 000 or $20 000 electoral allowance. Let us not pretend in any way that the current system is fair, and I am not looking at the Hon. Nick Xenophon and suggesting that he says that it is not. I think what he and others who have a problem with this bill are on about—

The Hon. D.W. Ridgway interjecting:

The Hon. T.G. CAMERON: Was that an interjection? I like picking up your interjections; I didn't get it.

The Hon. D.W. Ridgway interjecting:

The Hon. T.G. CAMERON: That's okay. The current system does allow members of parliament who are all doing the same job, although some like the Hon. Michael Atkinson would get no tax deductibility at all—

The Hon. Sandra Kanck interjecting:

The Hon. T.G. CAMERON: He'd be able to write off or depreciate his pushbike. We are talking about double dipping; he obviously cannot double dip. We might then move to a member like the Hon. Nick Xenophon all the way up to a $200 000 or a $250 000 car. Under the existing system, the motor vehicles of some members of parliament are subsidised to a far greater extent than others on a monetary value. Do I think that MPs deserve to get a car? Yes, I do; and I do not think they should have to pay $7 000 to get it. However, I do not believe that that is a determination that should be made by parliament, which I guess is the nub of the complaint the Hon. Julian Stefani and the Hon. Nick Xenophon have in relation to this issue, if I am correctly interpreting what they are saying.

In relation to double dibbing, if a member of parliament decides not to take a car, I wonder where that leaves that member of parliament in relation to their electoral allowance and how it will be treated for taxation purposes. From my knowledge of the tax law, I would assume that they would still be granted a deduction. However, a potential problem is being injected into the debate by setting the monetary amount of $7 000 per year. It may well be that, as a result of that determination, any member of parliament who chooses not to take up this offer and drives their own vehicle (and, if I were the Hon. Julian Stefani, that is what I would prefer to do; it is a lovely old car) would create an environment or a situation where the ATO would say, 'Okay, the taxation deduction for a motor vehicle on the basis of this will now be set at $7 000 per year.' I doubt that any member of parliament would appeal that and run the risk of public condemnation, as it would be the subject of media interest.

If a member of parliament elects to have a government vehicle but decides not to drive that vehicle to and from their country electorate into the city, will they still be entitled to claim the country members' travelling allowance, which, I might add, is the most generous in the state (it is double what most public servants get when they drive their own vehicle)? First of all, if a member of parliament decided not to take up a government car, would they still be able to claim the government allowance, or is that something that it is intended to do away with? Is it now really necessary?

If members of parliament are being provided with a government car, is it appropriate that that member of parliament can say, 'I'll leave that in the garage, because when I drive from Port Pirie (and I am only using Port Pirie as an example because the President does not drive any more) I'll get 50¢ or 56¢ a kilometre.' Each trip would amount to a few hundred dollars, which would certainly go a long way towards paying more than the expenses of running a motor vehicle. What if a member of parliament decided to take a government car but still keep another car and claim an allowance from the government for that car when he uses it and still claim a tax deduction for the car from the government, which, under federal tax law, he would be entitled to do?

I understand that the fee we will be charged for this motor vehicle is $7 000 per annum. I would appreciate knowing what that $7 000 per annum includes. Does it include registration, insurance, maintenance or repairs? What happens in the event of a member of parliament writing off a motor vehicle and it is deemed to be his fault? I suspect that there are a lot of issues in relation to this bill that have not been properly thought through. However, there seems to be a desire to have this bill dealt with through parliament.

Whilst I do not always agree with the Hon. Nick Xenophon, and they are not his words, I think that I can draw only one conclusion, which is the conclusion that he has drawn, that if this bill is subsequently passed by parliament it will weaken the position of the parliamentary salaries tribunal; certainly if not in real terms it will make it a bit of a toothless tiger as far as the electorate is concerned. One of the reasons that we have been able to ameliorate the public's concern about MPs' wages is that they are now determined independently by a parliamentary salaries tribunal, not different from the industrial commission.

I do not know that I agree with the Hon. Nick Xenophon's argument in relation to double dipping, but I can see a whole lot of problems in relation to this in terms of equity and how it is going to operate. It does not matter now what the Australian Labor Party or the Liberal Party say in relation to this. Once this bill has been passed, as far as the public is concerned, it will look like we have voted to give ourselves a motor vehicle.

I have one further question. I understand the opposition to an MP's getting a motor vehicle to go and do his work. As every member of this chamber would know, even those who oppose this legislation, if we do our job properly and we are out there meeting people in the electorate, we do a lot of kilometres. As an aside, I would like to take the mileage on the Hon. Sandra Kanck's car and find out what it is 12 months later. She would have to be doing 40 000 kilometres a year. She is not alone. Many members of parliament do 30 000 or 40 000 kilometres a year. Many country members would do a lot more.

I have been made aware—and this is not a personal matter and I hope no-one takes it that way—that lots of people who work inside Parliament House, whose job is inside this building and who arguably do not use a car to do any work with the electorate or outside this building—just like thousands of other public servants—are provided with a car to enable them to go about their work. I do not have problem with salary sacrifice. If a member opts for salary sacrifice it just means that he will not be able to claim the cost of running a car under his electorate allowance. The South Australian government, just like every other state and the federal government in Australia, provides tens of thousands of motor vehicles to its employees. I would be interested to know from the government what the conditions are for the provision of motor vehicles to public servants. Is that done by way of salary sacrifice, or not?

The Hon. J.F. STEFANI: I have a number of questions that I wish to put to the minister, but before I do, I want to place on the record a few comments in relation to this measure. We all recall clearly that in July 2003 a proposal was advanced by the Hon. Bob Such dealing with the Parliamentary Remuneration Act. It changed a number of aspects of the act and it was passed by both houses of parliament. Subsequent to that change, it appeared that the provision did not properly address the issue of non-monetary benefits which the amendment sought to address.

So, the honourable member, in July this year, again presented to parliament a proposal which I recall very vividly I voted against for a number of reasons, one of which was the haste with which that measure came into this place. As it turned out, given my anger at the way in which the legislation was pushed through, I decided to investigate the matter. The Auditor-General concurred in the views that I held, and those views have been put down very clearly in another place by the Treasurer. The same advice to the government came from the Solicitor-General, Mr Chris Kourakis QC. That is briefly the background to why this measure is being repealed. The government took advice and acted upon it on the basis that it was not proper to proceed with the measure, such as it was, which directed the tribunal to consider the provision of a vehicle, which was deemed to be an allocation of money, and that allocation was $750 per car. That is briefly the background.

I want to canvass a number of issues. As the Editor of *The Advertiser* pointed out, we have now had this measure in tow for a number of months. With respect to the issue of the constitutional legality or otherwise of the amendments in July 2004, shortly afterwards the Treasurer announced that he had reached an understanding with the opposition that a motor car would be provided to members of parliament for $7 000 a year. I recall that very clearly because, obviously, the heat was on, and it was on good and proper for the government. He must have thought that that figure, which he either plucked out of the air, or about which he had very strong advice, was sufficient to cover the expenses. Since July this year, or thereabouts, we have had four months to come out and say what the costs are and whether they are adequate and, if not, what subsidy is being provided from the taxpayers' purse to run the vehicles. I think that is a legitimate question.

Undoubtedly, we have a great deal of respect for the Hon. Kevin Foley. He is a shrewd Treasurer. He is doing his job: he is keeping costs under control; he has achieved a AAA rating; he is not going to budge on any overruns. He has done a great deal of work, he has claimed, to get the budget under control. Surely he would have (and, if he does not, the army of Treasury officials that he is responsible for would have) a very accurate idea of the costs. I would like the minister to tell me the figures that have been formulated which will cover the running costs of the vehicles; what those costs are made up of; which other subsidies are required from general revenue to run the vehicles that are being provided; which fringe benefit tax the government will be liable for; and which provisions are being considered to reduce the allowances that have been made by the tribunal in our electoral allowances for the provision of vehicles, which the Hon. Nick Xenophon has put on the public record.

Substantial amounts are being allowed in our electoral allowances. If those allowances are not to be touched, will the $7 000 be paid from the allowances that we have? Can we call upon the allowances we have to pay for the $7 000, and whom do we pay? Does that mean that the balance of the allowances that have been allocated by the tribunal in our electoral allowances will not be reduced? I would also like some other questions answered. As the Hon. Terry Cameron has asked, are members of parliament able to use their travel allowance to pay that $7 000 for the provision of a vehicle? That is an important question, which should be answered. What sort of mechanism will that impose on the staff of the council to administer? What provisions will there be for the monitoring of these expenses? These are some fundamental and important questions that should be answered by the government. I think the community expects a very open and accountable approach to this matter, as it is already being seen as a back door method for members of parliament to help themselves to a cheap motor car for the payment of $7 000.

The Hon. P. HOLLOWAY: First, in relation to the Hon. Terry Cameron's question, members of the Public Service generally get their cars through salary sacrifice. There are obviously some employees who drive home the blue-plated vehicles if it is required in their work; that is a separate issue. But those who have cars do so through salary sacrifice. In relation to the Hon. Julian Stefani's points, I can only repeat that this bill before us really is not about the new scheme; that is an administrative scheme that is not covered in the bill in relation to the costs of motor vehicles. Obviously, it will depend on a number of factors, one of which is the type of vehicle chosen by the individual, as it does for the Public Service. There is a range of vehicles. Some will cost more than others. It will depend on the distance travelled by the member of parliament. One can really only talk about average costs. It would be impossible to put a figure on each member, because they will differ. I guess some cars will be less reliable than others and will require more repairs, and so on. That is the nature of whether they are made on a Monday, Tuesday, Wednesday or Friday.

An honourable member: What about Thursday?

The Hon. P. HOLLOWAY: Or Thursday, yes; that is true. But we can really only deal with average costs. I have

made the point before, when we have discussed this bill in the past, that it is impossible to ascertain the actual cost for individual members, because it will depend on how many kilometres they drive and how—

The Hon. Nick Xenophon: What guidelines are anticipated?

The Hon. P. HOLLOWAY: As I said, some information has already been provided, but Fleet SA will be briefing members of parliament on it when the scheme is introduced. The first step, obviously, is to remove from the current bill those provisions which instructed the Remuneration Tribunal to give members a car at the same conditions as apply to federal members of parliament. That is what this bill is about. It is about removing those provisions that were inserted in July. The Treasurer has indicated that the cost to members will be $7 000. Obviously, the actual cost to the taxpayer will differ for each member of parliament depending on, first, what sort of car they get and, secondly, how far they drive.

The Hon. J.F. STEFANI: Will the minister advise whether the $7 000 covers petrol, insurance, registration, repairs, replacement of tyres and other incidental costs?

The Hon. P. HOLLOWAY: Taking into account the salary sacrifice schemes that apply to the Public Service, my understanding is that it does. As I said, they are all matters on which members will be briefed by Fleet SA at the appropriate time.

The Hon. T.G. CAMERON: Does it include the excess payable in the event of an accident for an insurance claim?

The Hon. P. HOLLOWAY: This bill is not about that. This bill is about repealing the provisions that would give members of parliament cars at the same conditions that apply to federal members of parliament. That is what we are voting on. The administrative scheme will contain those sorts of details. I do not know those details; they are not in the bill before us. As I say, they are matters on which all members of parliament will be briefed. I imagine that standard rules apply in relation to those sorts of highly technical details.

The Hon. T.G. CAMERON: Does that mean that we will be expected to vote on the bill this afternoon without knowing what conditions or regulations might apply to the use of that car, etc.?

The Hon. P. HOLLOWAY: Absolutely. If members vote on it, this bill will remove the provision that instructs the Remuneration Tribunal to provide cars at the same cost as applies to federal members of parliament. That is what is in the bill. We are removing that. Incidentally, the Hon. Nick Xenophon asked me about double dipping. There is no double dipping in relation to this. The reason that clause 46A as amended will remain in the bill is that it does apply to matters other than motor vehicles. It is quite inconceivable that the Remuneration Tribunal would award members a second car, if that is the suggestion the honourable member is trying to make. That is quite inconceivable. The reason that clause 4A is left, essentially, is to deal with other matters. Of course, we do delete those provisions which were added in July and which relate to a comparison with the commonwealth, and I hope we will vote on that fairly soon.

The Hon. J.F. STEFANI: With all due respect, minister, the fact is that if this parliament were to amend the bill to allow the tribunal to consider the provision of a vehicle at the right cost—not at the forced cost of $750 or $7 000 a year—you would have the voices of all this parliament approving it. The fact is that we are bypassing the tribunal (using a 6A) and providing vehicles for $7 000. Can ministers or other members of parliament—committee chairmen, and so on—who are provided with vehicles now get another car for $7 000?

The Hon. P. HOLLOWAY: That is my understanding. Again, that is up to the details of the scheme, which are yet to be released. It is not a matter that is covered in this bill. My understanding is that the provision of motor vehicles to public servants is not covered in any bill: it is something that is provided by administrative act. If any act covers it, essentially it is the Commonwealth Taxation Act which governs the conditions of the provision of cars rather than any specific state legislation. I could be wrong but that is my understanding of it.

The Hon. J.F. STEFANI: Will the minister tell this council whether any other person employed in the Public Service who has a chauffeur-driven car is also being provided with an additional vehicle for $7 000, subsidised by the taxpayer?

The Hon. P. HOLLOWAY: I do not know of any other person in the Public Service who is provided with a chauffeur-driven vehicle. I assume that they are given to members and leaders so that, essentially, they can work in transit. They are in a unique position. The uniqueness is the provision of the chauffeured cars.

The Hon. SANDRA KANCK: Just so that I have a sense of exactly what it is we have before us, the minister said that there was not a clause 5 in the bill, but I am adamant that there is a clause 5 in the bill. At that point I understood that the minister was saying that this bill restores the act to its earlier condition, and we do that with clauses 3 and 4. We have now added clause 5. As I read it, by restoring the act to its earlier form in clauses 3 and 4, a member could still go to the Remuneration Tribunal and ask for a car, or alternatively they can resort to what is in clause 5, which is the administrative scheme. They have a choice. Is that correct?

The Hon. P. HOLLOWAY: Theoretically that is true but, as I just said, it is inconceivable that that would happen. I suppose someone could ask the Remuneration Tribunal for travel, but a separate scheme for that already exists outside it. It is inconceivable that that would happen. In a sense, of course, under the new scheme the allowance of those choosing to participate would be reduced by $7 000.

The Hon. R.I. LUCAS: I indicate that my understanding is that one of the reasons for the need to deal with the passage of the legislation today (or this evening) is that potentially the tribunal may well move down a path of looking at the provision of cars under the existing entitlements, but that the—

The Hon. Sandra Kanck: No-one has told us that before.

The Hon. R.I. LUCAS: Clearly, the tribunal will not be going down that path should this arrangement be proceeded with—and that is clearly the intention of the government and it is being supported by the Liberal Party. No-one, including the tribunal membership, will countenance the offer of a second car or a parallel scheme if this bill is repealed and the government's administrative arrangements are to proceed. That is by way of background information.

To assist the Hon. Mr Stefani concerning his question about chauffeur-driven cars, whilst there is no-one else in the public sector, I put on the record for his information that federal ministers and office bearers are in the same position. I understand that Victorian office holders are in the same position, and I think there is a provision in relation to the Western Australian legislation which might be a bit more restricted in that you have to make application, but certainly the other schemes generally do make the same provisions in

relation to office bearers or ministers who have those sorts of entitlements about which the member was asking.

The Hon. T.G. CAMERON: In relation to all the conditions, regulations and rules—call them what you like—which will apply to a member's use of a car, who will make those decisions? We know Labor and Liberal are together in supporting this bill, but who will make those decisions which would normally be made by a remuneration tribunal?

The Hon. P. HOLLOWAY: Ultimately the scheme will be the responsibility of the Treasurer, but it is my understanding that Fleet SA will be the agency that administers it.

The CHAIRMAN: I point out to members that, as this bill has been controversial and it is being promoted on the basis that there will be an administrative scheme, an enormous amount of latitude has been given to members to ask questions about the administrative scheme, which is not the subject of the bill. That accommodation was made by me and the Hon. Mr Dawkins as my relief. When we come back, we really do need to get on with the bill, unless it is a vital question in relation to the bill. The minister has explained what the bill does and members have been given a fair amount of latitude. Members will be able to ask all those questions when the briefings take place in respect of the alternate scheme, if they want to avail themselves of that.

Progress reported; committee to sit again.

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

STATUTES AMENDMENT (MISCELLANEOUS SUPERANNUATION MEASURES NO. 2) BILL

Adjourned debate on second reading.

(Continued from 25 November. Page 709.)

The Hon. NICK XENOPHON: I support this bill. I had the opportunity to receive a comprehensive briefing from Mr Deane Prior from Super SA. The amendments, which are largely of a technical nature, deal with a number of matters, including the commonwealth superannuation co-contribution scheme. Because of that scheme, established to encourage people to save for their retirement, certain consequential changes need to be made to the state's superannuation scheme and to the various schemes over which this parliament has jurisdiction. I do not think this measure is controversial and, essentially, is technical in nature. I understand that some provisions deal with family law matters, given recent changes to legislation that affect superannuation benefits that are payable. For those reasons, I support this bill, which I regard as essentially non-controversial, given the matters to which it relates.

The Hon. T.G. CAMERON: I, too, rise to support the government in this bill and, in doing so, join with every other member of this parliament. As was pointed out by the previous speaker, these are technical adjustments, and it is really a tidying-up of the act. I do not think that the measure contains anything too controversial for anyone to get too worked up about.

The Hon. IAN GILFILLAN: I indicate Democrat support for this bill. In fact, we strongly support it. With the commonwealth Superannuation Government Contribution for Low Income Earners Act 2003, the federal parliament established an invaluable co-contribution scheme to aid low income earners to increase their superannuation savings. The 2003-04 financial year sees a maximum co-contribution of $1 000, which is available to people whose income is $27 500 or less. A co-contribution is also available to people on higher incomes; however, the maximum amount is reduced on a sliding scale as income rises. The effect is to phase out co-contribution at an income of $40 000. The maximum co-contribution rises in 2004-05 to $1 500, and the lower threshold increases to $28 000 with a phase-out threshold shifting to $58 000.

This scheme was negotiated with the federal government and my Australian Democrats Senate colleagues in the federal parliament. With 60 per cent of Australian workers earning less than $40 000 a year, this scheme is an invaluable step in increasing national savings and providing Australians with a more secure future. In 2003-04, 2.7 million Australians are eligible for the full co-contribution with a further 1.9 million eligible for a part co-contribution. The number of Australians able to partake of the scheme increases in the 2004-05 year when the thresholds change. We understand that some 30 000 state government employees will receive a co-contribution in 2004-05, and that that number will increase considerably in future years.

The bill also makes a number of technical amendments. It updates the Police Act 1998 to include reference to the Southern State Superannuation Act 1994 and clarifies the definition of 'salary' in the Police Superannuation Act 1990. This bill will also amend the superannuation legislation to provide for all potential superannuation splitting scenarios under the commonwealth Family Law Act 1975 and clarifies amendments made by the Statutes Amendment (Equal Superannuation Entitlements for Same-Sex Couples) Act 2003. Finally, the bill updates a number of references in the Judges' Pensions Act 1971. With our Senate colleagues having played such a dominant role, it is quite clear that the Democrats in this parliament will certainly support the passage of this bill.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank all members for their indications of support for the bill. I also thank them for facilitating the speedy passage of the bill given that I believe the first commonwealth co-contribution payments are likely to be made before Christmas, so it is important that we get this bill into place as soon as possible. I thank members for their support and also for enabling the bill to be given speedy passage before the end of the year.

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

PARLIAMENTARY REMUNERATION (RESTORATION OF PROVISIONS) AMENDMENT BILL

In committee (resumed on motion).

(Continued from page 755.)

New clause 2A.

The Hon. NICK XENOPHON: For me and perhaps for a couple of other members, there was a threshold issue in that, if my amendment does not succeed, where does that leave the legislation in its current form? Does it allow for an alternative scheme with respect to a motor vehicle? Technically, there is nothing to stop the tribunal from considering

the issue of a motor vehicle, notwithstanding that there is an administrative scheme, because the two would be in parallel. That is my concern, and that was the question I put to the government.

The Hon. P. HOLLOWAY: I thought that I had answered that when I said that it was inconceivable that the tribunal would agree to a second scheme once one was already in place. However, as the Hon. Mr Lucas pointed out before the dinner break, one of the reasons why we need to pass this bill very quickly is so that the remuneration tribunal does not carry out what it has been asked to do, that is, to consider this matter. Again, I urge all members of the committee to support this bill and to restore it to the form it was in July. I can assure members that there will not be two schemes.

The Hon. R.I. LUCAS: I repeat what I said before the dinner break; that is, my understanding is that the tribunal has sensibly delayed implementing a process in relation to cars, given that the Treasurer, on behalf of the government, publicly announced almost six months ago that the government intended to introduce an administrative scheme for $7 000, which would negate the need for the tribunal to look at a scheme in relation to motor vehicles.

The Hon. NICK XENOPHON: Without labouring the point, I appreciate what the Hon. Mr Lucas has said. However, my understanding is that, prior to the Treasurer's announcement, the tribunal asked members of parliament to provide information so that it could make a determination with respect to members' entitlements. As I understand it, the existing provisions of the act provide that, whilst the tribunal must have regard to the commonwealth entitlements, it is not obliged to go down that path. That is why the tribunal was asking for information from members of parliament.

