LEGISLATIVE COUNCIL

Wednesday 16 February 2005

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

QUESTIONS ON NOTICE

The PRESIDENT: I direct that the written answer to the following question, as detailed in the schedule that I now table, be distributed and printed in *Hansard*: No. 27.

ONESTEEL

27. **The Hon. SANDRA KANCK:** After construction of the planned OneSteel pipeline from Iron Duke to Whyalla:

1. Will ore continue to be freighted via rail from Iron Duke to Whyalla; and

2. If so, for how long?

The Hon. P. HOLLOWAY: The Minister for Infrastructure has provided the following information:

1. OneSteel has indicated that, following commissioning of Project Magnet, it will continue to rail haematite ore to Whyalla in both lump form and as crushed fines. OneSteel and the EPA are in discussions regarding the minimisation of dust emissions during handling procedures. As part of those discussions OneSteel will be conducting trials of rail shipments.

2. It is anticipated the haematite ore reserves would largely be depleted after 10 years.

LEGISLATIVE REVIEW COMMITTEE

The Hon. J. GAZZOLA: I bring up the 14th report of the committee.

Report received.

PAPER TABLED

The following paper was laid on the table:

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

National Environment Protection Council—Report, 2003-04.

BIODIESEL FUEL

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I lay on the table a copy of a ministerial statement relating to biodiesel buses and trains made earlier today in another place by my colleague the Minister for Transport.

QUESTION TIME

CONFERENCES

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make a brief explanation before asking the Leader of the Government a question about conference spending, fees and attendances.

Leave granted.

The Hon. R.I. LUCAS: The Leader of the Government this morning issued a press release which attacked spending by one of his government's own departments, the Justice Department, on attending conferences and, in particular, some conferences in relation to a project called the balanced scorecard project. The leader referred to interstate junkets and lavish spending and referred to a two-day conference in Canberra at a cost of $6 500 in November 2003 and a two-day (and I assume two-night) conference in September 2003 at the Palazzo Versace at a cost of $3 595 for two nights' accommodation in September 2003. My attention has been drawn to details of a conference run by the South Australian government on public-private partnerships. The South Australian government through the Minister for Infrastructure and also, I believe, the state Treasurer and Treasury officers were responsible for hosting the public-private partnerships conference. I am advised that some South Australian public servants, for a conference here in South Australia, paid up to $3 298 to attend the South Australian government conference and paid those fees to the conference which, as I said, was hosted by the South Australian government.

I know that dozens and dozens of public servants attended that conference, because I also attended it, and I eventually got the answers to these questions in March 2004, and I think the conference was originally run at the end of 2001 and into 2002. The average costs for most of the public servants who attended was $2 418. They were only for conference costs to attend. It obviously did not have to include accommodation costs, given that that conference was hosted by the South Australian government in Adelaide. Indeed, officers from various departments reporting to the Leader of the Government attended this conference. So, my question to the Leader of the Government is: does he believe that the public servants reporting to him and other Rann government ministers have been guilty of lavish and unjustified spending, by spending up to $3 200 to attend a two-day conference here in Adelaide conducted and hosted by the South Australian government?

The PRESIDENT: Before the minister answers that question, I am asking honourable members to be very mindful of some directions that I gave yesterday in accordance with the standing orders. I listened with some interest to the remarks reportedly made on behalf of the Hon. Mr Holloway in respect of the matters involved in the question being posed by the Leader of the Opposition. I am aware of the content of that. I refer to the directions that I have made that honourable members of this council should not refer to the proceedings or talk about the matters before a select committee. In fact, when the minister made the remarks that he made, the matters he involved himself in were not, at that stage, before the committee.

Technically, he is not in breach of my ruling. However, one assumes that these matters were discussed, as reported in the popular press this morning. So, I am giving this direction in respect of when honourable members ask questions. The Leader of the Opposition is perfectly entitled to ask the question, but I do warn the minister that he needs to be careful about talking about matters which may have been discussed at the select committee—and I do not know whether they were.

The council has charged the committee with looking into these matters, and it is highly disorderly for members, either on the government or opposition side, to speak about those proceedings in line with standing order 190. The minister is perfectly entitled to answer the question, but he needs to bear in mind his responsibilities under the standing orders. I am sure he is capable of answering the question, and I am sure he will be mindful of my ruling and his requirements under the standing orders of the Legislative Council.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): Notwithstanding the difficulties of adequately answering the question within the framework—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I think there was some misrepresentation in relation to the preamble of the honourable member's question. My criticisms of what had been spent on—

Members interjecting:

The Hon. P. HOLLOWAY: Yes; it was. The heading was 'Lavish spending from trust account' and—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: No; it says 'Lavish spending from trust account'. That is the headline; I have it here, and that is what it says. Mr President, I will endeavour to answer within your rules—

The PRESIDENT: The Legislative Council's rules; not my rules.

The Hon. P. HOLLOWAY: I believe that the preamble of the Leader of the Opposition's question really ignored the fact that it was the context of that spending, and the claims made in relation to that spending that I was addressing in relation to that press release—not some generic comment in relation to government generally. There have been claims that money spent from one particular account within government was used for improved services to the community. In my press release, I was endeavouring to illustrate that it was a pretty strange way of spending money on improved services to the community, if you are spending that sort of money on places like the Palazzo Versace. There is probably not much more that I can say in relation to the answer. I will refer to one particular matter that was—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, it was a particular conference that was held in Adelaide. Obviously, if you are bringing in speakers from interstate, that may well be the reason for the cost. The point is—

Members interjecting:

The PRESIDENT: Order! Honourable members on my left will cease to interject when the minister is giving his answer in an orderly manner.

The Hon. P. HOLLOWAY: No one has ever claimed that the conference on the PPP was paid from a source of funds that was not readily accessible by Treasury and the Auditor-General; and I think that there is a big difference.

Members interjecting:

The PRESIDENT: Order! Members on my right are not being helpful.

COURTS, REGIONAL

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Leader of the Government, representing the Minister for Infrastructure, a question about regional courthouses.

Leave granted.

The Hon. R.D. LAWSON: On 13 February, through the pages of the *Sunday Mail*, the Minister for Infrastructure (Hon. Patrick Conlon) announced that the state government has released preliminary computer generated images of six buildings to be constructed at Mount Barker, Gawler, Port Pirie, Berri, Port Lincoln and Victor Harbor. These are either courthouses or courthouses combined with police stations. The minister said that work on the buildings will begin in April, funded mainly with private sector money through a public-private partnership. The article further states that the government will spend $40 million, included in the past two budgets, on leasing the buildings for 25 years. It also states that the minister said that construction is due to be completed by August next year and that many should be ready by the end of this year.

In a radio interview on ABC regional radio on Monday this week, the minister again said, 'We hope the building and construction can start in various places in about April and finish this year.' The government's performance in relation to the delivery of regional courthouses ought be seen against its record in Port Augusta. The first state budget, handed down by this government in July 2002, announced that the Port Augusta courthouse premises were to be completed in June 2004 at a cost of $7.4 million. In the following budget, in May 2003, the project was pushed out to 2005, not 2004. The budget in the following year (2004) stated that the project had been pushed out to 2006-07 and that the cost had gone from $7.4 million to $12.1 million.

In the Courts Administration Authority annual report, tabled earlier this month in this place, the Chief Justice comments that this project had been slower than hoped and is now due for completion in September 2006. Given the appalling record of the government in delivering the project, I ask the following questions:

1. Will the projects referred to in the minister's latest announcement be referred to the Public Works Committee? If so, when?

2. Under what item in the past two budgets has the $40 million referred to in the *Sunday Mail* article been included?

3. Have any contracts at all been let for the construction of any of these buildings?

4. Has the minister seen any construction schedules prepared by any builders that show that construction will finish this year?

5. Given the government's appalling record in relation to delivery of the Port Augusta courthouse, what assurance can there be that these projects will be delivered on time and on budget and that we are not seeing here just another announcement for regional consumption?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer those questions to the Minister for Infrastructure and bring back a reply. It is interesting that the Leader of the Opposition just asked a question about the PPP conference and what value we had from it. It is my understanding that this is one of the outcomes, so it nice to see that, from those taxpayer funds, the $4 000 a head conference brought forth some fruit—probably more than the conference at the Palazzo Versace. That is another story.

The Hon. R.D. Lawson interjecting:

The Hon. P. HOLLOWAY: Well, we have this new technology. One reason we have been looking at those schemes is to ensure faster construction.

Members interjecting:

The PRESIDENT: Order! There is too much audible conversation in the chamber, especially coming from my friends from Her Majesty's loyal opposition.

The Hon. P. HOLLOWAY: I will refer the question to the Minister for Infrastructure and bring back a reply.

The Hon. T.J. Stephens interjecting:

The PRESIDENT: Order! Unparliamentary language is unparliamentary whether by interjection or serious debate. The Hon. Mr Stephens will come to order.

FOSSIL PROTECTION

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the minister representing the Minister for Environment and Conservation a question about fossil protection.

Leave granted.

The Hon. CAROLINE SCHAEFER: I have a publication called *The Fossicker*, which is the publication of the Adelaide Gem and Mineral Clubs.

An honourable member interjecting:

The PRESIDENT: Order! Hurtful remarks to members are out of order.

The Hon. CAROLINE SCHAEFER: The publication states:

> A discussion paper on fossil protection in South Australia was produced by 'The Fossil Working Group' and published by Primary Industries and Resources, the Department of Environment and Heritage and the government, but who or what is the Fossil Working Group? The paper does not elaborate. It is comprised of people from those groups, universities and the South Australian Museum. Were clubs and collectors consulted by this group prior to the discussion paper being published? Initially, yes, Kym Loechel and Len Dallow were Gemcasa's representatives who participated in discussions for two years, until they were told that the group no longer existed, and were excluded from final deliberations. One has to ponder the question—do authorities wish to work with bona fide and responsible collectors through a reasonable self-regulating body—or against them? The paper lists many options too detailed to include in this article, but at the very least, it is imperative that Gemcasa, representing all 18 gem and mineral clubs in South Australia, continue to be an active part of this group, and an integral part of all deliberations before concrete proposals and ultimately binding decisions are made by anyone likely to benefit from such restrictions.

My questions are:

1. Were the clubs and collectors excluded from final deliberations and, if so, why?

2. Is it also correct that at least 10 and up to 50 submissions from these clubs were received and never acknowledged?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): As the honourable member suggested in her preamble, the discussion paper on fossil protection (which was an important one) was a joint publication of PIRSA (my mines and energy division) and the Department of Environment and Heritage. At present, as I understand it, fossils do come under the Mining Act, but also, of course, there are reserves, which have a clear involvement with heritage. A number of issues relate to which act would best ensure the protection of fossils.

That discussion paper was released a long time ago now; but, clearly, one issue it was looking at was how one could best go about the protection of fossils. Obviously, fossils are very important in relation to this state's natural heritage. We have the ediacaran fossil, of course, which was quite famous because it led to a completely different picture of the geological make-up not just of this state but of the world. There are important issues in relation to that. I am aware of those issues that relate to my portfolio.

For example, if you are mining, what does it mean if your drill bit hits a fossil well below the surface? Clearly, this needs broad community discussion and that is why the discussion paper was released. I understand that, depending on the response, it is highly likely that there would need to be some act of parliament. Eventually any improved protection that is likely, through changes to either the Mining Act or the National Parks Act, will come before this parliament and, ultimately, all members would have some input to that. That would enable all the relevant groups such as those mentioned by the honourable member to have an input.

The responses are, I think, being handled through the Department for Environment and Heritage. I will have that part of the information checked out by my colleague and bring back a reply. As far as the mineral side is concerned, it is important that we have input from as wide a group as possible, because there are a number of quite complex issues in relation to what on the surface appears to be a simple matter. We all want to protect fossils, such as those up near Brachina Gorge or in the north of the state. There are a number of other complex issues in relation to that, and I will obtain an update for the honourable member and bring back a reply.

ASEAN FREE TRADE AGREEMENT

The Hon. G.E. GAGO: I seek leave to make a brief explanation before asking the Minister for Industry and Trade a question about the ASEAN Free Trade Agreement.

Leave granted.

The Hon. G.E. GAGO: On 30 November 2004, Prime Minister John Howard, together with his ASEAN and New Zealand counterparts, announced that negotiations would commence on a Free Trade Agreement between Australia, ASEAN and New Zealand in early 2005. Will the minister advise the house on any developments with regard to the ASEAN Free Trade Agreement?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): The heads of state or government of member countries of the Association of South-East Asian Nations (ASEAN), Australia and New Zealand met on 30 November 2004 in Vientiane for the ASEAN-Australia and New Zealand Commemorative Summit. It was the 10th ASEAN summit and marked the 30th year of dialogue between Australia and ASEAN. As the honourable member indicated, Australia and New Zealand signed an agreement with ASEAN to commence negotiations for a multilateral Free Trade Agreement (FTA). Negotiations are expected to commence by mid-2005 and it is anticipated that it may take two years to complete this with member countries.

It is further expected that any Free Trade Agreement that results from the negotiations will be implemented over a 10-year period. The multilateral Free Trade Agreement builds on the ASEAN Free Trade Area (AFTA), the Closer Economic Relations (CER) between Australia and New Zealand and the Closer Economic Partnership (CEP) agreement between ASEAN, Australia and New Zealand. An ASEAN Free Trade Agreement—

Members interjecting:

The Hon. P. HOLLOWAY: Listen and you will find out what the state role is in a minute. An ASEAN Free Trade Agreement with Australia and New Zealand would complement Australia's bilateral Free Trade Agreements with Singapore (SAFTA) and Thailand (TAFTA) and Australia's present scoping study with Malaysia. ASEAN is a region of 500 million people with a combined gross domestic product of $863 billion. State input will commence during the third quarter of 2005 on issues relevant to early negotiations. ASEAN is a medium trading partner for Australia.

Australia's two-way merchandise trade with ASEAN was valued at $32.8 billion in 2003-04. ASEAN countries currently purchase more than 11 per cent of Australia's merchandise exports and just under 15 per cent of services exports. In 2003-04, Australia's merchandise exports to

ASEAN were worth $12.2 billion and Australia's merchandise imports from ASEAN were worth $20.6 million. The bulk of Australia's trade is with the three big member economies of north Asia: Japan, Korea and China.

Members interjecting:

The PRESIDENT: Order! There is too much audible conversation in the council.

The Hon. P. HOLLOWAY: Together, the Australian, ASEAN and New Zealand economies equate to almost 90 per cent of the Chinese economy. ASEAN is not at present a major investment partner for Australia, with only ASEAN countries—Malaysia and Singapore—having significant foreign direct investment stocks in Australia. Two-way trade between South Australia and the ASEAN region totalled over $1.76 billion in 2003-04, with South Australian exports amounting to more than $728 million. The ASEAN region as a whole is South Australia's fourth largest export region after the United States, Japan and the United Kingdom. The promotion of trade within this region with our closest neighbours will be a positive step forward.

Given that this country already has free trade agreements with Singapore and Thailand and is currently negotiating with Malaysia and looking at a broader agreement with the ASEAN region, clearly there are implications for the trade in this state. This is why, as I said, during 2005 the state government will be part of the consultation process with the stakeholders in this state in relation to the impact those agreements would have. At this stage we can certainly say that, given our close relationship and expanding trade with that region, the government would welcome developments of trade with the ASEAN region.

The Hon. CAROLINE SCHAEFER: Does the government intend to congratulate the federal government for engineering and agreeing to a free trade agreement when the federal ALP opposed it?

The Hon. P. HOLLOWAY: I do not believe the Australian Labor Party has opposed those free trade agreements or others. If the honourable member wants a history lesson I think she will find that Labor governments opened it up. If we turn the clock back to 1996, I can well recall what John Howard said in relation to Asia. John Howard has changed, and I welcome that and warmly welcome these developments. The honourable member would not want to go back and look at what was said prior to the 1996 election in relation to that. I warmly welcome the change in climate.

This openness and expansion of trade with Asia probably goes right back. If you take another example in history, I can well recall the reaction when Gough Whitlam recognised China back in 1972. Times have changed. We have all moved on, and it is great that we have. The Asian region is particularly important for this country, and the fact that it is now a bipartisan policy and that we have reached this point in the development of our trade relationships with Asia is great. It is great that it is now not a political issue that we should be developing these expanding trade relationships with Asia.

CORONER'S COURT

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Attorney-General, a question about the Coroner's Court.

Leave granted.

The Hon. IAN GILFILLAN: Today's *Advertiser* carries an article by Sean Fewster on page 5 entitled 'Coroner's shortage of staff risks lives'. The article talks about comments made in the Courts Administration Authority annual report for 2003-04 and states:

> In its submission to the Courts Administration Authority annual report the Coroner's Court says it does not have sufficient staff to investigate its backlog of 35 cases. It warns people could die in the same or similar circumstances to those unresolved cases in the time it takes for them to be investigated and potentially life-saving recommendations made.

While the Coroner appropriately would not comment beyond what is written in the report, it is seen as a strong criticism of the state government. In response, the state government was reported as saying:

> An extra $200 000 already budgeted for the court would help clear the backlog.

There was indeed an allocation in the current budget of $200 000 for the Courts Administration Authority for the purpose of improved service delivery. This, however, is not specifically tied to the Coroner's Court and, in fact, there is no indication that any of this money would reach the Coroner's Court.

Members will recall that the new Coroners Act had a long history in this place. It was introduced, passed and lapsed on a number of occasions. However, we finally passed the bill and the act was assented to on 31 July 2003. However, it has not yet been proclaimed and it has not commenced. In September last year I asked the Minister for Aboriginal Affairs and Reconciliation why the act had not yet been proclaimed. The minister assured this place that he would follow it up. I can only assume that the minister is having some difficulty communicating with the Attorney-General's office, as no response has yet been forthcoming. My questions are:

1. What percentage if any of the additional funds—the $200 000 provided to the Courts Administration Authority for the purpose of 'improved service delivery'—is being provided to the Coroner's Court?

2. Will the government increase the budget for the Coroner's Court to allow the court to cope with the increased work loads in reasonable time?

3. Why has the Coroners Act 2003 not yet been proclaimed?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer those questions to the Attorney-General in another place and bring back a reply.

KOALAS

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Environment and Conservation, questions regarding Kangaroo Island koalas.

Leave granted.

The Hon. T.G. CAMERON: There has been quite a lot of public and media attention regarding the rapidly increasing koala population on Kangaroo Island and the environmental damage that they are causing. I was witness to that this morning when I turned on the television and nearly fell off my seat when I found myself listening to Sandra Kanck talking about koalas on Kangaroo Island.

The PRESIDENT: The Hon. Mrs Kanck.

The Hon. T.G. CAMERON: What did I say?

The PRESIDENT: You didn't say the Hon. Mrs Kanck, but let us just leave it at that and move on.

The Hon. T.G. CAMERON: I hear that all the time, Mr President. I do not know why you do not pick everyone else up, rather than just me.

The PRESIDENT: I draw your attention to the standing orders, Mr Cameron.

The Hon. T.G. CAMERON: Thank you. Until the 1920s there were no koalas on Kangaroo Island. They were introduced by men and women. The last significant cull was during the 1950s but since then the numbers have exploded. Despite an eight-year sterilisation and relocation program to curb the koala population on the island, the numbers have continued to rise and currently stand at about 27 000, according to the government; 30 000 according to the Hon. Sandra Kanck.

This week the Minister for Environment and Conservation announced an expansion in the number of koalas that would be sterilised, as well as an increase in the number to be relocated to the state's South-East. The government plans to move 550 koalas to the South-East this year, compared to 162 in 2002-03. The government has rejected any notion of a cull, with the Minister for Environment and Conservation stating that shooting the koalas would appal international tourists and would not be supported by South Australians. This is despite several reputable reports recommending the culling of the koalas.

Assistant Professor of Environmental Biology at Adelaide University, Mr David Patton, recently warned that without a cull the koala population could reach 60 000 within five to 10 years, and he is on record as stating that 20 000 koalas need to be killed now before they destroy the manna gums which support them. Mr Patton believes that the longer the problem is left the harder it will be to tackle.

I have been informed that koalas on Kangaroo Island are not afflicted with the sexually transmitted disease chlamydia, while those living in the South-East are so infected. I have been advised that moving koalas from Kangaroo Island, which is free of sexual diseases, apparently, to the South-East, is committing those koalas to a three to five-year life span because they will die of chlamydia. The current program of sterilisation and relocation is not working and is barely touching the surface. My questions are:

1. Just how many koalas will have to be sterilised or relocated from Kangaroo Island and in what time frame to reach sustainable levels?

2. How much in total would this program cost?

3. Exactly how much does it cost to relocate each koala from Kangaroo Island to the South-East?

4. Other than shooting, there must be other ways to cull the koala population. Has the government undertaken any studies to see which method would be the most humane and efficient?

5. Considering that several reports have been carried out, with each recommending a culling of koalas as a most suitable way to reduce their numbers and prevent environmental devastation, will the government now do so?

6. Has the government investigated any way of inoculating the Kangaroo Island koalas against catching the sexually transmitted disease chlamydia when they are sent to the South-East to prevent their dying within three to five years?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): In his preamble the honourable member mentioned the statement of my colleague the Minister for Environment and Conservation in relation to the government's attitude towards this problem. There is undoubtedly a problem with the number of koalas on Kangaroo Island, but Kangaroo Island happens to be one of the prime tourist regions of this state. Of course, the wildlife on Kangaroo Island is one of the major attractions. That is a key factor in any consideration of this matter. One has only to look at the recent debate in relation to the issue of sheep crutching to see how significant that will be—

The Hon. Caroline Schaefer interjecting:

The Hon. P. HOLLOWAY: Well, the honourable member can see what is happening. It is a very serious issue for the sheep industry in this country because of the perception overseas—in my opinion quite wrong—that somehow in this country we are cruel to sheep, even though those of us aware of the issue—

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: Even in terms of animal health and animal safety, I think, arguably, it is a far preferable situation than fly strike. I use that example to show how emotive these issues can be in relation to the perception of this country and its policy. Clearly, that is one of the issues the government—and, in particular, my colleague the Minister for Environment and Conservation—must take into account in making this decision. I believe that the minister has done that. As to the other parts of the honourable member's question, I will refer that to my colleague and bring back a reply.

The Hon. SANDRA KANCK: I have a supplementary question. Given that 15 years ago there were 5 000 koalas on the island, that in 1996 the government began a sterilisation program which has resulted in 3 000 koalas being sterilised and that the current number of koalas is now sitting at 30 000, why does the government believe that its current program will make any difference?

The Hon. P. HOLLOWAY: I will refer that question to my colleague and bring back a response.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: It is all very well to say that, but, if there was a collapse in the tourism industry on Kangaroo Island as a consequence of that, would the honourable member take responsibility for that? Government has to make difficult decisions in a whole lot of areas, taking into account all these issues. I have every confidence in my colleague the Minister for Environment and Conservation. He is mindful of the reputation of this country in international circles and its impact on the tourism industry. He is also very conscious of the environmental issues in relation to Kangaroo Island. Any solution will inevitably be expensive, but it may well be that the measures that have been proposed will be less costly for this country than a solution that might cause long-term damage to this country's important industries.

STATE FOOD PLAN

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Industry and Trade a question about South Australia's food plan.

Leave granted.

The Hon. D.W. RIDGWAY: South Australia has experienced a decline in food exports of almost 30 per cent in the past two financial years; from almost $3 billion in 2001-02 to only $2.2 billion in the 2003-04 financial year. On top of this, in 2003-2004 our food and beverage industry

experienced the lowest level of private investment for some six years. My questions to the minister are:

1. Given the alarming decline in food exports, coupled with the lowest private sector investment in the food and beverage industry in six years, does the government stand by its target of tripling exports by 2013?

2. Will the minister commit to releasing a comprehensive report of the government's and the state's export performance before the next election?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): In relation to export performance, this government has, of course, established the Export Council, and it has produced a number of reports, and there will be more out shortly. This is a question that has been asked by members opposite before, and one of the key reasons why food exports have fallen, if you take 2001 as the base year, is of course that during that year there was the largest grain crop ever recorded by a massive margin. Also, of course, if one takes the dollar value of our exports, it is no secret that the rising Australian dollar in recent days is putting significant pressure on our exports, and that is being recognised all around this country.

The federal government has recognised that in statements that it has made. A particular example of that would be the wine industry where of course, although the Australian dollar has appreciated most rapidly against the US dollar, it has appreciated less rapidly against most other currencies—but with the US dollar it is probably the most rapid. Of course that is undoubtedly a problem in relation to those exports and those growing markets such as the US, where wine has been one of our growing markets.

So there will be short-term fluctuations in our export figures that do reflect the current exchange rates, and that is recognised by, I think, every economic commentator, the federal government and so forth, but the target that this government has to treble exports is over a 10-year period. That remains. Obviously, if we are to achieve that difficult target, we will need—

Members interjecting:

The Hon. P. HOLLOWAY: It was always a very difficult target to achieve, and clearly we have to consider the exchange rates, if they remain where they are, and other factors in relation to our trade. One of the issues that the federal government has been talking about, as well as my federal opposition counterparts, is infrastructure in relation to exports, particularly with respect to ports in the eastern states. This government has the antidote to that, but other ports in this country have much more serious long-term problems.

The other point that I have made in relation to exports and export targets relates to one of the most successful export areas in recent years in the service industry, and particularly areas such as the electronics industry and software. Indeed, if one looks at the Export Council's publication *Beyond Local Towards Global*, some of the most ambitious targets are in those service sectors. The food and wine sector is important, because it is about a third, if my memory serves me correctly, of the overall volume of exports.

So if the state is to meet the targets, clearly the food and wine sector has to play its part, but we would hope that, with some improvement in the exchange rate, we will get better figures. Certainly there was a decline in the figures for this state. One of the reasons in the food sector was due to the SARS virus and a significant fall in seafood income. There are signs over the past consecutive six months or so that those figures have been steadily picking up, and we obviously hope that that trend continues. In relation to the food plan, the government is continually putting out the component sectors. The food plan was initially put forward by the previous government.

I have complimented the Hon. Rob Kerin for implementing the plan. This government has supported that, and we have put further components of that plan under way. In the three years of this government, there have been a number of sector plans under the food plan: the goat sector, beef and sheep, pork and, earlier, the dairy sector, and there are others. All of those sector plans have been introduced to try to increase the focus, and to add value to the state's food plan. Yes; it is a difficult target.

Certainly, in relation to exports, not just for this state but for the whole country, the results have not been good in reflecting the current exchange rate. However, with trade, one needs to take a longer-term perspective, and we believe the trends, particularly recently, are moving in the right direction.

SCIENCE AND RESEARCH COUNCIL

The Hon. J.M.A. LENSINK: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Science and Information Economy, a question about the Science and Research Council.

Leave granted.

The Hon. J.M.A. LENSINK: The Science and Research Council was an announcement trumpeted by Mike Rann prior to his government's coming to office. One of the government's first announcements in March 2002 was the appointment of the eminent Professor Tim Flannery as its chair. I have looked with interest through documentation in terms of any public information about the Science and Research Council and its achievements, and I have a number of questions in relation to this area. On 10 June 2002, in a press release entitled 'Premier launches SA Bio-tech Push', the Premier announced his attendance at the Global Bio 2002 Convention in Toronto, Canada, along with 15 000 other business and research leaders from 140 nations. In that press release he states:

> While our state already has a growing bioscience industry, it is important that it be given every opportunity to grow.

In the STI10 Mapping the Vision document, there are also a number of comments that I would like to read into *Hansard*. Under the title 'The Vision Unfolded, a whole of government commitment to science technology and innovation', the following comment is made:

> The state government has effective 'seed' programs to support local R&D and early-stage innovation.

There are references to the Adelaide Innovation Constellation which links five innovation precincts, including Waite. There are a number of other comments on page 21, which talk about the development of the constellation, and it states the following:

> The government will reassess and reward STI related economic development arising from each precinct.

It then sets out that any of the grants must come under the following criteria to align with key state priorities: they must 'set audacious objectives' and 'be championed by the private sector.' My questions to the minister are:

1. What direct investment and achievements can the Premier list as a direct result of his attending the Global Bio 2002 Conference?

2. How do the state government's seed programs to support local R&D and early-stage innovation align with its stripping of the department now known as DTED?

3. Similarly, how do the significant funding cuts from the Waite Institute align with the STI10 vision?

4. How does the government define 'audacious objectives'?

5. How would more modest projects be able to fit into these criteria?

6. How will the government manage the process of competition among different institutions and potential conflicts of interest of board members, who may be on the council and assessing these programs?

7. Apart from the production of documents, what investments has the council facilitated, directly and indirectly, and what other projects has it supported? Can I be provided with a list with all the dollar amounts?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I can help the Premier answer the last of those questions. When this government came to office, one of the issues with which it had to deal (and which it had debated in this place before) was where the funding came from the Australian Centre for Plant Functional Genomics, which is a very important project for this state.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: No; we did not.

The Hon. R.I. Lucas: Yes, you did.

The Hon. P. HOLLOWAY: On the contrary, when we came in there was no money. That is what happened.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: They did not fund it at all. We have had this argument before. One of the very difficult issues we faced when coming to office was dealing with the fact that the application for this very important centre had been lodged prior to that time, but there were insufficient funds for the project. As I said, that has been the subject of lengthy debate before. However, I believe that it was one of the earlier contributions made by the Premier's Science and Research Council in relation to a focus on these issues. Of course, I am sure that, when I refer these questions to the Premier, in his answers he will talk about the Premier's Science and Research Fund, which has provided significant funds.

The South Australian Strategic Plan has various goals for innovation and research. In particular, its targets relate to the number of CRCs. I answered a question just last week in relation to the automotive sector, and I know that my colleague in another place (Hon. Trish White) has also made statements in relation to a number of bids in which this state was successful in receiving commonwealth funds for either the centre of the CRCs or major nodes in this state. From the information I provided last week, I think that this state has already exceeded the targets in the State Strategic Plan in relation to those important funds.

In her question the honourable member talked about stripping funds from Waite. Given that some millions of dollars have gone into major developments—not just the Centre for Plant Functional Genomics but also other centres—I do not accept that this government has stripped funds. On the contrary, this government has set about selling the benefits of Waite, because the Waite campus is one of the most important agricultural research centres in the world. It is a very significant centre, where five major research bodies are located and, over the past 10 or 15 years, it has developed into one of the most important precincts in the world. I can speak from my personal experience as minister for agriculture, food and fisheries. At present I believe that we undersell the institute, but perhaps those overseas are more aware of its significance than are those who live here.

Certainly, a number of benefits have resulted from the Premier's Science and Research Council. As minister for agriculture, food and fisheries, I was a member of that body, and it has played a key role in developing the targets in the South Australian Strategic Plan. I understand that, in relation to the CRC, those have already been exceeded, and I gave that information last week in an answer to this place.

I am sure that the Premier will be pleased to add any further information in relation to the achievements in the science and research area, but this government does regard innovation very highly. It is absolutely crucial to economic development in this state. That is why we have set up this high level council with the Premier's involvement. As I say, it has delivered in a number of key areas, beginning in those very early days with securing the funding for the Australian Plant Functional Genomic Centre.

The Hon. J.M.A. LENSINK: As a supplementary question: the minister referred to millions of dollars going into other projects at the Waite, and also that some targets set by STI10 have already been met. Will the minister provide the chamber with specific details of those?

The Hon. P. HOLLOWAY: As I said, I am sure that the Premier will be pleased to do that. I am not the minister responsible. I do not have those details at my fingertips; but, certainly, I am aware from my experience that, until 12 months ago, that council did play a very significant role. Of course, another area that comes to mind is the bioscience precinct that has been expanded at Thebarton. That is another area on which, I am sure, the Premier would be pleased to provide more information.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Well, there is a big expansion of it where the Michell's factory was—a huge expansion of that area.

GEOSCIENTIFIC DATA

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about the collection of geoscientific data.

Leave granted.

The Hon. CARMEL ZOLLO: The collection of geoscientific data is an important part of the government's efforts to increase resources exploration in South Australia. The government announced its plan for accelerating exploration last year, and the minister has regularly informed the council of its progress. Part of the PACE initiative included a plan to complete gravity mapping of the targeted regions of the state. When will this data collection be available to explorers in South Australia?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): The honourable member is, of course, correct: on a number of occasions before this council I have talked about the various geoscientific data acquisition programs that the government is supporting to improve the data that is available for explorers in this state. I am pleased to tell the council that the state government has approved a three quarter of a million dollar program for the acquisition

of new gravity data in the northern Curnamona Province and Central Gawler Craton. The Curnamona Province is, of course, that area which adjoins the New South Wales border in the northern part of the state.

We have seen the successful exploration, which I mentioned yesterday, by Havilah Resources in that highly prospective region of the state. The new survey will significantly boost the amount of precompetitive geophysical data available to assist mineral exploration in South Australia. South Australia is the number one provider in the world of geophysical data to industry, and this new program will reinforce that view. As I said in my answer to the council yesterday in relation to the geochemical data (which is another part of it—we have magnetic gravity and geochemical data), if we are to stay number one in the world we do need to make sure that we increase the amount of data and the coverage of data that is available to stay ahead.

The work will form part of the government's Plan for Accelerating Exploration (PACE), which aims to increase mineral exploration in South Australia to $100 million by 2007 and mineral production and process to $4 billion by 2020. A South Australian company, Daishsat Geodetic Surveyors (based at Murray Bridge), will carry out the survey. The survey is conducted by acquiring data on the ground at predetermined points using a gravimeter, which measures the earth's gravitational attraction at various points over the area of interest.

Gravity anomalies are due to differences in density of underlying materials. The method is passive and non-invasive. Gravity surveys can provide useful information where other exploration methods do not work. For example, gravity may be used to map bedrock topography under a landfill or cover sediment where other measures, such as seismic refraction, is limited. Gravity can also be used to map lateral lithologic changes and faults.