I will not take the matter any further, but I wanted to make that clear and to put on the record my understanding of the process. I appreciate what both the Leader of the Opposition and the Leader of the Government have said, that is, that it has, in a sense, been superseded by the Treasurer's announcement pending this legislation being considered.

The Hon. SANDRA KANCK: During my second reading speech this afternoon, I indicated that I was looking forward to hearing substantial answers to the questions I asked, with the opportunity to be able to reflect on the answers once I saw them in writing and to discuss it with my colleagues. Of course, that has not happened. Similarly, with these amendments, we have not had an opportunity to sit down and tease out all the issues. Therefore, my colleagues and I do not have an agreed point of view on these amendments, and each of us will inform ourselves on the basis of what we have heard up to this stage. However, I indicate that I will be supporting the amendment. I am concerned about double dipping, and I am not sure whether this amendment will necessarily correct it. Nevertheless, given that—

The Hon. Nick Xenophon interjecting:

The Hon. SANDRA KANCK: The Hon. Nick Xenophon says that his understanding is that it will correct it. Given that I have a concern about double dipping, if it does stop that from happening, it must be a good thing, from my perspective.

The Hon. J.F. STEFANI: I rise to support the Hon. Nick Xenophon's amendment. Essentially, the amendment provides for the tribunal's involvement in assessing what might be the subsidy presently being proposed by this measure. I know that a substantial amount of money has been allocated for the provision of vehicles in our electorate allowances. By this measure, we are virtually voting ourselves a cheap, subsidised, $7 000 motor car without recourse to the tribunal to adjust the allowances, which it has previously allocated in good faith to every member of parliament.

The Hon. KATE REYNOLDS: I oppose the new clause. I am not totally persuaded that there is no opportunity or potential for double dipping but, by the same token, I am not persuaded that the bill as proposed by the government allows double dipping. I have found a lot of the debate to be utterly confusing and, if anyone can sit down and explain these systems and their ramification to any member of the public in such a way that that member of the public can understand them, I will be the first to buy them dinner.

Members interjecting:

The Hon. KATE REYNOLDS: I am not sure what that gesture meant, Mr Chairman. I might interpret it at a later date. I also take this opportunity to say that I found the debate on this bill and the previous version last year to be probably the most confusing and bewildering debate that I have experienced in my less than two years in the parliament. I find it disappointing and frustrating that we seem to be unable to have sensible, logical and honest debate on matters relating to our salary, our entitlements and so on in this place. I know that some members would have experienced this over many years and probably think this is the same old debate taking another form, with the same old issues coming up again. I have some sympathy with that and I am not persuaded by the Hon. Nick Xenophon's arguments or anyone else's arguments. I think that the government has proposed this bill in good faith. On this occasion, I am prepared to take it in good faith and I will be opposing the amendment.

The Hon. T.G. CAMERON: Unlike the previous speaker, I have found this debate quite entertaining and I have not at all been confused or bewildered.

The Hon. Sandra Kanck: It might be entertaining but it is not at all clear.

The Hon. T.G. CAMERON: That is a different matter. The Hon. Sandra Kanck interjects that it has not been clear. What have not been clear are the government's answers to the many questions that have been put to it as to just how this scheme will work. I understand why there was confusion on the part of the previous speaker and, whilst I am not confused about the bill at all, I hope she will accept my polite refusal to explain it to her.

The Hon. Julian Stefani mentioned that the cost of this car will be $7 000 per annum to MPs. That will be deductible and, at our marginal rate of tax, that will mean that we will have to pay only about $3 700 or $3 800. I do not have a problem with that because that is up to the Australian Taxation Office. The point needs to be made about the real cost, because it will be deductible and we will get 50¢ in the dollar back from the government.

It is easy to see why this debate would become a little confusing. Self-interest always sees rational debate as the first casualty. I do not intend to support the legislation but I do not think the legislation needs the amendment that the Hon. Mr Xenophon has put forward. I cannot see that there is any real opportunity for double dipping. If any member of parliament is stupid enough to have a go at double dipping they will run into serious problems with the Australian Taxation Office. In any event, I have the same view as the previous speaker. I am not convinced that the amendment of the Hon. Nick Xenophon would fix up a problem which I do not in reality see in the legislation.

The committee divided on the new clause:

AYES (3)

Kanck, S. M.	Stefani, J. F.
Xenophon, N. (teller)	

NOES (16)

Cameron, T. G.	Dawkins, J. S. L.
Evans, A. L.	Gago, G. E.
Gazzola, J.	Gilfillan, I.
Holloway, P. (teller)	Lawson, R. D.
Lucas, R. I.	Reynolds, K.
Ridgway, D. W.	Roberts, T. G.
Schaefer, C. V.	Sneath, R. K.
Stephens, T. J.	Zollo, C.

Majority of 13 for the noes.

New clause thus negatived.

Clause 3.

The Hon. NICK XENOPHON: I move:

Page 3, after line 6—

Insert:

(4) Section 4A—after subsection (6) insert:

(7) If any determination or direction is in force relating to the provision of motor vehicles to persons occupying executive positions under the Public Sector Management Act 1995, a determination of the Remuneration Tribunal with respect to the provision of motor vehicles to members of parliament must not include terms and conditions that are more favourable than those applying under that determination or direction.

For the benefit of honourable members, I indicate that I will not be seeking to divide on this amendment, but I will on the final amendment, No. 4. This amendment essentially says that, if the tribunal is determining the whole issue of a motor vehicle allowance, the tribunal must not include terms and conditions that are more favourable than those applying to members of the Public Service under the Public Sector Management Act 1995. Essentially, it is saying that, rather than $7 000, as is proposed by the government under an administrative arrangement, it be in line with public servants. That is the essence of the amendment. I ask honourable members to support it.

The Hon. P. HOLLOWAY: I indicate that the government does not support this amendment. Clearly, the situation that relates to members of parliament is different from that which relates to public servants. There are probably few other professions (particularly for members in the lower house, who have electorates, but also for some people who have to attend a number of functions) that would require the use of a motor vehicle to the same extent as do members of parliament. As has been pointed out, I think that is why the electoral allowance was introduced in the first place, in part: to allow for those motor vehicle costs, because they are significant. Of course, it is why the scheme that the Treasurer is proposing is to include that payment of $7 000 out of the electoral allowance in relation to this scheme.

Clearly, the conditions that apply in relation to members of parliament are different, as they are in many other areas, in relation to travel, for example. Members of the Public Service have their travel approved and their fares paid for. In the case of MPs, we have a separate scheme that provides payment. So, in a whole number of ways, the allowances and conditions that apply to members of parliament are different from those in the Public Service. In many cases, contrary to what people think, they are not more generous than those available to other members of the public. For those reasons, we oppose the amendment moved by the Hon. Nick Xenophon.

The Hon. R.I. LUCAS: Speaking on behalf of the Liberal members I indicate our opposition to the amendment. I can understand whence the Hon. Mr Xenophon comes and the reason why he would move the amendment. But, equally, as I have indicated before, we stand in this chamber prepared to indicate and publicly say that we see this as an additional entitlement to members. We do not resile from that. In doing so, therefore, we would be foolhardy to support an amendment such as this, which would not provide, in our judgment, an additional entitlement.

As a former minister (and the Leader of the Government is the current minister), if one is talking about parity with chief executives in the public sector, in particular, when one looks at a member of parliament on an average salary of $100 000 a year and ministers on $175 000, or so, and chief executives in the public sector on $300 000, the Hon. Mr Xenophon might wonder as to whether parity for him in relation to superannuation and motor vehicles also extends to salary levels, long service leave provisions and a range of other issues that perhaps members might like to raise with him.

The honourable member highlights the issue of parity with a senior executive in the public sector on issues such as superannuation and motor vehicles, but I do not hear him too often referring to parity with senior executives when it does not suit his particular argument. He probably would not get as much publicity were he to raise those issues; perhaps that is an explanation as to why he does not raise those parity issues—not that I would suggest that the Hon. Mr Xenophon is in any way driven by publicity in terms of the issues he raises. I would not suggest that at all; I would not want to divert this debate. We do not support the amendment.

The Hon. J.F. STEFANI: I support the amendment. Unlike the Leader of the Opposition who believes that members of parliament should be paid a higher salary, I make the point that we are all volunteers in this place. No-one has forced us to come in here. Some of us were earning a lot more money before we came here, and we have therefore taken an effective pay cut of our own free will. We have also forgone many other benefits one receives in private enterprise. I was a public company director, so I can speak very freely about this.

In terms of my position as a member of parliament, there would be no comparison. However, I chose to come into this place and serve the people of South Australia, and that is a very big difference. We know the conditions under which we come here. We accept them. Public servants are appointed to their position. We choose to serve, and I remind all members about this. It is a very important point to remember.

Can the minister tell me how much government ministerial drivers pay to drive their cars home and be available at a minister's beck and call? Does the minister know how much drivers pay per year for the privilege of being available 24 hours a day, seven days a week at the beck and call of a minister? They have that imposition placed upon them under the conditions of their employment. If the minister does not have the answer, I might tell him.

The Hon. P. HOLLOWAY: I really have no idea. Drivers are employed by the Department of Administrative Services, and it is really a matter for that minister. Certainly, it is nothing at all to do with this bill. I really have no idea. I am not even sure that they do. It is rather complicated. I

suggest that the honourable member speak to the Minister for Administrative Services. I have no detailed knowledge of it. We do not have any advisers in relation to that matter because it is nothing to do with this bill.

The Hon. J.F. STEFANI: In due course will the minister provide an answer? I have been informed that drivers are required to pay a sum of around $7 000 a year for the privilege of taking the car home, to be available at the beck and call of the minister and therefore available to pick up the minister from his or her home or from what other appointments they may have. If he can, I ask the minister to confirm that. I am advised that that is the sum of money they are required to pay.

The Hon. P. HOLLOWAY: Again, that has absolutely nothing to do with this bill. I do not believe that is the case. As I said, I am not representing the Minister for Administrative Services. In any case, whatever is done is a requirement under federal law. In fact, I do not think that the state minister would be able to provide information in relation to the law because fringe benefits tax is a federal measure. From my knowledge, I believe that it is not the case for drivers who are assigned to a particular minister. I believe that some drivers are not assigned a particular person to drive and therefore different provisions may apply. Again, I have no detailed knowledge of that and, certainly, it is not relevant to the bill before us.

The Hon. NICK XENOPHON: I need to respond to the Hon. Mr Lucas' comments. I am shocked that he thinks that I am driven by publicity. I am driven, as I hope all other members are, by the desire to have in place some good public policies, and if the consequence of that sometimes is to get a bit of publicity, I do not think that there is anything wrong with that. In relation to the remarks of the Hon. Julian Stefani about the difference between members of parliament and public servants, I do not think I could have put it any more eloquently. I appreciate his remarks, and I think that they succinctly set out the differences between members of parliament and public servants.

The Hon. SANDRA KANCK: In principle, I agree with what the Hon. Nick Xenophon is saying: that there needs to be a comparison in terms of giving that advice to the Remuneration Tribunal. However, the example of the Hon. Mr Lucas has placed a little doubt in my mind. I think that we are on a base salary of $102 000 per annum. I think that is what it is. The Hon. Nick Xenophon's amendment talks about persons occupying executive positions under the Public Sector Management Act 1995. How does one make that comparison between someone in the public sector who is on $300 000 a year and us on $100 000?

Does the honourable member say then that our entitlement for a vehicle should be one third of whatever a senior public servant gets? We are saying to the remuneration tribunal, 'This is the way we want you to examine this. Here is the filter through which you will look.' However, I am not quite sure that what we have here will give the tribunal adequate advice about exactly what it is we want of it.

The Hon. NICK XENOPHON: The issue is a determination made by Fleet SA as to what is a reasonable cost for a public servant in respect of the use of the vehicle, and that is the sum that has been determined. Arguably, members of parliament will be using their vehicles more, but, by virtue of having a determined amount based on that applicable to public servants, in a sense, that is a fall back position. My preferred position is for the remuneration tribunal to determine this, but that is not to be. Therefore, if we are talking about the use of a vehicle, then the same guidelines that Fleet SA applies to members of the Public Service ought to apply to members of parliament.

I know that the point has been made by the Hon. Mr Lucas that some chief executives are on $300 000 a year, but, by the same token, there would be others who would pay the cost of $10 500 or $12 500 a year for a motor vehicle and who would be on a salary similar to that of a member of parliament.

The Hon. J.F. STEFANI: The relativity of a vehicle is the same. The vehicle does not change in the character of a vehicle—a six cylinder car is a six cylinder car. If we then start to talk about a Rolls Royce, that would be a far different proposal. If we are talking about public servants running a standard vehicle, we are talking the same relative costs. The salary bands are very different, as I mentioned earlier, and I remind members that, for the reasons I have given, we cannot compare the salary and allowances which members of parliament are paid with other people because all kinds of people get paid more than members of parliament—not only public servants but almost every CEO of a local council is being paid more than members of parliament.

I discount that issue because, as I said previously, we choose to serve the people and that is our choice. Other people apply for their job. The salary conditions are advertised and the job appointment is made through an application or whatever. The vehicle component is the vehicle component. It does not matter whether it is a public servant who salary sacrifices $12 000 or $15 000, or the judiciary who are required to forgo a certain amount of money—the equation should be the same because the vehicle is the same item.

The Hon. SANDRA KANCK: I am absolutely in agreement with what the Hon. Julian Stefani says. No-one went out in a posse, lassoed me and brought me into this parliament; I did so of my free will and knew what I was letting myself in for. Nevertheless, that does not in any way clarify for me what is confusing wording. I think that, if I was a member of the remuneration tribunal and this wording arrived with this legislation (once we have passed it), I would be scratching my head to work out how to interpret it, and, for that reason and not because of the philosophy behind it, I will not be supporting this amendment.

Amendment negatived; clause passed.

Clause 4 passed.

Clause 5.

The Hon. NICK XENOPHON: I move:

Page 3, after line 32—
Insert:
(4) If any determination or direction is in force relating to the provision of motor vehicles to persons occupying executive positions under the Public Service Management Act 1995 then, despite any other provision of this section, the parliament or the Crown must not offer to provide a motor vehicle to a member of parliament on terms and conditions that are more favourable than those applying under the determination or direction.

I am sure that some members will be pleased to know that this is my final amendment. Following on from what I said previously about my earlier amendment, if parliament goes down the path of authorising an administrative arrangement for the provision of a motor vehicle, then at least that administrative arrangement should be constrained, since we have bypassed the remuneration tribunal to ensure that the terms are no more favourable than those that would apply to a public servant.

That is the essence of it. In a sense, we have dealt with this in a previous amendment when we were considering whether a tribunal had those powers. I think we have canvassed the

debate fairly thoroughly. Essentially this would mean that a motor vehicle would cost a member of parliament the equivalent amount that it would cost a public servant.

The Hon. R.I. LUCAS: Liberal members oppose the amendment essentially for the same reasons that I gave in relation to the last amendment.

The Hon. J.F. STEFANI: I indicate my support for the amendment. This will be the telltale of the will of the government. The government is quite prepared to make subsidies to members of parliament through the proposal to provide a cheap vehicle. Yet, it is not prepared to increase the rebate to pensioners for their power supply, and many of them (14 000) have had their power disconnected. I feel very passionate about this issue. If the government is prepared to stand up and be counted on the issue of accountability and the appropriate expenditure of public money, it should apply the appropriate rules, which would see that a fair amount is deducted or paid by the member of parliament who is provided with a motor vehicle.

The Hon. SANDRA KANCK: I seek some guidance, Mr Chairman. I want to ask the minister some questions about clause 5 in general. At this stage, do I deal with the amendment, or can I ask those questions?

The CHAIRMAN: The honourable member needs to deal with the amendment before the committee. However, if some matter in clause 5 impinges upon subclause (4), which is the key, that would be a reasonable proposition but, if it does not impinge on the operation of that subclause, those questions should be raised in respect of clause 5.

The Hon. SANDRA KANCK: My questions are in relation to clause 5, and we are dealing with an amendment to that clause.

The CHAIRMAN: We will deal with the amendment, and then we will deal with your questions.

The Hon. SANDRA KANCK: So, after the amendment has been resolved, I can ask those questions?

The CHAIRMAN: That would be the appropriate time.

The Hon. SANDRA KANCK: At this stage, I will simply address the amendment. My position remains as it was with the previous amendment—that is, as worded, the amendment does not provide the sort of direction to the remuneration tribunal that will really assist us. Because this has so many layers relating to what public servants are paid and other benefits, such as superannuation, I cannot see that it is really possible to compare apples with apples. Had we had more time on this bill, it might have been possible to further amend the amendment. However, in the time constraints within which we are working, I can only oppose the amendment, because I do not think that it clarifies anything.

The Hon. P. HOLLOWAY: I indicate that the government will oppose the amendment for the same reasons that it opposed a similar amendment to the previous clause.

The committee divided on the amendment:

AYES (3)

Cameron, T. G.	Stefani, J.F.
Xenophon, N. (teller)	

NOES (16)

Dawkins, J. S. L.	Evans, A.L.
Gago, G. E.	Gazzola, J.
Gilfillan, I.	Holloway, P. (teller)
Kanck, S.M.	Lawson, R. D.
Lucas, R. I.	Reynolds, K.J.
Ridgway, D. W.	Roberts, T. G.
Schaefer, C. V.	Sneath, R. K.
Stephens, T. J.	Zollo, C.

Majority of 13 for the noes.

Amendment thus negatived.

The Hon. SANDRA KANCK: I asked a range of questions in my second reading speech, and the minister at that stage was adamant that there was not actually a clause 5. He has recognised—

The Hon. Kate Reynolds: He has seen the error of his ways.

The Hon. SANDRA KANCK: Yes; he has seen the error of his ways and he recognises that there is a clause 5. The consequence of his believing at that stage that there was not a clause 5 was that my questions did not really get answered. His answer was that much of what is going to be done is through an administrative scheme, and that comes down to the old saying, 'Trust me. I'm from the government.' I am not sure that that is such a good idea. We are being told that the Treasury or the Treasurer will devise this scheme, but we simply do not know how it will work.

I asked the following question in my second reading speech and I ask the minister again, and I hope he is listening. If, according to clause 5, a member opts to get a car through salary sacrifice as opposed to getting it through their electorate allowance, does their electorate allowance get docked for that amount, or does their electorate allowance stay at the same amount? It is a fairly simple question and, as I have said, I am not going to use this scheme. Will their electorate allowance stay at exactly the same amount as mine even though they have been able to get the car through salary sacrifice?

The Hon. P. HOLLOWAY: As I understand it, the car would be provided through salary sacrifice, but the actual income—if you like, a component of salary—would be from their electorate allowance, which would be deducted by $7 000. That is my understanding of the scheme.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Yes; salary sacrifice really is a term that applies from the perspective of the Australian Taxation Office—that is really the relevance of salary sacrifice. It may have taxation implications but, in terms of the $7 000 contribution, it will come from one form of allowance or income or the other.

The Hon. SANDRA KANCK: I am not an accountant. I do not go into any fancy tax deductions in anything that I do, so this is all a foreign language to me. In terms of the answer that the minister has given, why do we have in clause 5(2)(b) three different options? First, you can do it by way of salary sacrifice and, secondly, by way of a reduction in the allowances and expenses. Is the minister saying that, if you do it by salary sacrifice, you get a deduction from expenses? In that case, why would you go down the salary sacrifice path?

The Hon. P. HOLLOWAY: I am not sure that I really understand the question that the honourable member is asking. The bottom line is that, whatever the member of parliament receives when they go into this scheme, it will be $7 000 less than it would be otherwise. Clause 5(2)(b)(i) provides for salary sacrifice by the member, subparagraph (ii) provides for a reduction in the allowances and expenses and subparagraph (iii) provides for a direct payment by the member to the Treasurer, which just means that it comes out through a bank account.

Clause 5(3) says that, for the purpose of the definition of basic salary to which a member is entitled under this act, it includes the amount of any contribution the member makes towards the cost of providing an allowance or benefit by way

of salary sacrifice under subclause (2). If I understand the honourable member correctly, she seems to be trying to draw some distinction between whether the $7 000 comes from some particular allowance. My advice is that it really can come out of either the salary component or the allowance component—it is really up to the member to choose. The implications of that are something that the honourable member would need to look at. I do not see that it would necessarily have any taxation implications, although it may do; it may have implications for superannuation or other matters, but that is really something that the honourable member would need to obtain advice on. Either way, the fact is that $7 000 will be deducted. That is the bottom line, and it would be the same regardless of what is used.

The Hon. R.I. LUCAS: To try to assist a little—and I am not an expert on these issues, either—I have had the benefit of some discussions with the Treasurer in relation to this scheme. This is actually an amendment moved by the Treasurer based on discussions that he and some of his members had with some tax and accounting advisers in relation to this issue.

The Hon. Sandra Kanck interjecting:

The Hon. R.I. LUCAS: No, and I accept that. That is why I thought I might share, for what it might be worth, the information I have received in relation to the background to this matter. I can also indicate that among some of our own members there was a variety of differing views, based on their own tax and accounting advice. The first point made by the Leader of the Government is correct; that is, it will cost $7 000, and it will be one-twelfth of $7 000 each month by way of some sort of payment, whether it comes out of salary, electorate allowance, or whatever. That is the first issue.

The second issue is that a number of members on our side, because of their own tax and accounting advice (and I am not arguing with them), prefer to have it come out of their salary (their $100 000); others, because of the advice they have had, want it to come out of their electorate allowance. I do not have to remind honourable members that not all accountants and lawyers agree with each other in relation to tax issues. So, it is probably not surprising that, when you add members of parliament as well, they do not all agree on the best way that structuring their own financial affairs might happen to be.

So, there were a variety of views (certainly, within our own party room) as to what would be the appropriate mechanism. There was a strong view that there should be an option, and that each individual member should take his or her own tax and accounting advice in relation to their own circumstances. For example, do they fully expend their electorate allowance, whatever that might be, on issues other than those related to car expenditure, or do they not fully expend their electorate allowance; or do they fully expend their electorate allowance, but only if it is a significant contribution for their car?

Some members of parliament, in particular, lower house members argue very strongly that, if they are a lower house member in a suburban city seat, their electorate allowance might be $15 000 but that they are spending $25 000 or $30 000 on electorate-type expenditure. Some will argue therefore that, without car expenditure being attributed to their electorate allowance, they will still have their $15 000 fully expended in their own tax and accounting position. They may well want to go down a particular path, as opposed to someone else. The reality is that there is no simple answer that the Leader of the Government can give the honourable member, other than that the government's advice is to provide all options to members, including the option of salary sacrifice.

In my second reading contribution I indicated the reasons why that was done; that is, virtually everyone in the public sector, from the lowest paid through to the highest paid, has the option of salary sacrifice if they want to take it up. So, I think the government's advice was to provide a range of options in how this might be provided. As the Leader of the Government has indicated, the bottom line is that there is a cost of $7 000 and there will be a monthly contribution or payment, and the member will have to decide whether it comes from his or her salary or electorate allowance to meet the cost of the motor vehicle.

The Hon. SANDRA KANCK: I thank the Leader of the Opposition for that explanation. A further question for the minister is: the $7 000 gets you a car; is that a car with on-road costs, or do members have to meet those registration and insurance costs, and so on, in addition to that amount?

The Hon. P. HOLLOWAY: My understanding is that it does meet those costs; these are questions that were addressed earlier. As I have also indicated, the Treasurer has informed me that, once this bill is passed and the new scheme is ready to operate, Fleet SA will be briefing—

The Hon. T.G. Cameron: But it will be the government deciding all the rules.

The Hon. P. HOLLOWAY: Yes; ultimately, the Treasurer is responsible, as indeed he is for other rules that relate to it. However, sensible treasurers do consult widely with other members of parliament, and I believe that is the case here.

The Hon. J.F. STEFANI: Will the Leader of the Government advise whether that $7 000 is inclusive of GST?

The Hon. P. HOLLOWAY: That is something the honourable member will be able to address when this scheme comes into operation and he is briefed on it by Fleet SA.

The Hon. J.F. STEFANI: Will the Leader of the Government advise whether the proposed $7 000 payment is revenue neutral, as far as the taxpayer is concerned?

The Hon. P. HOLLOWAY: The honourable member has already asked me that question, and I addressed it before the dinner break.

The Hon. T.G. CAMERON: Will members of parliament, in their government car, be caught by the bill we passed a day or two ago in relation to the misuse of motor vehicles? In other words, if my wife is caught hooning around in this government vehicle, could it be seized by the government and, if so, what would happen in that case? Would the government seize its own car?

The Hon. P. HOLLOWAY: Quite obviously, the 'hoon' driving law, as it is commonly known, applies to all vehicles on the road.

Clause passed.

Schedule and title passed.

Bill reported without amendment; committee's report adopted.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I move:

That this bill be now read a third time.

The Hon. SANDRA KANCK: I indicated when I gave my second reading speech that the Democrats would give second reading support and, on the basis of answers that we received, make a decision thereafter. I also indicated earlier

in the committee stage that, as a party, we have not had time to go through the answers and reach a party position, so I speak for myself at this point in indicating that I will not be supporting the bill.

I commend opposition members for being as open and upfront as they have been to put on the record that they regard this bill as an additional entitlement. They are not pretending, they are not hiding behind anything, and I think it is very good that they are doing it in that way. I take the view that the Hon. Julian Stefani put a short time ago that we all came into this place with our eyes wide open and I am not asking for extra entitlements. When I buy my new car next month I will be paying for it entirely by myself.

The Hon. T.G. Cameron: What are you getting?

The Hon. SANDRA KANCK: A Toyota Prius. I indicate that I was somewhat surprised when the Hon. Paul Holloway, responding to my questions at the end of the second reading debate, said that all public servants are able to get cars through salary sacrifice.

The Hon. R.I. Lucas: No, they are all entitled to salary sacrifice.

The Hon. SANDRA KANCK: I beg your pardon; they are all entitled to salary sacrifice. I got the impression from what the minister said they could all get cars if they wanted to. I have heard things about people in the Public Service being able to salary sacrifice to buy their kids computers and all sorts of things like that. Certainly, we are not entitled to any of that. I understand that and I understand that members—

The Hon. T.G. Cameron: We get them for free.

The Hon. SANDRA KANCK: Not for our kids, we don't. I can understand that members do feel a little bit of jealousy, perhaps, that we do not get the opportunities that public servants get. For me, the fact that we do not get those opportunities is not a good enough reason in itself to vote for this bill. I can continue as I do to claim tax deductibility for the 40 per cent use of my car that is related to my work in parliament and that will suffice for me.

In the end, I have to reconcile what we do here with the poor in the community, and it is not for me simply a matter of comparing our position with that of public servants. When I am dealing with people who are unemployed, with people who are on disability pensions, for people who are on carers pensions, for people on supporting mothers benefit, I cannot say to them that I so desperately need this car that the government is going to give me money to buy it; yet, as either the Hon. Nick Xenophon or the Hon. Julian Stefani said, the government cannot see its way clear to give extra money for people who cannot afford to pay their electricity bills.

That is fundamentally where I stand at the end of this debate, as to whether or not we are talking about real fairness, and real fairness is not about politicians' versus public servants' entitlements. It is about where we stand in relation to the community and, for me, I cannot accept this legislation and certainly will not be taking any advantage of it.

The Hon. T.G. CAMERON: I had not intended to make a contribution at the third reading but, like the Hon. Sandra Kanck, I will not be supporting this legislation. I suspect that my reasons are different from those of the Hon. Sandra Kanck and from those of other members who might be opposing this legislation. My reason for opposing this bill is that I believe this matter should be determined by the Remuneration Tribunal. However, I wish to state on the record that I believe that members of parliament in South Australia should be provided with a car to enable them to perform their duties.

Any argument that MPs should not get one or should not be able to salary sacrifice for a car but public servants can is just a nonsense. No-one can argue that members of parliament are not constantly, almost on a daily basis, using their motor vehicles to perform their duties. Of course we get an electorate allowance, which covers some of those costs, but that is an electorate allowance and it does not necessarily mean that it will defray motor vehicle costs. As I understand it, the federal government and nearly every other state in Australia provides a motor vehicle or one that is subsidised.

Of course, when I came into this place, as someone said, I came in with my eyes wide open, and we were not provided with a car. Any reasonable examination of movements that have taken place in the conditions of salaries of all other occupations shows that that is not a constant. I have been here for 10 years and we have not been provided with car. That does not necessarily mean that we are not entitled to or do not deserve a car, just because at some stage in the past we did not get one or we did not get one when we came in here.

I believe that members of parliament should be provided with a car to enable them to perform their duties, like they are in every other parliamentary jurisdiction, as I understand it. It is the process that I have a problem with, but I can count the numbers and they are there. Let us get on with it and vote.

The Hon. J.F. STEFANI: I wish to record my strong opposition to the third reading of the bill. The reality is that tonight members of parliament in this chamber will be engaging in a vote for a cheap motor car, with running and servicing costs of about $5 000 a year, added to which is another $2 000 a year for registration and insurance. Most members of the community who arrange for finance for a vehicle would be paying probably $2 500, or thereabouts, on loan interest. I certainly consider that a $7 000 payment by members of parliament for the provision of a vehicle is not adequate. It represents, in my view, a very strong subsidy by the ever suffering taxpayer, who is already paying an exorbitant amount of money by way of government charges, rates and taxes. I do not feel very comfortable at all in supporting a measure that I know in my own heart is not an adequate payment for the provision of a non-monetary benefit.

I also want to voice my displeasure that the parliament has seen fit to take away the mechanism by which the determination of this benefit should be dealt with, that is, by the independent tribunal. If we, as members of parliament, who are charged with the responsibility of representing the people, many of whom are in very difficult circumstances, choose to bypass what is being considered by many members of the community, that is, an independent arbiter who is able to determine what should be paid for the provision of a vehicle, we are deluding ourselves. All I can say at the moment is that we are making the taxpayer pay for the excesses of our thinking—and I will not say greed; it is almost greed but, certainly, our wayward thinking.

I know that, at the next election, the taxpayers will not forget and they will make us pay, unfortunately—or fortunately; I will not be around. But those who are still here will be made to pay heavily for their decision tonight. I came into this place when there were shared offices. I bought the first fax machine, because the opposition was not provided with a fax machine and we had to beg the Labor government of the day for the paper to run the fax machine.

The Hon. Sandra Kanck interjecting:

The Hon. J.F. STEFANI: No, I still have the fax machine. I will keep it. It is 16 years old. We have come a long way since that time. Those of us who remember that far back will recall sharing offices. In fact, I was offered a small office, which was previously a toilet which had been converted into an office. However, it was so small that I chose to stay in a shared office, because I felt that if I put all my cupboards in there I would have to move out. We have come a long way, and we have more than adequate provision for the resources to do our job properly. I do not find it difficult at all to cope with the resources that are provided. I think this is just another demand on the ever suffering taxpayer, who I think will view members of parliament with a great deal of disdain and odium. I am sure that they will not forget it.

The Hon. KATE REYNOLDS: I would like to begin my remarks on the third reading by, first, congratulating all members for allowing decent debate and consideration with respect to this matter. The Hon. Julian Stefani said that we had moved a long way. We have moved a long way from the last time, when we had almost no debate, and it was very acrimonious. This time around it has been courteous and there has been detail, and I have certainly appreciated that.

My position has always been that members of parliament, like other servants of the public, should be able to access some sort of salary sacrifice arrangement. However, I am very disappointed, and I think it is very unfortunate, that the terms of the scheme have not been available to us to scrutinise. Clearly, the government has not been in a position to properly argue its case and it has relied on us to take its intentions in good faith. That is not a position with which the Democrats have ever been comfortable. I think we would have had a much better and probably a more constructive and shorter debate if we had been able to understand the terms of the scheme before now. I would also like to place on the record my thanks to the Hon. Rob Lucas for his explanatory comments. Whilst it certainly did not cover all the detail—

The Hon. T.G. Cameron interjecting:

The Hon. KATE REYNOLDS: No, I said that, if anyone can persuade any member of the public, I will buy them dinner. If the Hon. Rob Lucas wants to go and persuade a member of the public, and it works, I will buy him dinner. Those comments were helpful, but there are still a number of unanswered questions. I indicate that I will be supporting the bill, but I also put on the record that that does not necessarily mean I will be signing up to the scheme.

I will reserve that decision until I have seen the detail and assessed its merits, both in terms of what it might mean for my personal circumstances and what it might mean in relation to other servants of the public. I note the Hon. Sandra Kanck's comments about how this sits in relation to people who live in poverty in this state. Whilst I have some level of discomfort with respect to any comparisons that might be made, I do not think that that is the only comparison we can make. I will also be looking at the scheme and offering public comment in the light of what this might mean for the parliament's ability and any parliamentary party's ability to attract good candidates in the future.

I do not know whether other members have had the same experience as I have but, certainly, people to whom I have spoken have not been willing to put their name forward for various reasons. One of the most often quoted reasons is that people simply cannot afford not to continue to have available to them schemes such as salary sacrifice when they have mortgages and other family commitments. Some people might think that is a pretty paltry excuse for not putting yourself forward to serve the public but, without wishing to comment on the merits of any members here, parliaments generally are scratching to find people who are willing to stand. I think that this measure might make a tiny bit of difference, and every bit of difference helps in terms of attracting people.

The Hon. T.G. Cameron interjecting:

The Hon. KATE REYNOLDS: Not being a member of the Labor Party, fortunately, I have not experienced that stampede. I indicate my support for the bill, but I do not want anyone to read anything into that about what that might mean with respect to my personal decisions. I reiterate my disappointment that the government has not made available more detail for us to scrutinise before we vote.

The Hon. NICK XENOPHON: I cannot support this bill. For decades the Remuneration Tribunal and its predecessors have considered the needs of members of parliament in determining what is reasonable and necessary for them to service their electorates, including the cost of a motor vehicle. This bill effectively takes away the right of the independent umpire to do that. It bypasses the independent umpire. I believe that it will lead to the diminution of the role and authority of the Remuneration Tribunal in dealing with such matters, and that is something that I regret very deeply. For the reasons set out by my colleagues the Hon. Julian Stefani particularly, the Hon. Terry Cameron and the Hon. Sandra Kanck, I cannot support this bill. I believe that it sends the wrong signal. Effectively, we are trammelling the authority of the Remuneration Tribunal and bypassing a system of using an independent umpire. For those reasons, I fundamentally disagree with this bill.

The council divided on the third reading:

AYES (15)

Dawkins, J. S. L.	Evans, A. L.
Gago, G. E.	Gazzola, J.
Gilfillan, I.	Holloway, P. (teller)
Lawson, R. D.	Lucas, R. I.
Reynolds, K. J.	Ridgway, D. W.
Roberts, T. G.	Schaefer, C. V.
Sneath, R. K.	Stephens, T. J.
Zollo, C.	

NOES (4)

Cameron, T. G.	Kanck, S. M.
Stefani, J. F.	Xenophon, N. (teller)

Majority of 11 for the ayes.

Third reading thus carried.

Bill passed.

GAMING MACHINES (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to amendments Nos 1 to 10 made by the Legislative Council without any amendment; agreed to amendment No. 11 with an amendment; agreed to suggested amendment No. 1 and amended the bill accordingly; and disagreed to suggested amendments Nos 2 and 3 and made the following amendments in lieu thereof:

Legislative Council's Amendment No. 11:

New Schedule—

After clause 45 insert:

Schedule 1—Related amendment of *Independent Gambling Authority Act 1995*

1—Amendment of section 17—Confidentiality

Section 17(3)—delete subsection (3)

House of Assembly's Amendment thereto

New Schedule—

Before clause 1 insert:

A1—Amendment of section 11—Functions and powers of Authority

Section 11(2a)(b)—delete paragraph (b) and substitute:

(b) the maintenance of an economically viable and socially responsible gambling industry (including an economically viable and socially responsible club and hotel gaming machine industry) in this State.

Schedule of the Suggested Amendments to which the House of Assembly has disagreed and made amendments in lieu thereof

No. 2.

New clause—

After clause 38 insert:

38A—Amendment of section 72A—Gaming tax

(1) Section 72A(4)—after paragraph (b) insert:

(ba) as to 3% of all gaming tax revenue—into the *Gamblers Rehabilitation Fund* established under this Part;

(2) Section 72A(5)—After "(b)" insert:

(ba)

No. 3

New clause—

After clause 39 insert:

39A—Insertion of section 73BA

After section 73B insert:

73BA—Gamblers Rehabilitation Fund

(1) The *Gamblers Rehabilitation Fund* is established.

(2) The Fund will be kept at the Treasury.

(3) The Treasurer will invite contributions to the Fund from stakeholders in the gambling industry.

(4) The money constituting the Fund will be applied in accordance with the directions of a committee established by the Minister for Families and Communities towards—

(a) providing treatment for persons suffering from gambling addiction; and

(b) overcoming other behavioural and social problems resulting from gambling; and

(c) community and school education programs designed to reduce problem gambling; and

(d) other appropriate early intervention strategies.

(5) The procedures of the committee will be as determined by the Minister for Families and Communities.

House of Assembly's Amendments in lieu thereof

No 2.

New clause—

After clause 38 insert:

38A—Amendment of section 72A—Gaming tax

(1) Section 72A(4)—after paragraph (b) insert:

(ba) as to $3.845 million—into the *Gamblers Rehabilitation Fund* established under this Part;

(2) Section 72A(5)—After "(b)" insert:

, (ba)

No 3.

New clause—

After clause 39 insert:

39A—Insertion of section 73BA

After section 73B insert:

73BA—Gamblers Rehabilitation Fund

(1) The *Gamblers Rehabilitation Fund* is established.

(2) The Fund will be kept at the Treasury.

(3) The Minister for Families and Communities will invite contributions to the Fund from stakeholders in the gambling industry.

(4) The money paid into the Fund under this Part will from time to time be applied by the Minister for Families and Communities towards programs for or related to minimising problem gambling or rehabilitating problem gamblers.

Consideration in committee.

Amendment No. 11:

The Hon. P. HOLLOWAY: I move:

That the Legislative Council agree to the House of Assembly's amendment to amendment No. 11.

By way of explanation to the committee, I indicate that a number of discussions have taken place since the gaming machines bill passed through this chamber 1½ weeks ago. A number of amendments were moved by the Legislative Council, and most of those amendments have been accepted by the government—some of them reluctantly. Nevertheless, the government, in seeking to gain the passage of the bill, and in particular to gain the objective of a reduction in the number of gaming machines of 3 000, has been prepared to make some changes. As I say, the government has accepted most of the amendments that were made by the Legislative Council.

The one with which the government had the most difficulty was the amendment of the Hon. Nick Xenophon (with which we disagree, and I will be moving that in a moment) that 3 per cent of all gaming tax revenue go into the Gamblers Rehabilitation Fund. As I pointed out at the time, the government had increased the amount of money going into the Gamblers Rehabilitation Fund from $800 000 to over $1.845 million over the course of this government—an increase getting on towards 200 per cent. However, if the Hon. Nick Xenophon's amendment had been carried, that, in turn, would have been increased four or fivefold and, quite frankly, with an increase of that magnitude it would be difficult to ensure that that sort of money would be spent wisely.

Instead the government, after some negotiation—and I thank all those responsible—during the past week has come up with a new amendment to pay a sum of $3.845 million into the Gamblers Rehabilitation Fund. We have accepted the Hon. Nick Xenophon's proposal that there be specifically in legislation a Gamblers Rehabilitation Fund. The government will increase that amount very substantially to $3.845 million. That is a guaranteed contribution. That is an increase in funding of some $2 million. This additional funding will commence with a pro rata share this financial year. Even if the Hon. Nick Xenophon's amendment had gone through, there was no specification as to when that would start, but I can inform the honourable member and the committee on behalf of the government that the additional funding will commence with a pro rata share this year.

In 2004-05, the government contribution to GRF services was $1.845 million, and that is why there will be an increase in funding of $2 million, which is a very substantial increase; and, with that increase, I am sure we can ensure that there will be a very substantial increase in services provided to assist problem gamblers. I can also inform the committee that the gaming industry has indicated that it will increase its commitment to reducing problem gambling by $750 000 per annum. That is an increase from $1.5 million to $2.25 million per annum. The industry should be commended on this step and on the acknowledgment of the need to increase resources in this area. Together, the contribution to services to minimise problem gambling and to rehabilitation services will be increased to over $6 million per annum. Certainly, the spirit of the Hon. Nick Xenophon's amendment is encapsulated in the recommendation before us. As a result of these measures, it will be a very substantial increase indeed. Again, I thank all those who have contributed, including industry, to this result.

I believe that one other amendment is part of this package of measures to try to resolve this issue and ensure that we achieve the reduction of 3 000 gaming machines, that is, the issue of viability. This bill contains a viability provision, which was part of amendment No. 11 made by this place, but it has a further amendment. I advise the committee that the amendment provides that, in performing its functions and powers, the Independent Gambling Authority must act consistently with the object of maintaining an economically viable and socially responsible gambling industry, including an economically viable and socially responsible club and hotel gaming machine industry in this state.

While the IGA Act already provides that it consider the broad objects of a sustainable and responsible gambling industry, this amendment ensures that the IGA specifically considers the sustainability and viability of the hotel and club gaming machine industry, as well as the gambling sector as a whole. The IGA correctly focuses on measures to address problem gambling. It will continue to have regard to the object of fostering responsibility in gambling and, in particular, of minimising harm caused by gambling. This amendment is not inconsistent with the approach introduced in this bill by the government, in which all guidelines, as well as codes of practice issued by the authority, are disallowable instruments. The provision reinforces that any decisions that affect the viability of the hotel and club gaming machine industry are appropriately considered by the parliament. Of course, this amendment does not prevent the authority from raising any matters with the government for consideration at any time.

In summary, a package of measures has been negotiated that includes a very substantial increase to a new Gamblers Rehabilitation Fund (the viability clause) and all the amendments passed by this place. All the other amendments to which I have referred have been accepted by the government. I seek the support of the committee for this package.

The Hon. R.I. LUCAS: I rise to indicate my support for the package that has been put to the committee. As members are aware, whilst this is a conscience vote for Liberal members, I am probably reflecting the view of a number of my colleagues in speaking to this package; however, ultimately, it will be an issue for them when we vote on it. As the leader has indicated, there has been a considerable degree of discussion between the industry and the government in relation to the amendments moved by this place. Whilst most of the amendments, which have now been agreed by the House of Assembly, are not the subject of our discussion, I want to acknowledge quickly the work done by colleagues, such as the Hons Angus Redford and Nick Xenophon and others, who moved various amendments that subsequently found their way into the package which has now been accepted in the other place and which are no longer part of the ongoing debate this evening.

There are some very important amendments, including the requirement that the IGA bring back a report on the smart card—an issue on which both the Hons Mr Xenophon and Mr Redford spoke, as did a number of other members. Another amendment related to the requirement for a report by the end of next year on the progress of the trading system. A number of members, including me, expressed significant concern about the adequacy of the proposed trading system as envisaged by the government. Many of us believe that it has significant deficiencies. At least under the arrangements now agreed there will be report on that by the end of next year.