Explorers will use this data to assist them in target generation for drill testing and will better define regions worthy of prospect scale company infill. The recent Prominent Hill discovery was made using detailed gravity data and further discoveries are expected using this method. It is expected that the survey will add 8 500 new gravity stations to the considerable data that is already available in South Australia. An additional 1 500 stations are expected to be added from company infill and extension programs. In the past, there has been an immediate uptake of exploration licence applications in the Curnamona Province and increased interest shown in the Central Gawler Craton region based on the gravity survey locations. I am pleased to advise that results of the survey are expected to be ready for release around the end of May 2005.

POLICE, PORT AUGUSTA

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking the minister representing the Minister for Police a question about policing in Port Augusta.

Leave granted.

The Hon. KATE REYNOLDS: Last Thursday, selected community members and representatives from the Port Augusta council were invited to a meeting the following day, called by SAPOL, so that they could hear about SAPOL'S plans to address street crime in the city. Those attending the meeting chaired by Superintendent Wayne Bristow included representatives from the Attorney-General's Department, Aboriginal Legal Rights Movement, Congress Church, Davenport Community Council, a number of Aboriginal service providers, Aboriginal police representatives and other police representatives, Port Augusta council representatives and local elders.

On Monday of this week four STAR Force officers arrived in town to (and I a quote a local Aboriginal man from the Davenport community who was interviewed for a story in the *Transcontinental* newspaper) 'sweep through' the area, picking up anyone in their path. STAR Force officers, carrying out what are known as Operation Return and Operation Continuance, are focusing on people breaching bail conditions, the meeting was told. You, Mr President, as well as any of us would know that Port Augusta is a traditional meeting place for Aboriginal people and, over the summer months, many hundreds of people travel, some well over a thousand kilometres, from surrounding communities to spend the hotter months near the ocean as, indeed do many members of this place during our summer break.

The police said at the meeting that indigenous people who are arrested will be bailed to their home addresses, many of which will be on the APY lands. The superintendent apparently made plain at the meeting that emphasis would be placed on removing troublemakers from the town to remote communities. Whilst I acknowledge that this may not have been the intention of the superintendent when he called the meeting, I have been contacted by many people who see these police operations as an opportunity, to quote a couple of people, to 'run Aboriginal people out of town.' I understand that the council even offered to provide free transport.

Back in August 2003, a two-day meeting was called and funded by the Department of Aboriginal Affairs and Reconciliation (DAARE) to discuss social issues in the Port Augusta area, with a particular emphasis on dealing with issues associated with the influx of Aboriginal people into Port Augusta over the summer months. Fifty-eight community leaders and representatives from various agencies, including SAPOL, attended that two-day meeting. At the end of the meeting the chair, Mr Peter Buckskin (CEO of DAARE), proposed that a working group be formed to progress the recommendations made. A 12-page action plan was developed by the council and DAARE, which named who would be responsible for following up on which action items. My questions to the minister are:

1. Given that this is the time that many Aboriginal people move back to the APY lands, to Western Australia or to Finke, why have STAR Force officers been sent to Port Augusta this week to target offences that would routinely be covered by local police?

2. What exactly is the purpose of Operation Continuance and Operation Return and when will they conclude?

3. Did SAPOL seek the views of representatives of DAARE or from the local magistrate (who sets bail conditions) before deciding on these operations or calling this meeting?

4. Which of the recommendations relating to the policing activities from the 2003 Social Issues Forum have been acted on?

5. Does the minister know whether the implementation group recommended at the 2003 forum was established and, if it was, does SAPOL have a representative on that implementation group?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer the questions to the Minister for Police and bring back a reply.

WORKCOVER

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I table a ministerial statement on WorkCover made today by the Premier.

MATTERS OF INTEREST

The PRESIDENT: Before calling on matters of interest, I will make a brief statement about a contribution during matters of public interest last week in relation to the actions of the Joint Parliamentary Services Committee with respect to smoking. All honourable members will remember the legislation that recently passed this council in respect of people smoking in public places. The Joint Parliamentary Services Committee received a legal opinion which clearly stated that the Botany Bay area, as it is known, did not comply with the legislation passed by all members of this place, and therefore we were forced to make an alternative arrangement in that we had to immediately declare that Botany Bay was no longer suitable for smoking.

The Joint Parliamentary Services Committee at that time determined that it would find another location and have bells and some cover installed for the benefit of those people who choose to smoke. The question was asked at that time about whether a member of the Joint Parliamentary Services Committee would come out and hold an umbrella while people smoked. That has proved to be impossible because we are too busy twisting the arms of people to make them smoke. So, that request will not be granted, either.

The Hon. R.I. Lucas: That is not what the minister told us at the time. The minister told us that Botany Bay was deemed to be a smoking area—

The PRESIDENT: It is not the time for a debate now.

QUESTIONS, REPLIES

The Hon. A.J. REDFORD: Over the past six to eight weeks I have asked at least 14 questions of the government, which questions have been referred to ministers in another place without notice. I have not received a single answer to those questions.

The Hon. CARMEL ZOLLO: On a point of order—

The PRESIDENT: There is a point of order.

The Hon. A.J. REDFORD: I would ask—

The Hon. Carmel Zollo: I have a point of order.

The Hon. A.J. REDFORD: I haven't finished.

The PRESIDENT: Once a point of order has been indicated, the person making the point needs to state—

The Hon. Carmel Zollo: Is this a personal explanation?

The Hon. A.J. REDFORD: No.

The Hon. Carmel Zollo: Well, what are you doing?

The Hon. A.J. REDFORD: I am raising an issue with the President in a public forum, if you let me finish.

The PRESIDENT: The matter ought to have been raised during question time. It has been done on numerous occasions. This is really not the time. I cannot give the honourable member leave to do this unless it is a personal explanation.

The Hon. A.J. REDFORD: I am asking you, sir, to consider keeping a register of unanswered questions asked without notice so that the Legislative Council can monitor that and maintain the prestige that we enjoyed when we had a government that did bother to respond to questions asked.

The PRESIDENT: Clearly, the honourable member is testing me. The closest way that this could be considered is as a matter of privilege. The answers to questions are in the hands of the ministers. It is a long-established practice. It has always been wise counsel that people who live in glass houses should not throw stones.

MATTERS OF INTEREST

TOUR DOWN UNDER

The Hon. CARMEL ZOLLO: On behalf of the Minister for Industry and Trade I was pleased to join other invited guests of Mayor Ray Gilbert and the City of Onkaparinga at their celebration held at Willunga for the Tour Down Under, stage 5 of the race. Stage 5 of the tour was run on the southern Fleurieu Peninsula. The celebration was organised by the Black Duck Cellars in Willunga. The catering was fantastic and included fabulous South Australian Fleurieu Peninsula food and wine from the McLaren Vale wine region—the perfect example of the lifestyle on offer in our state.

For the 2005 Tour Down Under the Onkaparinga council, in conjunction with Fleurieu Peninsula Food, set out to offer Tour Down Under visitors to the region a wider food and wine experience. On the day of the Tour Down Under leg in the Fleurieu, three events were held to tempt and tantalise visitors. These events included the McLaren Vale Long Lunch, the Aldinga Bay Seafood Splendour, and the McLaren Vale Eat the Street.

The Jacob's Creek Tour Down Under, which began on Tuesday 18 January, featured six stages which ended with a 90-kilometre Adelaide City Council circuit on Sunday 23 January. It is undoubtedly Australia's premier international cycling event, with around 96 of the world's best road cyclists competing in the race. Twenty-one year old Spaniard Luis Sanchez won overall honours for the event, completing the tour in 16 hours, 45 minutes and 44 seconds. He was closely followed by his team mate Allan Davis who finished 33 seconds behind. South Australia's very own Stuart O'Grady came third in the overall honours, finishing the race 47 seconds behind Luis Sanchez.

The Tour Down Under is believed to have injected around $15 million into the state's economy. Over the six days, it is estimated to have attracted almost half a million spectators, of whom 15 000 were interstate visitors as well as many from overseas. Over 200 media representatives gathered in South Australia to capture one of the world's biggest bike races. People in countries such as Belgium, Italy and France were able to see the Tour Down Under against a backdrop of South Australia. The tour took riders through some of the most beautiful countryside, including the Adelaide Hills, the Barossa, the Southern Fleurieu and the city of Adelaide itself.

Premier Mike Rann has announced that Adelaide will be the home for a new Australian Centre for Excellence in Cycle Tourism. The new national centre will promote the growth of cycle tourism across Australia, with the state government providing $105 000 in funding over three years.

Fleurieu Peninsula is recognised for its fantastic range of food, wine and tourism. Fleurieu Peninsula Food, headed by chair Pip Forrester, is a collaborative organisation of food producers and suppliers on the peninsula who collectively, through membership, communication, projects, programs and celebrations aim to enhance the food experiences of the region and put Fleurieu Peninsula food on the map.

As a starting point, the members have agreed that food tourism is the food aspect that connects businesses from all sectors of the industry across the whole peninsula. The group wants to work together to ensure that food and wine experiences play a central role in the promotion and development of quality products on the peninsula that will be of benefit to all food businesses across the peninsula. For the first time, the Fleurieu Peninsula food industry has a united voice backed up with financial support and a passion to share the food experience of their region. Driven by the recognition that food, wine and tourism are the major strengths of this region, Fleurieu Food will work with industry partners to complete the connection.

The scene for stage 5 of the Tour Down Under was perfectly captured in the words in the invitation from the City of Onkaparinga:

> Tantalising food and wine, stunning scenery, friendly locals. . . top it off with a major international sporting event and you couldn't have a better excuse to visit the spectacular McLaren Vale wine region.

I congratulate all those involved in this wonderful sporting and tourism event, which gave us an opportunity to showcase our beautiful state and two of its major economic drivers: wine and food.

VIETNAMESE TET FESTIVAL

The Hon. J.F. STEFANI: Today I wish to speak about the Vietnamese TET Festival, which is a new year celebration organised by the Vietnamese Community in Australia (SA Chapter) Incorporated. This year, as in previous years, the TET Festival was celebrated at the Regency Park Reserve and was attended by many dignitaries and the many thousands of members of the Vietnamese community. As a close friend of the Vietnamese community, I was privileged to receive an invitation and to share in this annual celebration.

Since arriving in Australia in 1975, many Vietnamese people have settled in South Australia and have established themselves as part of our vibrant and diverse multicultural society. The aims of the Vietnamese Community in Australia (SA Chapter) Incorporated are to serve the interests of all South Australians of Vietnamese background whilst striving to build a cohesive and united community, making a positive contribution to the development of our state. Many of my friends from the Vietnamese community first arrived in Australia as boat people when they escaped the ravages of war, experiencing great hardships and suffering under the communist regime. Many of them made their brave escape as refugees, risking their lives for greater freedoms and a better life for their families. Today, the Vietnamese community in South Australia has reaffirmed its commitment to, and aspirations for, the return of freedom and democracy for their beloved country and its people.

During the last 30 years, since the arrival of the first Vietnamese people, the Vietnamese community has made significant contributions to the social and economic development of our state. Many Vietnamese have gained tertiary and professional qualifications, and they are annually represented amongst the most diligent and successful students in year 12 examinations and university courses. I know from my own contact with many Vietnamese families since 1980 that the greatest satisfaction which children can give to their parents is the success of achieving excellence through hard work in their chosen studies and careers. Many elderly parents have made great sacrifices to give their children every opportunity to build a better life for themselves, and they have encouraged their children to maintain a strong commitment to family traditions, religious practices and the Vietnamese language.

I acknowledge the important contributions which the South Australian Vietnamese community has made, and continues to make, for the betterment of our people. I take this opportunity to offer my sincere congratulations to Mr Loc Doan, President of the Vietnamese Community in Australia (SA Chapter) Incorporated, together with the dedicated members of the executive committee, staff and volunteers who work tirelessly to provide essential welfare and social settlement services to the many South Australians of Vietnamese origin. I wish them all continued success and happiness for the Year of the Rooster.

CARPATHON

The Hon. J. GAZZOLA: We all are aware of the environmental problems posed by the introduction of exotic flora and fauna to Australia and the efforts to redress them. Federal and state departments, NGOs, private groups, schools and individuals have battled the carp problem that bedevils our rivers and waterways. Since its introduction over 100 years ago, the prolific spreading of carp has resulted in the destruction of fragile aquatic systems, an increase in water turbidity, the destruction of stream beds and irrigation channels, and competitive interaction with desirable native fish species, amongst other undesirable and destructive consequences.

As expected in the face of such a challenge to our waterways and native fish stocks, given, for example, that some Murray-Darling Basin rivers have carp numbers of the order of some 90 per cent of the total fish population, the responses have been vigorous and varied. These responses range from the use of screens and fish traps, commercial exploitation of the resource, scientific removal of adults to speed population reduction, the proposed introduction of 'daughterless' carp controlled through genetic manipulation and removal through fishing competitions such as carp busters and carpathons.

One South Australian school, initially assisted by Oz Green, has acted to increase public awareness of the carp blight through its Youth, River, Us Carpathon held on 30 October last year. Oz Green, a member of the federal government's register of environmental organisations, works with communities, businesses and youth to address critical water issues through innovative educational programs, and in this capacity it has acted as a catalyst for Renmark High School's carp competition. Forming a committee and working out of school time, students Emma Graham, Kate Graham, Roop Grewal, Theo Papageorgiou, Natasha Mitchell, Kimberley Ingerson, Barbara Tsolomitis, Peter Golding, Jaspreet Bachra, Saadet Hashim and Kate Anderson liaised with local agencies and businesses to gain support and sponsorship to further educate the community on river issues.

It is pleasing to note that the day was a success, to the extent that the carpathon was declared the Event of the Year by the Remark Paringa Council at its Australia Day Awards ceremony. Some 230 registered competitors and their families, friends and interested onlookers, including me, saw the event remove some 92 carp from the river.

The success of the event is evident not just in the number of fish removed but also in the promotion of public aware-

ness, as demonstrated in local support and the interest and coverage provided by ABC Riverland Radio, the *Murray Pioneer* and local television station, WinTV. Plans are afoot to stage the event again this year. I commend the efforts of the students of Renmark High School and all those involved and look forward to visiting Renmark for the 2005 Carpathon, but this time helping to remove a carp or two.

WATER SUPPLY, GLENDAMBO

The Hon. T.J. STEPHENS: I rise today to speak about an issue that has dragged on and on, namely, the Glendambo water issue. Members of this council are sick and tired of hearing about it, so imagine how the people of Glendambo feel. Members would be well aware of the plight of the people of Glendambo, who have been suffering from government inaction for a long period of time now. I have repeatedly made speeches and asked questions in the council of several ministers, who have all sought to handball this issue around.

Glendambo is a small oasis in regional South Australia; it provides facilities to over 700 people a day, in addition to its 30 residents. It is a vital stop on the way to Coober Pedy. So much for promoting tourism in the Outback! The essential problem is that, as in the case of many of our regional communities, the town is reliant upon the town bores. One bore has dried up and the other, as is also the case with many of these communities, is in serious danger of collapsing. There is no guarantee of water supply beyond the bore about to collapse.

Mr Boothey, Chairman of the Local Progress Association stated:

> That day (when the bore collapses) is just around the corner. When that happens we will have to start carting water 113 kilometres from Woomera, at a cost of $720 per load.

This would have to be done at least four times a week, which means that there is a considerable and unreasonable impost being imposed on the 30 residents and their businesses for services that the government should provide anyway. I have stated before that, in reply to a letter I wrote to him, the Minister for State/Local Government Relations (minister McEwen) gave me a lengthy explanation about a report which was due by the end of September 2004 and which would then be given consideration by several ministers, and maybe at some point in the future some real solution might be found.

Subsequently, I asked questions and issued a release condemning this 'yes, minister' approach and called on the government to cover the costs of the water carting until a permanent solution was found. I am happy to put on the record that I do not want to subvert the work being done by the working party, but I do want a mechanism to protect the Glendambo residents until its recommendations can be implemented. I was later assured that a solution was being formulated and that something would be done in three weeks' time. Imagine my surprise when I read in Saturday's *Advertiser* that the chair of the working party indicated that a report is expected by the end of the year and that it made no mention of covering the water carting, and of course this was the end of 2004.

The end of the year has come and gone, and yet there has been no report that the people of Glendambo and I are aware of. Like so many actions of this government, the due date has been pushed back or ignored yet again. Minister McEwen has tried to assure me that progress is being made and that a solution is just around the corner. With progress like this, we will end up with the problems in the Middle East being solved before the government finds a solution to the Glendambo water situation. The progress association has provided a possible solution. I have made the suggestion that the government should increase its component of funding to cover the cost of water carting rather than cut into existing budget items. Yet the government still cannot produce a report which is nearly six months overdue on a critical area of governmental responsibility.

In my view, minister McEwen has botched this entire process and should apologise for the unnecessary delays the Glendambo township has had to endure. I once again reiterate my preference for an interim solution to the problem should the water supply fail and until the report can be finalised, which I imagine will be some time after the next election. If this is the sort of service that minister McEwen serves up to rural and regional South Australia, no wonder the residents of Mount Gambier are very unhappy with him.

FORENSIC NURSING

The Hon. SANDRA KANCK: Last year I learnt about a branch of nursing I had never heard of before, forensic nursing, and it is a branch of nursing that I hope will develop further in this state. It is a profession of growing standing in the United States and Canada, and it covers a variety of subspecialties, including nurse coroners, clinical forensic nurses and sexual assault nurse examiners, who are fortunate to be able to call themselves by the acronym of SANE.

Forensic nursing is a specialist form of nursing—recognised as such by the American Nurses Association in 1995—in which the skills and knowledge of nursing are applied to medico-legal issues. It is distinguished from traditional nursing by its combination of nursing science, forensic science and criminal justice skills. In the US, sexual assault nurse examiners have sexual assault response teams which are funded by the US Department of Justice and the Office for Victims of Crime, yet, as a group, they are almost undetectable in Australia.

As we all know, nurses are the first point of contact for people reporting with trauma, particularly in accident and emergency departments in our hospitals. Of particular interest for forensic nurses would be injuries sustained that may have been caused by physical violence. Given the right amount of training and expertise, it places these nurses in a vital position to note information that could be useful at a later time if charges result against a perpetrator for the injuries or death of a patient.

Sometimes, significant amounts of time elapse between the nurse's examination of the patient and the subsequent doctor's investigation, which can compromise evidence. The role that can be played by forensically trained nurses in finding the pieces of the jigsaw puzzle can become even more important, because they are there when the patient first arrives.

The evidence that they are able to note can become very important in determining whether a woman who says she walked into a door, really did so, or whether her injuries were inflicted by another person, whether a SIDS case is actually a murder case, or whether a suicide was really a homicide. The North American experience shows an increase in the number of successful prosecutions for sexual assault and guilty pleas as a consequence of the high standard of evidence collected by SANE nurses. In South Australia, it is possible

to study for a Graduate Certificate in Clinical Forensic Nursing at Flinders University, and there have been eight graduates so far, and there is a waiting list to get into the course.

This year at Flinders University, for the first time, clinical forensic nursing was offered as an option in the Bachelor of Nursing course, and the 40 places were filled almost immediately, with queries coming in from around the world. The demand is such that a course will soon be run in the Riverland, consisting of three days of intensive study, followed by subsequent online study. According to the Flinders University web site, some of the issues that students will be able to look at include: sexual assault, domestic violence, child abuse, industrial accidents and road traffic accidents. The Dean of the School of Nursing and Midwifery, Linda Saunders, is a member of the International Association for Forensic Nurses, and she is a powerful advocate for this subject and profession.

With so few South Australian rape victims able to achieve a successful prosecution against their perpetrators, forensic nursing has a real role to play in obtaining justice for victims of sexual assault. If a woman is raped in some of our regional towns, her trauma will be increased by having to travel to Adelaide for an examination. If we had nurses properly trained to do the job on the spot, some of that trauma could be reduced. I have no doubt that doctors will argue against this expansion of the role of nurses, and some will no doubt claim that they are the only ones capable of doing the examinations; but the North American experience belies that.

The foreword of the United States National Protocol for Sexual Assault Medical Forensic Examinations states:

> We know that effective collection of evidence is of paramount importance to successfully prosecuting sex-offenders. Just as critical is performing sexual assault forensic exams in a sensitive, dignified and victim-centred manner. For individuals who experience this horrendous crime, having a positive experience with the criminal justice and health care systems can contribute greatly to their overall healing.

Nurses are an untapped resource in supporting sexual assault victims, and providing this extra training can make the difference in getting convictions. I want the South Australian government to get behind forensic nursing, take the lead, and set the standard for the rest of Australia.

Time expired.

WORKCOVER

The Hon. A.J. REDFORD: There are some really strange things happening at WorkCover which do not seem to add up. Over the past two days, I have raised a number of issues during question time, and they simply do not stack up when considered together. I think that the actions of WorkCover at the moment are inconsistent, appear to be arbitrary and are certainly not in accord with statements made to parliamentary committees. In that respect, the chair of WorkCover, Mr Bruce Carter, is on record as saying a number of things, which I summarise, as follows:

(a) in November-December 2004, the WorkCover board extended claims agents' contracts to June 2006;

(b) to change claims managers, regulations need to be amended;

(c) an external report into claims management by Mountford was highly critical of WorkCover's process driven claims management, rather than its being outcome driven;

(d) in terms of managing claims, WorkCover was focusing on early intervention and adopting the New South Wales model to manage long-term claims;

(e) consistent with WorkCover consultant recommendations, there are no benefits from 'in-sourcing claims management';

(f) WorkCover will be fully funded by 2012;

(g) WorkCover improved its financial position by $19 million last year, despite collecting an extra $97 million from the pockets of employers;

(h) claims managers, rather than insurance companies, are being considered, and the firm Wyatt Gallagher Bassett is being talked to; and

(i) the Victorian system is the one most similar to that in South Australia.

Today, in another place the Treasurer told parliament that WorkCover is beginning to turn around significantly. Further, the minister for WorkCover (whose office regularly destroys documents) said that the Mountford report stated that the government left WorkCover in a mess. I have read that report in some detail, and it says no such thing, thus casting considerable doubt on the recollection of a minister whose office regularly destroys notes that might assist his recollection. Recent events outlined in questions asked by me appear inconsistent with what Mr Carter has said. I will outline some of those, as follows:

(a) despite extending claims agents' contracts to June 2006, those very same claims agents are under scrutiny, according to the *Sunday Mail*;

(b) despite the appointment of Jardine Lloyd Thompson in relation to claims management, regulations have not been changed, as suggested might be required by Mr Carter;

(c) despite criticism by Mountford that claims management has been process driven, letters sent to claims managers just prior to Christmas referred to changes in process and, indeed, interference in process;

(d) despite adopting the New South Wales method of managing long-term claims, consideration was being given to taking up some Victorian initiatives, including bonuses for claims agents;

(e) despite stating that claims managers should continue and that there should be no in-sourcing, WorkCover is now in-sourcing claims (and commenced to do so immediately prior to Christmas);

(f) despite the Victorian system being most closely aligned to that in South Australia, we are following the New South Wales scheme, which scheme is in desperate trouble; and

(g) despite a lack of claims management experience, WorkCover is directing claims managers (prescriptively, I add), to make offers to the lucky 40 long-term claims, precisely identified by WorkCover, amounting to a sum of $4 million.

After question time today, the Treasurer tabled some new figures, although the unfunded liability figure was omitted. I suspect that a frank exchange of views is currently happening between the auditors and the managers at WorkCover. However, I say this: in the past 18 months, the government has collected an additional sum of $108 million and has managed to achieve a lousy turnaround of some $20 million. That does not fill me with any degree of confidence in relation to the medium or longer term future of WorkCover.

Indeed, it was only 12 months ago that Mr Carter wrote to the leader.

Time expired.

COOBER PEDY, PROBLEM GAMBLING

The Hon. NICK XENOPHON: On Melbourne Cup day (of all days) last year I attended a public meeting in Coober Pedy. I was invited by the President of the Coober Pedy Residents Association, Boro Rapaic, who also happens to be a Coober Pedy councillor. The reason for the meeting was as a result of the concerns that councillor Rapaic and many others in the community had about the impact of poker machines in Coober Pedy. That meeting was attended by about 50 people in the Greek hall (of all places). There was a fairly robust discussion not only from those who worked in the community but also from representatives of the two poker machine venues in Coober Pedy. It was a good community meeting and a good discussion about poker machines in that town. It would be fair to say that, in many respects, Coober Pedy is almost an iconic town in South Australia. It is the opal capital of the world, it is a prime tourist attraction, it is a place with an international reputation and, certainly, it still has that pioneering spirit for which it is most famous.

There is a deep-seated concern amongst residents and the community of Coober Pedy about the impact of poker machines on their town. They are concerned about the impact they have had on families and particularly children who, in many respects, are the innocent victims of families who have either broken up or who, as in some tragic instances, are not able to afford to feed them adequately because of their addiction to poker machines. Also, there is concern that petty crime could be linked to poker machines, and that is something on which I will be seeking further statistics and information. There is a concern that small businesses have been impacted by poker machine losses in that town. When I was asked by Coober Pedy residents how much has been lost in Coober Pedy as a result of poker machines I could not answer, because of the way in which statistics are compiled by the Office of the Liquor and Gambling Commissioner. The figures relate to the Flinders Ranges and Roxby Downs areas, but there are no specific figures for Coober Pedy. I will be seeking to get that further information for the people of Coober Pedy.

What also concerned me very deeply is that, several years ago, the people of Coober Pedy did have an occasional service for gamblers rehabilitation, but that service no longer exists. Of course, they can call the free call number, but that is no substitute for face-to-face counselling and the intensive help that many people in Coober Pedy need to deal with their gambling problems. I have asked questions about that in this chamber before, and I will continue to ask questions. Given that the government has now increased funding for gamblers rehabilitation as a direct consequence of concerns that the opposition expressed, and my fellow crossbenchers supporting an amendment to increase funding, I am hoping that that money will also be available to residents of Coober Pedy for direct assistance with gamblers rehabilitation, which is a very serious problem there.

My brief discussions to date with members of the indigenous community in Coober Pedy indicate that this is a serious problem. Councillor Rapaic and others in the community are pushing for Coober Pedy to be a pokie-free town. They know that it is a big call, but it is something that they believe is worth fighting for. They believe that it will highlight the impact of pokies in one of the state's iconic towns, and I am more than happy to work hard with them on that aspect. The immediate concern is to provide assistance for those who have a devastating gambling problem but, of course, it is much better to have a fence at the top of the cliff than the best-equipped ambulance at its base. I am looking forward to continuing to work with members of the Coober Pedy community in their campaign to lessen the impact of poker machines on their town. I believe that this campaign has a lot of gusto, a lot of pioneering spirit and a lot of grass roots activism. I am looking forward to working with the Coober Pedy community for a good outcome.

EYRE PENINSULA BUSHFIRES

The Hon. IAN GILFILLAN: I move:

That this Council—

1. Notes with sympathy the disastrous Eyre Peninsula bushfire of January 2005 that caused the deaths of nine people and a heavy loss of private and public property.

2. Requests that the Government of South Australia undertakes an independent inquiry into the preparation for and operational response to those bushfires by South Australia's emergency services in order to identify improvements that might enhance the capacity to respond effectively to large-scale events of that kind that can be implemented prior to the next fire season.

(a) That the terms of reference for the inquiry be to examine and report on the adequacy of the response to the bushfires by the SA Department of Justice and its components (CFS, MFS, ESAU, SES, SAPOL) and other relevant agencies, including EnvironmentSA, with particular reference to-

(i) the preparation, planning and response to the bushfires and of strategies for the evaluation and management of bushfire threat and risk;

(ii) CFS's management structure, command and control arrangements and public information strategy;

(iii) the coordination and cooperative arrangements with local government, other South Australian, interstate, Commonwealth and non-government agencies, including utility providers, for managing such emergencies; and

(iv) the adequacy of CFS's equipment, communication systems, training and resources.

(b) In undertaking its work, the inquiry team should consult closely with the Coroner conducting inquests into the deaths caused by the bushfires to avoid any interference with the process of inquiry being directed by him.

(c) The inquiry should report by 30 June 2005 in order that relevant recommendations resulting from the inquiry may be fully implemented prior to the onset of the 2005-2006 bushfire season.

It is relevant in commencing my explanation of the motion to refer at least in part to material that I referred to in a question on the Coroner this afternoon in question time because, to a large extent, the reliance on the Coroner's report, which appears to have been the assumption of the government to date, is going to be seriously jeopardised because, as it said in the article and confirmed elsewhere, the Coroner's Court is seriously understaffed and overworked and is unlikely to complete such a lengthy and exacting term of reference as the Eyre Peninsula bushfires for many months.

I remind the chamber that, after Ash Wednesday, it was 17 months before the Coroner completed a report into that tragic event, at a time when there was far less pressure on the

Coroner's Court with matters referred to him. Secondly, in Canberra, the ACT had a Coroner's report into the fires in January 2003 and that report is still not concluded. In fact, it has been stalled because of some form of litigation that has been raised. Had the ACT been depending on the Coroner's report for the substantial assessment and recommendations for the tragedy of the Canberra fires, they would still be waiting and, what is more, they would not know whether that report was to be finalised, certainly not within a comfortable foreseeable distance.

I think it is a very high priority for me and on behalf of the Democrats to commend in the highest terms the response of the state government to the fire. Various aspects of what it did have been identified, and I will mention two now. One is the immediate placing of a responsible minister in the location so that decisions could be made, and authorising the minister to make decisions on the spot gave a lot of assurance and confidence, and got actions taken and decisions made in very good time. The second was the immediate granting of the $11 000 to every victim suffering loss from the fire. That was very timely and showed compassion and cut through what quite often is long drawn-out red tape before the real help gets to the people who need it.

Another initiative of the government is the establishment of the West Coast Recovery Committee, headed by Vince Monterola, which is an excellent initiative. I have in my hand a couple of bulletins that were put out very promptly for people, distributing information, friendly invitations to gatherings and meetings and an explanation of what is happening. Storage containers available for delivery, is one item from this, along with donations, cleanup, environment, volunteers, education, planning for the future, housing and accommodation. So the people in the community who suffered such desperate loss would quickly get the feeling that there were others who really cared. Uncharacteristically, a government was leading that approach, so it is important that we recognise it.

I am sure that every member in this chamber will join with the Democrats in making absolutely plain that we congratulate the government on an exemplary reaction to the fire. Having said that, it is important to point out again that there is a need for an objective and thorough inquiry so that these initiatives by the state government do not just slip into memory as nice warm, fuzzy actions and be looked back on in recollection. They need to be accurately identified as initiatives that can be recommended for other regimes to follow when, as inevitably will happen, other jurisdictions—and perhaps our own here in South Australia (God forbid, but it will happen)—have similar disasters occur.

In the print media there have been some articles which, after the first flurry of the immediate news reporting, were reflective. I refer to one in *The Australian* of Tuesday 1 February at page 11, 'Fighting fire with fire', which contains the early stages of a critical analysis, with some finger pointing emerging, which is inevitable. It is important that the finger pointing, complaints, grievances or discontentment have a formal, competent entity in which to be heard and have the information the people want to get off their chest analysed objectively and constructively.

Another article to which I refer appeared in *The Adelaide Review* of 21 January this year with a front page headline 'After shock'. It states:

> First came fear and shock as fire and water ravaged the landscapes and communities of the Eyre Peninsula and the rim of the Indian Ocean. Now recrimination, anger and confusion are taking their toll.

Obviously the rim of the Indian Ocean was referring to the tsunami. The article goes on to outline some of the emerging concerns, hurt and anger which inevitably arise. They will be much more constructively dealt with if there is a formal and competent inquiry, other than one by the Coroner or the police.

Again, in the context of excellent initiatives, I refer to the mental health approach. With a couple of hiccups, when bureaucracy's knee-jerk reaction was to set up nodes to which those who had supposedly analysed themselves as needing some sort of mental or emotional counselling would present, it took a little while (but not long) for the comment by others (who were more accurate in their assessment) that people will not come to those sort of centres and present. Many people will stay, lick their wounds and be hurt more profoundly on their own. So, the initiative needed to be pro-active without being paternalistic for it to be constructive and caring. It is much too sensitive an area.

I am not qualified to analyse the details in this contribution to my motion. Suffice to say that I have had frequent reports back that the benefits of the human contact, of comradeship, just being there, have been so beneficial to those people who will be suffering for a long time. I commend that approach. I have been told that Jonathan Phillips, the Director of Mental Health, is incredibly committed to this.

I had a conversation with Geoff Phillips who is with the community services department of the Baptist Church. It is involved in a commonwealth-funded program. I also share this quote with the chamber from Sue Paterson of Eyre Peninsula mental health:

> We had a planning day last week—how to communicate to people, concerns and facts, that clinical support for everybody is wrong and how impressive it was to watch the community responding.

Work is in progress, extraordinarily challenging and difficult work, which deserves to be assessed so that people can learn for future experiences and benefit from an analysis of what has occurred, what is occurring and what will occur in the Eyre Peninsula situation.

There are desperate needs on the West Coast. Obviously, there is a need for money. I know that we may be experiencing charity fatigue from the appeal for funds, but it has been put to me that the charitable gifts have amounted to perhaps $1.5 million to $2 million from an estimated need of $10 million, so there is plenty of financial gap to be made up there. I have mentioned elsewhere and I mention again that insurance is an issue that needs to be addressed and analysed, whether there need to be cooling-off periods (and I will come back to that), but I am advised that insurance assessors have been there. In many cases they have made funds immediately available but from the Canberra experience there was a caution that people should be advised not to rush into signing total settlement with insurance companies.

I am reassured, not that I needed to be, I suppose, that the handling of the donations is being done very responsibly. It is being done on a basis that does not discriminate against those who were not insured, which is obviously a sensitive area, but I think that time and analysis will show us that this was a sensible decision but one which should be assessed again in hindsight rather than making a spontaneous judgment about it as each day goes by.

I urge the government to consider this motion. I know it will consider it very seriously but I believe that it has been

swept along at a speed faster than is comfortable to make calm, objective judgments about everything that should be done. I share with the chamber what some honourable members may not have picked up. To my mind the Minister for Emergency Services, the Hon. Pat Conlon, is being swept along with what is needing to be done and has not yet had time to step back and see the value of the independent inquiry that the Democrats are proposing. This question was asked by the Hon. Wayne Matthew in the other place:

> Will the Minister for Emergency Services make public the details and findings of internal investigations into the recent Eyre Peninsula bushfires or, if there are valid reasons for non-public disclosure, will the minister agree to make the information available to the opposition in confidential briefing?

The minister replied:

> I am not sure what information the honourable member is referring to because as yet I have not seen a report on the fires. I understand that Euan Ferguson, for whom I have enormous respect, has been working through the process of debriefing everyone involved in the fire. A Coroner's inquiry is afoot and of course the police inquiry was undertaken speedily. The Coroner's inquiry, as I understand it, will make public its findings. I have not turned my mind to the question of an internal inquiry but I can say that I am quite happy to share any information that does not unfairly damage any individual with the parliament and with the opposition.
>
> The first priority for us was not to give us the inquiry but to make sure that we got the recovery afoot. I have been far more interested in getting regular reports from Vince Monterola who is running the recovery process. I have every faith in the CFS properly to debrief its people. I put on the record that there is absolutely no doubt that, as with every major fire, with this fire we will all learn something.

I think the minister misses the point. Certainly, if as he says, we all are to learn something, we will learn it much more substantially and effectively if it has been assessed by a competent independent inquiry. I think it is true that the police are conducting an inquiry. When I was there they had a schedule at that stage, I think, to interview 160 or 170 people. I am sure they are getting interesting information. However, they are not what I would regard as competent in assessing the broad range of matters which should be covered by such an inquiry. Furthermore, I believe that the police themselves should be part of the subject of the inquiry—as should everyone. It is not a critical assessment: it is a fact assessing exercise. Certainly, once the fire was under way, the police had a most influential role in conducting where the public should and should not go; and in other areas of decision making involvement.

There has been a series of investigations in relation to the Canberra bushfire from which we should be big enough to learn. There is no point and no need to reinvent the wheel. If members have not realised it, I will let them know that my terms of reference for this recommendation are largely drawn from the terms of reference set up by the ACT government. The other inquiry, and one to which I have referred at other times in this place, is the National Inquiry on Bushfire Mitigation and Management. I have a summary dated 31 March 2004. That inquiry was chaired by Mr Stuart Ellis, and Professor Peter Kanowski and Professor Robert Whelan made up the committee of three. That was responded to somewhat belatedly in a document by the government entitled 'Response to the National Inquiry on Bushfire Mitigation and Management'.

The original report of the inquiry contains 400 pages—and I confess that I have not read those 400 pages—but I have made an attempt at assessing the recommendations that are summarised in the summary in the National Inquiry on Bushfire Mitigation and Management. I will share with the chamber the nature of some of the recommendations. For example, recommendation No. 3.1 states;

> School-based bushfire education: the inquiry recommends that state and territory governments and the Australian government jointly develop and implement national and regionally relevant education programs about bushfire, to be delivered to all Australian children as a basic life skill. These programs should emphasise individual and household preparedness and survival, as well as the role of fire in the Australian landscape. Program effectiveness should be audited by each state and territory after five years, with a national report to be provided to the Council of Australian Governments.

Recommendation 4.1 states:

> The inquiry recommends that a structured risk management process, based on the Australian Standard for Risk Management, be further developed and applied in all aspects of bushfire mitigation and management, informed by a thorough understanding of the full range of assets.

The report to which I am referring is in a broader ambit than the one which I would expect to look at the West Coast situation and broader than the one specifically set up by the ACT. I hope I am not confusing members, because I am referring to the one COAG commissioned and responded to. It responded, I thought, quite constructively. I need to mention—although I have mentioned it elsewhere—the sorts of recommendations that were in the original inquiry. They included building codes; the ABC as the broadcasting or communications authority; the requirement for a single control of major event fires; the aerial approach to fire fighting; the issue of evacuate or stay or in one wording 'go early'; more resources to fire fighters; a code for insurance companies dealing with victims of these tragic events; tax concessions and out-of-pocket expenses for volunteers, such as the CFS and SES; and a centre for lessons learned. So there would be an ongoing assessment of the material and the experiences that the community has throughout Australia for dealing with such crises that arise as from the fires in Canberra and on the West Coast.

COAG in many cases has accepted the recommendations of the inquiry. It says that it has already acted upon some, and with respect to others it intends to recommend that the various jurisdictions act upon them. Essentially, it was a cooperative reaction. I do not know exactly why it was delayed so long. I was told that it was because of some jurisdictions having quibbles about the wording in the report. I think they felt that their parliamentary noses were out of joint. However, there is one that I think is important because it appears in other inquiries. It is recommendation 6.2, which states:

> The inquiry recommends that the review of the Building Code of Australia, with particular reference to the Construction of Buildings in Bushfire Prone Areas Standard—to deal with resistance to natural hazards, including bushfires—be completed by the Australian Building Codes Board as a matter of priority.

COAG in its response says:

> COAG is concerned by the Report's observation concerning the delay in the review of the building code, and in particular the Construction of Buildings in Bushfire Prone Areas Standard AS3959 by Standards Australia. COAG supports recommendation 6.2 and notes that the Australian Government Minister for Industry, Tourism and Resources will write to the Board identifying this review as a priority, and reinforcing both the urgency for, and benefits of, encouraging Standards Australia to complete the revision of the Australian Standard that follows COAG's *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* and its enactment through the Building Code of Australia.

That is very worthy, but the fact is that there are between 70 and 80 houses which are to be rebuilt as a result of the fire,

and how much more valuable it would be for them to have had the advantage of an up-to-date building code which embraced lessons learnt of fire-proofing and of safe areas in those houses.

I mentioned about the ABC having the role as the official emergency broadcaster and having that as an assured standing arrangement. COAG continues:

> COAG agrees that the electronic and print media have an important role in informing the community about bushfire mitigation and management in preparation for each bushfire season, and in providing up-to-date information during bushfire events.

Recommendation 7.1 calls for the following:

> . . . non-exclusive agreements with the Australian Broadcasting Corporation as the official emergency broadcaster, and similar protocols with commercial networks and the local media. COAG supports the recommendation and notes that all jurisdictions are working towards formalising agreements with the Australian Broadcasting Corporation. COAG also supports the extension of these arrangements to commercial networks where feasible.

Rather coincidentally, I was in the ABC Adelaide studio doing an interview with Neil Vesey on the delay in the COAG report coming out on the afternoon of the fire, and it was clear that, although they were doing their best, there was no really thorough and predictable pattern whereby information was coming through for the ABC to use and then to redistribute. It struck me then—and it has come to me even more forcibly—that, unless this is formalised, people can be and will be confused, particularly in situations which evolve so dramatically quickly as the fire on the West Coast.

These are matters which could save lives if they are properly addressed between now and a time when there is the risk of further bushfires. Recommendation 8.6 states:

> The inquiry recommends that the Australian Government maintain leadership of and support for the National Aerial Firefighting Centre for a further three years until the Bushfire Cooperative Research Centre has finalised its research into the effectiveness of aerial suppression operations.

In reply, COAG states:

> The Australian Government has already announced funding of $16.5 million for the National Aerial Firefighting Centre ($5.5 million per annum for the three years 2004-05 to 2006-07).

The actual time of and style of aerial firefighting is dealt with. It is particularly sensitive, I think, in the circumstances that occurred on the West Coast. Quite clearly it is a matter which an independent inquiry should assess. I have mentioned insurance, but in this explanation I would like to remind the chamber that recommendation 9.1 states:

> The inquiry recommends that the Insurance Council of Australia be asked to review the industry's code of practice and response to the lessons learnt from the claims arising from the 2002-03 bushfires.

COAG's response is as follows:

> COAG notes the inquiry's observations about significant levels of non-insurance and in particular under-insurance, and the need for the insurance industry to provide improved and more consistent advice to policy holders. There are also lessons to be learnt from the performance of the insurance industry, including the need to provide comprehensive information and the balance between prompt settlement of claims and a cooling off period to allow for consideration and review of settlement offers. COAG supports the recommendation to raise these issues with the insurance industry. The Australian government will write to the Insurance Council of Australia asking that a review of the industry's code of practice take account of the lessons learnt from the claims arising from the 2002-03 bushfires. This approach is consistent with actions planned in relation to COAG's Natural Disaster's report.

This issue is relevant right now on the West Coast. An independent inquiry will be able to add to and report on the actual experience of the insurance companies in their interface with the victims on the West Coast. The challenges of under-insurance or non-insurance are situations which will continue to arise. There needs to be an expectation, so that one does not have to wait until after a disaster to suddenly discover these problems. The problems in Canberra were in some cases just the callous indifference of insurance companies to the victims, and manipulating them into signing prematurely, and leaving some of them without public liability cover because they had not been advised that that would be the consequence of concluding a settlement with the insurance company.

As far as this inquiry goes, I do urge honourable members to access the two documents I am referring to. They are not long and they give you an indication of the sort of substantial material that can be further enhanced with our own inquiry on the West Coast. I think that their emphasis on the financial recognition for volunteers will be an ongoing issue, particularly in the face of falling numbers of volunteers with the CFS. I think it is an important challenge for us to realise that the CFS is an absolutely vital organ in dealing with bushfire incidents. We need to make sure that people will continue to offer for that volunteer service, and that they do not have to suffer particularly onerous financial sacrifices for doing so. That deals with the COAG inquiry.

Because we are basing my push for an inquiry on the terms of reference as spelt out by the ACT, I would like to explain that there were two specific inquiries into the Canberra bushfires: one is on the motion of the ACT government, and the other is from the House of Representatives, with a select committee looking into recent Australian bushfires. Both of these reports are very valuable, but the one which I regard as particularly relevant to us is the 'Legislative Assembly for the Australian Capital Territory government response—Report of the inquiry into the operational response to the January 2003 bushfires in the ACT', tabled by John Stanhope MLA, Chief Minister, August 2003. Bear in mind the date; this was tabled as a response by the ACT government in August on the fire of January in that same year. If the government depends entirely on the Coroner's report, and if previous performances are any guide, we should not expect anything until August 2006—if we are lucky, 2007, if we are working on what has been a precedent elsewhere, and it is much too long to wait.

The ACT government report is called the McLeod report, because the former commonwealth ombudsman, Mr Ron McLeod, conducted the inquiry and provided the report. All of this material is also available to honourable members; it is very easy to access and print out. I will make a couple of observations as I go through the pages of the report. It is the government's reaction to the McLeod report. This, I think, is very significant to us when we look at my motion before this chamber. Bear in mind that the following is the government's response:

> The need to act before the beginning of the 2003-04 fire season, planned for 1 October 2003, has been recognised.

In other words, with a fire in January 2003, the ACT government regarded it as a top priority to put all the structures it possibly can in place before the next bushfire season, which is less than 12 months away. The government spells it out in the report. It details its amounts of money which, in its budget, relative to our state, is still a substantial amount. It includes funding for fuel reduction work, maps, aerial photography, accelerated fuel reduction, access trail upgrades and bushfire abatement zones. I refer members back

to when I was talking about building codes. The government has also engaged expert consultants to provide advice on future building design and landscaping of properties to mitigate fire risk. These are clearly areas that neither the police nor the Coroner would, in any way, be able to address, and yet they are critical to saving lives and houses which are going to be exposed to fire risk in the future.

There is also reference to aerial firefighting operations. The repeated reaction to this aerial firefighting is in all three reports, with the recognition that the aerial campaign has to occur early in the fire to be effective and, where it can be applied quickly, it is very effective and well worthwhile. There are obviously other allocations of money for training, community fire units, equipment and compressed air foam systems to be fitted to all bushfire tankers. So, there is some very detailed and useful information in this report; the recommendations are specific and useful. To its credit, in its response to the McLeod report, the ACT has outlined something which must reassure the residents of Canberra that their government is taking this report seriously and is taking action.

The House of Representatives Select Committee Into the Recent Australian Bushfires was chaired by Garry Nairn, the MP for Eden-Monaro. It was given quite specific terms of reference by the House of Representatives, and it has compiled a series of recommendations which are spelt out in this quite brief summary—54 recommendations—all of them practical and sensible. I am spending some time on my contribution because I hope to make it quite clear that, in assessing the value or otherwise of this motion, honourable members ought to realise—and I hope they do—that this cannot be regarded as a party political or political point scoring exercise.

The loss of nine lives in the disaster of the fire on the West Coast is far too profound a loss for the state to allow this parliament to be drawn into point scoring as to who is at fault and who should initiate the right actions to take place. We have had serious bushfires, certainly, in the known history of European settlement. In fact, *The Canberra Times* of Monday 16 January 1939 described a very serious fire as follows:

> . . . burning tinder was carried five and six miles by the wind, before being dropped to start fresh outbreaks in the dry grass and trees.

When those sorts of circumstances occur, whether it be 1939 in Canberra or 2005 on the West Coast of South Australia, they create circumstances beyond those we can normally handle and control. In Canberra, scientists are still studying fire behaviour in order to gain a clearer understanding of its characteristics; the same must happen on our West Coast.

The final word (as it is described) of the inquiry states that the inquiry considers, however, that there was a chance to extinguish the fires if the opportunity to put them out in the first 36 to 48 hours after the lightning strikes (because that is how the Canberra fires began) had been grasped more vigorously. The ACT fire authorities are criticised for not coming to this realisation quickly enough and for failing to immediately attack the fires with all the aggression they could muster. There is a risk that, if we grasp the recommendations responsibly and learn from the lessons of the past, there would appear to be wasted resources, labelled as 'overkill', namely, that aerial bombers are brought in to stop a fire which, it could be argued, would not get out of control and, therefore, it was a waste of resources.

The point is that I would far rather live in a community that is wrestling with the allegation that there had been some waste of resources and some unnecessary early intervention than burying, lamenting and grieving for nine dead people and thousands of dead sheep, which are the consequences, in my view, of not having acted quickly enough to prevent the fire on the West Coast. The report further states:

> Many recommendations are made in this report. If they had all been implemented before the fires, would that have made a difference? The inquiry considers that had the improvements it recommends in relation to strengthening the initial attack capability of the bushfire service already been implemented when the fires first broke out, things could have been different.

Again, that emphasises the point I make. On 25 January, I wrote to the Premier urging him to set up an independent review and to expedite the process so that the recommendations could be considered in this year's budget and certainly before the next bushfire. I have not yet received a reply, although it is fairly short notice, so I am not concerned about that; however, I would like to think that the Premier has taken its contents seriously on board.

I am coming to the end of what I want to say in my introduction and recommendation to pass the motion, but I think that nothing could be more poignant than the loss of life when people have wrestled with whether they should stay or leave their house when they are at risk. It does not take much imagination to feel with those people. One incident I heard of involved a 16 year old girl, whose only communication was with her father on a mobile phone. He recommended that she go into the bathroom and fill the bath with water. She did so, but it became harder and harder to breathe and, when the ceiling glowed pink, she decided to vacate the premises. However, in the process, she had to inhale very hot air and smoke. She found herself walking down the main highway but was bypassed by a couple of CFS vehicles because she was virtually invisible: she was dark and not on the road in a conspicuous way. That is one instance, but it highlights for me the dilemma of how to behave in the front of a fire with the horrendous capacity of the fire experienced on the West Coast. A couple of points came from this Canberra report, as follows:

> The message to the community should include acknowledgment that in major bushfire emergencies:
> · the authorities are unable to guarantee that firefighters will always be available to assist;
> · householders generally need to take sensible precautions and be prepared, if that is their choice, to protect their own lives and properties;
> · the authorities are committed to doing all they can to help, including advising the community on how best to go about achieving a higher degree of personal and household self-reliance.

The ACT recommendations were divided into the following topic areas, and I will read them because I believe that they are good indicators of the sorts of things that must be considered in any thorough learning process in any inquiry on the West Coast:

· Fuel management
· Fire access
· Aerial operations
· The Emergency Service Bureau headquarters facility
· Incident command and control
· Vehicles and other equipment—

obviously, the failure of radio connection would have to be looked at very intensely in relation to the West Coast situation—

· The Rural Fire Control Manual
· Training and development
· Occupational health and safety

- Relationship between the fire management and land management agencies
- Commonwealth and interstate contributions
- Scaling-up
- Public education
- Public information
- Evacuate or stay?
- Forestry settlements
- A more unified and independent emergency services organisation.

Those recommendations apply to us. The report continues:

> Example recommendations
> Aerial operations
> Aerial bombing should remain a capability used in the ACT during bushfires, with particular emphasis on using the aircraft for water bombing as an immediate response—as soon as fires are detected. This should be backed up by the use of ground crews.

That is all I want to share with the chamber at this stage; perhaps when I close the debate there will be more material to put to the chamber. I do hope that we will pass the motion, because I believe that the government is in a receptive mode. It has not locked its mind into resisting persuasion and argument to set up an independent inquiry. It is on that basis that I urge the chamber to support the motion and to do so expeditiously so that it is not drawn out too long, and that we can start to harvest some sensible and objective recommendations from the tragedy which was and still is the bushfire on the West Coast.

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

SUMMARY OFFENCES (TICKET SCALPING) AMENDMENT BILL

The Hon. NICK XENOPHON obtained leave and introduced a bill for an act to amend the Summary Offences Act 1953. Read a first time.

The Hon. NICK XENOPHON: I move:

That this bill be now read a second time.

This bill deals with the issue of ticket scalping, and I am indebted to the advice of the parliamentary library research service. The research carried out by the parliamentary library staff indicates that advice from the Office of Consumer and Business Affairs is that, at this point, scalping tickets in South Australia is not illegal. However, the office did say that it was improper and discouraged anyone from engaging in the practice. One definition of scalping in the *Oxford Dictionary* is reselling at a large or quick profit.

Certainly, a scalper is well known in the vernacular in terms of the practice of flogging off tickets at a significant profit, either at a sporting or entertainment event. Research indicates that in South Australia the only legal limitation on scalping or reselling a ticket is restricted to any contractual conditions printed on the back of the ticket which form part of the conditions of sale. Terms such as 'non-transferable' or 'not for resale' are meant to prevent the selling on of tickets, and the issuer of the ticket would have the power to void the ticket if this condition was contravened.

However, enforcing this type of contractual obligation would be difficult. Although the act of scalping is not illegal in South Australia, the Recreation Grounds Regulations 1996 do provide some form of regulation on selling within a relevant sports ground. Regulation 8(2)(d) provides that a person must not 'offer any article for sale', and attracts a maximum penalty of $200. This regulation prevents unauthorised selling within or on the relevant recreation grounds listed in the schedule of those regulations. However, the relevance and effectiveness of this regulation is, of course, limited to scalping on the actual sports grounds.

It also depends whether land surrounding recreation grounds (car parks, lawns, etc.) is included in the physical description of the relevant recreation grounds in the schedule. Prior regulations under the Recreation Grounds (Regulations) Act 1931 may have contained more detailed regulations against the reselling of tickets. For example, regulation five of the Recreation Grounds (Regulations) Act 1931-1978 (made at the request of the District Council of Barossa) requires the surrender of any ticket marked 'not transferable' which has not been issued to a person by an authorised body. Regulation six forbids the transfer of a 'not transferable' ticket to another person.

All such prior regulations under this act were revoked by the Recreation Grounds Regulations 1966. In Victoria, ticket scalping is illegal for prescribed major sports events. Section 20 of the Sports Event Ticketing (Fair Access) Act 2002 provides:

> (1) A person is guilty of an offence if—
> (a) without reasonable excuse, a person knowingly contravenes a condition that—
> (i) is printed on a ticket to a declared event; and
> (ii) prohibits or restricts the sale or distribution of the ticket by a person who is not authorised in writing to sell or distribute tickets on behalf of the event organiser; and
> (b) the approved ticket scheme for the event requires a condition to be printed on the ticket.

Penalties apply with respect to that. I understand that was the response of the Victorian government in relation to major sports events, such as AFL finals and, of course, the AFL grand final. Recent media reports indicate that in relation to the Kylie Minogue concert (which is to be held in June) people are offering to sell two tickets for $1 850, which is $1 370 above the original purchase price, and that on e-Bay tickets are being offered at $522 above the recommended retail price. The final sale price remains to be seen, but it does indicate, according to one of the people offering the tickets for sale, a case of supply and demand.

My concern for consumers is that if someone has the economic power to buy tickets in bulk they can deprive genuine fans access to tickets at a reasonable price. In effect, they can distort the market. I understand that, during the course of this debate, others will take the view that it is not unreasonable to let the market decide. My view is that there ought to be some control on those who seek to distort the price of tickets in the context of events that attract a major demand for them.

The bill proposes to have the minister, by notice in *The Gazette*, declare an event to be an event to which the section applies. It does not apply to all events but, given that there may be a dozen or up to 20 major events each year in South Australia, it would be for those events that ticket scalping potentially could be a problem. It allows for a resale of up to 10 per cent above the price, which allows for the fact that some people genuinely cannot go to an event or cannot use their tickets and they can get back the cost of the ticket and any reasonable costs involved.

It allows for exemptions to be made in prescribed circumstances. For instance we know that since the tsunami and the Eyre Peninsula bushfires there have been charity auctions where people have auctioned items and where, in those circumstances, it clearly would be unreasonable for

such legislation to apply to people who are paying well above the price for the purpose of raising funds for charity.

'The event' is defined as meaning 'a sporting event, concert or other entertainment for which tickets for admittance are sold by or on behalf of the event organisers' and the original ticket price would include any booking fees and the like. I know that there may be some concert promoters who do not agree with this. I would be interested to hear from the music industry generally, promoters and those who represent artists. In Victoria there was a view there that action ought to be taken to prevent ticket scalping in certain prescribed circumstances. It is time we moved on this as well. It is curious that the Office of Consumer and Business Affairs say that it is something that is improper, and it discourages anyone from engaging in the practice, but there is not any system of consumer protection in place to prevent this practice. I urge members to support the bill. It is a bill that would be doing the right thing by the genuine fans for major events that come to our state, and I look forward to further debate on the bill.

The Hon. CARMEL ZOLLO secured the adjournment of the debate.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE: WASTE MANAGEMENT

Adjourned debate on motion of Hon. Gail Gago:

That the report of the committee on an inquiry into waste management be noted.

(Continued from 8 December. Page 798.)

The Hon. D.W. RIDGWAY: The Environment, Resources and Development Committee began its inquiry in early 2004, heard from 22 witnesses and received 13 submissions from waste management proprietors, recycling companies and environmental groups, who all submitted their views on waste management techniques in South Australia.

The committee heard that there seems to be sufficient landfill space for metropolitan Adelaide's waste for at least the next 30 years, although this was not the case for rural and regional South Australia. Zero Waste SA commented to the committee that south of Adelaide there was probably 30 years capacity, but to the north with some of the new facilities there is around 90 years capacity. It was also noted by the committee that some local councils, especially in the country, are having trouble complying with some of the stringent EPA regulations and are forcing some councils to be quite cost prohibitive.

For example, I have been talking to people from the Kingston council—to the chairman of the council—and the cost of dealing with waste at present is about $12 a tonne after it has been collected. It appears in a report that the Kingston council has done that after it has been collected, and, if the council complies with the EPA regulations, it will cost something like $70 a tonne to handle that waste. The report that it has had done states that it will necessitate a 15 per cent rise in its council rates just to manage that waste issue and comply with EPA regulations. So the 'one size fits all' approach to landfill is probably not appropriate for country councils and in rural and regional South Australia.

Further, the committee recommended the EPA work with all individual councils to implement some new guidelines applicable to the needs and requirements and also fit into the budgetary restraints of many of South Australia's rural councils. The committee explored new technologies for using waste in energy production, but it found that many need further investigation and most require significant start up capital. One that interested me—and we did not have a lot of information on it—was the technology presently available to convert plastic into diesel. It seemed, from the limited evidence we were given, that it could be quite cost effective and diesel would not be much more expensive than conventional forms of diesel or conventional production of it.

Recycling was investigated by the committee and was found to be working reasonably well in metropolitan Adelaide. All 19 metropolitan councils have a recycling program, although there was not much consistency and there were different programs from council to council, leading to some confusion about what is recyclable. As the Hon. Gail Gago said in her report to the council, the different systems cause confusion, which potentially reduces the amount of recycleables collected and makes them more expensive to recycle.

The committee also noted that country councils were willing to participate in recycling programs but needed assistance from government as the exercise can be very cost prohibitive in rural areas. Certainly the volumes of recycled cans, beverage containers and other recycled material—steel and plastic—are quite bulky and the freight component to get them back to recycling and processing depots can be very expensive.

The final recommendations for increasing recycling in both metropolitan and rural areas were that state and local government review and investigate initiatives to encourage rural recycling and that the state government assist with new infrastructure, technology and transport mechanisms to improve the ease of transporting recyclables over large distances. Plastic bags were discussed but they are the subject of a separate report that we expect the committee will table next month in this chamber.

The committee also focused on the container deposit legislation during the waste inquiry as this is a major part of the South Australian legislation which helps keep our levels of litter down compared with the other states. South Australian litter rates for beverage containers are 25 per cent to 30 per cent lower than those of other states. The committee noted some issues with lack of uniformity for container capacity whereby most containers approved under the scheme are up to three litres but others are less than one litre. The committee found that these regulations are not only confusing for the public but can be confusing for the container depot operators.

The committee also examined the positive and negative issues relating to increasing the deposit value on containers. There were arguments for both sides and the committee agreed that further investigation should be conducted into the possible change of the deposit value. It is interesting to note that there was a 5¢ deposit value on a soft drink can or bottle some 25 or so years ago, and, although the deposit value has not increased, the retail value of those products has probably increased four or fivefold in that time. An argument could be made that there is a sound reason to increase the 5¢ deposit.

The committee agree that the container deposit legislation is a good environmental policy and the committee and I have a belief that it should be expanded into a national program. It works well in South Australia. As a person who has lived on the Victorian-South Australian border all my life I know that the difference in the amount of litter on the side of the

road when travelling from one state to another is quite marked, and I say that is primarily because of the container deposit legislation.

Hazardous waste management was included in the terms of reference. The committee found that Zero Waste SA takes many chemicals and stores them at the Zero Waste depot at Dry Creek. Some of this is an expensive process. We do not have a solution for what to do with some of these hazardous wastes and some are simply stored there and on an annual basis redrummed or repackaged into safe containers or containers that are not corroded. It seems expensive. Some chemicals can be treated in Adelaide by facilities such as Cleanaway and Collex, but others such as some of the PCBs and organochlorin pesticides cannot be treated in South Australia. It may be time for South Australia to look at some form of high temperature incinerator or a bacteria-based method of disposing of some of these chemicals. Some rural communities are also having problems with the management and disposal of hazardous wastes.

It is interesting to note that a toxic waste dump is being proposed for Victoria and there is ongoing debate about its location and its possible impact on ground water and the Murray-Darling Basin. The proposed site is close to the South Australian-Victorian border. It is interesting to note also that Victorian industry produces some 50 000 tonnes of toxic waste, according to the statistics. Given that our economy is about a third the size of Victoria's, we should produce some 15 000 tonnes of toxic waste. However, that is not the case. The evidence we received was that, while more work has to be done by the EPA and the government on the treatment of some of these toxic pesticides and chemicals, we do not have a huge 15 000-tonne problem to deal with each year.

The committee did not pursue an inquiry into radioactive waste but incidentally recommended that a strategy be prepared to manage radioactive waste in South Australia. The federal government had a strategy but unfortunately that issue was politicised by the state government, so now we are recommending that a strategy be pursued, and I look forward to that strategy.

The committee made 33 recommendations as a result of the waste management inquiry and we look forward to them being implemented in consultation with all parties involved. I thank the 22 witnesses and the people involved in preparing the submissions to the inquiry. My thanks also go to the members of the committee: the Hon. Sandra Kanck, the Hon. Gail Gago, the Hon. Malcolm Buckby, Mr Tom Koutsantonis and the Presiding Member, Ms Lyn Breuer. I also thank the current and former staff members, secretary Mr Philip Frensham, and researchers Ms Heather Hill and Ms Alison Meeks.

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

OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION COMMITTEE

Adjourned debate on motion of Hon. J. Gazzola:

That the 2003-04 report of the committee be noted.

(Continued from 8 December. Page 799.)

The Hon. A.J. REDFORD: Before I make any comments about the report itself, I endorse the comments made by my colleague the Hon. John Gazzola in thanking the hardworking staff of the committee of the Occupational Safety, Rehabilitation and Compensation Committee. I also thank all my colleagues who have served to date on the committee, including the Hon. Ian Gilfillan, the Hon. John Gazzola, the member for Mitchell and the member for Colton, who have all worked extraordinarily well. It has been quite a good committee in that there has been a good, frank exchange of ideas, and debate has been undertaken in good humour and in a spirit of trying to achieve a consensus on all views, trying to achieve some understanding of where the other side is coming from. In that respect it has been an enjoyable and pleasant experience. While we have not always agreed with each other, I think that we have managed to agree as much as we can. Often there might be different approaches in terms of achieving the same outcomes, and those matters I will comment on later when we deal with the specific reports.

I know that this is a much abused term, but the committee is conceivably a part-time committee and under the previous administration it met about three times a year, if that, and ministerial resources were available to it and it was chaired by a minister. It was not particularly onerous. It now has a completely different flavour. We have met on 23 occasions and we have done some substantive work. It would be nice if it was a select committee because at least we would get $8 a sitting, but that is not to be the case. Someone pays for our tea and biscuits—I am not sure—but I suspect that happens because there is some sympathy for our position.

Our main tasks over the past year have been dealing with two references from the minister, namely, consideration of the WorkCover governance bill and the safe work bill—on which I will speak later today; and we have had significant evidence on the Stanley report and other issues such as section 58. My only disappointment is the fact that the government is not responding to reports we have tabled, notwithstanding the provisions in the Parliamentary Committees Act. I am getting used to, although not accepting, of this government's failure to properly recognise the parliamentary committee system and to acknowledge it, particularly in the case of the minister who deals with WorkCover.

At present we are considering what we will do in the future. I hope we can look at occupational health and safety issues in government agencies. It is becoming increasingly apparent to me that there are real problems in that area. Indeed, in evidence given to the committee last year, the chair of WorkCover acknowledged that fact in response to a question from the chair. That is what I would hope. I note the Hon. John Gazzola has mentioned in his contribution some positive statistics about Workcover—and I congratulate him for it because it would have been difficult. Indeed, I take my hat off to him because he would have had to trawl through this whole WorkCover saga to find anything positive; and he has my respect that he did find something.

I will not repeat my views in relation to this disaster that the Government has created in WorkCover over the past couple of years. It has dropped a lazy $500 million in and keeps pointing a finger in every direction except at itself. Currently, even on the figures that were tabled today, WorkCover is in the third worst financial position for any reporting period since its institution. That is way worse than anything the Bannon government ever had with WorkCover. I note that the Treasurer in another place lives in a fool's paradise when he deludes himself by announcing that it is a wonderful result, how fantastic it all is, when it is the third worst result since WorkCover came into existence.

I also note that there are different ways one can look at these figures. We have the dearest levies in Australia. They

are double the levies of Victoria, our main competitive state—although the government seems to want to support that. Indeed, last year $97 million extra was plucked out of the pockets of business in South Australia for a turnaround of $19 million. We see the Treasurer in another place stand up and say what a wonderful result that is. I know that the Treasurer sets his sights very low. He is that sort of guy. That might impress him, but it does not impress us at all. There are certain things to which I referred during Matters of Interest today and which cause me some concern, and there is a range of other issues on which I have not yet touched but which I will talk about later in relation to other matters that also concern me.

What we have here is an arrogant Treasurer who seems to think that the third worst performance in 20 years by WorkCover is something to be crowing about. We have a minister who never answers any questions; who destroys documents; and who fails to properly and in a timely fashion tell this parliament what is actually happening inside WorkCover. That is clearly on the record. Never in the history of this committee, established at the institution of the Hon. Michael Elliott—and I had misgivings about it at the time—has there been such a need for a committee to provide guidance to an arrogant Treasurer and an incompetent minister.

The Hon. J. GAZZOLA: I rise on a point of order, sir.

The PRESIDENT: Offensive and objectionable remarks are out of order. Members will not make objectionable or offensive remarks about Her Majesty, judges of the court, the Governor or another member of parliament. A point of order has been called. I will have to uphold the point of order.

The Hon. A.J. REDFORD: Sir, are you saying that I am not allowed to call the government incompetent? If you are, I will seek to disagree with your ruling. I said the minister is incompetent. I have never heard that—

The Hon. CARMEL ZOLLO: I rise on point of order, sir. I ask the honourable member to withdraw the statement about a minister having destroyed documents. It is impugning to that minister actions which could be illegal, unlawful and unparliamentary.

The Hon. A.J. REDFORD: I will withdraw that. I put it in these terms: the Ombudsman made a finding in which evidence and documents were destroyed by the minister's senior staff with the minister's knowledge and approval. I think that that accurately sums up the finding of the Ombudsman in relation to that freedom of information request. He is a minister who goes into the other place on an hourly basis with one of the most shocking memories I have ever seen in any minister. It is not for me to give him advice, but on this occasion I will. My advice to anyone with a shocking memory, including this minister, would be to keep notes—because it helps. That might not occur to this minister, but documents were destroyed. He acknowledged that they were destroyed. He even had the gall to stand up in the other place and say that he had been vindicated by the inquiry.

The Hon. J. GAZZOLA: I rise on another point of order, sir. We are currently debating and noting the report of the Occupational Safety, Rehabilitation and Compensation Committee. I am not sure that bagging ministers is relevant to the subject. A fair bit of leeway is given to the honourable member. I suggest the honourable member strays back to the topic which we are trying to debate.