The commission to be paid on the transfer of gaming machines, which will now be locked in by legislation, will be paid into the Gamblers Rehabilitation Fund. The government indicated that that, as a matter of policy, was to be its intention, and it is now formally part of the legislation. The bill now contains the provision that the parliament has the power to disallow existing guidelines. Members will be aware that proposed new guidelines were to be disallowable instruments under the legislation, but the existing guideline issued by the IGA to the industry will now also be a disallowable instrument, and there will be the power to disallow.

My colleague the Hon. Mr Redford moved an amendment relating to freedom of information. The Independent Gambling Authority will now be part of the agreed package of legislation. I understand that the government has decided that the issues of confidentiality and privacy for problem gamblers can be handled with the existing freedom of information legislation. I know that I speak on behalf of my colleague the Hon. Mr Redford and others when I say that, although we do not envisage any concerns or problems, should the government have the view in the future that there was a significant concern or loophole, I would be very surprised if opposition and Independent members were not prepared to sit down with the government to resolve that issue quickly.

A number of amendments were moved that are now part of the package. I will not go through all of them, but I welcome the fact that there has been agreement on them. There are two specific issues before us this evening, and one is the consequential amendment as constructed by the House of Assembly to the amendment for confidentiality. That is the inclusion in the functions and powers of the authority of what is known as an economically viable and socially responsible gambling industry clause.

Members would be aware that the member for Morialta first moved an amendment—not the same as this, but very similar to this in the House of Assembly—and that was defeated. Members would also be aware that I moved a similar amendment using the wording under the existing object provisions of the Independent Gambling Authority Act which used the word 'sustainability'; that was narrowly defeated, seven votes to six. Nevertheless it is a credit to the industry that this has been an issue near and dear to its heart. In the negotiations that it was conducting with the government, it has managed to construct a set of words that the government and its advisers were prepared to accept. Certainly, from my viewpoint, and I suspect that I speak on behalf of my colleagues, we are pleased to see that resolution. I know that there will be some members, such as the Hon. Mr Xenophon—who will speak in a moment too, I am sure—who, whilst they might accept most aspects of the agreed package, will probably continue to oppose this provision. However, I repeat the reasons why I think this is sensible, which is something along the following lines.

It was the clear intention of the majority of members in this place when the Independent Gambling Authority was first established that the whole issue of sustainability of the industry should be part of the object of the authority. Those of us who supported the establishment did so explicitly and with the understanding that the Independent Gambling Authority was not being constructed so that it could destroy the gaming and gambling industry in South Australia. It was twofold in its objects. It had to tackle the issues of problem gambling, but at the same time it needed to consider the issues of sustainability in the industry and also the sustainability of a responsible gambling industry. As I indicated

before, my colleague the Hon. Mr Redford is not here to refer to him by another phrase, but the presiding member of the Independent Gambling Authority—

The Hon. D.W. Ridgway: Not that Victorian lawyer?

The Hon. R.I. LUCAS: I think 'barrister' is the word. The presiding member appears to have taken a particular construction of the objects of the Independent Gambling Authority Act; that is, whilst it talks about a sustainable and responsible gambling industry, it is possible to achieve that whilst at the same time potentially driving out of existence one aspect of that industry that is the gaming industry. That is, you can have a socially responsible and sustainable gambling industry if you are talking about wagering, X-Lotto, Keno, the casino, and those sorts of things, and you can get rid of or significantly harm the gaming industry. As I indicated in my second reading speech, that was never the intention of the majority of members in this place.

I think that the presiding member does no credit to himself and the authority in seeking his own peculiar construction of the legislation. Indeed, I am informed that, after our second reading debate, when the presiding member was informed of the comments that I had made in relation to this and the intentions of the parliament, he haughtily retorted, 'Well, that was just the opinion of one member of parliament. He is entitled to interpret the legislation in his own way.' This package, as it has passed through this chamber, will be a clear, unequivocal and explicit message to the presiding member that this is not the view of just one member: it is now the view of the parliament. An amendment was moved by the government, negotiated with the industry and, I suspect, supported by the overwhelming majority of members of this place. The presiding member of the Independent Gambling Authority, whatever he might think, will now be required to follow not only the original spirit and intent of the legislation in this respect, but now also the explicit detail as outlined in this amendment.

Another issue is the vexed issue of the Gamblers Rehabilitation Fund. As I indicated, I was prepared to support the amendment moved by the Hon. Mr Xenophon, and I publicly paid tribute to him in this place. I also paid tribute to my colleagues in the House of Assembly—in particular, the member for Mawson, who wanted to move a similar amendment to beef up the Gamblers Rehabilitation Fund. However, through the processes in the House of Assembly, he was prevented from doing so. We are fortunate that the processes in this place allowed the amendment to be moved by the Hon. Mr Xenophon and to be supported by the majority of members. I indicated at the time that I was prepared to support it to allow the negotiations to continue. I thought that a jump from about $2 million to $9 million was probably an ambit claim from my viewpoint (I do not speak on behalf of the Hon. Mr Xenophon) and I was prepared to see negotiations between the industry and the government—and anyone else, for that matter—to see whether or not a sensible resolution could be reached.

I confided privately to the Hon. Mr Xenophon and, while I will not reveal his conversation with me, I am happy to reveal mine to him. In my view he should not, and we should not, settle for anything less than an extra $2 million to $3 million from the government in any compromise on the package. The issue has been clarified now that the foundation commitment from the government is $1.845 million. I understand that the extra $350 000 that had been discussed during our last debate was evidently an offer from the government of additional funding contingent on the industry agreeing to an extra $350 000. At that stage that had not been finalised with the industry; therefore, the existing level in the fund is the baseline at $1.845 million. I think that the Hon. Mr Xenophon accepts that and, indeed, I accept that as well. With this amendment the government will increase the $1.845 million, and more than double it, which increases by $2 million to $3.845 million.

I congratulate the industry (as the leader has done) because it has evidently given some indication of a willingness to increase its commitment from $1.5 million to $2.25 million—an increase of three-quarters of a million dollars. I understand that there are to be some ongoing discussions with the government in relation to the operation of the Gamblers Rehabilitation Fund and possibly even its governance structure. That is an issue for the government and the industry to negotiate, and I guess for the government to answer questions in the council from the Hon. Mr Xenophon and, indeed, others, if that is required.

When one adds that together, we are talking about almost $6.1 million. Although I was not aware of it, I understand that the casino currently contributes about $110 000 into the GRF, which takes it to about $6.2 million. Certainly, there has been some industry discussion that the government should negotiate with the casino to see whether or not it is prepared to increase its contribution, although I acknowledge that the casino has recently appointed a number of gambling responsibility officers (I do not think that is the correct title, but it is something along those lines). Another issue is that of the TAB—

The Hon. P. Holloway: They are called host responsibility coordinators.

The Hon. R.I. LUCAS: Yes; I knew I did not have the title right. I am indebted to the minister for his assistance; they are HRCs. The other industry sector which should perhaps negotiate with the government is the TAB, which is now privately owned and operated. There appears to be no reason why the TAB should not voluntarily make a contribution to the GRF for its operations. A member of this chamber raised with me the notion of the Lotteries Commission, and my view is that the Lotteries Commission is a wholly owned government operation and its contribution goes back to the government, and the government's contribution more than covers (in my view, anyway) the Lotteries Commission's potential contribution to the GRF.

So, potentially, we are going from just over $3 million to just over $6 million, in broad terms, and I think that is a very significant achievement in a full financial year. I pay credit to the Hon. Mr Xenophon, the member for Mawson in another place, and others who have supported this and helped bring it about. I also pay tribute to the industry, which I know is often criticised. I place on the record my congratulations to the Executive Officer, John Lewis, and the officers who work with him, as well as Peter Hurley, Brett Matthews and others who hold office in the AHA. I believe their willingness to significantly increase their contribution to the GRF and engage in ongoing negotiation has greatly assisted the capacity for the package to be resolved this evening.

In conclusion, in recommending the package to members, whilst it should not be the be all and end all, the fact is that, if this is agreed by a majority of members in this place, we will not have to contemplate, in the dying days of this week, a conference of managers between the two houses on a conscience vote issue. I would suggest to members, if they need any persuading, that that might be just the additional

inducement to support the package and ensure that we are all able to get away from here before Christmas time.

The Hon. NICK XENOPHON: At the outset, I believe the amendments moved by the Legislative Council have, by and large, strengthened the bill, in terms of its objects for reducing problem gambling. The amendment moved, with the support of the opposition, the Democrats and my fellow cross-benchers—the Hon. Terry Cameron and the Hon. Andrew Evans—with respect to smart card technology and requesting a report from the Independent Gambling Authority within six months, is something I believe we will revisit in this place next year. I hope there will be a comprehensive report and the basis for a debate to see whether we can significantly reduce the level of gambling addiction in this state caused by poker machines.

I acknowledge the Hon. Angus Redford's role with respect to the whole issue of smart card technology, as well as his interest and suggestions with respect to that issue. The amendment moved by the Hon. Mr Angus Redford providing for a review of gamblers rehabilitation services in this state is a good one. It is very timely and welcome, given that there will be a significant increase in the funding for gamblers rehabilitation in South Australia.

The amendment that was successfully moved by the Hon. Mr Lucas, with respect to the commission level going to the Gamblers Rehabilitation Fund after a certain level, is welcome because of the additional funding it will provide to assist problem gamblers. The Hon. Mr Lucas' amendments providing for the provision of reports, both in relation to the way in which the transferability system works, before the end of next year, are not only timely but also essential to monitor the effectiveness of the legislation.

Further, his amendment, to which I moved an amendment, requiring the Independent Gambling Authority to provide a report on the impact that the reduction of machines has on problem gambling and, in addition, requiring a more specific figure in terms of what it does in relation to the percentage figure of problem gambling in South Australia due to poker machines is very important. In that way, we can have some rigorous analysis to determine the impact of this legislation. I think it is a question of keeping the government (and this would apply to any government) on its toes to ensure that the legislation is as effective as it is meant to be.

In relation to the amendment with respect to the Gamblers Rehabilitation Fund, I note that a compromise has been reached, and I pay tribute to the opposition. While my views on poker machines and the views of the Hon. Mr Lucas are diametrically opposed, there was a common ground that more had to be done for problem gamblers in this state. Whatever their viewpoints with respect to poker machines, the majority view of members in this chamber was that more had to be done to assist those hurt by poker machines. Having waiting periods of weeks, in some cases months, for the Flinders Medical Centre program to assist problem gamblers was simply unacceptable.

The level of support for problem gamblers and their families was not there in a timely enough fashion for so many problem gamblers. The people of the northern suburbs did not have easy access to the intensive treatment program at the Flinders Medical Centre. I believe that this compromise amendment, a more than doubling of the current fund, will go a long way to deal with that. So, I express my unreserved gratitude to members of the opposition and my crossbench colleagues, the Democrats, the Hon. Terry Cameron and the Hon. Andrew Evans, for supporting those amendments. I also pay tribute to the member for Mawson in the other place who has consistently argued for increases in funding. I am pleased that the government has been willing to compromise on this and this has not been the subject of a conference of managers.

I will ask a couple of questions of the minister with respect to the increase in the fund. The hotels association has agreed to increase its funding from $1.5 million to $2.25 million, and obviously that is pleasing. I note that the $1.5 million figure was put in place nine years ago, so some would say that this is a long overdue figure, given the massive increases in revenue for the industry since that time. I note that the government has been discussing the issue of governance with the industry. So, I ask the minister: in terms of the issues of governance, have any undertakings been given? To what extent will the Hon. Angus Redford's amendment be taken into account that would require a review of the whole system of gamblers rehabilitation? There should not be any dispute in this or the other place about the need to ensure that every dollar spent on gamblers rehabilitation is spent effectively to maximise its benefit in reducing levels of problem gambling in the community.

Further, when will funds be made available? I appreciate that it is pro rata, but when is the government expecting the first additional flows of money to come into play? Will the government be relying on the existing Gamblers Rehabilitation Fund with respect to any early determinations as to where these additional moneys will go, or will it be waiting for the review that it appears to be discussing with the industry? I am deeply concerned that any review of the fund ought to take into account as a primary consideration the views of those at the front line—the problem gamblers, the welfare agencies that have to deliver services, and the independent consultants or independent organisations that have some knowledge and expertise in the delivery of services with respect to this. For instance, John Hannifin is the person responsible for allocating funds for gamblers rehabilitation in New Zealand, and I know that the Hon. Angus Redford has met with him, as have I.

The Hon. T.J. Stephens: Where is he from?

The Hon. NICK XENOPHON: Mr Hannifin from New Zealand has an impeccable reputation in that country for the way in which he has administered the scheme and ensured its effectiveness in New Zealand. The figures that I have seen from New Zealand indicate that its level of success and its ability to get to as many problem gamblers as possible with the funds available is something that we should aim for. My questions are: can the government assure us that this consultation with the industry is not just a one-way consultation between government and industry, that it is going to be multilateral and will also include those at the front line and problem gamblers and, for that matter, the Independent Gambling Authority, given its statutory responsibilities?

They are very important issues but the fact that the fund is going to double in size is long overdue. The opposition did not have to support my amendment to keep the issue alive and that has led to this eventual compromise. Whatever differences I have with members such as the Hon. Mr Lucas on poker machines, I express my gratitude that it has been acknowledged that more needs to be done for problem gamblers. I believe that this amendment will go a long way to alleviating some of the suffering and assisting those who have been hurt by poker machines. Having said that, I still subscribe to the philosophy that it is better to have a fence at the top of the cliff rather than the best-equipped ambulance at its base. Given that the parliament was not prepared to

undertake more radical reforms with respect to the poker machine industry, this substantial increase in the fund is most welcome.

The one amendment that I have very serious concerns about is the amendment to section 11 with respect to the functions and powers of the authority under the Independent Gambling Authority Act. Section 11(2a) provides:

> In performing its functions and exercising its powers under this Act or the prescribed Act, the authority must have regard to the following objects:

Paragraph (a), which is not being amended, refers to:

> the fostering of responsibility in gambling and, in particular, the minimising of harm caused by gambling, recognising the positive and negative impacts of gambling on communities; and

Paragraph (b) provides:

> the maintenance of a sustainable and responsible gambling industry in this state.

I object to the proposed amendment of paragraph (b) that refers to the maintenance of an economically viable and socially responsible gambling industry (including an economically viable and socially responsible hotel and club gaming machine industry) in this state, because I believe that will even further fetter the Independent Gambling Authority in considering its important statutory role.

I have always thought that there has been a tension between paragraph (a) and paragraph (b), and my fear is that proposed new paragraph (b) in the Independent Gambling Authority Act will shift the balance further in favour of the industry by the addition of the words 'economically viable', and that it will in some way fetter even further the role of the authority. I note what the Hon. Mr Lucas has said in relation to his concerns, but I have always thought that there was a level of tension between paragraphs (a) and (b), and that paragraph (b) in its proposed form will weaken the role of the authority.

I note that the Leader of the Government indicated his view that this will not prevent the authority from raising any issues with government, but I would have thought that in a way it would, in that, if this amendment is passed, the authority will be in some way restricted, constrained or limited in what it can say about the gaming machine industry in this state. It will be constrained by virtue of almost a direction in this paragraph and, for that reason, I oppose it, because I believe that it will unduly fetter the role of the authority.

This legislation is all about reducing the level of problem gambling. Obviously, I wanted to see much broader reforms, but I believe that this package, apart from the amendment to section 11 of the Independent Gambling Authority Act, will be a step in the right direction in assisting problem gamblers; and, in particular, the amendment that deals with a substantial increase—a doubling—in the level of funding for the Gamblers Rehabilitation Fund.

With respect to that fund, as I understand it, that is the second amendment. Whilst honourable members have been discussing it broadly, I do not know whether it is appropriate for me to ask further questions on the Gamblers Rehabilitation Fund now or wait for it to be considered. Perhaps I can just ask a further question of the minister in that respect. Given that the wording has been amended somewhat, so that there is greater discretion on the part of the minister, and that the money paid into the fund under this part will from time to time be applied by the Minister for Families and Communities towards programs for or related to minimising problem gambling or rehabilitating problem gamblers, how does the government say that that wording will operate in reality with respect to 'from time to time'? Does that mean that those funds will not be expended this year, in terms of the pro rata increase, or that they will be? What will be the criteria?

Will the minister be guided by the Gamblers Rehabilitation Fund committee, will it be guided primarily by industry, or will it be guided by independent experts or the Independent Gambling Authority? How will it work in relation to its administration? Whilst I acknowledge that industry's increased contribution is welcome (although it is not proportionate to the increase in revenue that the industry has obtained over the years), is that also conditional on a revamping of the Gamblers Rehabilitation Fund to the satisfaction of the industry?

The CHAIRMAN: I think the questions asked by the Hon. Mr Xenophon relate to the gamblers rehabilitation amendments. I would ask the minister to take them on board, and his adviser can prepare the answers. I think that we should deal with clause 11 at this stage, and the others as they come up in sequence. But it will give the minister and his adviser an opportunity to consider their answer.

The committee divided on the motion:

AYES (14)

Cameron, T. G.	Dawkins, J. S. L.
Gago, G. E.	Gazzola, J.
Holloway, P. (teller)	Lawson, R. D.
Lucas, R. I.	Ridgway, D. W.
Roberts, T. G.	Schaefer, C. V.
Sneath, R. K.	Stefani, J. F.
Stephens, T. J.	Zollo, C.

NOES (5)

Evans, A. L.	Gilfillan, I.
Kanck, S. M.	Reynolds, K.
Xenophon, N. (teller)	

Majority of 9 for the ayes.

Motion thus carried.

Suggested Amendments Nos 2 and 3:

The Hon. P. HOLLOWAY: I move:

> That the Legislative Council do not insist on its suggested amendments Nos 2 and 3 but agree to the alternative amendments made in lieu thereof.

I have already spoken to the package as a whole, but the Hon. Nick Xenophon did ask some questions in relation to the Gamblers Rehabilitation Fund clauses, which I will seek to answer as best I can. First, the honourable member asked a question about governance and whether there had been a commitment from the government. I am advised that as yet there is no commitment on the future structure of the Gamblers Rehabilitation Fund given that discussions have only just begun. The review will occur as required by legislation, and that will flow onto discussions on the appropriate structure of the GRF.

In relation to the second question asked by the honourable member in relation to when funds would flow from the Gamblers Rehabilitation Fund, as I indicated earlier, the government has agreed to apply the additional funding as soon as the bill is proclaimed, which will be early next year when the regulations are complete. Clearly, regulations are needed and they should be completed early in the new year. The bill will be proclaimed at that stage, and that is when the pro rata funding will go into the scheme.

The other issue raised by the honourable member related to the new suggested wording of part 4 of new clause 73BA.

I am advised that reference to the words 'from time to time' in relation to money paid into the fund is standard phrasing that is used in legislation. I think that it simply refers to the fact that money will be paid as the minister directs. Given that it is standard phrasing, I do not think that the honourable member should read anything untoward into that.

In relation to the GRF committee, as I just indicated there is a review. At present the GRF committee advises the minister on spending from the GRF. Obviously, the role of that body would be subject to review by government, to which we referred earlier. If the honourable member has other questions or he would like more detail, I will be happy to answer him.

The Hon. NICK XENOPHON: I thank the minister for his response. In relation to the review of governance of the GRF, I know that there have been discussions between government and industry, but what about welfare agencies, problem gambling experts and others who would be seen as independent of both industry and the welfare providers in order to maximise the effectiveness of the fund and what the fund does? What assurances can the government give that there will be a level of transparency and openness in terms of this review process of the GRF, which has an added importance now given that it has substantially increased funding and, obviously, will have a greater reach in the community to try to tackle the issue of problem gambling? What will be the process? The minister refers to legislation. Will the minister give the committee a timetable for that legislation, and will there be broad consultation with all interested parties?

The Hon. P. HOLLOWAY: In relation to consultation, I will clarify the position. I indicated that there will be discussions. Obviously, it is early days yet. I am not sure whether any discussions have taken place, but the government has indicated that there will be discussions. I am advised that the sort of stakeholders to which the honourable member referred are already represented on the GRF committee; and, obviously, as members of that committee they would be a part of the considerations of the future of the committee. I think that is understood. In relation to the timetable of the legislation, I have indicated that we would be looking at proclaiming it early in the new year when the regulations are ready.

The Hon. NICK XENOPHON: Does the minister intend to have separate legislation for the GRF? Will we be moving any legislative amendments to the GRF?

The Hon. P. HOLLOWAY: No, there will be no legislation. The only legislation that will apply to the GRF is what is included in new clause 73BA.

The Hon. R.I. LUCAS: The only point I want to acknowledge is the minister indicated in his earlier comments that there was a commitment from the government to pro rata increase the funding to the GRF for this year.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: I welcome that. My understanding in the discussion I had with the minister was that potentially we are looking at half of the $2 million, which is $1 million for a six-month period. I am sure there is no real reason for an excessive delay in the proclamation of the legislation. I welcome the minister's commitment to pro rata. If there can be an early proclamation, it would seem to make sense that there would be approximately $1 million for the rest of this financial year and that $2 million would then factor in for financial year 2005-06 and onwards. I welcome that acknowledgment from the government on the issue.

The Hon. NICK XENOPHON: If the minister has already answered this, I apologise for asking it again: will the industry's increased contribution of $750 000 kick in on a pro rata basis or at some other time?