The PRESIDENT: I believe that the honourable member has sought to comply with standing orders. By way of explanation he has done that. I think that so far he has given the impression he has withdrawn it. I think he is just about to round up his remarks on that subject and get back to the report.

The Hon. A.J. REDFORD: Mr President, you have read my mind. The honourable member prematurely rises to his feet—but it would not be the first time. The point I am making is that we have this level of maladministration demonstrated by this government. The need for a committee such as this becomes even more desirable, even greater. I have to say that the most disappointing aspect is that certain members have other competing demands on their time. Obviously, if one of those competing demands is another paid committee, then one has to give their priority to that other paid committee. In terms of the legislation, that means the committee is not treated with the respect it needs. I think we all should be paid and remunerated properly. I think there is a range of reasons for that, including the importance of WorkCover; the amount of work we do; and the fact we are dealing with a government that is incompetently managing WorkCover so we have to spend more time with it. All of those factors lead me to the inevitable conclusion that this committee should be treated in exactly the same way as any other committee. I commend the motion.

The Hon. J. GAZZOLA: It is left to me to wrap up the debate. I was hoping that the Hon. Angus Redford would carry on with the positive nature of his submission, but we have become accustomed to the Hon. Angus Redford taking every opportunity to bag ministers and the government. He enjoys it, and I must say that people might actually think that he is good at it. However, I will conclude on a positive note by thanking the hard-working staff that had to compile the report and arrange for the witnesses. I thank the witnesses for attending, and I also thank the committee members for their positive input in the committee room, although perhaps not in this place when they were speaking to the report. I thank members for their positive comments on the report.

Motion carried.

OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION COMMITTEE: SAFEWORK SA

The Hon. J. GAZZOLA: I move:

That the report of the committee on the Occupational Health, Safety and Welfare (Safework SA) Amendment Bill 2003 be noted.

In so doing I advise the council that on 7 August 2003, pursuant to a notice in the South Australian *Government Gazette*, the Governor referred examination of the Occupational Health, Safety and Welfare (Safework SA) Amendment Bill 2003 to the Occupational Safety, Rehabilitation and Compensation Committee. The bill is based on the recommendations contained in the Stanley report, which was commissioned by the government to examine the state's occupational health, safety and workers compensation systems. The report argued that a global and strategic approach to the administration of occupational health and safety compliance through prevention and enforcement was required.

It also proposed that occupational health and safety needs a higher public profile which will be achieved by the establishment of a new Safework SA authority. The Stanley report noted that South Australia is the only jurisdiction where the occupational health and safety inspectorate and advisory functions are not located together. Workplace

Services supported the Stanley report's argument, which represented the majority of stakeholder submissions that the transfer of all occupational health, safety and welfare functions to Workplace Services would be the most efficient option. The majority of the committee supports the creation of the Safework SA authority and the transfer of occupational health and safety resources and responsibilities as proposed.

There is an underlying assumption that the changes resulting from the bill will lead to increased efficiency and effectiveness in occupational health and safety administration and regulation from which improved outcomes will flow. The committee did not, however, receive evidence that the changes will result in improved outcomes. The committee received many written and verbal submissions from a range of stakeholders representing employer and employee groups. However, the committee did not receive a submission from WorkCover in regard to the proposed changes. Whilst the committee found widespread support for the changes proposed by the bill, a number of issues were identified by stakeholders and by the committee itself.

The committee is aware that Workplace Services currently has responsibility for the administration and regulation of employment legislation and a range of public safety programs. It is also responsible for shop trading hours' legislation and a range of licences and permits. There is sometimes overlap between public safety programs and occupational health and safety, especially when accidents occur in workplaces that are also public places.

A majority of the committee recommends that Workplace Services can provide occupational health and safety advice, information and support whilst, at the same time, being responsible for compliance and prosecution functions as proposed. However, the committee also recommends that sufficient resources be maintained by WorkCover to ensure its responsibilities to exempt employers can be adequately fulfilled. Key issues raised by stakeholders were the transfer of financial resources and the proposed ongoing levy transfer process which they argue should be transparent. Stakeholders wish to ensure that SafeWork SA will have sufficient resources to undertake the whole range of prevention activities, but, at the same time, employers do not want their levy rates to be increased as a consequence.

The committee noted that the changes proposed by the bill will result in a substantial dislocation of WorkCover and will affect more than 100 employees. The budget reallocation is estimated to be between $12 million and $14 million. A due diligence report commissioned by the government estimated that there is likely to be an ongoing occupational health and safety levy transfer of about 3.8 per cent. The committee suggests that the level of communication and cooperation between WorkCover, SafeWork SA and Workplace Services will need to be strong in order to guard against any increased risk to WorkCover and increased cost to industry which might occur as a result of the potential loss of information which may benefit claims management.

The committee notes that it is now well established law that employers have a responsibility to their employees, contractors, labour hire personnel and to all visitors who enter their premises. Therefore, a majority of the committee supports the proposal to strengthen and clarify the responsibility of employers and self-employed persons to others. The committee also recommends that employers' obligations be further clarified by defining the term 'reasonably practical'. A recent review of the Victorian occupational health and safety legislation undertaken by Chris Maxwell QC found that the expense of implementing safety measures too often constituted the biggest obstacle to improving Workplace safety, and this could be resolved by clearly defining the term 'reasonably practical'.

A majority of the committee supports the clauses that relate to training. This includes the maintenance of records, the training of occupational health and safety representatives, deputies, and committee members, and the training of responsible officers. A majority of the committee also supports the process for resolving training related disputes. Most employer stakeholders were opposed to the use of expiation notices. The Stanley report tentatively recommended their use. However, the committee noted recent research undertaken by the National Research Centre for Occupational Health and Safety Regulations, which found that even small fines can improve employer performance, especially when used in conjunction with media campaigns.

This clause is, therefore, supported by the committee, as is the clause relating to an alternative penalty regime. The proposal to extend inspectors' powers aligns the occupational health and safety legislation with other similar legislation such as the Dangerous Goods Act and the Fisheries Act, which is supported by a majority of the committee. The Stanley report made a number of recommendations relating to what it called 'inappropriate behaviour' at work, and these recommendations have been reflected in the bill. It is proposed that the complaints will be investigated and may be referred to the industrial commission for mediation. It is fair to say that this part of the bill is the most controversial.

Whilst all stakeholders agree that workplace bullying is an increasing problem that needs to be addressed, they were divided on how this should occur. However, one stakeholder stated that the bill is flexible enough to enable a range of redress. The committee agrees that bullying is a serious matter that warrants early intervention strategies to preserve workplace harmony and productivity. The committee supports the views of a number of stakeholders who argue that compliance with the occupational health and safety legislation through effective workplace management systems which focus on prevention and early intervention are the ideal.

Whilst the committee understands that the problem of workplace bullying is complex, the committee also agrees that a range of strategies is required to assist the employers and employees. The committee acknowledges that mediation will not be a suitable option for all workplace bullying complaints. The committee notes that mediation requires informality and cooperation of the parties and is most effective when there is a desire to preserve the relationship. Mediation is an option that some individuals or groups may wish to access. The committee prefers to use the term 'workplace bullying' or 'workplace harassment' rather than 'inappropriate behaviour', because either of these terms is more easily identifiable to a wider range of people.

The committee also believes that the term should be clearly defined to reflect the relevant key factors. The definition should prevent individuals from taking action in circumstances where management has acted reasonably and in good faith. A definition should not water down behaviours that are at the extreme end and which should more properly be dealt with in such other jurisdictions as, perhaps, the criminal jurisdiction. The committee recommends that the term 'workplace bullying' or 'workplace harassment' be used, and that it be defined to mean 'Any behaviour that is repeated, systematic and directed towards an employee or

group of employees that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten, and which creates a risk to health and safety.'

The committee supports the proposal to prosecute government departments and agencies for a failure to comply with the act. The committee notes an agreement between the Office for the Commissioner for Public Employment and Workplace Services that allows the Office for the Commissioner for Public Employment to investigate workplace bullying complaints within government departments. To ensure transparency and accountability, the committee recommends that this agreement be reviewed in consultation with public sector unions.

In regard to prosecutions generally, the bill proposes an extension of time for prosecutions, but some stakeholders argue that this should be allowed only in specific circumstances. The committee was persuaded by stakeholders that an extension of time should be permitted only where the prosecution could not be initiated due to a delay in the onset or manifestation of injury, disease or condition.

The committee received submissions in relation to the membership of the Mining and Quarrying Occupational Health and Safety Committee. The committee recommends that the formal arrangement in place between the South Australian Chamber of Mines and Energy and the Extractive Industries Association be reflected in legislation to enable one nominated representative from each organisation to be appointed to the committee.

The seventh report of the Occupational Safety, Rehabilitation and Compensation Committee represents the conclusion of an exhaustive inquiry into the Occupational Health, Safety and Welfare (Safework SA) Amendment Bill 2003. It includes 21 recommendations that represent the views of either the whole committee or a majority of its members. I thank all those who contributed to this inquiry and those who took the time and effort to prepare submissions for and to speak to the committee. I extend my sincere thanks to its members: the Hon. Mr Ian Gilfillan, the Hon. Angus Redford, Mr Paul Caica MP, Mr Kris Hanna MP and Mrs Isobel Redmond MP. I also extend my thanks to the committee staff, Mr Rick Crump and Ms Sue Sedivy. I look forward to the Hon. Angus Redford's positive contribution on this motion.

The Hon. A.J. REDFORD: First, I join with the Hon. John Gazzola in thanking all those he thanked, with the exception of myself and, in substitution thereof, thank the Hon. John Gazzola. As I said earlier, we all worked well. I also thank all those who attended and gave submissions, which were of varying quality, and I am sure those who gave them did so in a genuine frame of mind. It might surprise you, Mr President, that it was a dissenting report. On this occasion, I was not in the majority. I know that, normally, I am, but I had to avail myself of the opportunity to prepare a dissenting report, in conjunction with Isobel Redmond, who supported me. She is a very capable member of parliament, who is constantly praised by members opposite for her intellect, her hard work, her capacity and her skill. It is a shame that they do not follow her leadership.

The bill considered by the committee seeks to create a body called Safework SA and to remove much of the responsibility for occupational health and safety from WorkCover to a government department, known as Workplace Services. It came about as a consequence of recommendations contained in the Stanley report. The bill contains a range of measures, some of which the opposition supports. In general terms, the minority was concerned that the bill we were considering, in conjunction with the WorkCover Governance Reform Bill, would have a negative impact on the administration of WorkCover and occupational health and safety in South Australia and that the effect of the bills would diminish the accountability of WorkCover and occupational health and administration by, first, substantially removing from WorkCover any capacity to control the cost of workplace accidents to improve occupational health and safety outcomes and, secondly, lessen the capacity to control WorkCover's income through the setting of levies.

The minority was concerned that moving from the current cooperative model in place between employers and employees to a prosecution model, as envisaged by this bill, would not improve occupational health and safety outcomes. The minority approached it from this perspective: if you are to change from the current model, demonstrate to us that you will achieve an outcome in terms of improved occupational health and safety. In some respects, that could not be demonstrated. The first measure is the removal of occupational health and safety from WorkCover to the department of Workplace Services and the creation of a new body, known as Safework SA.

The first point I make is that Safework SA is simply an advisory body, and we on this side could not see the need to statutorily establish a body such as Safework SA, although we would probably not die in a ditch over it. Secondly, we were concerned that the transfer of staff, property, etc. from WorkCover to the other body would cause some financial issues, and I will deal with those in more detail later in this contribution.

The next issue with which I intend to deal is the proposal to impose a duty on employers to keep information and records relating to training undertaken by employees. We asked for evidence on whether or not this bureaucratic requirement on the part of business in South Australia would lead to an improved occupational health and safety outcome. Not one witness came forward to demonstrate any such improvement in occupational health and safety. All we could identify that would improve was the capacity of bureaucrats and inspectors to smack more businesses around the head for not keeping proper records. Small business has a hard enough job as it is without having to keep records that, quite frankly, are not justified.

The third issue relates to occupational health and safety requirements for the training of occupational health and safety officers, particularly in relation to small business. The bill makes a number of changes, including the requirement for time off for members of health and safety committees. Where an employer has 10 or fewer employees, the time to be allowed is to be reasonable and not prescribed, and all this time is to be fully paid, with expenses reimbursed.

Businesses and other stakeholders generally supported the need for training, but there were specific criticisms concerning the measures, including that the threshold of 10 employees was too low, particularly when one has regard to the fact that the Australian Bureau of Statistics defined small business as 20 employees or less; and, secondly, that there was no flexibility in terms of alternate means to train employees and a greater deal of flexibility. In this respect, we agreed with the position of Business SA that, first, the provision should be amended to the extent that the timing of training should be agreed to by employees; and, secondly, that we adopt the ABS stance in terms of small business.

The next issue was the extension of powers of inspectors in relation to the investigation of breaches. I will not go into any detail other than to say that we did not receive any justification for the extension of the powers of inspectors. Again, in relation to expiation notices, we supported the proposal to enable inspectors to issue expiation notices for failure to comply with an improvement or prohibition notice, but we did not support amendments which would enable inspectors to issue improvement notices in circumstances where plant machinery is not in use.

Bullying was probably the most difficult issue. It is clear—and the opposition has a clear policy position—that bullying is a serious issue in the workplace. By way of background, the following should be noted: workplace bullying has become an increasing issue over the past six or seven years; the Employee Ombudsman has referred to workplace bullying in his annual report since the inception of this office, and particularly in relation to the Queen Elizabeth Hospital; and currently, in certain circumstances, workplace bullying may be dealt with through anti-discrimination or equal opportunity legislation.

Also, the bill itself does not define bullying or abuse at work. We came to the conclusion that bullying should, however, be categorised as a workplace injury under the act, and that would be the most appropriate way to deal with it. Mr Bishop of the Stanley review described workplace bullying as the 'RSI of the century with lots and lots of cases.' Whilst we support the principle in respect of workplace bullying, we would hate to see that principle being undermined by abuse, such as occurred with RSI claims in the 1980s and the early 1990s. We acknowledge, too, Union SA's concern that bullying is identified as No. 1 on the list of concerns at work.

There was some discussion about who should manage it. We acknowledge that the Employee Ombudsman believed that he could become involved if he was delegated the powers of an occupational health and safety inspector. Currently, occupational health and safety health inspectors do not have the power to conciliate and do not have training to do so, and it is our view that that is one issue that ought to be looked at. Other states have attempted to deal with the issues with mixed success. The prospects of resolving the complaints depend on effective management and, in particular, timely responses.

If bullying issues are allowed to fester in a workplace, it is our view that the resolution of those issues becomes more difficult with the passage of time. We also acknowledge World Health Organisation definitions of workplace bullying. Indeed, the organisation defines it as 'repeated, unreasonable behaviour directed towards an employee'. This was and is a difficult and significant issue. Bullying in the workplace is becoming more prevalent and can have adverse effects on productivity. In our view, bullying is probably a product of poor management as much as anything else, both in the management of prevention of bullying in the workplace and in the management of dealing with it when it arises.

Indeed, we acknowledge that in certain cases where bullying behaviour can be characterised as discrimination remedies already exist. Finally, we were concerned that if bullying was not strictly defined it could turn into the 21st century RSI, and that would be disappointing. The position that we took is, first, that we recognise that workplace bullying can constitute a threat to the occupational health and safety of employees. Secondly, we support a legislative response to the issue of workplace bullying conditional upon the fact that workplace bullying be recognised as a threat to occupational health and safety and that workplace bullying be strictly defined so that it is not abused.

Thirdly, we recommend that the Employee Ombudsman be delegated the powers of an inspector in relation to workplace bullying and that the Employee Ombudsman be given the power to conciliate where a complaint of workplace bullying is made; fourthly, that any remedies in subsection (4) are not in addition to remedies available under equal opportunities legislation; fifthly, that any remedies not interfere with an employer's legitimate right to manage an employers' business, for example, a dismissal process or the promotion process.

Finally, we recommend that the business community is adequately trained in the extent and limitations of this principle. What we do not want is a situation—and I see it as a member of parliament a lot—where a worker is given a warning of dismissal, or, alternatively (and more commonly in this case in the public sector), they miss out on a promotion. Some people are saying, 'I missed out on a promotion because I am being bullied', or 'This notice of warning is part of a process of bullying.' That is a legitimate concern, and we do not want bullying to prevent legitimate management decisions.

The final issue I want to talk about relates to the impact on Workcover should occupational health and safety be shifted out of WorkCover. The minister, quite wisely (just to demonstrate to the Hon. John Gazzola that I am a very fair and reasonable man), engaged Bryan Bottomly and Associates in May 2003 to prepare what he describes as a 'due diligence report' into what would be required to be shifted out of WorkCover and into Safework or Workplace Services to fulfil the minister's responsibility, and how many WorkCover staff would be involved in that.

The final outcome of the analysis used two methods and came up with two answers that were relatively close. If we look at WorkCover historically (although in the past 12 months under the stewardship of this minister, with the able interference of the Treasurer and his army of sycophants, it has blown out quite considerably), at the time the Bottomly Report was prepared WorkCover spent about $45 million a year on administration. That was its total expenditure. That has blown out under the management of this minister, with interference from the Treasurer. They had also at that time approximately 300 full-time equivalent employees.

If occupational health and safety were shifted out of WorkCover, the Bottomly Report found that, effectively, it would mean that you shifted 100 of the 300 employees out of WorkCover and that you would shift, depending on how you analysed it, somewhere between $12 million and $14 million out of WorkCover. The opposition's view was that that was all well and good, but demonstrate to us that you will get better occupational health and safety outcomes. That is a substantial dislocation to an organisation that currently is under great stress because of poor management on the part of this minister. We are saying that, if you are going to shift and go through this substantial dislocation, you need to demonstrate to us that you will get an occupational health and safety outcome.

We did not get a single witness before us who could demonstrate that you will get a better occupational health and safety outcome. It was some pie-in-the-sky optimistic assessment by some people who thought that it possibly might happen. That was the best we could get. Nobody would say, 'You will get better occupational health and safety

because you do this.' No-one could demonstrate that. Bottomly himself says that he could not identify what the benefits would be of shifting out these people. However, he did say that there were what he described as transitional risks.

First, there was the risk of not properly identifying employee entitlements and which agencies should pick them up—WorkCover or SafeWork. Secondly, there was a risk in identifying current or potential legal liabilities. Thirdly, and importantly, there was a risk that there would be a loss of key professional expertise, including the transfer of inappropriate staff or staff choosing to resign rather than transfer, and the process of identifying and encouraging transfers. Fourthly, there was the risk of a loss of unit viability. In other words, there would be one unit that has $15 million and another that has $30 million. Is there an economy of scale and viability that will deliver what WorkCover is currently delivering?

To be fair, we asked WorkCover what it thought of the Bottomly report. We asked WorkCover what it thought about this substantial dislocation. It was important for this committee, representing members of parliament, to find out what WorkCover thought because it is its business—it is not my business, not the business of the Hons John Gazzola or Caroline Schaefer, but the business of WorkCover, which runs it on trust for the workers and employers of this state.

It might surprise members to know what WorkCover did: it refused to give evidence to this committee. It said that it was not its job to tell the committee what its view was in relation to that matter. I will read into the *Hansard* record what was the minority viewpoint in relation to that issue, as follows:

> Finally, the minority was extremely disappointed that the current WorkCover board chose not to present any evidence to the committee in relation to its views on either this bill or the WorkCover Governance Bill. Indeed, the board has and continues to deny the opposition access to any internal documents which might assist in determining what the current board's view is through the freedom of information process. Parliamentary committees are always reliant on advice from those who are most directly involved and who will be charged with the future responsibility of administering the proposed legislation. At best, Workcover's failure to present its view on this legislation can be described as a dereliction of its duty to this parliament or, at worst, a contempt of the parliamentary process.

The chair of the board came along and said that he did not like those comments. He said that parliament should wander around, completely ignorant of what WorkCover thinks should or should not happen in relation to this important piece of legislation before the parliament. That is an outrage. I have never been confronted with any wholly-owned government agency that has treated a parliamentary committee in such a fashion.

I am grateful for the support of members such as the Hon. Ian Gilfillan and the member for Mitchell, who took up with Mr Carter that proposition. I am quite surprised that Mr Carter held that view. I suggest that ministers in future, when appointing chairs of boards, ought to explain to some of these people what is the constitutional set up in this state so they do not thumb their nose in a contemptuous manner at parliamentary committees. I am not even sure that Mr Carter has the message yet about the paramountcy and importance of parliament and how much parliament relies on agencies such as WorkCover to get information so we can make fully informed decisions.

I turn now to trying to find out what WorkCover actually thinks about this legislation. That, I have to say, was a tortuous process because I resorted to the freedom of information legislation, such as it was. Back on 9 February last year, a little over 12 months ago, I instituted a freedom of information application. On 15 March, I received a response and I was told that there were five documents that might indicate what the view of the WorkCover board was in relation to this legislation and, surprise, surprise, consistent with Mr Carter's viewpoint that we, as members of parliament, as representatives of the public, should not be entrusted with any information, he said, 'You cannot have any; you cannot be trusted.' So I thought, 'Shall I accept Mr Carter's word?' It might not come as any surprise to you, Mr President, that I did not, and I sought an internal review.

I pointed out in my application for an internal review that this was an important piece of information to a parliamentary committee, and it was also an important piece of information relevant to a decision of this parliament about whether or not we ought to agree to an important piece of legislation introduced by the government. I set that out in some detail and I hopefully explained it in a manner that people could understand. Anyway, I got a response from someone who I suspect was higher up in the food chain. It will come as no surprise to you, Mr President, that the internal review did not come forth with anything of any significance. However, I knew there were documents because that had been acknowledged.

I then issued an application in May of last year to the Ombudsman; ergo the comments I made last week. The Ombudsman took some time to deal with it because of the fact that this government is hell bent on starving him of resources so he cannot deal with these things in a timely fashion. I went through the fact that this information was very important to the deliberation of this parliamentary committee.

As part of that process, very early in the piece in July, WorkCover had a sudden change of heart and said, 'You can have some of the documents.' I got some of the documents and they showed to me that WorkCover was concerned and that WorkCover had engaged Access Economics to look at this whole issue, and we were not aware as a parliamentary committee that Access Economics had been brought into this. I was told that there had been a review of it and the documents also showed that there was some discussion about whether the Bottomly report could even be released to the board. There were also some slides which, in simple terms, basically repeated what was in the Bottomly report. That is what they were prepared to give me but I could not be trusted with the rest of the documents, and nor could the people of South Australia, the Hon. John Gazzola, the member for Colton, the member for Mitchell or even the Hon. Ian Gilfillan. So WorkCover valiantly continued to refuse to release these documents to me.

Subsequent to the release of those few documents, there was a vigorous exchange of correspondence. WorkCover must have spent quite a bit of time on this because a seven-page letter was sent to the Ombudsman as to why I, on your behalf, sir, and on behalf of the Hon. Ian Gilfillan, could not be entrusted with these internal documents within WorkCover that were relevant to the parliamentary committee's inquiry and to the determination of my application.

[Sitting suspended from 5.59 to 7.45 p.m.]

The Hon. A.J. REDFORD: Before the dinner break I was going through the saga of trying to ferret out from WorkCover what its view might be about legislation that could potentially strip a third of its workers and a third of its budget out of its hands; and what impact that might have on it. I was

reminded over dinner about what happened in another place. One thing I have noticed—and I have started to get a feel for it—is just how hard WorkCover was fighting to keep documents away from me, from you, Mr President, from the Hon. Ian Gilfillan, from the Hon. John Gazzola and from other hardworking members of this committee. I cast my mind back—and I am sure other members would remember—to another major, great state institution that had a leadership that used to behave in the same way; and I need not trouble members by mentioning anything other than the words 'State Bank'.

There was a vigorous exchange of correspondence. If there is one public servant I admire more than anyone else, simply because of his sheer hard work, it is the Ombudsman. He is thorough and he went through this process of assessing the review in some detail. The WorkCover correspondence referred to a number of legal cases, including Ipex Information Technology Group, News Corporation Limited v NCSC, and Tunchon v the Commissioner of Police (Tunchon's case). Indeed, there was also the case of Waterford v the Treasurer and the Commonwealth. They were all designed to make sure that members of parliament could not see any material or any documentation that might shed some light on whether WorkCover had a view on the Minister for Industrial Relations' legislation.

In any event, the heart of the position from WorkCover is that it was not in the public interest for members of parliament to have documents that might be relevant in making a decision about legislation before parliament. Indeed, indicative of this institution's complete misunderstanding of the constitutional arrangements that exist in this state, and the fact that parliament is a superior body—parliament is the institution to which it is ultimately responsible—it refused to release documents.

The Hon. Carmel Zollo interjecting:

The Hon. A.J. REDFORD: Yes, I do agree with the Hon. Peter Lewis, the Speaker, in respect of that. I think he is absolutely correct in that the parliament is the paramount institution in this state, and that is pretty basic constitutional law. It said, 'No, we are not going to release this information because the minister is presently considering altering WorkCover's function.' This is an institution that obviously does not understand that it is parliament that makes laws, not the minister. One would think that an institution that has some 300-odd employees, some fairly highly paid people, with lawyers at the top end of the process, that we would not get bunkum from an institution like WorkCover, yet the minister considers altering the function.

What in fact is the case is that the minister came to a viewpoint and introduced legislation for the approval of parliament, and it is the parliament that does that. I am sorry to bore you, Mr President, because I know you would understand that, but many highly paid people, and some people who should know better in WorkCover, did not understand that. WorkCover also said in its correspondence to the Ombudsman that the Bottomly and Associates report had been leaked to the opposition. That is what this big body said.

I am going to tell you what happened, Mr President, and this might surprise you. It was not leaked to the opposition. In fact, it was given to the parliamentary inquiry by the minister, so it is the most amazing leak! The opposition has had a document leaked to it by the minister, including 'certain opposition politicians', and I assume that was a reference to me having a copy. All I can say is that it was available and published quite extensively.

The other issue that was raised was that these were documents that were important to WorkCover in terms of determining the cost. However, it is equally as important to the parliament to have this information. Notwithstanding these arguments, Mr President, you will be very pleased to know that I prevailed, and that the Ombudsman made a decision ordering WorkCover to release the documents. You would think that that would be the end of it, but it was not. I had to wait for 30 days while WorkCover considered appealing, because it has 30 days to appeal to the District Court. I had to wait the 30 days, and then I thought, 'No, I will make it 31 days'. This was post-Christmas, so I waited the whole of January to get this.

In the end I had to issue a press release. I did not get a lot of coverage, but you would expect that as a member of the upper house. It was only after I issued the press release that I received the documents, and they were very interesting documents, indeed. The first of the documents is entitled 'Review of OH&S demerger costs prepared for WorkCover Corporation by Access Economics, Canberra, May 2003.' The foreword of the document states:

> WorkCover has commissioned Access Economics to undertake a review of the costs associated with the demerger of its business with the transfer of OH&S to the Department of Administrative Services.

Even the Hon. John Gazzola would understand that this is a very relevant document to the deliberations of our committee.

I will not bore members by going into too much detail, but I will go through the executive summary. First, it comes up with a different figure—and I will come back to that in a minute—as to what should or should not be transferred to this body. It then goes on to make certain observations. The first is important in terms of public policy, and it states:

> Diseconomies of scale are to be expected from the merger of this kind and are evident in the estimates.

That is a fairly significant finding, and one that the parliamentary committee that looked at this bill should have had in front of it so that we could have explored that issue. It goes on:

> This is particularly the case for operating expenses. It appears that, in some areas where less than the entire programs have been transferred, no operating expenses have been included.

So, it is critical of the Bottomly Report. It then goes on and states:

> Savings from the resources portfolio are also minimal.

These are quite serious statements, and I am sure that the Hon. John Gazzola would understand that these are issues that we should have had the opportunity to explore in our committee deliberations. But, because of the attitude of WorkCover in not releasing these documents to a parliamentary committee, we were not able to explore them. Is it any wonder that WorkCover claimants knock on my door, on the door of the Hon. Nick Xenophon, or any one of us? Where I have assumed in the past that WorkCover has done the right thing with the release of information and compliance with freedom of information, I now have a great deal more suspicion about WorkCover.

It goes on to say something that the government would not like, and it is something that the Hon. John Gazzola would have liked to explore if we had the opportunity to call Access Economics before us. It states:

> Similarly, the cost of workers' compensation in the new environment depends on funding mechanisms on which we currently have no information. If Workplace Services require more than WorkCover's avoidable costs to run the OHS function—

and I emphasise this—

> there is likely to be an additional cost to industry.

During our committee deliberations on this very important bill for the biggest statutory authority for which this state has the responsibility of managing, no one said that in evidence before us. No one on the committee has had the opportunity to explore this issue about an additional cost to industry. Business SA did not know that WorkCover was told that there was a potential additional cost to industry. The Housing Industry Association did not know; the Motor Traders Association did not know; the Independent Schools Association did not know; and dozens of other organisations that took the time and trouble to provide submissions to this parliamentary committee did not know.

That is a disgrace, and it is a disgrace I place fairly and squarely at the feet of WorkCover in failing to participate and cooperate with an important parliamentary committee. To be fair, I have never pulled back on criticising this minister. I have to say that this is fairly and squarely at WorkCover's feet. We did not go through the minister to do this; and we did not ask the minister's assistance, on this occasion. There was a good reason for that—we have never got anything out of the minister on anything yet, but we cannot blame him for this. This is fairly and squarely at the feet of WorkCover, and at the feet of the chair of WorkCover who, I understand, was praised in glowing terms in another place by the Treasurer earlier today. Here is a man who does not seem to understand the importance of the constitutional arrangements in this state, and the head of our largest budgetary authority. Indeed, it goes on:

> In some ways the most interesting issue is whether the demerger could have any adverse flow on effects on workers' compensation claims through changed incentives.

That is an issue that we did not even touch upon, and I am sure that the Hon. John Gazzola will agree with me that we were not apprised at any stage that the shifting of occupational health and safety out of WorkCover could potentially have flow on effects on individual worker's compensation claims. It was not an issue that was on our radar screen in the 18 months that we ran our inquiry.

Again, that information was kept from the committee by the management of WorkCover, and that is so disappointing. Finally, and just as importantly, it goes on to state:

> If synergies have been achieved within WorkCover, e.g. through information sharing, that have benefited claims management, the destruction of such synergies could increase WorkCover's risks.

It is saying that the government's proposed legislation could increase the financial risk of the taxpayer insofar as WorkCover is concerned. That information was hidden from the committee by WorkCover for as long as possible, and the chair came before the committee and said, 'It is not for us to tell the parliament what information should be relevant to these things. The parliamentary committee does not need to know this information.' All I can say is: that is a disgrace. WorkCover needs to have a hard look at itself in terms of its responsibility to this parliament and, indeed, to this government.

This is an institution that has managed to drop a blazing half-billion dollars whilst this government has been in office. Is it any wonder that we on this side of parliament, faced with this performance by WorkCover, treat it with some degree of contempt when it has hidden documents from us? It has a lot of work to do to redeem itself in the eyes of the opposition. Indeed, there is more. I know that the Hon. John Gazzola, who served on this inquiry with me for 18 months, is hearing this information for the first time; he should not be. He should have heard it when he was sitting on the committee and when we were engaging each other trying to come up with the best answer in relation to this legislation.

WorkCover is quite critical of the Bottomly report (and you would expect that to be the case), a report which states that too many staff and too many resources are to be handed over to this new bureaucracy the minister wants to establish by this legislation. Again, that information was not disclosed and was hidden from us.

The Hon. J.F. Stefani: Did the minister have it?

The Hon. A.J. REDFORD: That is a good interjection from the Hon. Julian Stefani. All I know about the minister is that, on the odd occasion he has documents, they have managed to be destroyed. Based on my experience, if you give this minister documents, they would be destroyed at some stage. You might recall this issue I raised last year: the minister was meeting regularly (on a fortnightly basis) with the chair of WorkCover at a time when the WorkCover unfunded liability had gone from $190-odd million to $500 million. It lost about $300 million—I do not know where, but it lost it. We asked the chair of WorkCover, 'During this massive decline, what was the minister saying to you?' Quite rightly, he said to me and to the committee, 'Look, Mr Redford, I don't have a detailed recollection, but I know there were two public servants in that room. They had a piece of paper in front of them, and they were writing things down.' Quite reasonably, I thought (and I am sure others would come to this conclusion), 'That's probably the best place to go,' and that is what he said. He also said, 'You get those notes, and they probably will record precisely what was said at those meetings.'

I will not go into detail, but this is another saga: I decided to FOI those notes. Guess what? They were destroyed. Every time this minister is asked a question in another place, he cannot remember anything, so someone makes notes for him and then, when we try to get those notes to check his knowledge and what he was doing while $300 million was disappearing out the back door, the notes are destroyed.

The Hon. T.G. Cameron: How do you know they were destroyed?

The Hon. A.J. REDFORD: The Ombudsmen told me, and he is a man I trust. It is the only FOI review I have taken to the Ombudsmen when I have come back empty-handed—because they were destroyed; there was nothing to give me.

The Hon. T.G. Cameron: That's saying something. You have lodged more than the rest of us put together!

The Hon. A.J. REDFORD: That's absolutely right. Normally, I get a document or two after I have gone to the Ombudsman, but this stumped me. I suppose that I should not say this so publicly, because I do not want other ministers to get the same idea. I am not saying that the minister did it personally, but it certainly happened in his office. In that report, the Ombudsmen criticised the minister quite severely about his record-keeping capacity. Interestingly enough, the minister issued a press release saying that he had been vindicated, which I thought was one of the more amusing *Yes, Minister* press releases I have seen since I have been a member of parliament.

I think this is a good report, and it is the product of hard work. The Hon. John Gazzola and I may have disagreed on a few things, but we worked hard and we worked well together. If the Hon. John Gazzola, or his colleagues, wanted some additional information, we cooperated; if we wanted it, they cooperated; and if we had serious questions to be asked, we were given the opportunity to do so. I enjoyed working on the committee, and I still enjoy it thoroughly. I think that every member has great integrity, is diligent and works hard for the benefit of the people of South Australia. However, what the Hon. John Gazzola, Paul Caica and the other members did not understand was that WorkCover was hiding documents from us. If we did not have so much to do over the next 12 months, or if it happens again, it is the sort of issue on which a motion would be brought to this place in order to ask the management of WorkCover to 'please explain', because it was a contempt of this parliament.

In closing, I encourage everybody to read this minority report. I ask everybody to be very careful about WorkCover in future, because it hides things. When a WorkCover constituent comes in off the street (and it might be even a Matilda Bawden, or someone who can be annoying), you might have to think that maybe they were driven mad by WorkCover because it treated that person as consistently and persistently as it treated this parliamentary committee—namely, by hiding information. There might be some truth in that. I have probably spent longer on this contribution than I should have, but I think it is important. If a member of the public comes into your office and says, 'I've been done over by WorkCover. They won't give me the documents. They are hiding stuff,' based on the experience of this parliamentary committee, it just might be true.

The Hon. J. GAZZOLA: I thank members and the staff of the committee for their work. As the Hon. Angus Redford outlined, 18 months—

The Hon. T.G. Cameron interjecting:

The Hon. J. GAZZOLA: I do not need assistance from the Hon. Terry Cameron. It was a rather substantial and good report, and a good 18 months. I can assure all members and you, Mr President, that the committee will not be distracted by the political attacks the Hon. Angus Redford wages on the minister or the government. The committee will continue its worthwhile work in assisting and developing a fair workers compensation and health, safety and welfare system for injured workers and their employers, and to achieve this aim I commend the report to the council.

Motion carried.

WORKERS REHABILITATION AND COMPENSATION (THIRD PARTY LIABILITY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 October. Page 369.)

The Hon. J.M.A. LENSINK: My contribution on this bill will be brief. I begin by commending the Hon. Angus Redford for bringing this matter to the parliament's attention, and to state that I do heartily hope that this bill will pass. The bill relates to loopholes within section 54 of the Workers Rehabilitation and Compensation Act. In my previous working life—working for the nursing home industry—it was my experience that this was causing a great deal of problems for workplaces in South Australia.

The brief history of it is that the minister in the previous government, the Hon. Michael Armitage, commissioned work to be done on closing this loophole. The state election intervened and, therefore, it was sent to be examined as part of what came to be known, broadly, as the Stanley review. I spoke on this issue as part of a broader discussion of issues relating to the WorkCover system fairly early in my tenure in this place (on 17 September 2003), so I do not propose going over those details again.

I think that, for the record, it is worth repeating some of the comments in the Stanley review which are in favour of this bill. Stanley recognised that there was an increased requirement for what is called 'hold harmless insurance'. The review states:

> The review understands that several bodies have made representation to the government that section 54 is inequitable and unjust. It is asserted that WorkCover's right of recovery under section 54 in its present form and WorkCover's policy of pursuing third party wrongdoers for full recovery jeopardises the way in which business is done, and further jeopardises the future existence of labour hire firms in this state. It is said that this is because host employers are insisting upon contractual terms to the effect that labour hire firms will indemnify them against any common law liability that they may incur as a third party wrongdoer. It is said that some insurers are no longer prepared to insure against this liability, and that insurance is difficult and expensive and, in some cases, impossible to obtain.

My practical experience has been in aged care. A number of people are employed from the on-hire industry in South Australia for good reason; and, indeed, it is often a choice of employees. The example that is very well known to many people, including the South Australian government, is the use of nursing agencies to hire nursing staff. Many nurses choose that avenue because they like the flexibility. They also get a high rate of pay. They get to choose their different hours and work as it suits them.

For this group it is a very attractive choice of employment. Other industries are also affected, such as group training schemes, which include apprentices in the building, mechanics and engineering sectors. A number of other sectors are also affected. Effectively we have this loophole, which means that on-hire employees have another avenue by which to claim. WorkCover can then pursue claims back from those employers, and it has been doing so. It is an unsustainable situation. It has been a very long time in coming and, at some stage, the truck will hit the wall.

I urge all members seriously to consider this proposal because, in many ways, it is inequitable. This is not a case of employer versus employee. It is not such an ideological thing at all: it is merely a loophole which needs to be closed and closed quickly.

The Hon. R.K. SNEATH: The government is in the process of determining its final position on the reform of section 54 of the Workers Rehabilitation and Compensation Act. I am advised that the minister is awaiting material from WorkCover which will allow him to put the matter before cabinet for consideration to bring a resolution to this matter, which stretches back to the time of the former government. It is critically important to get issues like this right and, as such, the government does not support this bill being further debated at this time.

The Hon. NICK XENOPHON: Again, I disclose that I practise in the workers compensation field. I am the principal of a law firm which handles these cases and which has

pursued section 54 claims. I emphasise that, whilst I am the principal of the firm, others are running the files. No doubt I will be going back to the law, and I look forward to doing that whenever that may happen.

I will not be opposing the second reading of this bill although, in terms of my broad concerns, I see section 54 as a mechanism to allow someone injured on a work site to obtain common law damages. I can understand the policy rationale behind the Hon. Mr Redford's bill, but I am a passionate advocate for the commonwealth system. This does give some workplace accident individuals an opportunity to obtain a common law award, and I think that is important. I know the Hon. Mr Redford has referred to what the insurance industry has called a crisis with respect to claims. I note that the High Court of Australia in recent decisions has been much tougher or narrower in its approach with respect to issues of liability, and I dispute now, as I disputed back in 2003, when the government moved the Ipp recommendations bill, as to the need for those changes.

Indeed, recent reports in the financial press about record profits and booming profits in the insurance sector without a concomitant decrease in premiums raises some concerns. These are legitimate matters that the Hon. Mr Redford has raised. I found it very helpful that he gave a number of examples of matters that either have been or are before the courts. I would be grateful if, in the committee stage, if the matter proceeds to committee, the honourable member could inform us at to whether any of those examples referred to have actually gone to judgment since that time. I would find that very useful in the context of this debate.

I am concerned as to what the impact would be on the WorkCover scheme, the diminution, in a sense, of the rights of injured workers not being able to seek redress to common law damages even in these limited circumstances. But I will not stand in the way of this being debated further in committee, and perhaps it will provide a useful opportunity to ask questions of the government as to the way the scheme is being managed in the context of this proposal, and also what the government is intending to do more broadly with respect to issues of proportionate liability.

The Hon. IAN GILFILLAN: The Democrats support the second reading. I indicate this so that there is no uncertainty as to how the votes will line up and it may actually save us a division.

The Hon. A.J. REDFORD: I thank members for their contributions, and in particular thank the Hon. Michelle Lensink and the Hon. Ian Gilfillan for their unqualified support. I am not saying that is long term, but it is unqualified support for the second reading explanation. I also thank the Hon. Nick Xenophon for his position. I will attempt to determine what has happened to any of those cases. I am not proposing to deal with the committee stage of this bill this evening or on the next Wednesday of sitting but on the following Wednesday of sitting, which will enable me to obtain a response. I understand the position that he takes, that the insurance crisis is not real, and I have some sympathy for that viewpoint. The problem is that in two critical areas that involve employment of young people, this is hindering that employment.

Secondly, he says that this bill prevents people from seeking redress. I am not sure the bill actually does that. You can seek redress up to a certain proportion. In respect of the Hon. Bob Sneath's contribution, my young son was in the chamber during that contribution, and I am going to be really nice to the Hon. Bob Sneath and the government on this occasion. This is not a long-term proposition, I must say but, out of respect for my young son who was watching me, who is probably up there listening as I speak, cheering me on, I am going to be very nice.

The Hon. R.K. Sneath: I think he got bored and left.

The Hon. A.J. REDFORD: That is because the Hon. Bob Sneath was on his feet. He was waiting for me to get up and it was the Hon. Bob Sneath's contribution that prevented it.

The PRESIDENT: Order! All members know that they are not to refer to persons in the galleries. Persons in the galleries are invisible.

The Hon. A.J. REDFORD: The Hon. Bob Sneath's comment was that he did not want a further debate. Given the government's inaction on this, one would expect the government to say that. I know the Hon. Bob Sneath would not have said this, because he is a genuine bloke and would not say this unless he had been misled. The fact of the matter is that he said to the chamber that the government was waiting for WorkCover to provide it with further information so that it could take it to cabinet. The Hon. Bob Sneath ought to talk to the minister. In fact, I think the Hon. Bob Sneath should be a minister, compared to this fellow.

But he said that WorkCover was to provide information. This bill was introduced on 27 October. That might have drawn this very serious issue to the attention of the minister. When Bruce Carter (the chair of WorkCover) came and gave some advice to me and to others, I said to him, 'What do you think of this section 58 thing?' And I have a copy of what he said. He said, 'I don't see a problem with it. It's not going to cost WorkCover very much and it is costing a lot of jobs.' I thought: that is good, I am going all right here. I said, 'What do you think the holdup is?' and he said, 'I don't know what the holdup is.' I said, 'Is there anything that the government wants you to do that might help you expedite things?' His answer to me was (and the Hon. Ian Gilfillan was there), 'No, we have done everything we can; there is nothing more for WorkCover to do.'

The Hon. R.I. Lucas: When was this?

The Hon. A.J. REDFORD: On 6 December. I do not want to rain on the Hon. Bob Sneath's parade, but as at 6 December they had done everything, and they had provided the information. I know the Hon. Paul Holloway is here. I suggest that ministers take some steps to see whether they can get some of this legislation before cabinet and deal with it. I am sure we will manage to find a photo opportunity for some of them if it means we can expedite this and save a few jobs. With those few comments I look forward to the bill's committee stage.

Bill read a second time.

HUMAN RIGHTS BILL

Adjourned debate on second reading.

(Continued from 15 September. Page 57.)

The Hon. R.D. LAWSON: This bill, moved by the Hon. Sandra Kanck, is modelled on the Human Rights Act recently enacted in the Australian Capital Territory, which is the first Australian jurisdiction to have a legislatively enacted bill of rights. The essential elements of the bill are: first, it sets out 'certain civil and political rights', which are taken from the international covenant on civil and political rights. These rights include: recognition and equality before the law; right

to life; protection from torture and cruel, inhuman or degrading treatment; protection of the family and children, privacy and reputation; freedom of movement; freedom of thought, conscience, religion and belief; peaceful assembly and freedom of association; freedom of expression; taking part in public life; right to liberty and securing of person; humane treatment when deprived of liberty; children in the criminal process; fair trial; rights in criminal proceedings; compensation for wrongful conviction; and the right not to be tried or punished more than once. It deals with retrospective criminal laws; freedom from forced work; and the rights of minorities.

Secondly, the bill provides that parliament and the government may infringe or restrict human rights only by imposing such 'reasonable limits' as can be demonstrably justified in a free and democratic society. Thirdly, the bill empowers the Supreme Court to make a declaration of incompatibility concerning any state legislation that conflicts with the bill. The court's declaration must be presented to the parliament. However, a declaration does not render invalid the infringing legislation. Parliament can choose to ignore a declaration of incompatibility. Before the court makes such a declaration, the Attorney-General must be notified and given the opportunity to make a submission to the court.

Fourthly, before any legislation is presented to parliament the Attorney-General will have to prepare a compatibility statement, which indicates whether the bill is consistent with human rights. The Legislative Review Committee of this parliament is also required to report every human rights issue raised by bills introduced into the parliament. Fifthly, under this general description of the provisions of the bill, it establishes a human rights commissioner who, in the first instance, will be the equal opportunity commissioner. The role of the human rights commissioner is:

(a) to review existing legislation with regard to the Human Rights Act. The report that comes out of this review is to be submitted to the Attorney-General, who makes amendments to the report before presenting it to parliament.

(b) it is a role of the human rights commissioner to pursue education programs; and

(c) with leave of the court, the commissioner can make submissions to courts regarding human rights.

Until the enactment earlier this year of the ACT Human Rights Act there was, as I mentioned in the beginning, no Australian jurisdiction with a statutory bill of rights. It is worth reflecting on some of the history of moves over the years to enact a statutory bill of rights in this country. In 1972 the Whitlam government signed the international covenant on civil and political rights. However, that treaty did not have any operation or force in Australian domestic law. In 1973 the then Labor Attorney-General, Lionel Murphy of blessed memory, introduced a human rights bill into the federal parliament. It never passed.

In 1988 the Hawke government proposed referendums to amend the constitution of Australia to include constitutional guarantees of trial by jury, religious freedom, one vote/one value and the acquisition of property on just terms. These referred to what might be regarded as fairly non-controversial rights which were already protected by common law and/or by statute. These referendums, when submitted to the Australian electorate, were comprehensively rejected. In 1976 Australia had become a party to the international covenant on economic, social and cultural rights.

That instrument includes the right to freedom from hunger, the right to physical and mental health, education and cultural freedom, the right to work, to safe and healthy working conditions and to form trade unions. This covenant is not part of Australian domestic law, that is, it does not give rise to rights that are enforceable in Australian courts, and state and federal laws are valid notwithstanding that they may not conform to the covenants.

There are other human rights conventions that Australia has adopted, for example, the convention on the elimination of all forms of racial discrimination, the convention on the elimination of all forms of discrimination against women, the convention relating to the status of refugees, the convention against torture or other cruel, inhuman or degrading treatment or punishment. Many of the concepts in the above treaties are already embodied in the federal Human Rights and Equal Opportunity Act of 1986. Some but not all of the above covenants do confer on individuals the capacity to complain directly to the relevant United Nations treaty committee if they are unable to obtain redress within Australia.

The Liberal opposition does not support the introduction of this Human Rights Bill. The bill contains many noble sentiments, especially in its preamble, and I think it is worth repeating it for the benefit of the record as follows:

1. Human rights are necessary for individuals to live lives of dignity and value.
2. Respecting, protecting and promoting the rights of individuals improves the welfare of the whole community.
3. Human rights are set out in this Act so that individuals know what their rights are.
4. Setting out these human rights also makes it easier for them to be taken into consideration in the development and interpretation of legislation.
5. This Act encourages individuals to see themselves, and each other, as the holders of rights, and as responsible for upholding the human rights of others.
6. Few rights are absolute. Human rights may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. One individual's rights may also need to be weighed against another individual's rights.
7. Although human rights belong to all individuals, they have special significance for Indigenous people—the first owners of this land, members of its most enduring cultures, and individuals for whom the issue of rights protection has great and continuing importance.

The Hon. Sandra Kanck: Do you think these are laudable aims?

The Hon. R.D. LAWSON: Many would say that these are laudable aims. Many would say that these are objectives to which we should all aspire, like freedom of religion laid before the Australian community in 1988 but rejected by them as the appropriate subject of an amendment to the constitution to entrench those provisions. It is one thing, in our view, to espouse worthy aims. It is another to seek to put those in the straitjacket of legislation.

We on this side believe that the best guarantees of freedom and liberty are a vibrant political process, a free press and independent courts interpreting laws made by parliament elected by the people and also the common law. We believe that a bill of rights actually restricts freedoms, somewhat perversely by defining them. For example, a great illustration of what is termed the freedom of religion becomes freedom from religion, as is so amply demonstrated in the United States of America.

Thirdly, we believe that a bill of rights transfers political power to an unelected judiciary thereby undermining the sovereignty of parliament and of the people who elect parliament. Fourthly, a bill of rights tends to set in concrete current concepts of rights which become inviolable after they

have ceased to be appropriate. Take the example of the right to bear arms in the United States. No doubt a noble concept at the time of its introduction but now a burden and a blight on the public policy of that great nation.

A bill of right also tends to empower policy elites, which use them to advance progressive agendas. I would never accuse the Hon. Sandra Kanck of seeking to advance any progressive agenda. However, there are some who would support the enactment of this legislation who would see it as an opportunity to advance particular political agendas. Ultimately, we see the principal beneficiaries of bills of rights of this kind as persons charged with criminal offences who use by the various creative devices that can be established to argue that rights are infringed during investigation and trial processes. That is clearly the experience in the United States. Sir Harry Gibbs, a former chief justice of the High Court of Australia said, and I think appropriately:

> If society is tolerant and rational, it does not need a bill of rights. If it is not, no bill of rights will preserve it.

The eminent American judge Lerned Hand said:

> Liberty lies in the hearts of men and women. When it does, there is no constitution, no law, no court, that can do much to help it. While it lives, it needs no constitution, no law, no court to save it.

In our view, the experience of the United States does not lend encouragement to the adoption of a bill of rights, especially one that enables the courts to invalidate laws on the ground that they contravene the bill. In that country the Supreme Court has become highly politicised and this bill avoids that fault by depriving courts of the effective power to invalidate laws but enables courts to exercise an influence that may well affect the way in which duly elected bodies such as parliaments act.

The activism of the High Court of Australia in the 1980s and early 1990s has dampened, in our view, any public enthusiasm—not that there ever was great public enthusiasm—for a bill of rights. Paradoxically, the High Court used the absence of a bill of rights as a licence to adopt a process of implying hitherto unknown rights from the Constitution, for example, rights to native title, the right to legal representation in a trial for serious criminal offences and the right to speak with impunity on matters of political and governmental issues, and the like, which shows that our common law system has sufficient flexibility to adapt appropriately to the exigencies of particular situations, subject always to the overriding right of any parliament within its sovereign power to adjust the laws.

The proponents of bills of rights over time, as I have indicated, have modified their demands. They abandoned the Murphy proposal, which would have enabled the courts to strike down legislation. They now support the approach adopted in the Canadian Charter of Rights and Freedoms in 1982 and the New Zealand bill of rights of 1990. Both allow parliament to pass laws which infringe rights within 'reasonable limits'. Of course, it is the court which determines what those reasonable limits are. Concepts as vague as rights which can be demonstrably justified in a free and democratic society also create uncertainties and give rise to justiciable matters, which will be resolved by an unelected judiciary.

I should say in relation to the Australian Capital Territory that the bill, ultimately passed there, had a very long gestation. A bill in the territory was introduced in 1995. There was a deliberative poll in 1993 in the Australian Capital Territory, somewhat similar to the deliberative poll which was conducted in relation to the Peter Lewis inspired Constitutional Convention in this state in 2003. The deliberative poll in the ACT was also conducted by Dr Pamela Ryan's firm, Issues Deliberation Australia. I must say that the poll on that issue was an admirable exercise and produced a result which I think had greater credibility than what happened in the Constitutional Convention, which was so driven by the agenda of the member for Hammond.

Notwithstanding that and the fact that the deliberative poll in the ACT supported the Human Rights Bill, we do not support it. Following that deliberative poll the Human Rights Act 2004 was passed. As the member acknowledged when introducing this bill, it is based on the New Zealand model. In opposing this bill I should indicate that we do so on the basis that we do not believe that, on the principle question and the principle philosophical question, we need a bill of rights in this state.

A paper was delivered by the columnist Janet Albrechtson of *The Australian* to the Society of Modest Members, a society—the council might not be surprised to learn—of which I myself am a member. Ms Albrechtson makes a very interesting point in the following passage:

> The proposed ACT bill of rights got me thinking. Maybe it is a useful exercise after all. What if we set up the ACT as the nation's laboratory where we can test the waters on a bill of rights.
>
> But let us throw down the gauntlet and genuinely test the mettle of those seeking a bill of rights. Rather than just catch up with the rest of the so-called sophisticated world with a copycat bill of rights, let us propose something even more sophisticated. Given that rights carry obligations, let's recognise that in law with not just a bill of rights as the US has, or a Charter of Rights and Freedoms as in Canada. Let us try something truly avant-garde. Let us lead the world with a fashion first—a bill of rights and obligations.
>
> What might these obligations be? They need to be framed in the same kind of general, fine sounding language of rights. They need to give conservative judges room for creativity.
>
> What about an obligation to support yourself where possible. After all someone has to pay tax to pay for the right to free education and a high quality health system?
>
> What about an obligation to take responsibility for your own mistakes and actions to ensure that there is enough money to pay for those in genuine need of compensation? What about an obligation to care for your children and raise them as responsible law-abiding citizens? An obligation to save for your own retirement might also be in order.
>
> Rather than encouraging a generation of professional takers with an old-fashioned bill of rights, let us talk about encouraging a generation of professional givers. Let us change the one-way rights driven traffic and offer an alternative agenda of obligations.
>
> What about an obligation to respect the parliamentary umpire's decision? That means judges do not overstep their mark in our tripartite system of government. And to those voters who still decry the 2001 election and look to judges to overturn policies of a popularly elected government, the words 'Dry your eyes Princess' come to mind.

For those reasons briefly given, we will not be supporting the passage of this bill.

The Hon. CARMEL ZOLLO secured the adjournment of the debate.

NATIONAL ELECTRICITY (SOUTH AUSTRALIA) (NEW NATIONAL ELECTRICITY LAW) AMENDMENT BILL

The Hon. P. HOLLOWAY (Minister for Industry and Trade) obtained leave and introduced a bill for an act to amend the National Electricity (South Australia) Act 1996. Read a first time.

The Hon. P. HOLLOWAY: 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.

The Hon. R.I. LUCAS: I rise on a point of order, Mr President. I seek your guidance in relation to this practice? Are you ruling that it is consistent with the standing orders of the Legislative Council for a bill to be introduced into the Legislative Council which is in exactly the same form as a bill which is before the House of Assembly at the moment?

The PRESIDENT: Once a bill has been considered in one house and a decision has been made, I am assured that it is legitimate for the bill to be produced in both houses at the same time. However, if a decision is made with respect to the bill in this council and then it is presented in the other house in the same form—in answer to your initial question—it is possible for the same bill in the same form to be presented in both houses. There is a problem when decisions are being made and there is a crossover.

The Hon. P. HOLLOWAY: It will not be debated simultaneously. It will be in one house or the other, but it certainly will not be in both houses at the same time.

The PRESIDENT: My only precedent with this is we had a bill pass in this council which was being discussed in the House of Assembly on the day that the bill from this council was delivered to the House of Assembly. The other bill was handled in private member's business in the House of Assembly, and a different decision was made from the one that was made in the upper house, and when it arrived in the House of Assembly it was rejected because it was a bill in the same form as that on which the house had made a decision. I think that may well be the precedent that is triggering the Hon. Mr Lucas's line of thought. I am assured that parliamentary practice and procedures does allow a bill to be introduced in the same form in both houses.

The Hon. R.I. LUCAS: On a further point of order, Mr President. The minister said that, from the government's viewpoint, it does not intend to debate the bill in both houses at the same time. I guess we will—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: The minister has given that indication. In the event that the bill is debated in the House of Assembly and it is amended, and an amended bill arrives in this chamber, can you, Mr President, outline to this chamber the procedure that you will be adopting in relation to an amended national electricity bill arriving in this chamber and this bill having already been introduced?

The PRESIDENT: My understanding is that, if the bill is amended in the other house, it then becomes a different question, because the question is the whole bill and, if it is different from the bill in this council, it has to be considered. I know it is convoluted.

The Hon. R.I. LUCAS: I seek your clarification in respect of that ruling, Mr President. If an amended bill arrives in this chamber, is it your ruling that we will have two bills on the Legislative Council's *Notice Paper* to amend the national electricity law: the one that the minister is attempting to introduce tonight and the amended bill?

The PRESIDENT: As complicated as it may seem, they will be considered as two different questions, and what you have just outlined is exactly what would happen. By way of further clarification, my advice is that, if the bill was to arrive from the other place unamended, it becomes a question for the council to determine which of those bills it will handle because it then becomes the same question.

The Hon. R.I. LUCAS: I do not want to prolong this but I have a final question, Mr President. If an amended bill arrives in this chamber from the House of Assembly, and this council determines by majority not to consider the amended bill but to consider the bill that is already here, and amends that particular legislation in a different way, and sends it to the House of Assembly, what is your ruling then in relation to an amended Legislative Council bill in the Assembly and an amended House of Assembly bill in the Legislative Council and both of them are different?

The PRESIDENT: My advice is that the House of Assembly would then be forced to consider the bill of the Legislative Council, because it would be faced with a different question. In respect of a situation where a bill arrives from the House of Assembly in the same form, the council, as is always its right, will then determine which of the bills it will handle by majority decision of the council.

The Hon. R.D. LUCAS: This is not the time for debate on this issue. I do express some concerns about the process on behalf of the opposition, but I move:

That the debate be adjourned.

The PRESIDENT: We are still determining the question of whether leave be granted to have the second reading explanation incorporated in *Hansard* without the minister reading it.

Leave granted.

Introduction

The Government is again delivering on a key energy commitment through new legislation to significantly improve the governance arrangements for the national electricity market, for the benefit of South Australians and all Australians.

The *National Electricity* (*South Australia*) (*New National Electricity Law*) *Amendment Bill 2005* will make important governance reforms to the national electricity market, through separating high level policy direction, rule making and market development, and economic regulation and rule enforcement. A further major reform is the streamlined rule change process, now embodied in the new National Electricity Law. As a result of these reforms, the rules that govern the national electricity market, and which are currently embodied in the National Electricity Code, will be remade as statutory rules under the National Electricity Law. These initial National Electricity Rules will be made by Ministerial Notice but will then be subject to change in accordance with the statutory Rule change process.

In short, this Bill will strengthen and improve the quality, timeliness and national character of the governance and economic regulation of the national electricity market. In turn, this should lower the cost and complexity of regulation facing investors, enhance regulatory certainty and lower barriers to competition.

Background

As Honourable Members will be aware, South Australia is the lead legislator for the National Electricity Law at present and retains this important role under the reforms proposed.

The existing co-operative scheme for electricity market regulation came into operation in December 1998. The lead legislation is the *National Electricity (South Australia) Act 1996*. The current National Electricity Law is a schedule to this Act, and that Law, together with the Regulations made under the *National Electricity (South Australia) Act 1996* are applied by each of the other national electricity market jurisdictions, that is, New South Wales, Victoria, Queensland and the Australian Capital Territory, by way of Application Acts in each of those jurisdictions. The initial rules for the national electricity market, contained in the National Electricity Code, were approved by the relevant Ministers in accordance with the current National Electricity Law.

Under the proposed reforms, the new National Electricity Law, the Regulations made under the *National Electricity (South Australia) Act 1996* and, now, the National Electricity Rules, will be applied in each of the other national electricity market jurisdictions by virtue of their Application Acts. In addition, this new regulatory scheme will now be applied as a law of the Commonwealth in the offshore adjacent area of each State and Territory, similar to the approach used for the gas pipelines access regime. Tasmania is scheduled to join the national electricity market on 29 May 2005, and apply this new regulatory scheme.

As Honourable Members will be aware, South Australia is participating in the reform of the regulatory framework of Australia's energy markets in response to the Council of Australian Government's Energy Market Review 2002, also known as the Parer Review.

In December 2003, the Ministerial Council on Energy responded to the Parer Review by announcing a comprehensive and sweeping set of policy decisions for its major energy market reform program. These policy decisions were publicly released as the Ministerial Council's Report to the Council of Australian Governments on "Reform of Energy Markets". All first Ministers endorsed the Ministerial Council's Report.

In June 2004, the *Australian Energy Market Agreement* was signed by all first Ministers, committing the Commonwealth, State and Territory Governments to establish and maintain the new national energy market framework. An important objective of the *Australian Energy Market Agreement* was the promotion of the long term interests of energy consumers. This new objective is reflected in the National Electricity Law as the key objective for the national electricity market.

New regulatory arrangements

This Bill reforms the national electricity market governance arrangements by conferring functions and powers on two new bodies, the Australian Energy Market Commission, which was established under the South Australian *Australian Energy Market Commission Establishment Act 2004*, and the Australian Energy Regulator, established under the Commonwealth *Trade Practices Act 1974*. Importantly, the Bill also enshrines the policy-making role of the Ministerial Council on Energy in the context of the national electricity market.

The two new statutory bodies are initially to be responsible for electricity wholesale and transmission regulation in the national electricity market jurisdictions. Under the *Australian Energy Market Agreement*, the Australian Energy Regulator's role is to be extended this year, subject to separate legislation, to include the economic regulation of gas transmission for all jurisdictions other than Western Australia. Also, subject to separate legislation, the Australian Energy Market Commission's role is to be extended at the same time to include access rule-making for gas transmission and distribution for all jurisdictions. It is also proposed that a national framework for the regulation of electricity and gas distribution and retail (other than retail pricing) will be implemented during 2006 subject to jurisdictional agreement on that framework.

Under the new regulatory arrangements, the Ministerial Council on Energy will have a high level policy oversight role for the national electricity market. This will ensure that the relevant governments are able to set the key policy directions for the national electricity market and thereby pursue the objectives in the *Australian Energy Market Agreement*. Conversely, it is not intended that the Ministerial Council on Energy will become involved in the day-to-day operational activities of the Australian Energy Regulator or the Australian Energy Market Commission, or in the detail of the operation and development of the national electricity market within the set policy framework.

The functions of the National Electricity Market Management Company, which is responsible for the operation of the wholesale exchange and power system security, are retained under the new National Electricity Law.

As a result of these new regulatory arrangements, the National Electricity Code Administrator is to be abolished and its functions assumed by the Australian Energy Market Commission and the Australian Energy Regulator. The National Electricity Code Administrator is currently being wound down as part of a transition management process to the new regulatory framework. Its market monitoring function will be retained in Adelaide as part of the Australian Energy Regulator, and its market development functions will be transferred to the Australian Energy Market Commission, which is to be located in Sydney. The National Electricity Tribunal is also being abolished through the repeal of Part 3 of the *National Electricity (South Australia) Act 1996*.

While a number of provisions of the current National Electricity Law have been retained as part of the new National Electricity Law, albeit with some amendments, the new regulatory arrangements have necessitated the inclusion of a range of additional provisions.

Consultation

All of these reforms have been the result of a public consultation process with industry participants and other stakeholders that began with consultation as part of the Parer Review during 2002. The Ministerial Council on Energy provided a substantial response to the Parer Review and other matters in its report "Reform of Energy Markets" on 11 December 2003. Further consultation has been undertaken on the implementation of the recommendations contained in the "Reform of Energy Markets" report such as the regulatory arrangements that will provide for cooperation between the Australian Energy Regulator, the Australian Energy Market Commission and the Australian Competition and Consumer Commission. Consultation has also occurred on the reforms proposed to date to the legislative and regulatory framework of the Australian energy market, the streamlined rule change process, and the proposal to convert the provisions of the current National Electricity Code into rules made under the new National Electricity Law.

Consultation on this Bill included an opportunity to provide initial written submissions on an exposure draft of the Bill, followed by final written submissions, and interested parties have also been given an opportunity to provide written submissions on an exposure draft of the National Electricity Rules. In addition, those who chose to make submissions have been given the opportunity to make an in-person verbal presentation, to senior officials administering the reform program, on the exposure drafts of both the Bill and the Rules. In total, 32 written submissions on the draft version of this Bill were received, and 15 in-person verbal presentations were made. I take this opportunity to thank all parties who made submissions for their valuable contribution to these important reforms. As you have heard, however, many of the constituent parts of the overall reform program, including important elements of this Bill, have also been subject to previous consultation processes.

National electricity market objective

An important feature of the new National Electricity Law is that it defines the scope of the national electricity market which is regulated under the new National Electricity Law and Rules, and provides a single clear national electricity market objective.

Under the new National Electricity Law, the national electricity market is comprised of the wholesale exchange that is operated and administered by the National Electricity Market Management Company under the Law and the Rules, as well as the national electricity system, that is, the interconnected electricity transmission and distribution system, together with connected generating systems, facilities and loads.

The national electricity market objective in the new National Electricity Law is to promote efficient investment in, and efficient use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability and security of supply of electricity, and the safety, reliability and security of the national electricity system.

The market objective is an economic concept and should be interpreted as such. For example, investment in and use of electricity services will be efficient when services are supplied in the long run at least cost, resources including infrastructure are used to deliver the greatest possible benefit and there is innovation and investment in response to changes in consumer needs and productive opportunities.

The long term interest of consumers of electricity requires the economic welfare of consumers, over the long term, to be maximised. If the National Electricity Market is efficient in an economic sense the long term economic interests of consumers in respect of price, quality, reliability, safety and security of electricity services will be maximised.

The single national electricity market objective replaces and subsumes the more specific list of "Market objectives" and "Code objectives" under the current Code. A significant catalyst for making this change was the policy position agreed to by governments in the *Australian Energy Market Agreement*. This policy position was that the Australian Energy Market Commission will be required to consider the "long term interests of consumers" in making any Rule change decisions. The single objective has the benefit of being clear and avoiding the potential conflict that may arise where a list of separate, and sometimes disparate, objectives is specified.

It is important to note that all participating jurisdictions remain committed to the goals expressed in the current market objectives set out in the old Code, even though they are not expressly referred to in the new single market objective. Applying an objective of economic efficiency recognises that, in a general sense, the national electricity market should be competitive, that any person wishing to enter the market should not be treated more nor less favourably than persons already participating in the market, and that particular energy sources or technologies should not be treated more nor less favourably than other energy sources or technologies. It is the intention of the Ministerial Council on Energy to issue a statement

of policy principles under the National Electricity Law which will clarify these matters. The Australian Energy Market Commission, in performing its rule-making functions, is to have regard to this policy guidance.

Ministerial Council on Energy

The new National Electricity Law and Rules have been drafted to reflect the agreed position in the *Australian Energy Market Agreement* that the Ministerial Council on Energy will not be engaged directly in the day-to-day operation of the energy market or the conduct of regulators. The function of the Council will be to give high level policy direction to the Australian Energy Market Commission in relation to the national energy market.