The Hon. P. HOLLOWAY: I am advised that that matter has not been discussed with the industry yet so I cannot advise the honourable member on that.

Motion carried.

STATUTES AMENDMENT (LEGAL ASSISTANCE COSTS) BILL

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

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I move:

That this bill be now read a second time.

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

Leave granted.

The *Statutes Amendment (Legal Assistance Costs) Amendment Bill* amends two Acts that deal with legal aid—the *Criminal Law (Legal Representation) Act 2001* and the *Legal Services Commission Act 1977*.

The Bill does two things.

It defines legal assistance costs in the same way in the two legal aid Acts, and makes the terminology in these Acts consistent in describing how the Legal Services Commission (the Commission) may recover and apply a contribution towards the costs of providing legal assistance to an assisted person, and consistent also with laws that allow the Commission to use confiscated proceeds of crime to reimburse its costs of providing legal assistance. In doing so, the Bill does not change the obligations or entitlements of assisted persons.

The Bill also clarifies the provision in the *Legal Services Commission Act* that governs the Commission's relationship with the legal practitioners it employs to provide legal assistance and with assisted persons.

I will deal first with the amendments about the recovery of legal assistance costs.

Recovery of legal assistance costs

The *Criminal Assets Confiscation Act 1996* allows the property of a person charged with a criminal offence to be restrained from further dealings (pending the trial of the offence) if it has been acquired for the purposes of or used to commit a certain type of offence, or represents the proceeds of such an offence. It allows property restrained in this way to be used by the Legal Services Commission to defray the costs of providing legal assistance to that person.

The *Legal Services Commission Act* and the *Criminal Law (Legal Representation) Act* entitle the Commission to recover a contribution towards the costs of providing legal assistance from an assisted person and to use the money so recovered to pay those costs. At present, the definitions and terminology used in each of these Acts and the *Criminal Assets Confiscation Act* are not consistent and appear to confuse an assisted person's liability to make a contribution towards the Commission's costs of providing legal assistance with the Commission's liability to pay those costs. The Legal Services Commission says this may lead to problems of interpretation.

This Bill will ensure that the cost to the Commission of providing legal assistance to an assisted person is described in the same way, and has the same meaning, whether for the Commission's entitlement to seek reimbursement of it from the Treasurer under the *Criminal Law (Legal Representation) Act* or for the Commission's entitlement to assess and enforce an assisted person's liability to make payments towards it under the *Legal Services Commission Act*.

The Bill does not also amend the *Criminal Assets Confiscation Act*. This is because the Government intends to replace the criminal conviction scheme of asset confiscation in that Act with a civil scheme of asset confiscation, matching what happens in most other parts of Australia. The new legislation will describe the Commission's entitlement to use the proceeds of crime to meet the cost of providing legal assistance in a way that is consistent with the amendments made in this Bill.

I now turn to the amendments that deal with the Commission's responsibility for the work of its employed solicitors.

Section 29 of the *LSC Act*

Members may remember inserting a new section 29 of the *Legal Services Commission Act* when enacting section 11 of the *Legal Services Commission (Miscellaneous) Amendment Act 2002* in October 2002. Section 29, as inserted by section 11 of the amending Act, allows the Commission to undertake standard case management, supervision and quality assurance of the legal work of its employed legal practitioners (Commission practitioners) by creating an artificial retainer between the Commission and the assisted person.

After section 11 was enacted, the Law Society expressed concern that the provision inserted by that section might apply to private practitioners and that the retainer might be too wide.

After thorough consideration and further consultation with the Commission and the Law Society, I have had section 29 re-drafted. Clause 20 of the Bill substitutes a new section 29.

The new section 29 overcomes the initial problem identified by the Commission—that the retainer between a Commission practitioner and the assisted person may prevent the Commission, as employer, supervising that practitioner's work and re-allocating files where necessary.

Like the current version of section 29 (that is, the version inserted by section 11 of the *Legal Services Commission (Miscellaneous) Amendment Act 2002)*, the proposed new section creates an artificial retainer between the Commission and the assisted person. Unlike the current section, that retainer comes into play only when the Commission assigns work to a legal practitioner employed by the Commission (a Commission practitioner), and then solely for the purpose of the Commission's managing the provision of legal assistance to an assisted person by that Commission practitioner. In all other respects, and specifically in the application of Part 3 of the *Legal Practitioners Act*, the retainer is between the Commission practitioner and the client.

Of course, there may still be room for argument over where the line is to be drawn between the Commission's deemed retainer and a Commission lawyer's actual retainer with the assisted person. That cannot be avoided. The Commission can always safeguard its position further by spelling this out in its contracts of employment and in the conditions of aid for assisted persons.

There is also the possibility that a direct retainer between the Commission and assisted persons, even when confined like this, could place the Commission in a position of conflict of interest in cases of co-accused to whom legal assistance is provided by Commission practitioners. This is just one aspect of the Commission's potential exposure to conflict, a wider problem than can be dealt with in this Bill. I intend to consult further with the Law Society and the Commission to see if there is a need for legislation about this.

In commenting on current section 29, the Law Society said that the artificial retainer between the Commission and the assisted person may place the assisted person at risk because the Commission would not be a legal practitioner in any relevant sense. In contrast to a private legal firm, the Commission would have no professional conduct obligations towards an assisted person and no professional indemnity insurance as a legal practitioner.

The Bill overcomes these problems. Like a private legal firm, the Commission may re-allocate files between employees and give directions on the conduct of a client file through its senior practitioners. It is accountable professionally for those actions because the Bill takes it, for precisely that purpose, to be the legal practitioner retained by the client. Equally, the Commission practitioner handling the file is bound to meet the professional standards set by legal professional conduct rules and is subject to the same professional requirements as any other legal practitioner. The Bill specifically says that Commission practitioners are retained by the assisted person for the purposes of Part 3 of the *Legal Practitioners Act*. Although Commission practitioners are exempted from taking out professional indemnity insurance under clause 15(2) of the Legal Practitioners Professional Indemnity Insurance Scheme 1996, they are covered by the Commission's own professional-indemnity insurance, obtained through SAICORP. Claims for legal-professional negligence are presently made against the individual Commission lawyer. If the retainer is between the Commission and the client, the claim may be made against the Commission rather than, or as well as, the Commission practitioner. The claim will be met by the Commission, whether the respondent is the Commission or the Commission lawyer, and from the same professional indemnity insurance fund. The assisted person is fully covered for any claim connected with the provision of legal assistance, whether this be against the Commission or the Commission practitioner.

I commend the Bill to members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

This clause provides that the Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Criminal Law (Legal Representation) Act 2001*

4—Amendment of section 4—Interpretation

This clause inserts a definition of ***legal assistance costs*** consistent with the definition in the *Legal Services Commission Act 1977*.

5—Amendment of section 6—Entitlement to legal assistance

This clause makes a minor amendment to the examples in section 6(3) of the principal Act to ensure consistency of terminology when referring to ***legal assistance costs***.

6—Substitution of heading to Part 5

7—Substitution of heading to Part 5 Division 2

These clauses substitute new headings as a consequence of the amendments made in relation to ensuring consistency of the terms ***contribution*** and ***legal assistance costs***.

8—Amendment of section 13—Recovery from financially associated persons

9—Amendment of section 14—Power to deal with assets

10—Amendment of section 17—Periodic accounts and final accounts

11—Amendment of section 18—Reimbursement of Commission

These clauses make minor amendments to ensure consistency of terminology when referring to payment of legal assistance costs by assisted persons and persons financially associated with assisted persons.

Part 3—Amendment of *Legal Services Commission Act 1977*

12—Amendment of section 5—Interpretation

This clause inserts and amends a number of definitions; in particular, it amends the definition of ***legal assistance costs*** to clarify what constitutes those costs for both practitioners employed by the Legal Services Commission (**Commission practitioners**), and private practitioners who provide assistance to an assisted person.

13—Amendment of section 18—Recovery of legal assistance costs from assisted persons

This clause makes amendments to ensure consistency of terminology when referring to ***legal assistance costs***. It also makes it clear that the Director may stipulate that a condition imposed on a grant of legal assistance may be that the assisted person indemnify the Commission in full for legal assistance costs.

14—Amendment of section 18A—Legal assistance costs may be secured by charge on land

This clause makes amendments to ensure consistency of terminology when referring to ***legal assistance costs***.

15—Amendment of section 18B—Special provisions relating to property subject to restraining order

This clause clarifies the position that an assisted person may be liable to the Commission for the whole of his or her legal assistance costs and that the Commission may secure that liability by a charge on property subject to a restraining order.

16—Insertion of section 18C

This clause inserts a new section 18C, which provides that the Director of the Legal Services Commission must determine a scale of fees for professional legal work.

17—Amendment of section 19—Determination and payment of legal assistance costs to legal practitioners (other than Commission practitioners)

This clause clarifies the situation in respect of payment of legal practitioners (other than Commission practitioners) who provide assistance to assisted persons.

18—Amendment of section 23—Legal Services Fund

19—Amendment of section 26—Commission and trust money

These clauses make amendments to ensure consistency of terminology when referring to ***legal assistance costs***.

20—Substitution of section 29

New section 29 provides that for the purposes of managing the provision of legal assistance to an assisted person by a Commission practitioner, the Commission—

- will be taken to be the legal practitioner retained by the person to act on the person's behalf; and
- may require a Commission practitioner to provide legal assistance to the person; and
- must supervise the provision of legal assistance to the person by the Commission practitioner.

Despite this, for the purposes of Part 3 of the *Legal Practitioners Act 1981*, the legal practitioner for an assisted person is the Commission practitioner required by the Commission to provide legal assistance to the person. The Director is responsible for ensuring that legal assistance provided to assisted persons by Commission practitioners is properly allocated and supervised.

The Hon. R.D. LAWSON secured the adjournment of the debate.

TEACHERS REGISTRATION AND STANDARDS BILL

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

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I move:

That this bill be now read a second time.

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

Leave granted.

The Teachers Registration and Standards Bill will establish the Teacher Registration Board in this State as an independent body, under its own legislation. The key role of the Board will be to promote and regulate our teaching profession.

The object of this Bill is to establish a system of teacher registration that will safeguard the public interest by ensuring our teaching profession is of high quality and its members are both competent educators, and fit and proper persons to have the care of children.

When enacted the Bill will repeal Part 4 of the *Education Act 1972*. These provisions are now 32 years old and no longer meet community expectations nor the national standard required regarding teacher registration.

The Bill is part of the Government's *Keeping Them Safe* child protection reforms. It supports the protection of children and recognises the professionalism of South Australian teachers, who work with children and young people both in our government and non-government schools and preschools.

It will raise the status of the profession and those standards of teaching required for the purposes of registration. It will strengthen the powers of the Teachers' Registration Board in regulating and maintaining a high quality teaching workforce.

Public consultation has indicated overwhelming support for the Bill, and confirmed that it is a significant and much needed improvement on the current provisions in the Education Act. Detailed and valuable input was received from teachers, community members and organisations, Parent and Professional Associations, Catholic Education SA, the Association of Independent Schools of SA Primary, the Independent Education Union, the Australian Education Union and the current Teachers Registration Board.

Respondents to the consultation strongly supported the intent of the Bill to strengthen the protection of children in our schools and enhance child safety and welfare measures. Respondents considered it timely for the powers of Teachers' Registration Board to be reconsidered, particularly in the light of current cases of abuse. The need for the public to have confidence in our teachers was affirmed, through the consultation feedback, as a guiding impetus for change. All key stakeholders have contributed to the process of refining this Bill, and many specific suggestions provided during the consultation have been included. The Bill that you have before you today is a significant, major reform of teacher registration and standards.

The Bill will give assurance to teachers and the wider community that the high quality of our teaching profession will be maintained over time. It will also provide assurance that our systems of teacher registration and monitoring of the profession afford the best possible protection to children and students, across all school sectors, in South Australia.

Key features of the Bill include:

- The provision of rigorous measures and capacity for the Teachers' Registration Board to ensure quality and 'fitness to teach' standards that are in line with nationally agreed measures.
- Enhanced ability of the Board to screen, monitor and make decisions on the suitability of teachers to work with children in the school and preschool environment.
- Enabling the Board to impose preconditions on an application for registration and subsequent conditions on registration, renewal and where a Special Authority to teach is granted. The Board will have the authority to require criminal history checks and current training in mandatory reporting of suspected child abuse, prior to registration and renewal.
- Providing authority for the Board to undertake investigations and apply disciplinary action, where appropriate, after an open and transparent inquiry. The Board will be have the capacity to reprimand, fine, impose conditions, suspend, cancel or disqualify from registration.
- Enhanced provisions for the sharing of critical information between the Board, employers in all schooling sectors, the Police, and Australian and New Zealand teacher regulatory bodies to stop movement of child abusers between schools and across States.

This Bill will advance and enhance professional recognition of our teachers, while delivering many new safeguards for the safety and wellbeing of children. While I am confident that the overwhelming majority of our teachers are clearly of the utmost integrity, we need to ensure that the protection of our children from physical, sexual or psychological abuse is paramount.

The Bill establishes the Teacher's Registration Board as an independent statutory authority with the powers of a body corporate. This autonomy is balanced with a limited power for the Minister to give written direction to the Board when it is in the public interest. The Minister must lay any such direction before Parliament within three sitting days of giving the direction. The Minister may not give a direction that relates to a particular person or a particular application or inquiry or the performance by the Board of its function of determining qualifications and experience for the purposes of registration.

Significant work is underway at the national level to ensure consistency of standards for the teaching profession and this Bill will put our registration practices at the forefront of that change. It places responsibility with the Teachers Registration Board for the development of those standards required by people seeking to be registered teachers, and acknowledges the role of the Board in supporting professional standards established within the education field.

The Bill rightly enables the Teacher's Registration Board to ensure children's safety by assessing the fitness and propriety of people seeking registration, and renewal of registration, as well as those seeking a Special Authority to teach.

Transitional provisions contained in the legislation will provide for retrospective criminal history checks on teachers who started practising before 1997, two-thirds of whom have never been checked. Checks will be conducted on all 35 700 teachers currently registered in this State. The Government is providing $700 000 to fund the cost of the checks and ensure a new benchmark is set for future confidence of parents and the wider community.

The Bill will help to ensure that South Australians can have the utmost confidence in the quality and professionalism of South Australian teachers.

I commend the Bill to honourable members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

Various terms used in the Bill are defined. Attention is drawn to the following:

School is defined to mean a school established for the purpose of providing education at primary or secondary level, whether or not also for the purpose of providing a pre-school education.

Pre-school education is defined to mean the provision of courses of education, training and instruction to children under the age of 5 years.

By these definitions, as they are used in subsequent provisions, the Bill is limited in its application to teaching at pre-school, primary and secondary levels.

Part 2—Object of Act

4—Object of Act

The object of the measure is to establish and maintain a teacher registration system and professional standards for teachers to safeguard the public interest in there being a teaching profession whose members are competent educators and fit and proper persons to have the care of children.

Part 3—Teachers Registration Board

5—Establishment of Teachers Registration Board

The *Teachers Registration Board of South Australia* is established as a body corporate.

6—Functions of Teachers Registration Board

This clause sets out the functions of Teachers Registration Board as follows:

- to administer the provisions of the measure for the regulation of the teaching profession;
- to promote the teaching profession and professional standards for teachers;
- to confer and collaborate with teacher education institutions with respect to the appropriateness for registration purposes of teacher education courses;
- to confer and collaborate with teacher employers, the teaching profession, teacher unions or other organisations and other bodies and persons with respect to requirements for teacher registration and professional and other standards for teachers;
- to confer and collaborate with other teacher regulatory authorities to ensure effective national exchange of information and promote uniformity and consistency in the regulation of the teaching profession within Australia and New Zealand;
- to keep the teaching profession, professional standards for teachers and other measures for the regulation of the profession under review and to introduce change or provide advice to the Minister as appropriate.

7—Primary consideration in performance of functions

The Teachers Registration Board must have the welfare and best interests of children as its primary consideration in the performance of its functions.

8—Directions by Minister

The Minister is empowered to give directions to the Teachers Registration Board in the public interest, but not any direction that relates to a particular person or a particular application or inquiry or the performance by the Board of its function of determining qualifications or experience for registration. Any direction must be preceded by consultation with the Board and be laid before each House of Parliament within 3 sitting days.

9—Membership of Teachers Registration Board

This clause provides for the Board to have a membership of 16, including nominees of the Catholic Education Office, the Association of Independent Schools of South Australia Incorporated, the Australian Education Union (S.A. Branch), the Independent Education Union (S.A. Branch) and the State's universities.

10—Terms and conditions of membership

This clause contains the usual provisions concerning terms and conditions of membership.

11—Remuneration

A member of the Teachers Registration Board will be entitled to remuneration, allowances and expenses determined by the Governor.

12—Conflict of interest etc under Public Sector Management Act

The *Public Sector Management Act 1995* has been amended to include conflict of interest provisions for bodies such as the Board. This clause makes it clear that a member of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of that Act by reason only of the fact that the member has an interest in the matter that is shared in common with teachers generally or a substantial section of teachers in this State, or schools or kindergartens generally or substantial section of schools or kindergartens.

13—Validity of acts of Teachers Registration Board

An act or proceeding of the Teachers Registration Board or a committee of the Teachers Registration Board will not be invalid by reason only of a vacancy in its membership or a defect in the appointment of a member

14—Procedures of Teachers Registration Board

This clause contains the usual provisions concerning procedures for meetings.

15—Registrar of Teachers Registration Board

There is to be a Registrar of the Teachers Registration Board.

16—Committees

The Teachers Registration Board may establish committees.

17—Delegation

This clause allows delegation by the Board. However, the Board may only delegate the holding of an inquiry to a committee of the Board that is comprised of not less than 3 members of the Board and includes a member who is a legal practitioner and a member who is a practising teacher.

18—Accounts and audit

This clause contains the usual provisions concerning accounts and audit.

19—Annual report

This clause contains the usual provisions requiring annual reporting. An annual report of the Board must also include details of any delegation of a function or power of the Board in operation during the relevant financial year.

Part 4—Requirement to be registered

20—Requirement to be registered

It will be an offence with a maximum penalty of $5 000 if a person who is not a registered teacher—

- undertakes employment as a teacher, principal or director at a school or recognised kindergarten; or
- for a fee or other consideration, personally provides primary or secondary education, or offer to do so; or
- claims or pretends to be a registered teacher.

It will be an offence with a maximum penalty of $10 000 if—

- a person employs another person as a teacher, principal or director at a school or recognised kindergarten and the other person is not a registered teacher; or
- a person employs another person in the course of a business to provide primary or secondary education and the other person is not a registered teacher.

These prohibitions do not apply in relation to a person acting in accordance with a special authority to teach granted by the Teachers Registration Board under Part 6.

Part 5—Registration

21—Eligibility for registration

A person is to be eligible for registration as a teacher if the person—

- has qualifications and experience prescribed by regulation or determined by the Teachers Registration Board to be appropriate; and
- has met any other requirements for registration prescribed by regulation or contained in professional standards or determined by the Board to be necessary for registration; and
- is a fit and proper person to be a registered teacher.

A person is to be eligible for provisional registration as a teacher if the person does not have the necessary experience but is otherwise eligible for registration.

22—Application for registration

This clause deals with applications for registration.

23—Grant of registration

The Board may grant registration (or provisional registration) to persons who are eligible.

24—Conditions of registration

Registration may be made subject to conditions.

The Board must make it a condition of every registration that—

- if the person is charged with or convicted of an offence of a kind specified in the condition (which may include offences under the law of South Australia or elsewhere), the person must, within 14 days, give written notice of the charge or conviction to the Board containing the details specified in the condition;

- if the person is dismissed from employment as a practising teacher in response to allegations of unprofessional conduct, or resigns from employment as a practising teacher following allegations of unprofessional conduct, the person must, within 14 days, give written notice of the person's dismissal or resignation to the Board containing the details specified in the condition;
- if the person is dismissed from any employment in response to allegations of improper conduct relating to a child, or resigns from employment following allegations of improper conduct relating to a child, the person must, within 14 days, give written notice of the person's dismissal or resignation to the Board containing the details specified in the condition.

25—Offence to contravene certain conditions of registration

It will be an offence to contravene conditions of registration requiring the Board to be notified of a matter or imposing a restriction on the practice of teaching.

26—Term of registration

The usual term of registration will be 3 years. Registration may be made subject to conditions reducing the term in particular cases.

27—Requirement for provision of information

The Teachers Registration Board or the Registrar may, at any time, require a registered teacher or the employer or a former employer of a registered teacher to provide information relating to the teacher or the teacher's employment.

28—Register

This clause makes detailed provision about the keeping of a register relating to registered teachers and public access to the register.

29—Certificates of registration

This clause deals with the issuing of certificates of registration.

Part 6—Special authority for unregistered person to teach

30—Special authority for unregistered person to teach

The Teachers Registration Board may, on application by a person who is not a registered teacher, in its discretion, grant the applicant a special authority to teach for a period and subject to conditions specified by the Board.

The Board may not, however, grant a person a special authority unless the person consents to the conduct by the Board of a criminal record check and meets any requirements prescribed by regulation.

The Board may, in its discretion and without any requirement for a hearing or other process, by written notice to the holder of a special authority, vary or revoke the special authority.

31—Register

The Teachers Registration Board must keep a register of persons granted special authorities.

Part 7—Action to deal with unprofessional conduct or incapacity of teachers

32—Application and interpretation

Part 7 is to apply to conduct engaged in by a teacher whether before or after the commencement of the measure and whether within or outside South Australia.