The means by which the Ministerial Council on Energy will perform this role under the new National Electricity Law and Rules is, first, through its ability to direct the Australian Energy Market Commission to carry out a review and report to the Ministerial Council on Energy. Such a review may result in the Australian Energy Market Commission making recommendations to the Ministerial Council on Energy in relation to any relevant changes to the Rules that it considers are required. Secondly, the Ministerial Council on Energy may initiate a Rule change proposal including in response to a review or advice carried out or provided by the Australian Energy Market Commission as a result of a request by the Ministerial Council on Energy. A Ministerial Council on Energy initiated Rule change proposal will, of course, be subject to the ordinary Rule change process set out in the National Electricity Law. Thirdly, the Ministerial Council on Energy may publish statements of policy principles in relation to any matters that are relevant to the exercise by the Australian Energy Market Commission of its functions under the new National Electricity Law, or the Rules.

Ministerial Council on Energy statements of policy principles must be consistent with the national electricity market objective. The Council will be required to give a copy of such statements to the Commission which must then publish the statement in the South Australian Government Gazette and on the Commission's website.

Australian Energy Market Commission

The Australian Energy Market Commission has been established as a statutory commission. Under the new National Electricity Law and Rules, the Australian Energy Market Commission is responsible for Rule making and market development. Market development will occur as a result of the Rule review function.

In so far as its Rule making function is concerned, the Australian Energy Market Commission itself will generally not be empowered to initiate any change to the Rules other than where the proposed change seeks to correct a minor error or is non-material. Instead, its role is to manage the Rule change process and to consult and decide on Rule changes that are proposed by others, including the Ministerial Council on Energy, the Reliability Panel, industry participants and electricity users.

In so far as its market development function is concerned, the Australian Energy Market Commission must conduct such reviews into any matter related to the national electricity market or the Rules as are directed by the Ministerial Council on Energy. The Australian Energy Market Commission may also, of its own volition, conduct reviews into the operation and effectiveness of the Rules or any matter relating to them. These reviews may result in the Australian Energy Market Commission recommending changes to the Rules, in which case the Ministerial Council on Energy, or any other person, can then decide to initiate a Rule change proposal based on these recommendations through the Rule change process.

In performing its functions under the new National Electricity Law and Rules, the Australian Energy Market Commission will be required to have regard to the national electricity market objective. Further, the Australian Energy Market Commission must have regard to any relevant Ministerial Council on Energy statements of policy principles in making a Rule change or conducting a review into any matter relating to the Rules.

However, the Australian Energy Market Commission will not have the power to compulsorily acquire information for the purpose of performing its rule-making and market development functions. In carrying out these functions, the Commission is expected to rely on voluntary participation by interested parties and established industry relationships.

Australian Energy Regulator

The Australian Energy Regulator has been established as a statutory body. Under the new National Electricity Law and Rules, the Australian Energy Regulator has enforcement, compliance monitoring, and economic regulatory functions. The Australian Energy Regulator will also take over the National Electricity Code Administrator's function of granting to transmission and distribution system operators any exemptions from the obligation to register.

In relation to its enforcement functions, the Australian Energy Regulator will be able to authorise an officer to apply to a magistrate for the issue of a search warrant where there are reasonable grounds for believing that there has been or will be a breach or possible breach of a provision of the new National Electricity Law or the Rules. Moreover, the Australian Energy Regulator is the body that is charged with bringing court proceedings in respect of breaches of the new National Electricity Law or the Rules, except where the breach is of an offence provision. The Australian Energy Regulator may also issue infringement notices for certain breaches of the Law and Rules.

The Australian Energy Regulator's compliance monitoring role will include monitoring compliance with the Rules for example, verifying and substantiating rebids by generators into the wholesale exchange.

The new National Electricity Law also empowers the Australian Energy Regulator to obtain information or documents from any person where such information or documents are required by the Australian Energy Regulator for the purposes of performing or exercising any of its functions or powers. However, persons are not required to provide information or documents pursuant to such a notice where they have a reasonable excuse for not doing so, such as that the person is not capable of complying with the notice. Information that is subject to legal professional privilege is also protected from disclosure pursuant to such a notice.

The Australian Energy Regulator will also be responsible for the economic regulation of electricity transmission services in the national electricity market jurisdictions and, to this end, will take over the Australian Competition and Consumer Commission's functions in relation to the regulation of revenue and pricing for electricity transmission services.

The Australian Energy Regulator will be required to exercise its economic regulatory functions in a manner that will or is likely to contribute to the achievement of the national electricity market objective. If such a function relates to the making of a transmission revenue or price determination, the Australian Energy Regulator must ensure that the regulated transmission system operator is informed of the material issues being considered by the Australian Energy Regulator and has a reasonable opportunity to make submissions before the determination is made. Further, the Regulator must, when making a transmission revenue or price determination in accordance with the Rules, provide a reasonable opportunity for the transmission system operator to recover the efficient costs in complying with various regulatory obligations. In addition, the Regulator must provide effective incentives to the operator to promote the efficient provision of regulated services, including the making of efficient investments. The Regulator must also make allowance for the value to be determined in accordance with the Rules of the operator's existing and proposed new assets and have regard to previous asset valuations.

Placing these principles in the Law, rather than the Rules, ensures that they cannot be changed by the normal rule change process and instead must be changed by legislation, thereby providing greater certainty for the industry and consumers on the regulatory practice of the Australian Energy Regulator.

The new National Electricity Law enhances the accountability of regulation by prescribing minimum requirements for the Australian Energy Regulator when performing its economic regulatory functions, such as making revenue and price determinations. The Rules will set out the Australian Energy Regulator's economic regulatory functions in more detail, consistent with the Law.

The new National Electricity Law requires that the Australian Energy Market Commission, by 1 July 2006, make Rules on a range of matters relating to transmission revenues and pricing that are set out in the new National Electricity Law. The National Electricity Law prescribes objectives that must be achieved by those Rules. Those Rules will relate to the Australian Energy Regulator's economic regulatory functions and will be subject to the general rule making process.

National Electricity Market Management Company

Consistent with the strengthening of the governance arrangements for the national electricity market, key functions of the National Electricity Market Management Company have been elevated to the new National Electricity Law. The National Electricity Market Management Company's functions remain substantially the same as currently exist in the Code.

The National Electricity Market Management Company will continue to operate, administer, develop, and improve the wholesale exchange for electricity, to register participants, and exempt generators and purchasers from the requirement to register, to maintain and improve power system security and to coordinate the planning of augmentations to the national electricity system. It will also have any other functions conferred on it under the National Electricity Law and Rules.

Reliability Panel

The National Electricity Code currently provides for the establishment of the Reliability Panel. However, under the new National Electricity Law, the obligation to establish the Reliability Panel is imposed as a statutory obligation on the Australian Energy Market Commission. The Reliability Panel's functions, as set out in the new National Electricity Law, include monitoring, reviewing and reporting on the safety, security and reliability of the national electricity system, as well as performing other functions relating to power system security under the Rules. In addition, the Australian Energy Market Commission may from time to time require the Reliability Panel to provide it with advice in relation to the safety, security and reliability of the national electricity system.

Under the Rules, the representative nature of the Reliability Panel will be enhanced by the requirement that it include representatives of the retailers, generators, transmission and distribution providers and end users. Decisions of the Reliability Panel will be required to be taken by way of majority vote.

Rule making under the new National Electricity Law

The new National Electricity Law empowers the Australian Energy Market Commission to make Rules relating to the operation of the national electricity market, the operation of the national electricity system for the purposes of the safety, security and reliability of that system, and the activities of persons who participate in the national electricity market or are involved in the operation of the national electricity system. Examples of specific matters in respect of which the Commission will be able to make Rules include the registration and exemption of persons under the new National Electricity Law and Rules, participant fees, the setting of prices, including maximum and minimum prices, for electricity purchased through the wholesale exchange, the operation of generating, transmission and distribution systems and other facilities, access to and augmentation of transmission and distribution systems, the economic regulation of transmission and distribution services, metering and disputes in relation to the Rules.

The Australian Energy Market Commission may make a Rule following a Rule change proposal if it is satisfied that the Rule will, or is likely to, contribute to the achievement of the national electricity market objective. For these purposes, the Commission may give the various aspects of the national electricity market objective such weight as it considers appropriate in all the circumstances, having regard to any relevant Ministerial Council on Energy statement of policy principles.

The 2003 Ministerial Council on Energy Report foreshadowed the need for more active participation of energy users and suppliers in the development of energy markets. To facilitate this in the context of the national electricity market, the new National Electricity Law enables any person to initiate a Rule change proposal, including industry participants, end users, the Ministerial Council on Energy and, to the extent the Rule change proposal relates to its functions, the Reliability Panel. The exception is that, in most cases, the Australian Energy Market Commission will not itself be able to initiate a Rule change proposal. This is in accordance with the policy position, stated by the Ministerial Council on Energy in its December 2003 Report, that the initiator of a rule change should not also decide whether the rule change should be made. However, the Commission will be able to initiate a Rule change where the change is to correct a minor error or involves a non-material change to the proposed Rules. In addition, as previously stated, the new National Electricity Law requires the Australian Energy Market Commission to initiate certain Rules in relation to the economic regulation of electricity transmission. These Rules must be made by 1 July 2006.

The Rule change process set out in the new National Electricity Law is transparent and involves the opportunity for significant input by stakeholders. For example, the Australian Energy Market Commission will only be entitled not to proceed with a Rule change proposal under the Rule change process if the Rule change proposal does not contain the required information, is misconceived or lacking in substance or is beyond power. However, in such a case, the Australian Energy Market Commission must give the proponent of that change written reasons for its refusal to proceed with the Rule change proposal. Moreover, if a Rule change proposal satisfies these requirements, before making any Rule change arising out of the proposal, the Australian Energy Market Commission must publish notice of the Rule change proposal and invite submissions on it; may hold public hearings in relation to the Rule change proposal; must publish a draft Rule determination (including reasons) and invite submissions on it; and may hold a predetermination hearing.

The Australian Energy Market Commission's final Rule determination must then set out the reasons for that determination. In addition, the new National Electricity Law specifies the time-frames within which these steps must generally be taken, thereby providing a structured and timely Rule change process.

The Australian Energy Market Commission will also be empowered to expedite a Rule change proposal where the Rule change is unlikely to have a significant effect on the national electricity market or where the Rule change is urgent in the sense that it is necessary to avoid the effective operation or administration of the wholesale exchange, or the safety, security or reliability of the national electricity system, being prejudiced or threatened. But even then, public notice of the Rule change proposal must be given and the full Rule change process must be undertaken if there is a reasonable objection to the Rule change proposal being expedited.

A Memorandum of Understanding between the Australian Energy Market Commission, the Australian Energy Regulator, and the Australian Competition and Consumer Commission will define the protocols for early consultation in relation to a Rule change proposal to facilitate the timely and informed evaluation of Rule change proposals. It should be noted that, whereas the Australian Competition and Consumer Commission was previously required to authorise changes to the National Electricity Code under the *Trade Practices Act 1974* on the basis that the Code constituted an arrangement between industry participants, the replacement of the Code by the National Electricity Rules will obviate the need for authorisation of the proposed Rules or of changes to them.

The Australian Energy Market Commission is required to publish notice of a Rule change in the South Australian Government Gazette. It must also publish the Rule change on its website and make copies of it available at its office. In addition, the Australian Energy Market Commission is required to publish an up-to-date copy of all the National Electricity Rules on its website.

The new National Electricity Law provides for participant and jurisdictional derogations to continue to be made, but under this new Rule change process. Under the Law, any person the subject of the Rules, including a registered participant or the National Electricity Market Management Company, may initiate a participant derogation as a Rule change proposal. Broadly speaking, a participant derogation is a Rule which, for a specified period of time, exempts the relevant person, or a class of which that person is a member, from complying with another Rule, or which modifies the application of another Rule to that person or class. Equally, under the new National Electricity Law, a Minister of a participating jurisdiction may initiate a jurisdictional derogation as a Rule change proposal. Broadly speaking, a jurisdictional derogation is a Rule which exempts a person or class of persons from complying with another Rule in the relevant participating jurisdiction or which modifies the application of another Rule to that person or class in the participating jurisdiction. The new National Electricity Law does, however, specify some factors to which the Australian Energy Market Commission must have regard in determining a proposal for a jurisdictional derogation.

Given the need to have Rules in place at the same time as the National Electricity Law comes into operation, the initial National Electricity Rules will not be made under this Rule change process. Instead, they will be made, on the recommendation of the Ministerial Council on Energy, by a Ministerial notice.

The initial Rules will largely consist of the provisions of the current National Electricity Code as amended to accommodate the reforms contained in the new National Electricity Law, the new governance and institutional arrangements, the status of the Rules as law, and various other consequential modifications. However, once made, these Rules will be subject to change in accordance with the new Rule change process, including through the application of the Rule making test and the public consultation arrangements. It is important to note that this initial Rule making power can only be exercised once.

Rights of review including merits review

The new National Electricity Law provides for judicial review of decisions and associated conduct of the Australian Energy Market Commission and the National Electricity Market Management Company under the Law and the Rules. Any person whose interests

are affected by a decision of either of these bodies may apply to a Court for judicial review of that decision. Conversely, the new regulatory arrangements do not provide for merits review of decisions of these bodies. In the case of the Australian Energy Market Commission, the reason for this is that the Commission is performing a statutory function as a rule-maker, and the process that it must follow for this purpose is transparent and entails considerable public consultation. Under the current National Electricity Law and the National Electricity Code, certain decisions of the National Electricity Market Management Company are reviewable by the National Electricity Tribunal. However, the abolition of the National Electricity Tribunal as part of the new regulatory arrangements means that there is now no scope for the merits review of such decisions.

Decisions of the Australian Energy Regulator are subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)*. Again, merits review is not available for decisions of the Australian Energy Regulator under the new National Electricity Law and Rules, and this is consistent with the position under the current arrangements where merits review of the Australian Competition and Consumer Commission's electricity transmission revenue determinations is not available.

Nonetheless, the Ministerial Council on Energy has undertaken to reconsider the issue of merits review for electricity when it makes its response to the Productivity Commission's *Review of the Gas Access Regime*.

Enforcement

The new National Electricity Law makes a number of important changes in relation to the enforcement of the National Electricity Law, the Regulations made under the *National Electricity (South Australia) Act 1996* and the National Electricity Rules.

In particular, while the National Electricity Rules have the force of law and thus are binding on all persons to whom they apply, the new National Electricity Law provides that, generally, proceedings for a breach of the National Electricity Rules can only be brought against a person who is a "relevant participant". For these purposes, a "relevant participant" includes registered participants and the National Electricity Market Management Company – that is, those persons who are currently bound by the National Electricity Code. However, the new National Electricity Law also provides for additional categories of persons to be prescribed by the Regulations as "relevant participants". At least initially, this power will only be used to ensure that persons who have previously been bound by contract to comply with the National Electricity Code may now have the National Electricity Rules enforced directly against them as law.

Under the new regulatory regime, only the Australian Energy Regulator is able to bring proceedings for a breach by a relevant participant of the new National Electricity Law, the Regulations made under the *National Electricity (South Australia) Act 1996* or the National Electricity Rules. The exception is where the breach is a breach of an offence provision. Such provisions include those contained in the current National Electricity Law, such as obstructing or hindering the National Electricity Market Management Company or a person authorised by it in exercising certain powers relating to power system security and obstructing or hindering the execution of a search warrant, as well as the new offences of failing to comply with a notice to provide information or documents to the Australian Energy Regulator or knowingly providing false or misleading information in response to such a notice. The prosecution of these kinds of offences will be within the general prosecution regimes of the Commonwealth, States and Territories.

The Australian Energy Regulator will be able to bring proceedings for a breach by a relevant participant of the new National Electricity law, the Regulations or the Rules in a State or Territory Supreme Court or the Federal Court, as appropriate. For the purposes of such proceedings, the Court may make an order declaring that the relevant participant is in breach of the new National Electricity Law, the Regulations or the Rules. If the Court makes such a declaration, the Court may also order the person to pay a civil penalty (for prescribed civil penalty provisions), to desist from the breach, to remedy the breach or to implement a compliance program.

As is the case under the current National Electricity Law, provision is made for the Regulations to prescribe provisions of the National Electricity Rules, as well as provisions of the new National Electricity Law, the breach of which will attract a civil penalty. However, under the new regulatory regime, the current graduated civil penalties scheme will be replaced by a maximum civil penalty of $100 000 and $10 000 for every day during which the breach continues (in the case of a body corporate) and of $20 000 and $2 000 for every day during which the breach continues (in case of a natural person). The exception is where the relevant provision is prescribed as a rebidding civil penalty provision, in which case the maximum civil penalty will be $1 000 000 and $50 000 for every day during which the breach continues. Nonetheless, this replacement of the current graduated civil penalty scheme should not be taken to indicate that all breaches of civil penalty provisions are of the same seriousness or that a breach of a provision that previously attracted a lower civil penalty should now be regarded as more serious and warranting a higher civil penalty. Rather, the changes have been made to simplify the civil penalties regime, and the Courts should determine the appropriate amount of the civil penalty having regard to the circumstances of each particular breach.

In addition to the orders described above, where the relevant participant is a registered participant, the Court may direct the disconnection of that registered participant's loads in accordance with the Rules or may direct that the registered participant be suspended from purchasing or supplying electricity through the wholesale exchange.

The Australian Energy Regulator may also apply to the Court for an injunction where a relevant participant has engaged in, is engaging in or is proposing to engage in conduct in breach of the new National Electricity Law, the Regulations or the Rules.

Under the new National Electricity Law a relevant participant who attempts to commit a breach of a civil penalty provision is taken to have committed that breach and persons who are in any way directly or indirectly knowingly concerned in, or party to, a breach of a civil penalty provision by a relevant participant are also liable for a breach of that provision. As is the case under the current National Electricity Law, officers of corporations which breach a civil penalty provision will also be liable for that breach if they knowingly authorised or permitted it.

The last element of the new enforcement regime is the ability of the Australian Energy Regulator to serve an infringement notice on a relevant participant for breach of any civil penalty provision, other than a rebidding civil penalty provision. A person who receives such a notice may either pay the infringement penalty, or defend, in court, any proceedings brought by the Australian Energy Regulator in respect of the breach. The amount of the infringement penalty is $20 000 (for a body corporate) and $4 000 (for a natural person), or such lesser amount as is prescribed by the Regulations for the particular civil penalty provision.

While persons other than the Australian Energy Regulator cannot bring proceedings for a breach of the National Electricity Rules, the initial Rules, like the National Electricity Code, will provide for a dispute resolution procedure that can be availed of to resolve disputes under the Rules between registered participants or between a registered participant and the National Electricity Market Management Company. A party to such a dispute will be entitled to appeal to a Court on a question of law against a decision of a dispute resolution panel established under that procedure. Also, payments between registered participants, or between the National Electricity Market Management Company and registered participants, under the Rules, may be enforced in a court.

Information sharing

The Australian Energy Market Commission, Australian Energy Regulator and Australian Competition and Consumer Commission will be empowered to share information that they obtain with each of the other bodies where that information is relevant to the functions of those other bodies.

Any information provided on a confidential basis to one regulatory body, including information provided on a "commercial-in-confidence" basis, may be provided to the other regulatory body subject to any conditions imposed to protect that information from unauthorised use or disclosure by the receiving body.

Immunities

The new National Electricity Law substantially replicates the statutory immunities that are contained in the current National Electricity Law. However, a new immunity applies to a member, the chief executive officer or the staff of the Australian Energy Market Commission from personal liability for an act or omission in good faith in the performance or exercise of a function or power under the new National Electricity Law, the Regulations or the Rules. In such circumstances liability lies instead against the Commission.

Access

The access arrangements for the national electricity market are yet to be settled by the Ministerial Council on Energy. Accordingly, the National Electricity Law is silent on the issue and the status quo will be maintained for the present time. Until the Ministerial Council

on Energy finalises its position on access, there is no intention to seek approval of the Rules by the Australian Competition and Consumer Commission as an industry access code. It is intended that the Ministerial Council on Energy will decide on this matter in the first half of 2005. Prior to implementation of the agreed approach on energy access issues for the future, appropriate opportunity for consultation with industry participants and other stakeholders will be made available.

Renewable energy

The South Australian Government remains strongly committed to renewable energy. The new National Electricity Law does not explicitly address environmental issues such as greenhouse. A future program of reform identified in the "Reform of Energy Markets" paper and the *Australian Energy Market Agreement* objectives will address issues such as user participation, barriers to distributed and renewable generation and further integration of the national electricity and gas markets over time. Addressing these issues is likely to reduce greenhouse emissions in an economically efficient manner.

Regulations made under the National Electricity Law

The expanded scope of the new National Electricity Law has resulted in an increase in the number of matters that are required to be the subject of the Regulations under the *National Electricity (South Australia) Act 1996*. As a result, the Bill broadens the regulation making power for the purposes of that Act and the National Electricity Law. The new regulation making power enables Regulations to be made where they are contemplated by, or necessary or expedient for the purpose of, the National Electricity Law. However, the extent of the Regulations that may be made is constrained by the provisions of the National Electricity Law and Regulations could not be made to implement extensive changes, such as the transfer of distribution and retail regulation to the Australian Energy Regulator. Such changes would necessitate a return to Parliament.

The Regulation making power has caused some concern because the Regulations are exempt from certain provisions of the South Australian *Subordinate Legislation Act 1978*—that is, they are not subject to disallowance by the South Australian Parliament. Nonetheless, it is inappropriate that one Parliament can disallow regulations that have been agreed to on a co-operative basis by all participating jurisdictions. An important safeguard, however, is that Regulations can only be made with the unanimous agreement of all relevant Ministerial Council on Energy Ministers.

Nevertheless, in recognition of the concern that has been expressed, it is the intention of the Ministerial Council on Energy that all draft Regulations will be released for consultation where timing permits this and the subject matter warrants it.

Savings and transitionals

To ensure a smooth transition to the new National Electricity Law and Rules, savings and transitional provisions are included in the new Law. Additional savings and transitional provisions will also be included in the Regulations, and a specific regulation making power has been included under the *National Electricity (South Australia) Act 1996* for this purpose. The savings and transitional provisions contained in the new National Electricity Law include provisions dealing with matters such as the making of rules that are currently in process under the National Electricity Code, the continuation of the registration of Code participants and associated exemptions under the National Electricity Rules, the substitution of references to the National Electricity Rules for references to the National Electricity Code, and a deemed "no change of law" provision as a result of the substitution of the new National Electricity Law and the making of the initial National Electricity Rules. In addition, it is provided that the undertakings given by Code participants to be bound by the National Electricity Code as a result of their registration as Code participants cease to have any effect.

Tasmania's national electricity market entry

As I mentioned earlier, Tasmania is scheduled to join the national electricity market on 29 May this year. Entry to the national electricity market and interconnection with the mainland later this year following the commissioning of Basslink, is a key element of Tasmania's Energy Reform Framework.

Tasmania's national electricity market entry and Basslink will make a significant contribution to the development of a more connected, larger and more secure electricity system in south eastern Australia. This has been identified by the National Electricity Market Management Company as a key issue in the Statement of Opportunity.

For Tasmania, national electricity market entry and Basslink will enable the introduction of sustainable competition and customer choice, while providing a robust framework for further investment in the Tasmania electricity supply industry.

Interpretation provisions

Like the existing National Electricity Law, the new Law includes a schedule of interpretive provisions. This Schedule 2 to the new Law means the Law is subject to uniform interpretation provisions in all participating jurisdictions.

As I noted at the beginning of this speech, this Bill will strengthen and improve the quality, timeliness and national character of the governance and economic regulation of the national electricity market, for the benefit of South Australians and all Australians. I commend this Bill to the House.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure is to be commenced by proclamation. The clause also excludes the application of section 7(5) of the *Acts Interpretation Act 1915* which would otherwise ensure automatic commencement of the measure if it were not proclaimed to commence within 2 years after being assented to by the Governor.

3—Exercise of rule-making power under new National Electricity Law following assent

Under clause 12, the new National Electricity Law is to replace the current National Electricity Law by substitution of the Schedule of the *National Electricity (South Australia) Act 1996* .This clause, that is, clause 3, empowers the Minister to make the proposed new National Electricity Rules (***the Rules***)under section 90 of the new National Electricity Law before the commencement of the new National Electricity Law, but provides that Rules so made will not take effect until that commencement or a later day specified in the notice published under section 90.

4—Amendment provisions

This clause is formal.

Part 2—Amendment of *National Electricity (South Australia) Act 1996*

5—Repeal of Preamble

The preamble (which formed part of the *National Electricity (South Australia) Act 1996* when the Act was enacted in 1996) is repealed. Given the changes to the legislative scheme since 1996, the text of the preamble is no longer apposite or helpful to readers of the Act.

6—Amendment of section 8—Interpretation of some expressions in *National Electricity (South Australia) Law* and *National Electricity (South Australia) Regulations*

Schedule 2 of new National Electricity Law contains comprehensive interpretation provisions applicable to the new National Electricity Law, the Regulations under the *National Electricity (South Australia) Act 1996* and the Rules. As a result, this clause excludes the application of the *Acts Interpretation Act 1915* to the Law (and hence the Rules) and the Regulations.

7—Repeal of Part 3

Part 3 of the *National Electricity (South Australia) Act 1996* provides for the establishment of the National Electricity Tribunal. This Part is repealed. The new National Electricity Law transfers the functions of the Tribunal to the Supreme Courts of the participating jurisdictions.

8—Amendment of heading to Part 4

Part 4 of the *National Electricity (South Australia) Act 1996* provides for the making of regulations for the purposes of the National Electricity Law. This clause amends the heading to the Part so that it will also now refer to the making of the Rules.

9—Amendment of section 11—General regulation-making power for National Electricity Law

The general regulation-making power for the National Electricity Law is widened. All Regulations under the *National Electricity (South Australia) Act 1996* may now only be made on the unanimous recommendation of the Ministers of the participating jurisdictions.

10—Substitution of sections 12 and 13

Section 12 of the *National Electricity (South Australia) Act 1996* currently contains certain limited specific regulation-making powers for the National Electricity Law. The section is replaced by a new provision containing a regulation-making power to deal with transitional matters relating to the transition from the application of provisions of the current National Electricity Law to the application of provisions of the new National Electricity Law. The provision is closely modelled on provision in the *Corporations (Ancillary Provisions) Act 2001*.

Section 13 of the *National Electricity (South Australia) Act 1996* currently provides for regulations to be made relating to the civil penalties scheme of the National Electricity Law. The new National Electricity Law does not require any such supporting regulations relating to civil penalties. As a result, section 13 is repealed. In its place there is to be a new provision making it clear that the provisions of the *Subordinate Legislation Act 1978* relating to rules will not apply to the Rules under the new National Electricity Law.

11—Amendment of section 14—Freedom of information

These amendments are consequential on the removal of a role for NECA in the proposed new national electricity administrative arrangements.

12—Substitution of Schedule

This clause provides for the replacement of the National Electricity Law which is contained in the current Schedule of the Act.

Schedule—National Electricity Law

Part 1—Preliminary

1—Citation

Provides that this Law may be referred to as the National Electricity Law (the NEL).

2—Definitions

Sets out definitions used in the NEL.

3—Interpretation generally

Provides that Schedule 2 to the NEL, which contains interpretation provisions, applies to the NEL, to Regulations made under the National Electricity (South Australia) Act 1996 (the Regulations) and to the National Electricity Rules made under the NEL (the Rules).

4—Savings and transitionals

Provides that Schedule 3 to the NEL, which sets out savings and transitional provisions, has effect.

5—Participating jurisdiction

Provides for the participating jurisdictions, which will be South Australia together with the Commonwealth, any other State and any Territory that has in place a law that applies the NEL as a law of that jurisdiction.

6—Ministers of participating jurisdictions

Provides for the relevant Ministers of the participating jurisdictions.

7—National electricity market objective

Sets out the national electricity market objective.

8—MCE statements of policy principles

Provides that the Ministerial Council on Energy (MCE) may issue statements of policy principles in relation to any matters that are relevant to the functions and powers of the Australian Energy Market Commission (AEMC); such statements must be published in the South Australian Government Gazette by the AEMC.

9—National Electricity Rules to have force of law

Provides for the Rules to have the force of law in each of the participating jurisdictions.

10—Application of this Law and Regulations to coastal waters of this jurisdiction

Provides for the application of the NEL and the Regulations to coastal waters.

Part 2—Participation in the National Electricity Market

11—Registration required to undertake certain activities in the national electricity market

Prohibits a person engaging in certain activities unless the person is registered or is the subject of a derogation or otherwise exempted from registration.

12—Registration or exemption of persons participating in the national electricity market

Provides for requests to the National Electricity Market Management Company (NEMMCO) for registration or exemption from registration.

13—Exemptions for transmission system or distribution system owners, controllers and operators

Provides for requests to the Australian Energy Market Regulator (AER) for exemption from registration in relation to transmission and distribution systems.

14—Evidence as to Registered participants and exemptions

Is an evidentiary provision relating to registration and exemption.

Part 3—Functions and Powers of the Australian Energy Regulator

This Part provides for the functions and powers of the Australian Energy Market Commission established by section 5 of the Australian Energy Market Commission Establishment Act 2004 of South Australia (the AEMC Act).

Division 1—General

15—Functions and powers of the AER

Sets out the AER's functions and powers.

16—Manner in which AER must perform or exercise AER economic regulatory functions or powers

Makes provision in relation to the manner in which the AER must perform or exercise the AER's economic regulatory functions or powers.

17—Delegations

Provides that a delegation by the AER under section 44AAH of the TPA is effective for the purposes of the NEL, Regulations and Rules.

18—Confidentiality

Provides that the confidentiality provisions of section 44AAF of the TPA are effective for the purposes of the NEL, Regulations and Rules.

Division 2—Investigation Powers

19—Definitions

Sets out definitions for the purposes of this Division.

20—Authorised person

Provides that the AER may authorise persons to be authorised persons for the purposes of this Division.

21—Search warrant

Provides for the issue of search warrants by a magistrate.

22—Announcement before entry

Provides for announcement before entry to a place in execution of a search warrant.

23—Details of warrant to be given to occupier

Requires certain details of a search warrant to be given to the occupier of premises

24—Copies of seized documents

Requires a certified copy of a seized document to be provided to the person from whom it was seized in execution of a search warrant.

25—Retention and return of seized documents or things

Provides for return of documents or other things seized in execution of a search warrant.

26—Period for retention of documents or things seized may be extended

Provides for extension of the period within which a document or other thing must be returned.

27—Obstruction of persons authorised to enter

Creates an offence of obstructing or hindering a person in the exercise of power under a warrant, for which the penalty is a fine of up to $2 000 for a natural person or up to $10 000 for a body corporate.

28—Power to obtain information and documents in relation to performance and exercise of functions and powers

Provides that the AER may serve notices requiring information to be furnished or documents to be produced and creates an offence of failing to comply with such a notice, for which the penalty is a fine of up to $2 000 for a natural person or up to $10 000 for a body corporate.

Part 4—Functions and Powers of the Australian Energy Market Commission

This Part provides for the functions and powers of the Australian Energy Regulator established by section 44AE of the Trade Practices Act 1974 of the Commonwealth (the TPA).

Division 1—General

29—Functions and powers of the AEMC

Sets out the AEMC's functions and powers.

30—Delegations

Provides that a delegation by the AEMC under section 20 of the AEMC Act is effective for the purposes of the NEL, Regulations and Rules.

31—Confidentiality

Provides that the confidentiality provisions of section 24 of the AEMC Act are effective for the purposes of the NEL, Regulations and Rules.

32—AEMC must have regard to national electricity market objective

Provides that the AEMC must have regard to the national electricity market objective.

33—AEMC must have regard to MCE statements of policy principles in relation to Rule making and reviews

Provides that the AEMC must have regard to any relevant MCE statements of policy principles in making a Rule or conducting certain reviews.

Division 2—Rule Making Functions and Powers of the AEMC

34—Subject matter for National Electricity Rules

Provides for the subject matter of the Rules; Schedule 1 to the NEL also specifies matters about which the AEMC may make Rules.

35—Rules in relation to economic regulation of transmission systems

Provides for the making of Rules in relation to economic regulation of transmission systems.

36—National Electricity Rules to always provide for certain matters relating to transmission systems

Provides that the Rules are at all times to provide for certain matters relating to transmission systems.

37—Documents etc. applied, adopted and incorporated by Rules to be publicly available

Requires documents applied, adopted or incorporated by a Rule to be publicly available.

Division 3—Committees, Panels and Working Groups of the AEMC

38—The Reliability Panel

Provides for the AEMC to establish a Reliability Panel.

39—Establishment of committees and panels (other than the Reliability Panel) and working groups

Provides for establishment of committees, panels (other than the Reliability Panel) and working groups by the AEMC.

Division 4—MCE Directed Reviews

40—Definition

Sets out a definition for the purposes of this Division.

41—MCE directions

Provides that the MCE may direct the AEMC to conduct reviews; such a direction must be published in the South Australian Government Gazette.

42—Terms of reference

Provides for the terms of reference of MCE directed reviews.

43—Notice of MCE directed review

Requires the AEMC to publish notice of an MCE directed review.

44—Conduct of MCE directed review

Provides for the conduct of MCE directed reviews.

Division 5—Other Reviews

45—Reviews by the AEMC

Provides for reviews by the AEMC other than MCE directed reviews.

Division 6—Miscellaneous

46—AEMC must publish and make available up to date versions of the National Electricity Rules

Requires the AEMC to maintain an up to date copy of the Rules on its website and to make copies of the Rules available for inspection at its offices.

47—Fees for services provided

Provides for the AEMC to charge fees as specified in the Regulations.

48—Confidentiality of information received for the purposes of a review

Provides for the confidentiality of information provided to the AEMC for the purposes of a review.

Part 5—Role of NEMMCO under the National Electricity Law

Division 1—Conferral of Certain Functions

49—Functions of NEMMCO in respect of national electricity market

Sets out NEMMCO's functions in respect of the national electricity market.

50—Operation and administration of national electricity market

Provides for how NEMMCO must perform its functions.