In Part 7, ***teacher*** is defined to mean a person who is or has been employed as a teacher whether or not the person is or has been registered as a teacher.

33—Cause for disciplinary action

There is to be proper cause for disciplinary action against a teacher if—

- the teacher has improperly obtained registration as a teacher; or
- the teacher has been guilty of unprofessional conduct; or
- the teacher is not a fit and proper person to be a registered teacher; or
- the teacher's registration or other authority to teach has been suspended, cancelled or otherwise withdrawn by another teacher regulatory authority.

The Teachers Registration Board may have regard to any evidence of the teacher's conduct that it considers relevant (no matter when the conduct is alleged to have occurred), regardless of whether the information was before or could have been before the Board at the time.

34—Registrar may conduct investigation

The Registrar is empowered to conduct investigations.

35—Inquiries and disciplinary action

The Teachers Registration Board may, on complaint by the Registrar or of its own motion, hold an inquiry to determine whether conduct of a teacher constitutes proper cause for disciplinary action.

If, after conducting an inquiry, the Board is satisfied on the balance of probabilities that there is proper cause for disciplinary action against the teacher, the Board may do one or more of the following:

- reprimand the teacher;
- order the teacher to pay a fine not exceeding $5 000;
- in the case of a registered teacher—
- impose conditions of the teacher's registration;
- suspend the teacher's registration for a specified period or until the fulfilment of specified conditions or until further order;
- cancel the teacher's registration with immediate effect or effect at a future specified date;
- disqualify the teacher from being registered as a teacher permanently or for a specified period or until the fulfilment of specified conditions or until further order.

36—Punishment of conduct that constitutes offence

If conduct constitutes an offence and also proper cause for disciplinary action, the taking of disciplinary action is not to be a bar to conviction and punishment for the offence, nor is conviction and punishment for the offence to be a bar to disciplinary action .

However, if a person has been found guilty of an offence and circumstances of the offence are the subject matter of an inquiry, the person is not to be liable to a fine under Part 7 in respect of conduct giving rise to the offence.

37—Employer to report dismissal etc for unprofessional conduct

This clause imposes a duty on an employer of a practising teacher who dismisses the teacher in response to allegations of unprofessional conduct, or accepts the resignation of the teacher following allegations of unprofessional conduct, to submit a written report to the Teachers Registration Board within 7 days.

38—Action by Teachers Registration Board to deal with impairment of teacher's capacity

The Teachers Registration Board may, on complaint by the Registrar or of its own motion, hold an inquiry to determine whether a teacher's capacity to teach is seriously impaired by an illness or disability affecting the person's behaviour or competence as a teacher.

The Teachers Registration Board may, during the course of an inquiry, require the teacher to undergo a medical examination by a medical practitioner selected by the teacher from a panel of medical practitioners nominated by the Board and to provide, or authorise the medical practitioner to provide, a report on the results of the medical examination to the Board.

If, after conducting an inquiry, the Board is satisfied on the balance of probabilities that the teacher's capacity to teach is seriously impaired by an illness or disability affecting the person's behaviour or competence as a teacher, the Board may do one or more of the following:

- impose conditions of the teacher's registration;
- suspend the teacher's registration for a specified period or until the fulfilment of specified conditions or until further order;
- cancel the teacher's registration with immediate effect or effect at a future specified date.

39—Employer to report impairment of teacher's capacity

This clause imposes a duty on an employer of a practising teacher to report to the Teachers Registration Board if the employer has reason to believe that the teacher's capacity to teach is seriously impaired by an illness or disability affecting the person's behaviour or competence as a teacher.

40—Notification by Registrar of inquiry and outcome

The Registrar is required to give notice of the commencement and the outcome of an inquiry to—

- the person's employer if the person to whom the inquiry relates is a practising teacher;

- the chief executives of the Department, the Catholic Education Office and the Association of Independent Schools of South Australia Incorporated;
- the Director of Children's Services;
- the other teacher regulatory authorities in Australia and New Zealand.

Part 8—Provisions relating to proceedings of Teachers Registration Board

41—Application

Part 8 applies to proceedings of the Teachers Registration Board on an application for registration or on an inquiry.

The Part does not apply to an application that the Board decides to grant without a hearing.

42—Natural justice and right to be heard and to call evidence etc

The Teachers Registration Board is to observe the rules of natural justice in proceedings.

In particular, the Board is to—

- give the person to whom the proceedings relate at least 21 days' written notice of the time and place at which it intends to conduct the proceedings;
- if the proceedings are on an inquiry, include in the notice particulars of the allegations that are the subject of the inquiry;
- afford the person a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Board.

The requirement to give written notice does not extend to adjournments.

The Board may proceed to hear and determine the matter in the absence of the person if the person does not attend at the time and place fixed by the Board.

43—Evidence and findings in other proceedings

The Teachers Registration Board may—

- receive in evidence a transcript of evidence taken in proceedings before a court, tribunal or other body constituted under the law of South Australia or any other place and draw conclusions of fact from the evidence that it considers proper;
- adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant.

44—Power to issue summons etc

This clause confers on the Board the usual powers to compel the attendance of witnesses, the production of documents, the answering of questions, and so on.

45—Principles governing proceedings

In proceedings, the Teachers Registration Board—

- is not bound by the rules of evidence and may inform itself on any matter as it thinks fit;
- may, of its own motion or on the application of a party, direct that the proceedings or a part of the proceedings be held in private;
- may, subject to this Act, determine its own procedures.

46—Protection of children etc

Section 13 of the *Evidence Act 1929* allows a court or body such as the Board to make special arrangements for the taking of evidence from a witness in order to protect the witness from embarrassment or distress, to protect the witness from being intimidated by the atmosphere of a hearing-room or for any other proper reason.

This clause provides that if evidence is to be given in proceedings by a student or a vulnerable witness, the Board should, before evidence is taken in the proceedings from the witness, determine whether an order should be made under that section.

47—Representation at proceedings

A party to proceedings is entitled to be represented at the hearing of those proceedings by a legal counsel or other person.

48—Counsel to assist Teachers Registration Board

The Teachers Registration Board may be assisted by a legal counsel at the hearing of proceedings.

Part 9—Appeals

49—Right of appeal

A right of appeal to the Administrative and Disciplinary Division of the District Court lies against a decision of the Teachers Registration Board made in the exercise or purported exercise of a power under Part 5 or Part 7.

Part 10—Miscellaneous

50—Information from Commissioner of Police relevant to registration

The Commissioner of Police must, at the request of the Teachers Registration Board, and may, at the Commissioner's own initiative, make available to the Board information about criminal convictions and other information to which the Commissioner has access relevant to the question of a person's fitness to be, or continue to be, registered as a teacher.

The Commissioner of Police is not required to provide information that the Commissioner considers—

- may prejudice or otherwise hinder an investigation to which the information may be relevant;
- may lead to the identification of an informant;
- may affect the safety of a police officer, complainant or other person.

Information may be provided whether or not the person to whom the information relates has consented to the provision of the information.

51—Arrangements between Teachers Registration Board, DPP, and Commissioner of Police for reporting of offences

Section 50 is to apply to an offence that has been committed, or is alleged to have been committed, by a person who is a registered teacher, or is believed to be or to have been a registered teacher and raises serious concerns about the person's fitness to be, or continue to be, registered as a teacher.

The Board, the Director of Public Prosecutions and the Commissioner of Police are required to establish arrangements for reports to be made to the Board of the laying of charges for offences to which the section applies and the outcomes of the proceedings on the charges.

The Board, the Director of Public Prosecutions and the Commissioner of Police are to conduct reviews, at least annually, to ensure the continuing effectiveness of the arrangements and their implementation.

52—Notification of offences to employer etc

On becoming aware that a person who is or has been registered as a teacher has been charged with or convicted of an offence (whether or not in South Australia) that raises serious concerns about the person's fitness to be, or continue to be, registered as a teacher, the Registrar is required to notify—

- the person's employer if the person is a practising teacher;
- the chief executives of the Department, the Catholic Education Office and the Association of Independent Schools of South Australia Incorporated;
- the Director of Children's Services.

The Registrar must give similar notice if a charge is withdrawn or there is an acquittal and must notify the person concerned when giving notice of a charge.

53—Confidentiality

This clause is a confidentiality provision protecting against inappropriate disclosure of personal information obtained in the course of official duties under the measure.

54—False or misleading information

It will be an offence if a person makes a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under the measure.

55—Procurement of registration by fraud

It will be an offence if a person procures registration for himself or herself, or for another person, by fraud or any other dishonest means.

56—Self-incrimination

Under this clause, if a person is required to provide information or produce material and the information or material would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide information or material, but the information or material so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than an offence relating to the provision of false or misleading information.

57—Service of documents

This clause deals with the service of documents.

58—Continuing offence

This clause provides for a daily penalty for continuing acts or omissions in breach of the measure.

59—Liability of members of governing bodies of bodies corporate

If a body corporate commits an offence against the measure, any member of the governing body of the body corporate who intentionally allowed the commission of the offence will be guilty of an offence and liable to the same penalty as is fixed for the principal offence.

60—General defence

It is a defence to a charge of an offence against the measure if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

61—Regulations

Provision is made for the making of regulations.

Schedule 1—Consequential amendments and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Amendment of *Education Act 1972*

2—Amendment of section 5—Interpretation

3—Repeal of Part 4

4—Amendment of section 107—Regulations

The provisions in the *Education Act 1972* relating to teacher registration are removed.

Part 3—Transitional provisions

5—Transitional provisions

Existing registrations and authorities are kept in force.

Schedule 2—Temporary provisions

1—Conflict of interest

This clause sets out the obligations of members of the Board in relation to personal or pecuniary interests giving rise to an actual or possible conflict of interest. The clause will expire when section 6H of the *Public Sector Management Act 1995* (as inserted by the *Statutes Amendment (Honesty and Accountability in Government) Act 2003*) comes into operation, or if that section has come into operation before the commencement of this clause, will be taken not to have been enacted.

2—Protection from personal liability

This clause protects members of the Board, the Registrar of the Board and any other person engaged in the administration of the measure from personal liability. The clause will expire when section 28 of the *Statutes Amendment (Honesty and Accountability in Government) Act 2003* comes into operation, or if that section has come into operation before the commencement of this clause, will be taken not to have been enacted.

3—Power to direct criminal record checks

The Minister is given power to give written directions to the Board, within 1 month after the commencement of the measure and after consultation with the Board, requiring it to obtain information to which the Commissioner of Police has access about criminal convictions and other matters relevant to the fitness for registration of all persons currently registered as teachers. The clause will expire 1 month after the commencement of the measure.

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

STATUTES AMENDMENT (RELATIONSHIPS) BILL

Adjourned debate on motion of Hon. P. Holloway:

That this bill be now read a second time,

which the Hon. T.G. Cameron had moved to amend by leaving out all words after 'That' and inserting the words:

the bill be withdrawn and referred to the Social Development Committee for its report and recommendations.

(Continued from 6 December. Page 722.)

The Hon. A.L. EVANS: The government states that this bill has been introduced to address areas it has identified where same sex couples experience discrimination that is unjust. However, I believe that this bill may go well beyond what is necessary to deal adequately with any such unjust discrimination. The government has said that this bill is not about marriage. I will make some comment about that claim in due course. The government has also assumed that any case where there is discrimination under current law in favour or against heterosexual de facto couples and such discrimination is not applied to same sex couples is evidence of injustice. I note that the Attorney-General, in the discussions pertaining to this bill in another place, took care to draw a distinction between 'mere discrimination' and 'unjust discrimination'. I will not labour this point here, as I know that my fellow councillors understand well that ordinary life is full of situations in which we are called upon to discriminate, and that such discrimination is necessary, rational and ethical. We discriminate in relation both to insignificant and significant matters constantly. Moral responsibility demands that we discriminate.

Good government has a duty to discriminate wisely and with a view to enhancing social wellbeing, stability, sustainability and cohesion. Responsible government must avoid the temptation of political expediency or short-term electoral gains. Government has an ethical duty to legislate and discriminate carefully to safeguard the future of society and the wellbeing of coming generations. There are some very important principles at stake in considering the longer term social impacts of this bill. The experience of the past 30 years in which Australian and other Western societies have engaged in a large scale experiment with family structures and relationships should be borne in mind.

We have witnessed massive social change. Relationship and family breakdowns are leaving a bitter harvest of wounded children. The people who have been most severely affected by these changes are those with the least economic, social and cultural resources to cope with such change. Professor Fiona Stanley spent 2003 as Australian of the Year raising the crisis proportions of the problems our children are now facing due to family breakdown and dysfunction, or other socioeconomic circumstances. She has warned about the damage that will be done to our social fabric and economic prosperity if governments and Australians do not address this issue. She has talked about the urgent need to examine closely whether legislation or policies are family enabling.

I am worried that this bill may contribute to further destabilisation of families and marriage. Twenty and even 10 years ago, there was widespread acceptance and defence of laxer approaches to family formation and widespread complacency about the impact on children of the unstable relationships underpinning many families. Among those who are now paying attention to the mounting evidence from the medical and social sciences, this complacency and acceptance is evaporating. The evidence is showing that children, by and large, are best off in stable family structures resting on stable, committed and faithful relationships. The evidence shows that the majority of relationship breakdowns and family restructures are not helpful to the development of children and adolescents. The evidence is also mounting with regard to the benefits of better health, happiness and economic outcomes for men and women in marriage.

Divorce and the unstable bonds of de facto relationships take a heavy toll on the happiness and wellbeing of adults and children. What is the government to do about this? Obviously there are many bandaid measures that can be taken. Extra resources can be ploughed into social services, mental health services, home visiting programs and schools. Government can reform family law processes to alleviate some of the stress and conflict that are natural outcomes of relationship breakdowns. Drug rehabilitation programs and suicide prevention programs can be improved. The list goes on and the need is urgent, but at some point the government must look at prevention. In the face of growing social problems and poorer outcomes for Australian children and adolescents, we have to look honestly at the facts concerning the needs of children for intact, healthy and stable family homes and relationships.

Governments need to focus again on the importance of marriage as the most fundamental and natural social institution, providing the only real and solid basis for stable family life and cohesive and harmonious communities. Government needs to shore up marriage, protect its status, and encourage all Australians to understand its relevance and importance. This bill could well do the opposite. The government will argue that this bill is not about marriage and that these matters I have raised are beside the point. It is right in a narrow and technical sense. This bill is about de facto relationships. It will extend to same sex couples the same rights and obligations that now apply to unmarried opposite sex couples of a certain class. The government says that the bill is simply to build on the existing law as it applies to these opposite sex couples so that, where an opposite sex couple is recognised under the present law, the bill will enable the law to recognise a same sex couple in the same way.

The core of the bill's operation is to amend the Family Relationships Act to create a new statutory status of domestic partner. The term will include partners of the opposite sex or the same sex. The term 'domestic partner' is to supersede the terms 'putative spouse', 'spouse', and 'husband and wife', for the purposes of any treatment of de facto relationships or marriage. This is a key issue of difficulty for me. Legislation dealing with recognition of de facto relationships was introduced because governments recognised that there was a class of relationships which was falling short of formal marriage but which was like marriage. They could be seen to meet most of the criteria of marriage.

The reason that many unmarried heterosexual couples could be shown to have demonstrated a stable commitment over time or a procreative dimension through the conception and shared rearing of children pointed to their relationships being very much like marriage. Governments recognised that partners, and especially women in these relationships, might be vulnerable because of their lack of legal status. In South Australia, particular concerns for the status of children of these relationships resulted in the passing of the Family Relationships Act.

The model for this legislation for various other states' responses was the common law approach to de facto marriage and marriage law. The Family Relationships Act and the De Facto Relationships Act were clear in using marriage as a reference point, hence the requirement to show cohabitation for a substantial amount of time or that there are children in the relationship. Even more telling is the definition of de facto relationships that is loaded with references to marriage law and terms such as 'cohabit as a couple on a genuine domestic basis as a husband and wife.' The definition of de facto relationships in the Family Relationships Act and the De Facto Relationships Act relates quite specifically and directly to Australian marriage laws. This present bill seeks to radically alter this definition and the scope of the de facto relationship legislation. The various rights and obligations given presently to de facto husbands and wives are also directly referenced to the application of our state laws to married couples.

The importance and special status and nature of marriage as a foundation social institution means that laws could not apply to spouses as if they were individuals. This recognition of de facto heterosexual relationships and previously of common law marriage also reflects the reality of the natural institution of marriage. Heterosexual couples have been participating in the reality of marriage almost universally across cultures and over time. Marriage predates our English word for it and also the Christian era, and even any nations or states.

Today, in our society not all heterosexual couples who embark on a shared life as a couple on a genuine domestic basis want their union solemnised through a marriage ceremony. Many societies have an informal process for recognising the establishment of a marriage relationship. These de facto marriage-like relationships establish families and have ramifications for the status and protection of the children they bear. Modern society needs to accommodate these relationships constructively and responsibly. Whilst it will be in society's best interests to foster an appreciation and acceptance of lawful marriage, it makes sense to protect the parties to and children of de facto marriages.

To summarise, we see that the model and reference for de facto marriage law in this state and elsewhere has clearly been marriage. The legislation is about marriage and, therefore, the bill before us is also, in a slightly indirect way, very much about marriage. The extension of 'de facto relationship' to include same-sex relationships becomes highly problematic once you see the clear connection of this law to marriage. Same-sex relationships lack the basic characteristics of marriage in both its de jure and de facto forms. This bill seeks to apply these rights and responsibilities of marriage to those relationships that are not like marriage at all.

Same-sex relationships lack key marriage-like components. Marriage is a heterosexual institution, and that was formally affirmed by the federal parliament earlier this year. Many Australians see de facto relationships as a less formal alternative to marriage. A number of sociologists have noted that many Australians regard a de facto relationship as a transitional step or pathway towards marriage. In its statistical concepts and classifications used with respect to marital status, the Australian Bureau of Statistics explains:

> The living arrangements of couples may be based on a legal concept or a social, marriage-like arrangement. Because users are interested in both living arrangements and registered marital status, the ABS has two separate variables for marital status: social marital status and registered marital status.
>
> The two marital status variables measure different personal characteristics and serve different purposes. . . an individual who is currently living in a de facto marriage and is separated from a previous registered marriage would be coded as 'married' in a de facto marriage in the social marital status classification and 'separated' in the registered marital status classification.

As I have said, evidence from the medical and social sciences shows that children tend to have better outcomes if they are able to grow up in a stable family with the care of their parents. The best interests of children and communities

require that government provide support, status and protection to the family and to marriage. It therefore makes sense for the government to consider how best to encourage stable heterosexual de facto relationships and especially marriage.

The proposed changes to the duration of cohabitation from five years to three should be carefully examined by the Social Development Committee in the light of this evidence. Should we legislate for the granting of marriage-like responsibilities and rights to shorter term or longer term relationships? Will the adoption of the criteria in new section 11A(6) to assess whether a de facto relationship exists lead to determinations of de facto status for relationships of less demonstrable long-term commitment and stability?

The government has noted that our present requirement of cohabitation for five years to establish de facto status is higher than that generally prevailing interstate. It is also noted that our law already requires only three years of cohabitation for property adjustment purposes. The government leaps to the conclusion that it is reasonable and logical to regard a couple who has been living together for three years as an established de facto couple for all legal purposes.

There is often much talk of the desirability for South Australia to lead the way in social reform. Proponents of this bill say that we must catch up and that we are straggling behind in the headlong rush to weaken the criteria by which we judge a couple relationship as worthy of having the rights and responsibilities of marriage under the law. Perhaps it is time for South Australia to take the lead and examine the impact of these legal trends in light of mounting evidence in favour of stable families and relationships. Perhaps it would be better for South Australians to move in the opposite direction. This question should be examined closely in the Social Development Committee.

The government is quite right in identifying the diversity of non-marital relationships in our society. Up until now there has been no explicit attempt to give them marriage-like status. Like many heterosexual people in non-marital relationships with or without a sexual dimension, many homosexual people choose to live their life in domestic relationships of mutual affection and support. As with opposite sex couples, these partnerships may be of short or long duration or even lifelong. They have much the same social consequences as relationships of non-marital opposite sex couples. For example, a couple may merge their property and financial affairs; they may provide care for each other during periods of illness and disability; and they may assist each other in a range of family responsibilities. But that is not saying their relationship is of a marital nature. If their relationship lacks the indicia of a marriage-like relationship then these relationships are not, at present, considered to be de facto relationships. In order to be classified as 'de facto' there would need to be heterosexuality and a sexual dimension in the relationship, together with a long-term duration of cohabitation or the shared bearing of children.

The government emphasises that the bill is about couple relationships, not friendships or so-called co-dependant relationships. However, I believe the government, in attempting to address unjust situations applying to same-sex couples, has not adequately examined why it is excluding a class of relationships where a number of the criteria set out in new section 11A(6) are met. The government insists that we are not talking about marriage-like relationships but then insists that it is not enough that the friends relationship has a long duration and is very close, that they have long shared a common residence and a degree of financial dependence, and clearly identified arrangements for financial support between them or a degree of mutual commitment to a shared life.

This is the stuff of some very close non-marital friendships that many of us know in the community. The failure of the law to acknowledge this type of relationship in certain circumstances may give rise to serious injustice. If there are specific cases of real injustice that impact on the people in various non-marital but close relationships then the parliament ought to ensure that these people are not left out of consideration, just because they do not have a sexual relationship. Specific gaps in the capacity of the law to cater for the small number of cases, where those in close non-marital like relationships may be unable to make decisions or share resources as they would wish in a way that reflects their close domestic bonds, should be examined carefully. Legislative change should be targeted to deal with the specific problems but not to give same-sex couples marriage-like status. Consideration of all these matters should be carried out carefully and thoroughly, in light of the need to preserve and even restore the special status of marriage for the wellbeing of our society.