51—NEMMCO not to be taken to be engaged in the activity of controlling or operating a generating, transmission or distribution system

Provides that NEMMCO is not to be taken to be engaged in certain activities by reason only of it performing functions conferred under the NEL and Rules.

52—Delegation

Provides for NEMMCO to be able to delegate functions and powers.

Division 2—Statutory Funds of NEMMCO

53—Definitions

Sets out definitions for the purposes of this Division.

54—Rule funds of NEMMCO

Provides for the continuation and establishment of Rule funds.

55—Payments into Rule funds

Provides for payments into Rule funds.

56—Investment

Provides for investment of moneys in Rule funds.

57—NEMMCO not trustee

Provides that neither NEMMCO nor its directors are to be taken to be trustees of a Rule fund.

Part 6—Proceedings under the National Electricity Law

Division 1—General

58—Definitions

Sets out definitions for the purposes of this Part.

59—Instituting civil proceedings under this Law

Provides that proceedings for breach of the NEL, Regulations or Rules may not be instituted except as provided in this Part.

Division 2—Proceedings by the AER in respect of this Law, the Regulations and the Rules

60—Time limit within which AER may institute proceedings

Provides for the time limit within which proceedings may be instituted.

61—Proceedings for breaches of a provision of this Law, the Regulations or the Rules that are not offences

Provides for the orders that may be made in proceedings in respect of breaches of provisions of the NEL, Regulations or Rules that are not offence provisions.

62—Additional Court orders for Registered participants in breach

Provides that the Court may, in an order under clause 61, also direct disconnection of loads or suspension of purchase or supply through the wholesale exchange.

63—Orders for disconnection in certain circumstances where there is no breach

Provides that the Court may order disconnection in circumstances, as specified in the Rules, which are not breaches.

64—Matters for which there must be regard in determining amount of civil penalty

Sets out matters to be taken into account in determining civil penalties.

65—Breach of a civil penalty provision is not an offence

Provides that a breach of a civil penalty provision (as defined in clause 58) is not an offence.

66—Breaches of civil penalties involving continuing failure

Provides for breaches of civil penalty provisions involving continuing failure.

67—Conduct in breach of more than one civil penalty provision

Provides for liability for one civil penalty in respect of the same conduct constituting a breach of two or more civil penalty provisions.

68—Persons involved in breach of civil penalty provision

Provides for aiding, abetting, counselling, procuring or being knowingly concerned in or party to a breach of a civil penalty provision.

69—Civil penalties payable to the Commonwealth

Provides that civil penalties are payable to the Commonwealth.

Division 3—Judicial Review of Decisions and Determinations under this Law, the Regulations and the Rules

70—Applications for judicial review

Provides that aggrieved persons (as defined) may apply for judicial review in respect of AEMC or NEMMCO decisions and determinations; the operation of a decision or determination is not affected by an application for judicial review, unless the Court otherwise orders.

71—Appeals on questions of law from decisions or determinations of Dispute resolution panels

Provides for appeals on questions of law against a decision or determination of a dispute resolution panel (as defined in clause 58).

Division 4—Other Civil Proceedings

72—Obligations under Rules to make payments

Provides for proceedings in relation to the payment of amounts required under the Rules to be paid.

Division 5—Infringement Notices

73—Definition

Sets out a definition of "relevant civil penalty provision" for the purposes of this Division.

74—Power to serve a notice

Provides that the AER may serve infringement notices for breaches of relevant civil penalty provisions.

75—Form of notice

Provides for the form of the infringement notice.

76—Infringement penalty

Sets out the amount of the infringement penalty: $4 000, or such lesser amount as is prescribed in the Regulations, for a natural person; or $20 000, or such lesser amount as is prescribed in the Regulations, for a body corporate.

77—AER cannot institute proceedings while infringement notice on foot

Provides that the AER must not, without first withdrawing the infringement notice, institute proceedings for a breach until the period for payment under the infringement notice expires.

78—Late payment of penalty

Provides for when the AER may accept late payment of an infringement penalty.

79—Withdrawal of notice

Provides that the AER may withdraw an infringement notice.

80—Refund of infringement penalty

Provides for refund of an infringement penalty if the infringement notice is withdrawn.

81—Payment expiates breach of relevant civil penalty provision

Provides for expiation of a breach subject to an infringement notice.

82—Payment not to have certain consequences

Provides that payment of an infringement penalty is not to be taken to be an admission of a breach or of liability.

83—Conduct in breach of more than one civil penalty provision

Provides for payment of one infringement penalty in respect of the same conduct constituting a breach of two or more civil penalty provisions for which two or more infringement notices have been served.

Division 6—Miscellaneous

84—AER to inform certain persons of decisions not to investigate breaches, institute proceedings or serve infringement notices

Requires the AER to inform certain persons of decisions not to investigate breaches, institute proceedings or serve infringement notices.

85—Offences and breaches by corporations

Provides that an officer (as defined) of a corporation is also liable for a breach of an offence provision or civil penalty provision by the corporation if the officer knowingly authorised or permitted the breach.

86—Proceedings for breaches of certain provisions in relation to actions of officers and employees of relevant participants

Provides that an act committed by an officer (as defined) or employee of a relevant participant (as defined) will be a breach where the act, if committed by the relevant participant, would be a breach.

Part 7—The Making of the National Electricity Rules

Division 1—General

87—Definitions

Sets out definitions for the purposes of this Part.

88—Rule making test to be applied by AEMC

Sets out the test to be applied by the AEMC in making a Rule; the test refers to the national market objective (see clause 7).

89—AEMC must have regard to certain matters in relation to the making of jurisdictional derogations

Provides for certain matters to which the AEMC must have regard when making jurisdictional derogations.

Division 2—Initial National Electricity Rules

90—South Australian Minister to make initial National Electricity Rules

Provides for the South Australian Minister to make the initial Rules; a notice of making must be published in the South Australian Government Gazette and the Rules must be made publicly available.

Division 3—Procedure for the Making of a Rule by the AEMC

91—Initiation of making of a Rule

Provides for who may request the making of a Rule and also provides that the AEMC must not make a Rule on its own initiative except in certain circumstances.

92—Content of requests for a Rule

Sets out what a request for the making of a Rule must contain.

93—More than one request in relation to same or related subject matter

Provides for how multiple requests for the making of a Rule are to be treated.

94—Initial consideration of request for Rule

Provides for initial consideration by the AEMC of a request for a Rule.

95—Notice of proposed Rule

Requires the AEMC to give notice of a proposed Rule.

96—Non-controversial and urgent Rules

Provides for the making of non-controversial and urgent Rules.

97—Right to make written submissions and comments

Provides for the making of written submissions on a proposed Rule.

98—AEMC may hold public hearings before draft Rule determination

Provides for the holding of a hearing in relation to a proposed Rule.

99—Draft Rule determination

Requires the AEMC to publish its draft determination, including reasons, in relation to a proposed Rule.

100—Right to make written submissions and comments in relation to draft Rule determination

Provides for written submissions on a draft Rule determination.

101—Pre-final Rule determination hearing may be held

Provides for holding of a pre-final determination in relation to a draft Rule determination.

102—Final Rule determination as to whether to make a Rule

Requires the AEMC to publish its final Rule determination, including reasons.

103—Making of Rule

Requires the AEMC to make a Rule as soon as practicable after publication of its final Rule determination; notice of the making of a Rule must be published in the South Australian Government Gazette.

104—Operation and commencement of Rule

Provides that a Rule comes into operation on the day the notice of making is published or on such later date as is specified in that notice or the Rule.

105—Rule that is made to be published on website and made available to the public

Requires the AEMC, without delay after making a Rule, to publish the Rule on its website and make a copy available for inspection at its offices.

106—Evidence of the National Electricity Rules

Is an evidentiary provision relating to the Rules.

Division 4—Miscellaneous Provisions Relating to Rule Making by the AEMC

107—AEMC may extend certain periods of time specified in Division 3

Provides for extension of set periods relating to Rule making.

108—AEMC may publish written submissions and comments unless confidential

Provides that the AEMC may publish written submissions and also provides how confidential information received by it as part of the Rule making process is to be treated.

Part 8—Safety and Security of the National Electricity System

109—Definitions

Sets out definitions for the purposes of this Part.

110—Appointment of jurisdictional system security coordinator

Provides for appointment of a jurisdictional system security coordinator.

111—Jurisdictional system security coordinator to prepare jurisdictional load shedding guidelines

Provides for the preparation of jurisdictional load shedding guidelines.

112—NEMMCO to develop load shedding procedures for each participating jurisdiction

Requires NEMMCO to develop load shedding guidelines for each participating jurisdiction.

113—NEMMCO and jurisdictional system security coordinator to exchange load shedding information in certain circumstances

Provides for exchange of load shedding information in certain circumstances.

114—NEMMCO to ensure that the national electricity system is operated in manner that maintains the supply to sensitive loads

Requires NEMMCO to use reasonable endeavours to ensure the national electricity system is operated so as to maintain supply to sensitive loads.

115—Shedding and restoring of loads

Provides for shedding and restoring of loads.

116—Actions that may be taken to ensure safety and security of national electricity system

Provides for action that may be directed or authorised by NEMMCO to maintain power system security or for public safety.

117—NEMMCO to liaise with Minister of this jurisdiction and others during an emergency

Provides for liaison between NEMMCO and jurisdictions in cases of emergency.

118—Obstruction of persons exercising certain powers in relation to the safety and security of the national electricity system

Creates an offence of obstructing or hindering the exercise of powers under clause 116, for which the penalty is a fine of up to $20 000 for a natural person or up to $100 000 for a body corporate.

Part 9—Immunities

119—Immunity of NEMMCO and network service providers

Provides an immunity for NEMMCO and network service providers in certain circumstances.

120—Immunity in relation to failure to supply electricity

Provides an immunity in relation to failure to supply electricity.

121—Immunity from personal liability of AEMC officials

Provides an immunity from personal liability for AEMC officials (as defined).

Schedule 1—Subject matter for the National Electricity Rules

Specifies matters about which the AEMC may make Rules; see also clause 34.

Schedule 2—Miscellaneous provisions relating to interpretation

Contains interpretation provisions that will apply to the NEL, Regulations and Rules.

Schedule 3—Savings and transitionals

Sets out savings and transitional provisions.

The Hon. R.I. LUCAS: I do not know whether or not I need to repeat it, but I indicate the opposition's concerns about the process.

The PRESIDENT: I will look at the matters raised, I will take learned advice, and I will report back to the council on the process so that everybody will be clearer. I must confess that I am tackling many of these issues for the first time myself, and I am relying on advice. I will get it in written form so that all members are aware of where we are going.

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

PODIATRY PRACTICE BILL

Second reading.

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 Podiatry Practice Bill will replace the *Chiropodists Act 1950*. It is 54 years since the Chiropodists Act came into force and there have been significant changes in podiatry practice and in the broader society during that time. This Bill, which has as its primary aim the protection of the health and safety of the public, will modernise the regulation of the podiatry profession in South Australia.

This Bill is one of a number of Bills relating to the regulation of health professionals in South Australia and it, like the other Bills to be introduced, is based on the *Medical Practice Bill 2004*. I would like to point out to the House therefore that the other Bills to be introduced later this session will be very similar and for the most part identical to this Bill.

Members will recall that this Bill was introduced during the last session but lapsed when Parliament was prorogued.

When introducing this Bill I acknowledged the role played by my predecessor, the Hon Dean Brown MP and his staff in the development of this legislation. At the time that the Hon Deputy Leader was the Minister I was supportive of the Bill and recognised the need for the 1950 Act to be revamped to accommodate the many changes which have occurred over the previous years.

The Chiropody Board of South Australia (to be known as the Podiatry Board of South Australia under the new legislation) has identified the deficiencies of the current legislation for some time now and has been very supportive of new legislation to address the problems with the Act.

I said, when introducing the Medical Practice Bill into the House, that we live in a world which is more demanding of its professionals than in the past and consumers are demanding a different relationship with professionals. By and large consumers today want a service based on a partnership model of care where both the practitioner and the consumer are active participants in that care. I believe that this is just as true for this Bill.

Increasingly, consumers are becoming more informed about their health and have higher expectations of the services available to them. On the other hand, podiatrists also provide care for a large number of older people who may not be so well informed and trust in the care and information provided by their podiatrist.

Overall in society there has been a shift in, or greater articulation of, expectations and standards regarding professional conduct and competence. There has also been a greater demand for transparency and accountability of individual practitioners and of those through whom a service is provided such as a small business or larger corporate provider. Changed standards and expectations in regard to transparency and accountability are now much more explicit than in the past and the *Statutes Amendment (Honesty and Accountability in Government) Act 2003* provides a clear framework for the operation of the public sector, including the Podiatry Board of South Australia.

A clear principle underpinning the Bill emphasises the need for transparency and accountability in the delivery of services not only by the individual podiatrist, but also by the organisations that provide podiatry through the instrumentality of podiatrists (podiatric services providers).

The Bill ensures that the Board cannot restrict the access of such organisations to the market of podiatry. However, The Bill protects the public by ensuring that services providers (other than exempt

providers) must make their existence known to the Board. Furthermore, the disciplinary powers of the Board extend to services providers (other than exempt providers) and persons who occupy positions of authority in such organisations. The Bill requires all services providers (including exempt providers) to report to the Board unprofessional conduct or medical unfitness of persons through whom they provide podiatric treatment. In this way, the Board can ensure that services are provided in a manner consistent with a professional code of conduct and the interests of the public are protected. It also ensures that private services providers (other than exempt providers) can be subject to disciplinary proceedings. Exempt providers are those hospitals and health centres incorporated or licensed under the *South Australian Health Commission Act 1976*. Hospitals and health centres are subject to the regulatory and disciplinary scheme of that Act. They are accountable to the Minister for Health for the services they provide and it is therefore not appropriate that they should also be accountable, under this legislation, to the Medical Board except in so far as they are required to report to the Board unprofessional conduct or medical unfitness. The Bill also ensures that the individual practitioner is not subject to influences by a services provider that may conflict with his or her professional judgements and conduct by making it an offence to direct or pressure a podiatrist or podiatric student to engage in unprofessional conduct.

While consumers have higher expectations of their health practitioners, Governments also have higher expectations of all professionals and those who occupy public office. As a society, we have higher expectations of the health system as a whole. The podiatry profession also reflects this change in expectations. For example, the Australasian Podiatry Council states that the role of a podiatrist is:

> To improve mobility and enhance the independence of individuals by the prevention and management of pathological foot problems and associated morbidity. This is achieved by providing advice on foot health, assessment and diagnosis of foot pathology, identification of treatment and other requirements, referral to other disciplines as appropriate, formulation of care plans, and provision of direct care as deemed appropriate and agreed to by the individual.
>
> To establish collaborative relationships with other health care providers. To promote the skills of the podiatrist and provide information regarding foot care and appropriate support to other health professionals and carers.
>
> To be a primary source of information for the community in all matters relating to the foot.
>
> To ensure podiatry is conducted in a manner consistent with registration acts in each State and Territory and the Code of Ethics of the Australian Podiatry Association.
>
> To practise in accordance with developments in clinical practice, research and technology.
>
> To ensure that communication with patients is respected and remains confidential.

As is clear from this description, podiatry is described in very modern terms and is consistent with the role of podiatry as having a significant role in primary health care. It is clear that protecting and supporting mobility as much as possible is crucial to a person's health and well-being. It is also clear that podiatrists work in a range of practice settings. These vary from individual practitioners, practitioners working collaboratively with a range of other health professionals and working as salaried professionals in the government and non-government sectors.

This Bill, which is supported by the Chiropody Board of South Australia, reflects the modern role of podiatrists and their relationship with consumers and other health professionals.

The Bill, like the Medical Practice Bill, has provisions regarding the medical fitness of registered persons and requires that where a determination is made of a person's fitness to provide treatment, due regard is given to the person's ability to provide treatment without endangering a patient's health or safety. This can include consideration of communicable infections.

This is particularly relevant to the area of surgical podiatry where the provisions recognise that there is a considerable difference between a surgical podiatrist with a communicable disease such as Hepatitis C or HIV, and a psychologist with a similar disease, in relation to the danger they may present to their patients.

This approach was agreed to by all the major medical and infection control stakeholders when developing the provisions for the Medical Practice Bill and is in line with the way in which these matters are handled in other jurisdictions, and across the world. It is therefore appropriate that similar provisions be used in the Podiatry Practice Bill.

I indicated in my speech when tabling the Medical Practice Bill that my preference was to have members of the Board representing the professions to be taken from all eligible members, and elected by them, rather than being restricted to representatives of a professional association. My approach is consistent with that adopted in the *Nurses Act 1999* and the *Dental Practice Act 2001* where no particular association is privileged by being specifically named in the Act. This is the approach I have adopted with the Podiatry Practice Bill.

Provision is made for 3 elected podiatrists on the Board, and 1 podiatrist selected by me from a panel of 3 podiatrists nominated by the Council of the University of South Australia. The membership of the Board also includes a legal practitioner, a registered professional who is not a podiatrist and 2 persons who are neither legal practitioners nor podiatrists. This ensures there is a balance on the Board between podiatrists and non-podiatrists.

In addition I have introduced a provision that will restrict the length of time which any one member of the Board can serve to 3 consecutive 3 year terms. This is to ensure that the Board has the benefit of fresh thinking. It will not restrict a person's capacity to serve on the Board at a later time but it does mean that after 3 terms, or 9 years, they will have to have a break.

I have also made some changes to the process used by the Board in hearing complaints to ensure that the person with the complaint will always be involved in the proceedings and has a right to this. As the previous Bill was drafted, only a party to the proceedings had a right to be present during the hearing of the proceedings. Most complaints are taken to the Board by the Registrar acting on behalf of the complainant. Complainants do not usually take their own case to the Board for fear of having costs awarded against them and because they are not a party to the proceedings, they do not legally have a right to be present during the hearing of those proceedings. This is obviously an unsatisfactory situation and I have had the relevant provisions of the Medical Practice Bill mirrored in this Bill to provide a right for the complainant to be present at the hearing of the proceedings. This ensures that proceedings are transparent from the perspective of the person making the complaint.

New to the Podiatry Practice Bill is the registration of students. This provision is support by the Chiropody Board and the University of South Australia, which is the provider for education of podiatry students.

The codes of professional conduct developed by the Board will need to be approved by me. This is to ensure that codes do not contain measures that can be used to restrict competition but rather, focus on public protection. In addition, podiatrists and podiatric services providers will be required to have insurance cover that is approved by the Board to protect against civil liabilities. This is to ensure that there is adequate protection for the public should circumstances arise where this is necessary.

This Bill balances the needs of the public with those of the profession and services providers. It also ensures a more modern approach in accountability and standards of care. As I stated in the beginning, this Bill is one of a number of bills that regulate registered health professionals and the standards and expectations established in this Bill will be consistently applied to the other bills to be introduced later in the year. This will ensure that South Australia has consistent standards across all services provided by registered health practitioners.

I believe this Bill will provide a much-improved system for regulating the podiatry profession in South Australia and I commend it to all members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines key terms used in the measure.

4—Medical fitness to provide podiatric treatment

This clause provides that in making a determination as to a person's medical fitness to provide podiatric treatment, regard must be given to the question of whether the person is able to provide treatment personally to a patient without endangering the patient's health or safety.

Part 2—Podiatry Board of South Australia

Division 1—Establishment of Board

5—Establishment of Board

This clause establishes the Podiatry Board of South Australia as a body corporate with perpetual succession, a common seal, the capacity to litigate in its corporate name and all the powers of a natural person capable of being exercised by a body corporate.

Division 2—Board's membership

6—Composition of Board

This clause provides for the Board to consist of 8 members appointed by the Governor, empowers the Governor to appoint deputy members and requires at least 1 member of the Board to be a woman and 1 to be a man.

7—Terms and conditions of membership

This clause provides for members of the Board to be appointed for a term not exceeding 3 years and to be eligible for reappointment on expiry of a term of appointment. However, a member of the Board may not hold office for consecutive terms that exceed 9 years in total. The clause sets out the circumstances in which a member's office becomes vacant and the grounds on which the Governor may remove a member from office. It also allows members whose terms have expired, or who have resigned, to continue to act as members to hear part-heard proceedings under Part 4.

8—Presiding member and deputy

This clause requires the Minister, after consultation with the Board, to appoint a podiatrist member of the Board to be the presiding member of the Board, and another podiatrist member to be the deputy presiding member.

9—Vacancies or defects in appointment of members

This clause ensures acts and proceedings of the Board are not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

10—Remuneration

This clause entitles a member of the Board to remuneration, allowances and expenses determined by the Governor.

Division 3—Registrar and staff of Board

11—Registrar of Board

This clause provides for the appointment of a Registrar by the Board on terms and conditions determined by the Board.

12—Other staff of Board

This clause provides for the Board to have such other staff as it thinks necessary for the proper performance of its functions.

Division 4—General functions and powers

13—Functions of Board

This clause sets out the functions of the Board and requires it to perform its functions with the object of protecting the health and safety of the public by achieving and maintaining high professional standards both of competence and conduct in the provision of podiatric treatment in South Australia.

14—Committees

This clause empowers the Board to establish committees to advise the Board or the Registrar, or to assist the Board to carry out its functions.

15—Delegations

This clause empowers the Board to delegate its functions or powers to a member of the Board, the Registrar, an employee of the Board or a committee established by the Board.

Division 5—Board's procedures

16—Board's procedures

This clause deals with matters relating to the Board's procedures such as the quorum at meetings, the chairing of meetings, voting rights, the holding of conferences by telephone and other electronic means and the keeping of minutes.

17—Conflict of interest etc under Public Sector Management Act

This clause provides that a member of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector Management Act 1995* by reason only of the fact that the member has an interest in the matter that is shared in common with podiatrists generally or a substantial section of podiatrists in this State.

18—Powers of Board in relation to witnesses etc

This clause sets out the powers of the Board to summons witnesses and require the production of documents and other evidence in proceedings before the Board.

19—Principles governing proceedings

This clause provides that the Board is not bound by the rules of evidence and requires it to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms. It requires the Board to keep all parties to proceedings before the Board properly informed about the progress and outcome of the proceedings.

20—Representation at proceedings before Board

This clause entitles a party to proceedings before the Board to be represented at the hearing of those proceedings.

21—Costs

This clause empowers the Board to award costs against a party to proceedings before the Board and provides for the taxation of costs by a Master of the District Court in the event that a party is dissatisfied with the amount of costs awarded by the Board.

Division 6—Accounts, audit and annual report

22—Accounts and audit

This clause requires the Board to keep proper accounting records in relation to its financial affairs, to have annual statements of account prepared in respect of each financial year and to have the accounts audited annually by an auditor approved by the Auditor-General and appointed by the Board.

23—Annual report

This clause requires the Board to prepare an annual report for the Minister and requires the Minister to table the report in Parliament.

Part 3—Registration and practice

Division 1—Registers

24—Registers

This clause requires the Registrar to keep certain registers and specifies the information required to be included in each register. It also requires the registers to be kept available for inspection by the public and permits access to be made available by electronic means. The clause requires registered persons to notify a change of name or nominated contact address within 1 month of the change. A maximum penalty of $250 is fixed for non-compliance.

25—Authority conferred by registration

This clause sets out the kind of podiatric treatment that registration on each particular register authorises a registered person to provide.

Division 2—Registration

26—Registration of natural persons on general or specialist register

This clause provides for full and limited registration of natural persons on the general register or the specialist register.

27—Registration of podiatry students

This clause requires persons to register as podiatry students before undertaking a course of study that provides qualifications for registration on the general register, or before providing podiatric treatment as part of a course of study related to podiatry being undertaken in another State, and provides for full or limited registration of podiatry students.

28—Application for registration and provisional registration

This clause deals with applications for registration. It empowers the Board to require applicants to submit medical reports or other evidence of medical fitness to provide podiatric treatment or to obtain additional qualifications or experience before determining an application. It also empowers the Registrar to grant provisional registration if it appears likely that the Board will grant an application for registration.

29—Removal from register or specialty

This clause requires the Registrar to remove a person from a register or a specialty on application by the person or in certain specified circumstances (for example, suspension or cancellation of the person's registration under this measure).

30—Reinstatement on register or in specialty

This clause makes provision for reinstatement of a person on a register or in a specialty. It empowers the Board to require applicants for reinstatement to submit medical reports or other evidence of medical fitness to provide podiatric treatment or to obtain additional qualifications or experience before determining an application.

31—Fees and returns

This clause deals with the payment of registration, reinstatement and annual practice fees, and requires registered persons to furnish the Board with an annual return in relation to their practice of podiatry, continuing podiatric education and other

matters relevant to their registration under the measure. It empowers the Board to remove from a register a person who fails to pay the annual practice fee or furnish the required return.

Division 3—Special provisions relating to podiatric services providers

32—Information to be given to Board by podiatric services providers

This clause requires a podiatric services provider to notify the Board of the provider's name and address, the names and addresses of the podiatrists through the instrumentality of whom the provider is providing podiatric treatment and other information. It also requires the provider to notify the Board of any change in particulars required to be given to the Board and makes it an offence to contravene or fail to comply with the clause. A maximum penalty of $10 000 is fixed. The Board is required to keep a record of information provided to the Board under this clause available for inspection at the office of the Board and may make it available to the public electronically.

Division 4—Restrictions relating to provision of podiatric treatment

33—Illegal holding out as registered person

This clause makes it an offence for a person to hold himself or herself out as a registered person of a particular class or permit another person to do so unless registered on the appropriate register. It also makes it an offence for a person to hold out another as a registered person of a particular class unless the other person is registered on the appropriate register. In both cases a maximum penalty of $50 000 or imprisonment for 6 months is fixed.

34—Illegal holding out concerning limitations or conditions

This clause makes it an offence for a person whose registration is restricted, limited or conditional to hold himself or herself out, or permit another person to hold him or her out, as having registration that is unrestricted or not subject to a limitation or condition. It also makes it an offence for a person to hold out another whose registration is restricted, limited or conditional as having registration that is unrestricted or not subject to a limitation or condition. In each case a maximum penalty of $50 000 or imprisonment for 6 months is fixed.

35—Use of certain titles or descriptions prohibited

This clause creates a number of offences prohibiting a person who is not appropriately registered from using certain words or their derivatives to describe himself or herself or services that they provide, or in the course of advertising or promoting services that they provide. In each case a maximum penalty of $50 000 is fixed.

36—Prohibition on provision of podiatric treatment by unqualified persons

This clause makes it an offence to provide podiatric treatment for fee or reward unless the person is a qualified person or provides the treatment through the instrumentality of a qualified person. A maximum penalty of $50 000 or imprisonment for 6 months is fixed for the offence. However, these provisions do not apply to podiatric treatment provided by an unqualified person in prescribed circumstances. In addition, the Governor is empowered, by proclamation, to grant an exemption if of the opinion that good reason exists for doing so in the particular circumstances of a case. The clause makes it an offence punishable by a maximum fine of $50 000 to contravene or fail to comply with a condition of an exemption.

37—Board's approval required where podiatrist or podiatry student has not practised for 5 years

This clause prohibits a registered person who has not provided podiatric treatment of a kind authorised by their registration for 5 years or more from providing such treatment for fee or reward without the prior approval of the Board and fixes a maximum penalty of $20 000. The Board is empowered to require an applicant for approval to obtain qualifications and experience and to impose conditions on the person's registration.

Part 4—Investigations and proceedings

Division 1—Preliminary

38—Interpretation

This clause provides that in this Part the terms ***occupier of a position of authority***, ***podiatric services provider*** and ***registered person*** includes a person who is not but who was, at the relevant time, an occupier of a position of authority, a podiatric services provider, or a registered person.

39—Cause for disciplinary action

This clause specifies what constitutes proper cause for disciplinary action against a registered person, a podiatric services provider or a person occupying a position of authority in a corporate or trustee podiatric services provider.

Division 2—Investigations

40—Powers of inspectors

This clause sets out the powers of inspectors to investigate certain matters.

41—Offence to hinder etc inspector

This clause makes it an offence for a person to hinder an inspector, use certain language to an inspector, refuse or fail to comply with a requirement of an inspector, refuse or fail to answer questions to the best of the person's knowledge, information or belief, or falsely represent that the person is an inspector. A maximum penalty of $10 000 is fixed.

Division 3—Proceedings before Board

42—Obligation to report medical unfitness or unprofessional conduct of podiatrist or podiatry student

This clause requires certain classes of persons to report to the Board if of the opinion that a podiatrist or podiatry student is or may be medically unfit to provide podiatry treatment. A maximum penalty of $10 000 is fixed for non-compliance. It also requires podiatric services providers and exempt providers to report to the Board if of the opinion that a podiatrist or podiatry student through whom the provider provides podiatric treatment has engaged in unprofessional conduct. A maximum penalty of $10 000 is fixed for non-compliance. The Board must cause reports to be investigated.

43—Medical fitness of podiatrist or podiatry student

This clause empowers the Board to suspend the registration of a podiatrist or podiatry student, impose conditions on registration restricting the right to provide podiatric treatment or other conditions requiring the person to undergo counselling or treatment, or to enter into any other undertaking if, on application by certain persons or after an investigation under clause 42, and after due inquiry, the Board is satisfied that the podiatrist or podiatry student is medically unfit to provide podiatric treatment and that it is desirable in the public interest to take such action.

44—Inquiries by Board as to matters constituting grounds for disciplinary action

This clause requires the Board to inquire into a complaint relating to matters alleged to constitute grounds for disciplinary action against a person unless the Board considers the complaint to be frivolous or vexatious. If after conducting an inquiry, the Board is satisfied that there is proper cause for taking disciplinary action, the Board can censure the person, order the person to pay a fine of up to $10 000 or prohibit the person from carrying on business as a podiatric services provider or from occupying a position of authority in a corporate or trustee podiatric services provider. If the person is registered, the Board may impose conditions on the person's right to provide podiatric treatment, suspend the person's registration for a period not exceeding 1 year, cancel the person's registration, or disqualify the person from being registered.

If a person fails to pay a fine imposed by the Board, the Board may remove their name from the appropriate register.

45—Contravention of prohibition order

This clause makes it an offence to contravene a prohibition order made by the Board or to contravene or fail to comply with a condition imposed by the Board. A maximum penalty of $75 000 or imprisonment for 6 months is fixed.

46—Register of prohibition orders

This clause requires the Registrar to keep a register of prohibition orders made by the Board. The register must be kept available for inspection at the office of the Registrar and may be made available to the public electronically.

47—Variation or revocation of conditions imposed by Board

This clause empowers the Board, on application by a registered person, to vary or revoke a condition imposed by the Board on his or her registration.

48—Constitution of Board for purpose of proceedings
This clause sets out how the Board is to be constituted for the purpose of hearing and determining proceedings under Part 4.
49—Provisions as to proceedings before Board
This clause deals with the conduct of proceedings by the Board under Part 4.
Part 5—Appeals
50—Right of appeal to District Court
This clause provides a right of appeal to the District Court against certain acts and decisions of the Board.
51—Operation of order may be suspended
This clause empowers the Board or the Court to suspend the operation of an order made by the Board where an appeal is instituted or intended to be instituted.
52—Variation or revocation of conditions imposed by Court
This clause empowers the District Court, on application by a registered person, to vary or revoke a condition imposed by the Court on his or her registration.
Part 6—Miscellaneous
53—Interpretation
This clause defines terms used in Part 6.
54—Offence to contravene conditions of registration
This clause makes it an offence for a person to contravene or fail to comply with a condition of his or her registration and fixes a maximum penalty of $75 000 or imprisonment for six months.
55—Registered person etc must declare interest in prescribed business
This clause requires a registered person or prescribed relative of a registered person who has an interest in a prescribed business to give the Board notice of the interest and of any change in such an interest. It fixes a maximum penalty of $20 000 for non-compliance. It also prohibits a registered person from referring a patient to, or recommending that a patient use, a health service provided by the business and from prescribing, or recommending that a patient use, a health product manufactured, sold or supplied by the business unless the registered person has informed the patient in writing of his or her interest or that of his or her prescribed relative. A maximum penalty of $20 000 is fixed for a contravention. However, it is a defence to a charge of an offence or unprofessional conduct for a registered person to prove that he or she did not know and could not reasonably have been expected to know that a prescribed relative had an interest in the prescribed business to which the referral, recommendation or prescription that is the subject of the proceedings relates.
56—Offence to give, offer or accept benefit for referral or recommendation
This clause makes it an offence—

(a) for any person to give or offer to give a registered person or prescribed relative of a registered person a benefit as an inducement, consideration or reward for the registered person referring, recommending or prescribing a health service or health product provided, sold, etc. by the person; or

(b) for a registered person or prescribed relative of a registered person to accept from any person a benefit offered or given as a inducement, consideration or reward for such a referral, recommendation or prescription.