The bill is likely to have wide-ranging and controversial impacts on society. Many people in the community have concerns about the issue I have raised in my contribution tonight. I know that various members have received correspondence, which expresses people's concerns. Over the weekend, just 24 hours ago, well over 3 400 letters were signed across Adelaide and country areas. These letters set out various concerns about this bill and the need to seriously examine these issues. They all called on members of this place to vote that the bill be referred to the Social Development Committee. Various members would have received copies of these letters this morning. I urge all members to oppose the second reading and support the motion for the bill to be referred to the Social Development Committee.

The Hon. KATE REYNOLDS: I rise tonight to speak in favour of this bill. The Democrats believe that South Australia is currently a national and, some would say, international embarrassment in the area of equal opportunity. So, we commend the government for introducing this bill which, when it is eventually passed, as I have no doubt it will be, will remove discrimination against same-sex couples from more than 80 pieces of existing legislation. Like other members, I have been inundated by letters, emails, faxes and phone calls from people who have experienced entrenched discrimination because their long-term partner happens to be of the same sex.

Last week we welcomed the delivery of more than 24 000 letters supporting the bill to upper house MPs and, in recent months, I have addressed meetings, forums and rallies on this issue of discrimination against same-sex couples. There is no doubt that people have strong feelings and some have taken the time to express their views in individualised letters, and I appreciate that. I have also received many letters and emails opposing the bill, as the Hon. Andrew Evans has outlined, including one that I received just yesterday from the Brethren Christian Fellowship. I would like to read briefly from that letter, which states:

> The marriage bond was ordained by God and any attempt to place same-sex relationships on an equal level is a direct affront to the truth and authority of the Holy Scriptures.

In the second paragraph it states:

However, government itself is an instrument of God and is therefore a custodian of right laws and should never be used as a rubber stamp to condone corruption and immorality.

I really struggle with the notion that the marriage bond is ordained by God, and I struggle very much with the notion that government itself is an instrument of God. I cannot agree with the fellowship's views; in fact, I vehemently disagree. I totally reject the notion that government is an instrument of God and the other assertions in that letter. I may return to that letter later in my speech. I am married to a man, and I am a mother.

The Hon. T.G. Cameron: Congratulations!

The Hon. KATE REYNOLDS: Thank you for those congratulations. I will pass them on. I am married to a man, and I am a mother. My family is central to my life, but I absolutely reject the notion that a stable relationship between two women or two men is somehow inferior to a relationship—married or de facto—between a woman and a man. I know of people, and have been contacted in recent months by many more people, who have experienced entrenched discrimination, not just once or twice but repeatedly over many years of long-term relationships just because their long-term partner happens to be the same sex. That is not acceptable to the Australian Democrats. We reject the notion that this bill will bring an end to the family as we know it.

I would like to read from an email that was sent to me by a woman in a long-term same-sex relationship. She sent this email to a number of her friends and colleagues in opposite-sex relationships asking them to indicate to members of parliament their support for the bill introduced by the government. The subject line of the email is, 'If you believe your rights should be my rights.' The email in part states:

If you are in a gay or lesbian relationship, unlike married or heterosexual de facto couples, you will not inherit your partner's assets if they die without a will. You cannot claim compensation if your partner dies in an accident. You have to pay [expensive] stamp duty when transferring property between yourselves. If your relationship ends, you cannot get access to the same court assistance to disentangle finances and divide [your] property. You are not entitled to be paid compensation for the grief you suffer if your partner is killed as the result of a criminal injury. You cannot access assisted reproductive technologies. You can be required to give evidence against your partner in court. You may be denied access to your sick partner if they are hospitalised. You may be denied access to any information about their condition. You may be denied the right to participate in [making] vital decisions about an incapacitated partner's medical treatment. If your partner dies, you may be denied the right [to] make any decisions about their body (like organ donation) or about the funeral. Indeed, you can legally [be prevented] from even attending [the] funeral.

This, by any name from any reasonable perspective, is discrimination not experienced by opposite sex couples, whether they be married or in a recognised de facto relationship, and this discrimination, which is allowed by our existing laws, is not acceptable to the Australian Democrats.

I would like to place on the record also some of the words spoken at the rally on the steps of Parliament House yesterday. Hundreds of South Australians (gays, straight people, mothers, fathers, grandparents, neighbours, workmates), all campaigners for equal rights (including some members of parliament) came out in the pouring rain to show us how much these changes to our state's laws would mean to them. For those members who were not there—and that is most members of this place—you missed a peaceful but lively and colourful gathering of people of all ages who care deeply about human rights, equal rights, and acknowledging and strengthening communities, families and relationships. These are people who care about this need to strengthen at a time when so many of us complain about the breakdown of our social structures and connections. In fact, I would have thought that anybody who was advocating for stable, committed and faithful relationships, particularly those which provide a stable environment for the rearing of children, would support this bill which seeks to do just that.

Roxxy Bent, whom I have known for nearly 15 years and who will be known to many South Australians through her work with Vitalstatistix Theatre Company, made an impassioned plea at yesterday's rally for members of this place to proceed with legislative reform as soon as possible. I am going to read her entire speech into the record, because she makes a number of valid points and offers a personal insight not available to many—or perhaps even any—members of this place or, I suspect, the other place. Roxxy stated that she wanted to speak as a South Australian, a campaigner for equal rights, a parent and, lastly, as a gardener. She asked the people at the rally:

Do you love South Australia? I do. I'm a migrant. I made a choice to settle here. I came in 1981 from London England. I worked as an actor in the first community theatre company in the state and in 1984 established Vitalstatistix Theatre Company, now Vitalstatistix National Women's Theatre, about to celebrate their 21st birthday. I worked hard with the company. I wrote and performed a body of work, toured all over this state, far and wide—

She named some of the places they visited and she said that she made a substantial contribution to this state. Then she said:

I went to Sydney to work on a Television Show. Happily there, the laws meant that as a lesbian I could access fertility services, but as soon as I could, I came back here. That's when I realised how much I love and appreciate this place, and so I took out Australian citizenship.

I'm still making a contribution. I'm still working hard as a writer, these days as a parent and a small landowner. During most of those years, over 20 actually, I've maintained a same sex relationship, through lots of ups and downs, with my long-term partner, Margie. She makes a contribution to this state, too.

My point is, like many of us here today, we make a great contribution to SA, and as we earn our money we pay our taxes. But when it comes to the crunch, I don't think this state, with its old, old, old, old unequal laws, appreciates us. This state is happy to take our hard work, our contribution, our taxes, but it doesn't treat us as equals. Even though we're making a first class effort, we're treated like second-class citizens. So, as a South Australian, I feel mighty ripped off.

I compare us to New Zealand where the Civil Unions Bill is almost through—

in fact, Mr Acting President, that was passed—

the UK has just passed theirs, Spain is about to begin their process, same sex couples are respected just like any other citizen in France, Canada, The Netherlands, Sweden, Denmark, Finland, Norway and some of the states in the US. What have we got? 72 acts that discriminate against us as same sex couples and young people leaving the state in their droves. Testament to how far behind the rest of the nation this once progressive South Australia has become.

Although I said that I would read the whole speech, there are a couple of paragraphs that I will skip because of the time. In her speech to the rally yesterday, Roxxy Bent goes on to say:

As a parent I can't stress. . . how important it is for our children, all of the children in society, that these laws to give our relationships equal status with heterosexual relationships are changed. Homophobia is still rife in our schools. Every time there's a back flip on gay marriage, civil unions, anything, it's more ammunition for the homophobes. Regardless of what you feel about marriage, this constant telling us our relationships are not worthy kicks us in the guts. I'm a confident older woman. It effects me. Imagine what it does to the young and impressionable.

The children of our same sex relationships are being studied. Excellent quantifiable research results show us our children are

turning out to be as healthy, in mind and body, as successful, with the same percentage in diversity of sexuality, as the rest of society.

Skipping the next paragraph, Roxxy goes on to say:

Which brings me to my last Point of view, that of a gardener. On my patch there are a lot of dominating colonising species. Blackberry, Broome, Watsonia, plants from Britain and South Africa. If left alone they form dense stands that exclude all other vegetation, shade out ground flora, compete for moisture. Basically, if left alone they take over and no native species survives.

But a garden thrives on diversity. There may be only a few of one species, more of another, but they form a delightful harmonious whole. Every thing has its reason, it's place. It fits into the whole.

We may not be the majority, but we are all essential, wonderful valuable contributors to this state. We have a right to be here. We want our equal rights honoured.

Whilst I am sure I did not deliver that speech with the same passion and personal insight as Roxxy Bent did yesterday, I hope honourable members have gained a little more insight from that speech. Although I would love to place on the record extracts from some of the other thousands of letters and emails I have received about this bill, I will resist. However, like the Hon. David Ridgway, I place on the record my apologies to those people who will not receive a personal response from me to their letter or email, regardless of whether they support or oppose the bill.

I managed for quite some weeks to respond to every piece of correspondence, but I confess that the volume has become overwhelming. However, for the record, the majority of emails and letters to me have asked that I support the bill and that I oppose it being sent to another inquiry. I also place on the record my support for the contributions made yesterday by the Hon. Gail Gago and the Hon. John Gazzola, so I will not repeat the arguments they put forward for the bill.

The Australian Democrats strongly oppose the bill being referred to the Social Development Committee because, quite simply, there has already been extensive, and we believe enough, public consultation, at both state and federal level. Unfortunately, a number of people who have contacted me still seem to believe that this bill is about marriage. Some seem to think that, first and foremost, it is about marriage and about the destruction of the family. It is not. Given that marriage is within the jurisdiction of the federal parliament, this bill is not and cannot be about marriage. In fact, I will quote from an email which was sent to members of the South Australian parliamentary Liberal Party by one of its branches. It outlines very clearly the argument for why this bill is not about marriage. It states:

It was felt by branch members—

this is just after one of its regular meetings—

that the rights conveyed to and the responsibilities required of same-sex de-facto partners by the bill are important, and that it is only appropriate to recognise same-sex de-facto partners in the same way that opposite-sex couples in the same situation are recognised.

Crucially, the legislation does not—and cannot—'downgrade marriage' as some have suggested. The state parliament is incapable of doing so, as the terms by which marriage has been set continue to be defined by the commonwealth. Indeed, the fact that the state parliament currently confers special status on unmarried opposite sex de facto couples that is not conferred on same sex de facto couples, through those very same rights and responsibilities dealt with in this bill, casts doubt over any argument that calls upon MPs to uphold the sanctity of marriage through privileged treatment, as we can do no such thing at the moment.

The email goes on to urge members to support the bill.

So, as I said, we oppose the bill's being referred to the Social Development Committee but we recognise that, if it comes to that, perhaps the debate and the findings of the Social Development Committee might shut down some of the claims and arguments about this bill supposedly being about marriage, the destruction of marriage and the destruction of the family. At the time that I wrote this, it appeared that the Hon. Terry Cameron had the numbers to have the bill referred to the committee (I am not quite so sure now) and, if his motion to have it referred to the Social Development Committee succeeds, we are very strongly of the view that the government must establish this inquiry as a matter of priority and that it must not let the issue linger for another year, given that it has taken nearly three years to get this far (and some people would say much longer).

The committee must, in our view, call for submissions before Christmas and report in February so that the legislative debate can be resumed in parliament as quickly as possible. I am pleased and relieved to hear that the Hon. Terry Cameron and the Hon. David Ridgway, on behalf of the Hon. Michelle Lensink, have indicated that they believe the inquiry should proceed. I do not think they used the term 'post haste', but I think that is what they meant. During the dinner break tonight, I spoke with the member for Hartley, who is a member of the Social Development Committee, and he too has indicated his willingness for the inquiry to get under way as soon as possible and to report as soon as possible.

In conclusion, given that every other state and territory gives legal recognition to same-sex couples, it really is embarrassing that South Australia, which was once a proud leader, now well and truly lags behind the rest of the nation when it comes to equal rights, and I commend the bill to all honourable members.

The Hon. SANDRA KANCK secured the adjournment of the debate.

INDUSTRIAL LAW REFORM (ENTERPRISE AND ECONOMIC DEVELOPMENT—LABOUR MARKET RELATIONS) BILL

Adjourned debate on second reading.

(Continued from 6 December. Page 731.)

The Hon. R.D. LAWSON: I rise to indicate that the Liberal opposition is steadfastly opposed to this bill. This bill in its genesis is flawed and simply fails to deliver any significant benefits to the South Australian community. It is strongly opposed by employers in this state and is ideologically based. It will lead to inflexibility in our workplaces. It is ill-adapted to suit the individual needs of employees. It is regressive, backward-looking and seeks to put the South Australian economy into a rigid straitjacket. It is unbalanced, one-sided and bureaucratic. The philosophy underpinning this bill finds its genesis, as I said, in Labor Party policy, not in any rational consideration of the issues.

The act which is sought to be extensively amended by this bill is the Industrial and Employee Relations Act 1994. This act was passed after much debate in the first year, I think, of the Brown Liberal government. There were long sittings in this place to forge that Act and, as it emerged from this parliament, it was not solely a product of the Liberal Party's position on industrial and employee relations. The Australian Democrats, in particular the Hon. Mike Elliott, together with the then Labor opposition, forced many amendments to this legislation which, in the end, represented a fair balance between the rights of employers and employees, and I acknowledge the part the Australian Democrats played in

that. The importance of that point is that the bill which is sought to be amended is not simply the product of one side of politics and now that a government of a different persuasion is in power it is entitled to have a bill which reflects its particular philosophical positions. The existing bill represents a compromise which was forged after much debate in this parliament.

In the year 2000 the then minister for workplace relations, Michael Armitage, introduced extensive amendments to the act which were designed to facilitate individual workplace agreements in the state jurisdiction comparable to those which applied in Western Australia and also comparable to the Australian workplace agreements that applied under the federal system. The Armitage bill, which was introduced under the general rubric of Workplace Focus, also included provisions relating to unfair dismissals and sought to limit the allowable matters in enterprise agreements and in awards. It also sought to simplify awards and to make a number of other provisions in relation to agreements. That bill of the then Olsen Liberal government was introduced but was implacably opposed by the then Labor opposition, the Australian Democrats, the Hon. Terry Cameron and the late Hon. Trevor Crothers. Although it was debated through to the second reading in this place it was not progressed, because of that opposition. So, the balance that was reflected in the 1994 compromise was maintained.

I think it is worth recording that through all of this South Australia has enjoyed a very good industrial relations record. We are the envy of other states and other industrial relations jurisdictions in terms of disputation and time lost through industrial action, and the South Australian economy has greatly benefited from that good record. So, when we went to the 2002 state election the balance between the interests of all industrial parties was fairly reflected in the South Australian act. The Australian Labor Party did not, during the course of the election campaign, announce any policy at all in relation to industrial relations. Obviously, it thought that would be poison and that it was not worth frightening the horses with Labor's true plans regarding industrial relations. However, the platform of the South Australian Labor Party, which was adopted in 2000, clearly shows what Labor's plans, ideology and objectives were in relation to these matters. On the subject of industrial relations, chapter 12 of that platform was misleadingly entitled 'Restoring the balance'. Rather than restoring the balance, the clear intent of these provisions was to place the balance firmly on the side of the unions, and we see that clearly reflected in the bill before us. In paragraph 32, under the subheading 'Terms and conditions of employment', we see the statement:

> That workers engaged as independent contractors rather than as employees should have access to the industrial relations system for relief against unfair contracts.

Paragraph 33 states:

> That independent contractual arrangements should not be used to defeat employee entitlements.

The platform goes on to say, at paragraph 36:

> Labor will . . . investigate the extension of the definition of 'employee' in legislation to embrace as many workers as possible. This will include ways to protect subcontractors (such as owner-driver contract carriers) from exploitation and ensure their ability to access relief from the industrial relations system on a basis similar to employees.

Paragraph 41 states:

> Labor will . . . review provisions in state legislation to permit the Industrial Relations Commission to review and monitor issues related to unfair contracts.

Paragraph 42 states:

> Labor will . . . review issues and develop protocols on workplace privacy associated with the introduction of new technology, e.g. [amongst other things], workplace surveillance.

This platform shows clearly Labor's antipathy towards independent contractors in the workplace. Under a somewhat emotive heading of 'Precarious employment', the following appears at paragraph 64:

> Labor believes . . . that governments must address the policy implications of the dramatic increase over the past decade in precarious employment, (which includes employment such as casual and labour hire).

Paragraph 65 states:

> The excessive use of precarious employment—

and 'precarious employment' is really just another expression for casualisation, which many regard as a poisonous term, but the Labor Party clearly did not want to put that nasty word into its platform—

> has negative implications for many workers, including workers losing access to many service-related entitlements.

Paragraph 68 states:

> That artificial arrangements denying permanency for workers are not acceptable and that measures must be taken to a protect workers' security of employment.

Paragraph 69 states:

> Labor will . . . conduct an inquiry into the precarious employment with a view to providing viable solutions, creating increased opportunities for employment which is secure. . .

Paragraph 70 contains a series of dot points—and I will not allow the parrot opposite to divert me:

> . . . legislation to provide a framework for the regulation of precarious employment, including . . . deeming clients of labour hire companies to be the worker's employer in appropriate circumstances, including for the purpose of unfair dismissal and dispute resolution.
>
> Labor will increase the scope of awards so as to ensure that labour hire companies are bound by the award binding the client employer.

There is the Labor Party's platform. Then it went through the charade of commissioning a so-called independent review from retired industrial relations commissioner Greg Stevens. Mr Stevens delivered his report, and this is after Labor fell into government—not that it was elected but it fell into government after an agreement with the member for Hammond—and appointed Mr Stevens. The terms of reference appear in his report, which was finally delivered in December of 2003. Although they termed them 'terms of reference', I think 'riding instructions' would be a better description of them. I quote them in part as follows:

> Mr Stevens' assessment and recommendations will focus on but not be limited to the following issues:
>
> · Identifying options to ensure fairer industrial outcomes for all South Australians with an examination of issues including:
>
> 1. The desirability of ensuring that all workers have an award safety net and what barriers, if any, presently exist to providing a safety net for all workers.
> 2. What mechanisms or strategies could be used to ameliorate any inequities and/or recognise changes arising from precarious employment and the shift away from lifetime employment.
> 3. What reforms will better take account of the needs of rural, regional, non-English speaking persons etc.
>
> · What improvements can be made to awards and collective agreement making opportunities. . .

with particular reference to certain matters that are set out. It is clear from those terms of reference that Labor favours

awards, the old system which was developed in the federal system and in the state systems at the beginning of the 20th century but which the Keating and Hawke Labor governments clearly saw to be deficient by introducing mechanisms for enterprise agreements; enterprise agreements that are clearly anathema to the current South Australian minister, Michael Wright, who has often deprecated the use of these forms of agreement, which have led to vastly improved efficiency in the Australian economy.

The Hon. R.K. Sneath interjecting:

The PRESIDENT: Order! It may be a pertinent question but it is out of order at this stage. The honourable member has made similar interjections and I know that they are heartfelt, but that does not make them legitimate interjections. They are against the standing orders. The honourable member should allow us all to hear the debate and he can do a forensic demolition of it at a later time.

The Hon. R.D. LAWSON: It is actually good to hear the honourable member speaking. It is probably the only time he has ever had an audience here. I might remind his audience that normally he is very silent and we never hear him on any issues at all. He is performing tonight for the benefit—

Members interjecting:

The Hon. R.D. LAWSON: Now we know about these deceased members on the AWU roll! I think that, again, this gives a clue to his riding instructions, because Mr Stevens said that, in his view, the system as it now stands fails to recognise and deal with in a satisfactory matter many issues. Mr Stevens said:

> In part this is due to a lack of appreciation and understanding of the far-reaching effects of the fundamental changes that have occurred in the nature of employment throughout Australia. It is also due to the lack of responsiveness in tackling the major issues of the day in a way that would bring the industrial system into the lives of those whom it does not touch. The challenge has been more recently met within Queensland, New South Wales and Western Australian systems. This review acknowledges the significant progress that has been made in those states where a more contemporary and inclusive way has been taken of the world of work.

That is clearly a reference to the fact—

The Hon. R.K. Sneath: Why don't you come up with your own ideas instead of reading everyone else's? You've got no idea, have you? You've got no idea about industrial relations.

The Hon. R.D. LAWSON: Clearly, the honourable member has not read the Stevens report, which is not surprising as the publication does not have any pictures in it.

The Hon. R.K. Sneath: You're a shocker, a shame and an embarrassment to your party.

The PRESIDENT: Order!

The Hon. R.K. Sneath: How are you going now?

The PRESIDENT: I think that it is about 40-love at the moment.

The Hon. R.D. LAWSON: The principles which Mr Stevens set out clearly show that Mr Stevens was under instructions to adopt the measures similar to those that have been adopted by Labor governments in other states. The genesis of this is an ideology of the Australian Labor Party and also a commitment to help its mates in the union movement. It is clear that if it were not for pressure from the unions the Labor Party would not have introduced this legislation. I can quite understand that the AWU is disappointed with the representatives it has sent into this place. It is clearly disappointed.

It has got very little value for those it has put in here. The honourable dead weight, the Hon. Bob Sneath, has been planted in the Legislative Council. The Australian Nurses Union is not satisfied with the Hon. Gail Gago, and other unions are not satisfied with the Hon. John Gazzola, Paul Caica and other members of the Australian Labor Party. It is clear that they are not getting good value from those people they have planted here. They make absolutely no contribution to this place at all. Clearly, the government felt that it had to do something for its mates.

The only people who have been calling for this bill are those in the union movement. No-one in the community, no business operation, no employer, no professional organisation, no academic industrial lawyers—

The Hon. R.K. Sneath: Have you ever heard about workers?

The Hon. R.D. LAWSON: Well, I do not see too many opposite on the backbench.

The Hon. R.K. Sneath: You have never cared about the workers. Tell us about the workers.

The Hon. R.D. LAWSON: It is not surprising that the union membership in this state has been plummeting over the last 10 years. It has dramatically declined because of the—

The Hon. R.K. Sneath: Union membership workers and members of the unions have more money in their pay packet than anyone else. That is not surprising, is it? No wonder you don't want them to be members of the union.

The Hon. R.D. LAWSON: A fair proportion of your members are six feet under.

The PRESIDENT: Order! The Hon. Mr Sneath has been a member of this place for a long time. He knows that his constant interjections are out of order. He should also be aware that he has unlimited time to respond to this speech. I am sure that he will take up that opportunity, but it is reasonable that the speaker in charge of the floor be heard.

The Hon. R.D. LAWSON: This fact has been recognised by both political parties at the national level, including the party which the Hon. Bob Sneath represents. Centralised wage fixing has been reduced in importance, and the facilitation of enterprise agreements has been given greater prominence. This state Labor government seeks to roll back the tide of history. There are many reasons for the decline in membership of unions. The Hon. Bob Sneath might be one for the decline of the AWU—at least those of its members that are still alive—but the major one is that unions have become irrelevant and droves of workers have been leaving them.

The Hon. R.K. Sneath interjecting:

The PRESIDENT: Order!

The Hon. R.D. LAWSON: We believe the current act strikes a balance that is already more favourable to unions than is good for the economy of this state or for business.

The infirmities in this bill are many. The principal ones are that it simply does not do anything to improve the efficiency of the South Australian economy; it does nothing for employment; it does not do anything to improve jobs; and it will not achieve its desired end of providing greater employment opportunities. The bill will be good for unions—perhaps—but not good for the state.

It is interesting to read the latest Bank SA analysis of the South Australian economy which talks of the difficulties that are inherent of the South Australian economy. An article just published entitled 'South Australia: trouble ahead?' reads as follows:

> South Australia's recent economic recovery may be reaching its next crossroads. After the economic stagnation of mid-1990s, the economy roared back in the late 1990s—

that is under the able treasurership of my colleague the Leader of the Opposition in this place—

and first part of this decade—

once again because of the activities of the Brown/Olsen Liberal governments—

boosted by strong investment, solid performance in a number of niche markets.

But, trouble ahead—the authors of the article say:

> . . . there is cause for concern. Employment growth and the unemployment rate have both stalled after a period of improvement. The past financial year saw the local employment level increase by 2 000—

sounds all right, but then—

while the national figure increased by 200 000.

When one bears in mind that in this state we have some 8 per cent of the national population, it is a pretty poor indictment on this government and its policies that our employment should have been increased by only that amount. The authors go on to say:

> The unemployment rate rose slightly and then recovered as the size of the labour force stabilised; people left the labour market rather than join the ranks of the unemployed.

South Australians are leaving the labour market. What does this bill do to assist in arresting that decline? Absolutely nothing.

The Hon. R.K. Sneath: For eight years, what did you do? Nothing. Did not create an apprenticeship.

The Hon. R.D. LAWSON: The honourable member obviously has not listened to what I have just been saying. The economists have pointed out and the figures show that under the previous Liberal government the economic conditions in this state, and the economy generally, improved markedly. This bill really is the result of a preordained political agenda.

In relation to the Greg Stevens' report (so-called independent report), he had his riding instructions and the platform was there before he ever embarked upon the task. The draft legislation was released in December 2003—and I do apologise, I might have said that the Stevens' report was released in December 2003; I think it was released a little earlier. However, on 19 December, just before Christmas and just as everyone was heading off on their Christmas holidays, the government put out a bill for discussion with a quiet press release saying that it was out for public consultation.

The Hon. T.G. Roberts: That was to spoil your Christmas.

The Hon. R.D. LAWSON: Well, it spoilt the Christmas of a number of Labor members, because it was pretty obvious from the response from the community that this Labor government did not have the heart for implementing some of the more bolshie aspects of the Stevens' review. For example, Stevens, in accordance with the Labor Party platform, had suggested that an unfair contracts jurisdiction be introduced into our system, and that was proposed in the draft bill. However, when the heat came up, the government quickly abandoned it.

The Hon. P. Holloway interjecting:

The Hon. R.D. LAWSON: The leader suggests it might be introduced by way of amendment, if he is prepared to—

The Hon. G.E. Gago: We look forward to your amendments.

The Hon. R.D. LAWSON: We have some good amendments, too, and we will be talking about those. We have a large number of amendments, which include provisions that will require—

The Hon. R.K. Sneath: Whipping; any whipping?

The Hon. R.D. LAWSON: The honourable member would be into that.

The PRESIDENT: Order!

The Hon. R.D. LAWSON: Another issue that was included in the original discussion paper related to labour hire, so anathema—

The Hon. R.K. Sneath interjecting:

The Hon. R.D. LAWSON: The labour hire industry, which is a major industry and a major employer in this state and which contributes significantly to employment, is anathema to those opposite. They will do anything they possibly can to disadvantage labour hire firms and force them out of business. The Stevens' draft bill included requirements about labour hire, provisions particularly which would have required labour hire firms to pay the same rates of pay in relation to enterprise agreements and awards at various employer sites. It also sought to enmesh safety issues with industrial issues in a way that was clearly unacceptable—and I suppose I should commend the government for withdrawing those ill-advised proposals. They have not found their way here.

The South Australian economy, notwithstanding these storm clouds ahead, has been performing pretty well under the existing industrial relations regime, but this government seeks to interfere with that smooth running by, once again, as I say, upsetting the balance that currently exists—the fair balance that is drawn in this legislation. This is largely a committee bill because there will be very many amendments. We on this side will be moving for the excision of many of the proposed amendments.

The Hon. R.K. Sneath interjecting:

The Hon. R.D. LAWSON: Excision is what has happened between his ears.

The Hon. R.K. Sneath: I know what you mob would do with workers; you do not have to explain that to me. I know what you will do to workers, you have done it all your life. Be honest.

The Hon. R.D. LAWSON: Mr President, I did not propose to go through all our amendments but, as the Hon. Bob Sneath is obviously so interested in the matter, I will. It is only a 37-page description of these amendments, which I would be very happy to explain.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.K. Sneath: Tell us really what you think about ordinary Australians. Tell us really what you think about the working class people of Australia.

The PRESIDENT: Order! The Hon. Mr Sneath has made his point about what he thinks that the Hon. Mr Lawson thinks about workers. It is getting to the point where it is becoming tedious, and, if someone were to call a point of order on tedious repetition, I may well have to uphold it.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Sneath should come to order and maintain the dignity of the council.

The Hon. R.D. LAWSON: There is a range of amendments which we will be moving but I propose, for the benefit of the Hon. Bob Sneath, who I am glad to see is deeply interested in what I have to say, that the first series of amendments that we will be moving relate to amendments which this bill proposes to the objects of the act. The objects are sought to be amended by this bill in a series of rather

subtle (and some of them not so subtle) ways to alter the balance which exists between employers and employees; to favour not so much employees but unions; and also favour the notion of centralised wage fixing rather than more flexible workplace arrangements that people in the community now insist upon. For example, there is a proposed amendment to the objects to include reference to the facilitation not only of security and employment but also permanency of employment. Once again this shows the antipathy of this government to workplace arrangements that many people now enjoy in our community. Permanent employment is not a necessity for everybody in the work force. A modern—

The Hon. R.K. Sneath: You are out of touch. People want job security. If you do not know that you are very out of touch.

The Hon. R.D. LAWSON: If I am out of touch, and I am here relying—

The Hon. R.K. Sneath: You are very out of touch. How is your job security going? How long were you elected for?

The Hon. R.D. LAWSON: It might be dangerous, but I am here relying on a speech made on 19 November 2004, only a fairly short time ago, by Mark Latham, the federal opposition leader.

The Hon. R.K. Sneath: I do not agree with him or you.

The Hon. R.D. LAWSON: The honourable member might be interested to hear that Mr Latham said:

> The new middle class is here to stay with its army of contractors, consultants, franchisees and entrepreneurs. They have less affinity with the traditional role of capital and labor, and even the notion of a traditional workplace.

At least one thing going for Mr Latham is his realism on this subject.

The Hon. R.K. Sneath: If you do not think that people want job security, you are out of this world. People want job security. Even kids want job security.

The Hon. R.D. LAWSON: There is absolutely no dispute that we support job security, but security of employment is one issue and permanency is quite another. The current workplace arrangements acknowledge that there are many differing needs and work situations. This regressive legislation seeks, by looking through the rose-tinted spectacles of ideologues who believe that we can—

An honourable member: His eyes are rose coloured, not his glasses!

The Hon. R.D. LAWSON: They are rosé coloured spectacles! Another series of amendments wrought by this bill relates to the interpretation of various terms and, once again, they are all designed to facilitate the unions and union recruitment. For example, in the definition of industrial matter we see a proposal to broaden the notion to include matters relating to the rights, privileges or duties of employees or prospective employees. Once again, this is designed to facilitate unions recruiting new members in the face of the droves who are resigning—no doubt after a visit from organisers such as the Hon. Bob Sneath.

The definition of workplace is changed to include, in certain circumstances, reference to the residence of an employer. This will also be opposed. There is a new notion of allowing the Industrial Relations Court to make declarations on the employment status of particular individuals or classes of individuals. This is a new jurisdiction and one which is open-ended. In the second reading explanation, no argument is mounted at all for this extension, other than it is said to assist outworkers. It is vague and uncertain, and it will create difficulties.

When one sees the operation of provisions such as this, which now exist in Queensland, one realises their undesirability and complexity. In Queensland, as of March this year applications had been progressed in only three cases, and they all proved to be costly and protected. The first was against contract shearers. The Hon. Bob Sneath claims to have once been a shearer, although that is difficult to believe. That case was dismissed and cost the 300 contract shearers some $325 000 in legal fees for the unsuccessful battle to establish one of these declaratory decrees. The second application resulted in a corporation in the security industry being declared an employee. The third application, which involved hundreds of contract truck drivers, was unresolved after two years. This is the type of provision that this government seeks to introduce into our industrial relations regime.

Only the Queensland provisions already operate in Australia. They have been criticised often, including by the President of the Queensland Industrial Relations Commission. This a back-door attempt to achieve the imposts and constraints the so-called fair contract provisions were intended to introduce, which, after appearing in the initial draft, have now been withdrawn by this government.

There are extensive provisions about outworkers, and one might be forgiven for believing that the current Industrial and Employee Relations Act does not contain protection for outworkers. Clearly, that is not the case; the act does include provisions. It is desired to include in the existing definition of outworkers those who clean articles or material; in other words, to affect the cleaning industry. The inquiries that have been made and the submissions we have received—and we have received thousands of submissions in relation to this matter—do not indicate there is any basis for introducing provisions of this kind. On the subject of consultation—

The Hon. R.K. SNEATH: I rise on a point of order, sir. I ask the honourable member to table the submissions to which he refers. He refers to thousands of submissions on the matter. I ask him to table them.

The PRESIDENT: He is not quoting from them. He says he has them, but he is not quoting from them. Are you asking him to table them?

The Hon. R.K. SNEATH: Yes. He referred to the thousands of submissions he has received in relation to this matter, and I ask him to table them—because I do not believe he has got thousands of submissions on this matter; I have not received any submissions on this matter.

The PRESIDENT: Order! The convention of the parliament is that if a member is referring to a document, normally in question time, he should table it. As I understand it, the Hon. Mr Lawson says that he has received thousands of submissions. We all know what copious submissions means from time to time; it means three. He is not quoting from them and I will not insist he table them. If he starts reading from one of the documents, and he is called upon, there is the possibility of a point of order. At this stage he is not referring to the matters. If he does, the honourable member's point of order can be made at that moment and we will consider it on its merit.

The Hon. R.K. SNEATH: The honourable member says that he has thousands of submissions.

The PRESIDENT: The Hon. Mr Sneath, we cannot debate this issue. You have made your point of order. Your desires are not the question: it is a question of the standing orders. I have ruled that at the moment there is no breach of standing orders. If there is a breach of the standing orders, and you raise it, the matter will be ruled on at that time.

The Hon. R.D. LAWSON: The shadow minister the Hon. Iain Evans sent out something like 67 500 surveys in relation to the original proposed bill. That included every small business registered with Australia Post in South Australia. In response to that, the honourable member received 2 591 responses. If the honourable member would like me to get them in, I will be happy to read them into the record. The information supplied by the Hon. Iain Evans indicates that 89 per cent of the responses indicated that the draft bill (which was then proposed) ought to be defeated and 2 per cent of people wanted it passed—which is a fairly surprising result. The Hon. Bob Sneath says that nobody wrote to him on the matter. Nobody would be surprised by that. Many peak bodies also provided responses to the Hon. Iain Evans.

The Hon. R.K. Sneath interjecting:

The PRESIDENT: Order! The Hon. Mr Lawson has the call.

The Hon. R.D. LAWSON: The provisions in this bill also seek to give greater powers and functions to inspectors. Already industrial inspectors under the existing legislation have wide powers to investigate and enforce compliance of awards, enterprise agreements and industrial provisions. However, now the inspectors are sought to be given powers beyond those ordinarily conferred on inspectors, including matters like conducting audits, monitoring compliance—this is oversight by inspectors—to conduct promotional campaigns and the like. This clearly indicates an intention on the part of the government to extend the powers of the bureaucracy to impose additional burdens on employers to provide further discouragement to employment.

The Hon. R.K. Sneath interjecting:

The Hon. R.D. LAWSON: Of course we care; of course the Liberal Party cares about industrial safety. That is why we have industrial health and safety regulations legislation inspected. It is a mistake to seek to include in industrial legislation of this kind matters such as compensation, health, welfare and safety which is properly the province of the specialist legislation. Clearly this is once again simply a demand by some people at the UTLC to have their powers extended. One of the—

The Hon. R.K. Sneath interjecting:

The PRESIDENT: Order! The Hon. Mr Sneath should take his lead from the opposition in respect of silence. The Hon. Mr Lawson should get on with his contribution and try to ignore the interjections which are becoming very repetitive. What we are talking about is enforcement of the rules. I am the only inspector here and I am going to have to be more insistent that there is some compliance with the standing orders in respect of interjections. When a member is trying to orderly debate an issue, interjections are definitely out of order. If the member on his feet is provoking other members, I am prepared to be tolerant, but I think that I have been over-tolerant until now. I think that we need to get on with the issue. The hour is late and other members will have an opportunity to make a contribution on this matter.

The Hon. R.D. LAWSON: One of the principal provisions in this bill, which sounds innocuous enough but which is anathema to good industrial relations, requires best endeavours bargaining. As I say, it sounds innocuous enough, and those who are not familiar with industrial relations would not understand the implications or ramifications of a provision of this kind. When introducing this particular measure, the Minister for Industrial Relations (Hon. Michael Wright) said:

> These provisions give the parties a clearer guide to the sort of conduct that is expected during enterprise bargaining negotiations. These provisions will allow the commission in limited circumstances to resolve a dispute about enterprise bargaining.

The difficulty about that notion (seemingly innocent) is that agreements themselves should be mutual and voluntary. When you have the capacity of one party or the other to force an arbitrated outcome—that is what best endeavours bargaining clearly leads to: an arbitrated outcome—you get the situation where, once again, we are returning to third-party intervention, centralised arrangements, or arrangements that are not based upon the full and free agreement of two parties. It is a way of forcing an outcome at a time when that outcome may not be desired by one or other party.

These provisions negate the whole notion of mutuality and voluntariness. They prevent either party from saying, as they ought to be entitled to say, 'I don't wish to reach an enterprise agreement.' The notion of best endeavours bargaining, which the federal Labor Party has sought to propose in the federal system from time to time, is simply wrong in principle and does not recognise in this particular measure the fundamental difference that exists between our regime in this state and the federal regime.

I think it is worth pointing out and reminding the house that we have two industrial relations systems in this state. If you have a system that this government seeks to impose in South Australia where there is greater bureaucratisation, greater inflexibility, greater rigidity, more centralised control, an old-fashioned system, you will have employers, employees and unions leaving the South Australian system altogether and going over to the federal system. We on this side have always supported a state-based system co-existing with a vibrant federal system, and it has worked well, but this measure, if adopted, will be a nail in the coffin of a state-based system and a nail in the coffin of a competitive South Australian economy.

I mentioned the provisions relating to outworkers. In committee I will introduce amendments which seek to remedy the deficiencies in the current bill. There is introduced into this bill the notion of host employers. This notion will, in relation to unfair dismissals, provide that the hirer of a labour hire firm can be deemed to be a host employer. The host employer can be subject to an unfair dismissal claim if the employee has performed work for the host employer for a continuous period of six months or more or for two or more periods which, considered together, total six months or more. The potential disadvantages of this scheme outweigh any potential benefits for workers. It is a bad law and a bad notion to introduce the idea or the concept that one person can have two employers in respect of the same set of tasks being undertaken. This will create uncertainty and give rise to litigation and, once again, it will make the federal system far more attractive for labour hire organisations and for any business concerned about the potential impact of these host employer provisions.

There is a provision which ought to be mentioned in this context, which will automatically render a dismissal harsh, unjust or unreasonable if the employer has failed to comply with an obligation under certain provisions of the Worker's Rehabilitation and Compensation Act. Once again, this is mixing the two systems—the industrial system with the occupational health and welfare system and, in this case, the rehabilitation compensation system.

The Hon. R.K. Sneath: Tell us what is wrong with it.

The Hon. R.D. LAWSON: No case has been made out in any of the speeches or in any of the arguments or cases presented to elevate the importance of workers compensation considerations beyond all other considerations. Procedural fairness is a consideration, so it is a matter to be considered on a case-by-case basis. You cannot say, as this bill seeks to say, that automatically an employer's failure to comply with certain provisions of the Workers Rehabilitation and Compensation Act would activate the harsh—

The Hon. R.K. Sneath interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! The Hon. Bob Sneath will get his opportunity to make a contribution.

The Hon. R.D. LAWSON: I have mentioned the matter of workplace surveillance devices for a couple of reasons, one being that these find their genesis not in the so-called independent reports or the consultation process, or the discussion process with industry, but it is clearly rooted in Labor Party policy and in its platform. This bill contains a prohibition against an employer using a listening, visual or electronic surveillance device in an employee's workplace, unless the employer has notified the employee of the installation of the device in a manner prescribed by regulations. There are a myriad of appropriate reasons why it may be necessary for an employer to utilise surveillance devices in a workplace, including security for people, goods, equipment, health and safety, and the like. To make it unlawful for those devices to be installed in a blanket way is inappropriate, and we will be opposing it.

The Hon. R.K. Sneath: Explain to us how you would like the devices used.

The Hon. R.D. LAWSON: Well, when I walk down Rundle Mall, as the honourable member might stagger down there from time to time, I will find that there are surveillance devices, and neither his nor my permission has ever been asked. They are installed for good reason, and they serve a good purpose. My permission is neither sought nor necessary.

I turn next to the rights of entry, because this is a controversial part of the bill. Once again, it is clearly one that is designed to assist unions in their desire to recover members. The proposal is to amend section 140 of the act to increase the power of union officials to enter any workplace at which one or more members or potential members of the association work. So, this is to give a licence to union officials—who are, after all, officials in private organisations—powers to go searching for potential members. They already have rights in relation to workplaces where they have members, and we have no quarrel with them. However, to increase those powers to go searching for potential members is giving union officials a licence that is not enjoyed by anyone else, and it is entirely inappropriate.

The Hon. R.K. Sneath interjecting:

The ACTING PRESIDENT: Order!

The Hon. R.D. LAWSON: Amendments which I will also be moving (and which I am sure the Hon. Bob Sneath will find congenial) relate to requirements that candidates for elections in registered associations (and this includes both employer and employee organisations) will be required to disclose donations. Also, we will introduce amendments in relation to the question of bargaining services fees and an amendment to ensure that, where any registered association (be it a union or an employer association) has any affiliation with a political party, the membership of individuals cannot be used for the purpose of calculating delegate entitlements and the like unless the written authorisation is given by the member of the registered association in a prescribed manner to ensure that the numbers of any industrial organisation cannot be misused in a way that might suit some union officials or members of parliament but is not necessarily in the public interest. In view of the time, I will not persist with many of the other arguments that can be explored.

The Hon. R.K. Sneath interjecting:

The ACTING PRESIDENT: Order! The Hon. Bob Sneath is out of order.

The Hon. R.D. LAWSON: These will be fully explained in the committee stage. In conclusion, we oppose this bill because it will not assist employment and it will not achieve the desire of putting a finger in the dyke of part-time flexible working hours. The bill is all about union recruitment and not about improving standards. It will not improve the South Australian economy; it will not improve the employment prospects of South Australians; it will increase the compliance costs on employers; and it will unfairly change the fine balance which currently exists between employers and employees in the workplace.

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

ADJOURNMENT

At 12.04 a.m. the council adjourned until Wednesday 8 December at 2.15 p.m.