In each case a maximum penalty of $75 000 is fixed for a contravention.
57—Improper directions to podiatrists or podiatry students
This clause makes it an offence for a person who provides podiatric treatment through the instrumentality of a podiatrist or podiatry student to direct or pressure the podiatrist or student to engage in unprofessional conduct. It also makes it an offence for a person occupying a position of authority in a corporate or trustee podiatric services provider to direct or pressure a podiatrist or podiatry student through whom the provider provides podiatric treatment to engage in unprofessional conduct. In each case a maximum penalty of $75 000 is fixed.
58—Procurement of registration by fraud
This clause makes it an offence for a person to fraudulently or dishonestly procure registration or reinstatement of registration (whether for himself or herself or another person) and fixes a maximum penalty of $20 000 or imprisonment for 6 months.
59—Statutory declarations
This clause empowers the Board to require information provided to the Board to be verified by statutory declaration.
60—False or misleading statement
This clause makes it an offence for a person to make a false or misleading statement in a material particular (whether by reason of inclusion or omission of any particular) in information provided under the measure and fixes a maximum penalty of $20 000.
61—Registered person must report medical unfitness to Board
This clause requires a registered person who becomes aware that he or she is or may be medically unfit to provide podiatric treatment to immediately give written notice of that fact of the Board and fixes a maximum penalty of $10 000 for non-compliance.
62—Report to Board of cessation of status as student
This clause requires the person in charge of an educational institution to notify the Board that a podiatry student has ceased to be enrolled at that institution in a course of study providing qualifications for registration on the general register. A maximum penalty of $5 000 is fixed for non-compliance. It also requires a person registered as a podiatry student who completes, or ceases to be enrolled in, the course of study that formed the basis for that registration to give written notice of that fact to the Board. A maximum penalty of $1 250 is fixed for non-compliance.
63—Registered persons and podiatric services providers to be indemnified against loss
This clause prohibits registered persons and podiatric services providers from providing podiatric treatment unless insured or indemnified in a manner and to an extent approved by the Board against civil liabilities that might be incurred by the person or provider in connection with the provision of such treatment or proceedings under Part 4 against the person or provider. It fixes a maximum penalty of $10 000 and empowers the Board to exempt persons or classes of persons from the requirement to be insured or indemnified.
64—Information relating to claim against registered person or podiatric services provider to be provided
This clause requires a person against whom a claim is made for alleged negligence committed by a registered person in the course of providing podiatric treatment to provide the Board with prescribed information relating to the claim. It also requires a podiatric services provider to provide the Board with prescribed information relating to a claim made against the provider for alleged negligence by the provider in connection with the provision of podiatric treatment. The clause fixes a maximum penalty of $10 000 for non-compliance.
65—Victimisation
This clause prohibits a person from victimising another person (the victim) on the ground, or substantially on the ground, that the victim has disclosed or intends to disclose information, or has made or intends to make an allegation, that has given rise or could give rise to proceedings against the person under this measure. Victimisation is the causing of detriment including injury, damage or loss, intimidation or harassment, threats of reprisals, or discrimination, disadvantage or adverse treatment in relation to the victim's employment or business. An act of victimisation may be dealt with as a tort or as if it were an act of victimisation under the *Equal Opportunity Act 1984*.
66—Self-incrimination
This clause provides that if a person is required to provide information or to produce a document, record or equipment under this measure and the information, document, record or equipment would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide the information or produce the document, record or equipment, but the information, document, record or equipment so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than an offence against this measure or any other Act relating to the provision of false or misleading information.
67—Punishment of conduct that constitutes an offence

This clause provides that if conduct constitutes both an offence against the measure and grounds for disciplinary action under the measure, the taking of disciplinary action is not a bar to conviction and punishment for the offence, and conviction and punishment for the offence is not a bar to disciplinary action.

68—Vicarious liability for offences

This clause provides that if a corporate or trustee podiatric services provider or other body corporate is guilty of an offence against this measure, each person occupying a position of authority in the provider or body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the principal offence.

69—Application of fines

This clause provides that fines imposed for offences against the measure must be paid to the Board.

70—Board may require medical examination or report

This clause empowers the Board to require a registered person or a person applying for registration or reinstatement of registration to submit to an examination by a health professional or provide a medical report from a health professional, including an examination or report that will require the person to undergo a medically invasive procedure. If the person fails to comply the Board can suspend the person's registration until further order.

71—Ministerial review of decisions relating to courses

This clause gives a provider of a course of education or training the right to apply to the Minister for a review of a decision of the Board to refuse to approve the course for the purposes of the measure or to revoke the approval of a course.

72—Confidentiality

This clause makes it an offence for a person engaged or formerly engaged in the administration of the measure or the repealed Act (the *Chiropodists Act 1950*) to divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—

(a) as required or authorised by or under this measure or any other Act or law; or

(b) with the consent of the person to whom the information relates; or

(c) in connection with the administration of this measure or the repealed Act; or

(d) to an authority responsible under the law of a place outside this State for the registration or licensing of persons who provide podiatric treatment, where the information is required for the proper administration of that law; or

(e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions.

However, the clause does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates. Personal information that has been disclosed for a particular purpose must not be used for any other purpose by the person to whom it was disclosed or any other person who gains access to the information (whether properly or improperly and directly or indirectly) as a result of that disclosure. A maximum penalty of $10 000 is fixed for a contravention of the clause.

73—Service

This clause sets out the methods by which notices and other documents may be served.

74—Evidentiary provision

This clause provides evidentiary aids for the purposes of proceedings for offences and for proceedings under Part 4.

75—Regulations

This clause empowers the Governor to make regulations.

Schedule 1—Repeal and transitional provisions

This Schedule repeals the *Chiropodists Act 1950* and makes transitional provisions with respect to the Board and registrations.

Schedule 2—Further provisions relating to Board

This Schedule sets out the obligations of members of the Board in relation to personal or pecuniary interests. It also protects members of the Board, members of committees of the Board, the Registrar of the Board and any other person engaged in the administration of the measure from personal liability. The Schedule 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.

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

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

In committee.

(Continued from 9 February. Page 981.)

Clause 22.

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

Page 12, lines 9 and 10—Delete subsection (2)

When we last met, the committee adopted an amendment to the general functions of inspectors under this act and agreed to greatly widen those functions. This particular amendment seeks to have deleted from the functions of the inspectors a new power which this bill gives, namely, subsection (2), which provides:

The powers of an inspector under this act extend to acting in relation to persons who are no longer engaged in the performance of work.

There is quite a considerable expansion of the powers. These inspectors will now have power to investigate matters in relation to people who are no longer employed in a particular function and who may no longer be alive and, if it were a matter of employment, the matter is one that ought to have been resolved during the term of the employment. We are not suggesting for a moment that the rights of individual workers cease when they cease to be employed; of course they do not. Workers can leave employment and still sue for underpayment of wages. Of course, in the classic case of unfair dismissal, a worker who is no longer employed is quite entitled to make an application in due form for reinstatement or damages.

The Hon. R.K. Sneath interjecting:

The Hon. R.D. LAWSON: The Hon. Bob Sneath asks, 'What about the Ansett workers?' True it is that, if a business closes down, workers will be left with particular rights. We are talking here about the powers of inspectors. Inspectors are to police compliance with legislation as it occurs, but to give them this general right—not only the right to monitor and audit existing businesses, or the right to require production of documents and the like for existing businesses, but also to act in relation to persons who are no longer engaged in the performance of work—in our view is an unnecessary and unjustified extension of the powers of the inspectorate.

The Hon. P. HOLLOWAY: This amendment was moved by the deputy leader of the opposition. Last evening, we debated clause 22 extensively, and some of the broader issues in relation to inspectors were canvassed at length at that time. So, I will not say too much more, other than to say that, at present, there are difficulties with respect to inspectors' powers to help workers whose employment has ended, particularly when they have not been paid correctly. If an offence has been committed during employment, why should it not be pursued after the employment ends? It may well be that a worker is sacked for seeking to have the law applied. I understand that it is arguable about what the powers currently may be in relation to this matter, but this clause

seeks to put it beyond doubt. The bill proposes to resolve these difficulties by making it clear that the fact that the employment has come to an end does not mean that the inspector cannot exercise his or her powers to ensure the law has been followed.

The Hon. R.D. LAWSON: Will the minister provide the committee with examples of actual situations in which the suggested absence of a power to act has operated to the detriment of anyone?

The Hon. P. HOLLOWAY: I cannot think of a specific example, but if someone's employment has ended, if the worker has been sacked, they may not have been paid correctly. How does one deal with that situation? The government's clause provides simply the capacity for inspectors to do that. They may, arguably, have the powers now, but the government seeks to put that beyond doubt so that fairness can prevail in those situations.

The Hon. R.K. SNEATH: I will give an example of a situation about which I was contacted when I was a union official. In a redundancy situation, when the redundancy was not paid out correctly under the terms of agreement in the redundancy, the worker who had not been paid correctly needed some representation to go back and look at that agreement, which may be in the employer's office. Another situation is that the outstanding moneys owed to the employee at the time of being dismissed, or retrenched, such as holiday pay, loading—

The Hon. R.D. Lawson: But they get that now.

The Hon. R.K. SNEATH: Yes, but these people are no longer employed, and these are the people this measure protects. The honourable member wanted some examples, and I am giving them to him, so if he would be good enough to listen he might learn something. I am sure that the Hon. Mr Cameron, when he was working for the trade union movement, would have run into examples of being contacted by members who had been put out of a job, whether through redundancy, retrenchment or dismissal, and their entitlements had not been paid correctly under the agreement agreed before the employee left the work site. So, they are not working, and they need some protection so that someone, in the form of an inspector, can go to the work site to look at the books to ensure that the employee receives their right entitlements.

The Hon. IAN GILFILLAN: The section in the act provides:

> The functions of the inspectors are—
>
> (a) to investigate complaints of non-compliance with the Act, enterprise agreements and awards;

It does not say anything about 'only non-compliance which applies to employees who are still currently employed'. I regard this new subsection as unnecessary.

The Hon. NICK XENOPHON: I agree with the Hon. Ian Gilfillan, unless I can be convinced otherwise by the minister, the Hon. Mr Sneath, the Hon. Mr Gazzola or, indeed, the Hon. Mr Cameron, who have worked extensively in the union movement and have been advocates. Are there any instances when the commission has thrown out a case, saying, 'This person is no longer working; therefore, I do not have jurisdiction'? I cannot see it under the existing act, or under the amendments carried last night.

The Hon. T.G. Cameron: We are not talking about jurisdiction; we are talking about whether the inspectors can get in there.

The Hon. NICK XENOPHON: The Hon. Mr Cameron has been very helpful to me. Have there been instances when the inspectors have been prevented from carrying out their work? It is jurisdictional in the sense that it relates to their powers. I cannot see how this clause is anything other than totally superfluous or unnecessary.

The Hon. P. HOLLOWAY: If the honourable member believes that it is superfluous, what problem is there with putting it in the act? I have already indicated that there is a view that it might not be necessary. We have all seen plenty of cases where, if there is an ambiguity of the law, some people will attempt to exploit that ambiguity as a delaying tactic. One only has to mention the name Alan Bond to know a classic case of how the legal system can be used at length to avoid just outcomes.

This is more a question of whether employers dispute the inspector's powers in this regard, and this will simply prevent those disputes by making the position clearer. If it is clearly spelt out in the legislation, there is no ambiguity. If there is an ambiguity in the law, some people will always try to exploit it. Even if, ultimately, the legal process upholds it, it could be an expensive and time-consuming process getting to that outcome.

The Hon. R.D. LAWSON: I indicate that section 104 of the existing act, under the heading 'Powers of Inspectors', provides:

> An inspector may at any time, with any assistance the inspector considers necessary, without any warrant other than this section—
>
> (a) enter a place in which a person is or has been employed;

Clearly, the powers of the inspectorate extend not only to situations—

The Hon. T.G. Cameron: That is in relation to the workplace; this is in relation to persons. That is my reading of it.

The Hon. R.D. LAWSON: Indeed, but the minister is suggesting that, at the moment, there is some impediment to an inspector examining the case of a worker after he has ceased to be employed or is no longer engaged in the performance of work. If this power is to have some other application, let the government indicate it to the committee but, at the moment, the act clearly provides that the inspectors have power to investigate matters relating not only to a person's current employment but also to the situation when they were employed. That is clearly the case because, as every member knows, inspectors examine cases of underpayment of wages. They can demand time books—not current time books—from six years ago.

The Hon. P. HOLLOWAY: The government's advice is that, due to the provisions of section 65, employers challenge the rights of inspectors in this regard. We want to make the position clear. Surely clarity helps everyone. If members believe that an offence committed during employment should be able to be pursued after the employment ends, they should support the government's proposal. It is as simple as that.

The Hon. T.G. CAMERON: I am still making up my mind on this one, but it would appear that the opponents of this clause are relying on the fact—not that it is a sheep in wolf's clothing; I am glad that I did not hear that one in relation to this clause—that it is not necessary because the power is already reposited somewhere else. I can accept that argument coming from the Hon. Ian Gilfillan, the Hon. Robert Lawson and the Hon. Nick Xenophon, but I do not think that that is the argument the Hon. Robert Lawson is putting forward.

If the Hon. Robert Lawson is agreeing with the Hon. Ian Gilfillan and the Hon. Nick Xenophon that this provision has

no meaning because the power is already somewhere else (the government seems to have a slightly different view), and if you do believe in protecting the workers' rights, would not the safest course of action be to leave it in and play safe? I point that out particularly to the Hon. Nick Xenophon and the Hon. Ian Gilfillan. If your only reason for knocking it out is that it has no meaning and it is irrelevant, leave it in there if you want to protect the workers, otherwise you are not making any sense.

The Hon. IAN GILFILLAN: If we are going to accept repetitious legislation just for the sake of satisfying someone's quibble, legislation would be ever extensive. If the government is really convinced that this measure is essential, and that it is frustrated elsewhere, let it prove it to the committee. I have not heard a word that justifies it.

The Hon. P. HOLLOWAY: I can only repeat that the advice is that we are aware of cases where it is argued—

The Hon. Ian Gilfillan: Where is the evidence? When has there been an action?

The Hon. T.G. CAMERON: I indicate that I do not want to take any chances in relation to this provision where a worker, for a variety of reasons, may no longer be engaged in the performance of their work but requires the assistance of an inspector to get hold of the books. Despite what some people might portray as the awesome power of a trade union official, let me tell members that, when someone threatens to call the police and you are in there trying to get hold of some dismissed or redundant worker's records for the last six years because they have been underpaid, I am afraid that you have to leave and you cannot get the records. You just cannot get them.

The Hon. R.D. Lawson interjecting:

The Hon. T.G. CAMERON: I know that, but when the union official cannot get them the only chance that these documents may be obtained would be if a complaint is lodged with the appropriate department and the inspector goes out there—not to determine guilt or innocence—to investigate the claim. I would have thought that that is what this clause is all about. Powers of an inspector under this act relate to acting in relation to persons, not about whether they can go back to the workplace, etc.

It may well be that the business has closed down and the workplace no longer exists; that the company has been put into liquidation or has just closed because the business is no longer performing. A thought has just crossed my mind: will these same powers that we are giving to the inspector under this act be conferred on the Employee Ombudsman? I would be very concerned if we are giving these powers to the inspector and not giving them to the Employee Ombudsman.

The Hon. J.F. STEFANI: Surely, the process of establishing a claim for underpayment would be based on the payments made, which would be verified by a group certificate of some kind and the award conditions or employment conditions of the worker, and checking against the two and, if there is an underpayment established at that point, the claim is made against the employer. I would have thought that that is a reasonably simple way of establishing the process of underpayment, because the employer is duty bound to provide the employee on termination, within a certain time, with a group certificate.

The Hon. P. HOLLOWAY: I was asked a number of questions. First of all, the Hon. Ian Gilfillan asked about evidence. The relevant section of the Stevens report states:

> Inspectors stressed that the wording of any amendment to section 65 should specifically clarify their ability to investigate claims concerning former as well as current employees.

Clearly, if that was the view of inspectors, then one can take it that those people involved at the coal face regard that as an important issue. One can only assume that they have come across cases where there is some question mark over their powers in relation to these matters.

I can put the Hon. Terry Cameron's mind at ease. Section 64(1)(a) of the act provides that the Employee Ombudsman is an inspector for the purposes of the act, which means that the Employee Ombudsman has an inspector's powers. So, the change here would automatically clarify that.

The Hon. R.K. SNEATH: I totally agree with the Hon. Terry Cameron's contribution, but it was very interesting to hear the Hon. Mr Lawson say that this has nothing to do with the unions; that this is inspectors. That is correct: it is all about inspectors. That is because the union members would not perhaps have as much of a problem as the most vulnerable people in the workplace, that is, the non-union members in small shops and lowly paid workers who need the inspectors to be able to go in after they have been paid their redundancy and their long service leave to check the books, as the Hon. Mr Cameron said, in case there has been an underpayment of wages, an underpayment of annual leave, of redundancy or of long service leave. The Hon. Mr Stefani noted that it could be all checked up with the group certificates. The group certificates only show the wages and moneys paid to the employee at the end of the year.

The Hon. P. HOLLOWAY: If you get one.

The Hon. R.K. SNEATH: That is right. The group certificate is only going to show the gross amount that has been actually paid in wages. The taxation department or whoever else sees the group certificate does not look at it and say, 'I can tell by this group certificate that there's been an underpayment of long service leave, annual leave or wages in this,' because they would not have a clue. They just see the gross amount of money that is on that group certificate, so they only see it when the inspector goes in and finds that there is a discrepancy and the employee is owed more long service leave, or there has been a mistake with the 17.5 per cent loading, or any other moneys that have been missed out on.

That will then go on the next group certificate if it is in the next financial year, or that money will be paid and another group certificate will have to be made out for taxation purposes. You cannot tell anything from group certificates. The only use they are sometimes is for arguing the average weekly earnings to set a rate for WorkCover for an injured employee and for taxation reasons. As the Hon. Terry Cameron said, these inspectors will be used for the most vulnerable employees: for the low income earners, for those who do not have representation and for those who do not have or cannot afford unions.

Also, with the inspectors able to go in and look at the books or anything else on behalf of workers who are no longer working, we hope it will save some stress on the Industrial Relations Commission. If the inspectors, when they go in, can sort out the discrepancy directly with the employer and between the employer and the employee, that will save registering a dispute in the Industrial Relations Commission and it will be sorted out on the work site.

The Hon. IAN GILFILLAN: The Democrats never had any opposition to the principle, and I indicated before that I believe it was unnecessarily superfluous legislation. How-

ever, a discovery of the actual comment in the Stevens report has persuaded me that, if it makes people feel easier that this is clarified in the legislation, it is not going to do any harm, so I indicate that we will no longer support the amendment.

The Hon. NICK XENOPHON: The Hon. Ian Gilfillan beat me to it. The fact that it has been referred to in the Stevens report (and, of course, the eloquent arguments by the Hon. Mr Cameron) has convinced me that there is no harm to this. But I think there is a valid point to be made that perhaps it is superfluous. I would have thought that the existing powers would do it but, given that the Stevens report has made these references, on balance I will not oppose this clause.

The Hon. R.D. LAWSON: I am disappointed to hear members indicate that they no longer support the principle.

The Hon. Ian Gilfillan interjecting:

The Hon. R.D. LAWSON: The Hon. Ian Gilfillan says, 'What harm can it do?' One does not include provisions in legislation simply on the basis that there is no harm in doing it: they are actually included for a reason, and the reason must be supported, as the Hon. Ian Gilfillan has said, by evidence and not simply by assertion that somebody thinks it would be a good idea. I remind the committee, especially in relation to the comments made by the Hon. Bob Sneath in response to the Hon. Julian Stefani, that the record keeping provisions of the existing act require employers to keep records—not only group certificates but records and time sheets.

Section 102 requires detailed records to be kept and retained for six years, and subsection (4) provides that 'these records must be available on the reasonable request of an employee or former employee'. Also, they must be made available 'at the reasonable request of an inspector to produce a record relating to a specified employee or former employee'. Clearly the inspectors have a power under existing legislation. We are highly suspicious when this government comes along and says, 'We want to extend these powers: we are not going to tell you why because it is all on the basis of some advice we are given.' Eventually they find it in the Stevens report, so they say that it is in the report and therefore they want to do it. The committee is entitled to have evidence.

The Hon. J.F. STEFANI: That is the very point I was driving at. The existing act (and I was aware that it had those provisions) requires an employee to keep time sheets and other records. The requirement of the law is that the employer has to issue a group certificate at the end of a financial period or at the end of an employment period. It is very easy for anyone who has any mathematical skill to inspect or check the records against the pay that is shown on the group certificate (and the employee gets to keep a copy) and come to a conclusion one way or another.

The Hon. P. HOLLOWAY: We are not dealing here with employers who obey the law—they are not the problem. The act is not for those people but for the people who, for whatever reason, deliberately or wilfully disobey the law. It does not matter what the law says in relation to group certificates, if you do not get it it is of no value to you. The whole point of the bill is that it deals with those who do not comply with the law and not those who do.

The Hon. R.K. SNEATH: I want to explain the group certificate issue.

The Hon. G.E. Gago: Again?

The Hon. R.K. SNEATH: Yes, again. Mr Lawson has great difficulty grasping this. I will give an example that perhaps even he can grasp.

The Hon. R.D. Lawson: It will have to be simple.

The Hon. R.K. SNEATH: It will have to be simple for you to get hold of it.

The Hon. T.G. Cameron: He was talking about you being able to explain it.

The Hon. R.K. SNEATH: Well, I am going to try to explain it. Let us say that the redundancy or dismissal is made or the employee leaves in the middle of June. In July, when he is unemployed, as this says, he discovers that he has not been paid his full entitlements. The group certificate is prepared at the end of the financial year, on 30 June. The employer prepares the group certificate in good faith on the basis of the money he has already paid the employee. He has not tried to cheat the Taxation Department or the employee. He has prepared the group certificate on the amount of money he has paid that employee for the 12 months from 1 July to 30 June.

The employee has gone to the inspector in the middle of July saying, 'I think my employer has made a mistake in working out my long service leave, my annual leave and my redundancy payment. I would like you to go and check it for me.' He could take the group certificate and show the inspector. The inspector says, 'That tells me nothing; all that tells me is what you were paid for the year, all inclusive, gross earnings.' When the inspector goes in there and looks at the actual redundancy figure and works it all out, it may be a genuine mistake by the employer and it may not be. The employer might have thought, 'Okay, you have pointed it out to me now—I forgot to include the 17.5 per cent loading, I will fix it up for him.' So he writes out a cheque for the 17.5 per cent loading on four or six weeks annual leave, takes out the tax as appropriate and, because it is paid in July, he will send him a group certificate at the end of June the following year. So you can tell nothing by group certificates.

The Hon. J.F. Stefani: That is better for the employee—what are you talking about?

The Hon. R.K. SNEATH: It might be, but the inspector has to go in there to check it.

The Hon. R.D. Lawson interjecting:

The Hon. R.K. SNEATH: Have you got the group certificate bit now, Mr Lawson?

The ACTING CHAIRMAN (Hon. J.S.L. Dawkins): Order! I ask the honourable member to direct his remarks through the chair.

The Hon. R.K. SNEATH: I ask the chair to ask Mr Lawson whether he has the group certificate bit.

The ACTING CHAIRMAN: I am not going to ask him anything.

The Hon. T.G. CAMERON: It is my intention to support the government on this clause. I can recall a number of times when I worked for a trade union somebody coming in, often rural workers working out in the bush. They would not be members of the union, but you would always have a quick look at their case and, if they were underpaid, naturally they would have to join the union before we could represent them. You would go out to the job site, the chap was no longer working there, and in some instances he might have left six or 12 months ago, but you can go back six years. You would turn up and you would want to look at the time and wages books. I can remember turning up to Lindsay Park stud on one occasion with Les Birch, the organiser. We wanted to have a look at the books.

The Hon. Nick Xenophon interjecting:

The Hon. T.G. CAMERON: No, not the horses. We wanted to have a look at the books. We had right of entry, we

were entitled under all the various acts to look at the books, but what do you do at that point? You are at the front door, the boss says, 'No, you can't come in,' shuts the door and says, 'Leave the property.' Irrespective of whether or not he is denying you a legal right of entry, or whatever he is doing, you cannot get inside to look at the books. I am sure no-one would be suggesting that we give trade union officials the power to batter down doors—Bob might support it—and physically go in there to look at the books.

So, you come back to the union office, and in those days you got onto the old DLI and you would ask them to go down and check the time and wages records. With due respect to the Hon. Julian Stefani, I think the Hon. Bob Sneath is right. Without each week's time and wages records, because you have to calculate each week out discretely, you cannot work out properly whether someone has been overpaid or underpaid. The only way that you can do it is to get those records.

The employer knows that he has a problem on his hands. What is usually the first thing he does? In my days, he could contact the old chamber of commerce. Back in my days the chamber of commerce had a bit of teeth. It was not the tame cat show it is these days, but that is not for me to sort out; that is for the employers to deal with. So they would ring the chamber of commerce or their lawyer. What sort of advice do you think they would get? You are supposed to give the union a right of entry, they have a legal right to look at those records. You could cart the employer off to the commission, if you wanted to, and cite an industrial dispute or attempt to have him prosecuted for a breach of the award. If you are the union, after tens of thousands of dollars you might get a prosecution and they would get a slap on the wrist.

What you want is the records, and the inspector turns up to be told, 'Oh, look, I can't find the time and wages books. Everything else is here, come in, but the time and wages record books for some of those old employees are missing. I haven't destroyed them.' He is in trouble if he says that. So the advice that he gets from the chamber of commerce and from a solicitor is, 'Well, he has a legal right to check your time and wages records, but if there are no time and wages books there to be inspected then he has to leave, he has nothing to inspect.' So the inspector would turn up and say, 'I am here to examine the books,' and that is what they would be told, 'The books are no longer here.'

What the inspector needs is to have the power so that, when he first gets there, even if it is five minutes after the union official, he can actually get in and look at the books. That is all this power would give the inspector, and I would remind some members about what power we are giving him. We are giving him the legal right to check, to ensure that the employer has legally complied with the award.

The Hon. J.F. Stefani interjecting:

The Hon. T.G. CAMERON: He can't do anything else. He does not have the power to shut down the shop. He is not an inspector who can close the business. If he turns up and wants to have a look at the records, I cannot see why he should be refused access to them, because to refuse him access would mean that he cannot determine whether the person has been legally paid, no matter how many group certificates he has.

The Hon. J.F. STEFANI: Following on from the contribution by the Hon. Terry Cameron, assuming that the inspector has these powers under this provision, and considering the scenario that he put regarding the advice that may have been provided by employer associations to employers regarding the time records, what is there to stop the employer saying, 'It is not convenient for you right now to inspect the books because I have a very urgent appointment with my bank manager,' or for some other valid reason? What then? Stretching my imagination, given the scenario that the Hon. Terry Cameron has painted, the dishonest employer then overnight makes the time record book disappear, and what happens? What are we chasing?

The Hon. T.G. CAMERON: In circumstances where the time and wages records have disappeared, and either have not been kept or have disappeared, the commissioner has the power to determine, based on the evidence before him, how long that person worked and what hours, etc. I was a little remiss because I did not finish off my story about what happened at Lindsay Park stud.

The Hon. R.I. Lucas: Was it a happy ending?

The Hon. T.G. CAMERON: Well, an unusual ending, one that I am sure would bring a smile to the Hon. Bob Sneath. Needless to say, we got hunted off Lindsay Park stud. I do not think my blood was blue enough to walk around that place. We had no choice but to go back to the union office with our tails between our legs. I think Alan Begg is still around.

The Hon. R.K. Sneath: Unfortunately, no.

The Hon. T.G. CAMERON: I was not aware of that; I am sorry to hear it. Alan Begg, the then secretary, walked into my office with a big grin on his face. He did not fancy me too much, I might add, but he said, 'You must have done something right yesterday.' I asked, 'What have I done?' He said, 'Bob Hawke has been on the phone complaining about you and Les Birch's activity up there at his mate's place. I have been asked to tell you to back off.' Then he said, 'Go and get into them!'

The Hon. R.I. Lucas: Did you?

The Hon. T.G. CAMERON: We did.

The committee divided on the amendment:

AYES (7)

Dawkins, J. S. L.	Lawson, R. D. (teller)
Lensink, J. M. A.	Lucas, R. I.
Redford, A. J.	Schaefer, C. V.
Stefani, J. F.	

NOES (10)

Cameron, T. G.	Evans, A. L.
Gago, G. E.	Gazzola, J.
Gilfillan, I.	Holloway, P. (teller)
Kanck, S. M.	Sneath, R. K.
Xenophon, N.	Zollo, C.

PAIR(S)

Ridgway, D. W.	Reynolds, K.
Stephens, T. J.	Roberts, T. G.

Majority of 3 for the noes.

Amendment thus negatived; clause passed.

Clause 23.

The Hon. R.D. LAWSON: I wish to speak against clauses 23 to 30 collectively.

The CHAIRMAN: The honourable member can do that, but I will need to put each question separately. You are perfectly entitled to put your point of view.

The Hon. R.D. LAWSON: Thank you, Mr Chairman. Clauses 23 to 30 is a series of the provisions under the general subject of 'Basic contractual features'—at least that is the title the bill gives them. Chapter 3 of the present act, dealing with employment, for example, in relation to remuneration, provides:

A contract of employment is to be construed as if it provided for remuneration in accordance with the relevant minimum standard under schedule 2 unless—

(a) a rate that is more favourable to the employee is fixed by the contract of employment; or

(b) the rate of remuneration is fixed in accordance with an award or enterprise agreement.

There is already in the act a provision for minimum standards in relation to remuneration. Schedule 2 of the act sets out a mechanism for determining that minimum standard for remuneration. It requires the full commission on its own initiative or on application of the minister, the UTLC or the chamber to fix a minimum rate of remuneration for a class of employees for whom there is no applicable minimum standard.

The following section, section 70, deals with a minimum standard for sick leave; section 71, a minimum standard for annual leave; and section 72, minimum parental leave. The reason I emphasise this is that, although this new bill introduces a new regime for minimum standards, there is the suggestion about that this bill of this government introduces standards that do not previously exist. There are existing mechanisms for the establishment of minimum standards. We seek to have the government put on the record the evidence to say that this existing mechanism is not delivering appropriate minimum standards of remuneration, sick leave or carer's leave.

We notice, of course, that there is a change in the definition. We do not have any quibble with that—sick leave or carer's leave. Bereavement leave is a new provision and, whilst we do not have any difficulty with that particular concept of bereavement leave, which is already widely accepted, we do not believe the mechanism that is used here is appropriate.

So this bill will now extend minimum standards to anyone covered by a contract of employment, whether or not covered by an award or an enterprise agreement. This will include a person subject of declared employment under new section 4A, which was passed through the committee stage yesterday. So, irrespective of whether an award applies or not, minimum rates, for example, will be required to be paid and annual and sick leave provided. This does have the potential to impact not only on ordinary employment but also on informal arrangements, for example, casual baby-sitting, or work carried out for clubs or associations where commercial rates, for good reason, may not be in place. In our view, no acceptable case has been made to extend these provisions beyond the systems and protections which already exist under the current act.

There are already mechanisms available, especially for the union movement or any employer association, to use, and greater use could be made of those existing mechanisms. By enabling the commission to create new minimum standards or to extend their application beyond those workers covered by awards or agreements, this bill clearly contemplates having the industrial relations system do work which is appropriately and traditionally the work of the union movement. No wonder the union movement so strongly supports this measure.

In relation to the remuneration, the Full Commission will now be required to establish minimum standards for remuneration at least once every year and the minimum standard must fix a minimum wage for an adult working ordinary hours, and a minimum hourly rate for an adult working on a casual basis; age-based graduations will also be fixed. We believe that it is inappropriate to legislatively compel the timing of a review of a minimum standard. To require such a standard to be fixed once every year in the statute is inappropriate.

The power already exists for applications to be made whenever they want to be made, but to automatically require the commission to undertake something is once again to require the commission to do the work that unions have been prepared to do in the past, actually making an application to increase terms and conditions. They just do not seem to be interested in doing it. If they are not interested in doing it, we cannot see why the parliament should pass a law to facilitate that. Moreover, irrespective of whether an award applies, minimum rates will apply, and this does have the potential to impact on not only what we might regard as ordinary employment but also, as I said a moment ago, informal arrangements like baby-sitting, work carried out behind the bar of the local bowls club, the RSL, and the like, where commercial rates, for good reason, may not be in place. So we, for the reasons I have given, do oppose this new minimum standards regime.

I emphasise that we are not against minimum standards, but the act already provides a mechanism for determination of those standards, and it is incumbent upon the government to say what is wrong with the current system, show some injustice in the way it applies. It is simply not good enough for the government to say that it has been advised that this is a better system or that the Stevens report recommended that this would be a better system. That is a matter of opinion. The parliament needs evidence.

The Hon. P. HOLLOWAY: The government believes that the provisions under the existing act are inadequate and we believe this was made clear by the Supreme Court decision in 1997 in relation to South Australian Employers Chamber of Commerce and Industry v United Trades and Labor Council of South Australia, and that information is all contained on page 36 of the Stevens report. What the government is seeking to do here is to remedy the deficiencies that exist in the current act. We think that some South Australians are falling between the gaps in our current system, and we want to establish a decent safety net for South Australians, and I am surprised that anyone really should have any difficulty with that particular proposition. It is a pretty basic one actually that all South Australians should be entitled to some reasonable minimum conditions.

The Hon. T.G. CAMERON: I rise to indicate my support for this clause. There may be some merit in the argument outlined by the Hon. Robert Lawson that this would be doing some of the unions' work for them, but they are all affiliated with Unions SA—

The Hon. P. Holloway interjecting:

The Hon. T.G. CAMERON: Can I finish my contribution? It may be of some assistance to the unions, but I do not see it doing the unions' work for them. I remind honourable members that it is the Full Commission that may hear an application on this matter, so you are not going to get unions running in there with claims in relation to this. It would only be an application by SA Business, Unions SA or, perhaps, the government, and it still applies a minimum standard to all employers and employees. Not everybody is covered by an award here in South Australia. It can be pretty heart-wrenching sitting in front of somebody who has been ripped off and only getting 70 per cent of the pay that they should be getting, and you are unable to pursue any type of claim for them because they are award free, and so on.

I think that the government has made out its case. It seeks to apply a minimum standard. It should be remembered that the standard does not apply unless the peak body first makes an application to the Full Commission, and they go through what is a fairly torturous process. I take cognisance of the words that the leader used when he talked about providing a safety net. I am one of those people who travels overseas from time to time. I do not know why, but I enjoy going to the poorer countries, rather than countries like France, America or—

The Hon. Ian Gilfillan: You get more for your money.

The Hon. T.G. CAMERON: I am sure the Hon. Mr Gilfillan has hit on one of the reasons why I visit these African or Asian countries. One of the things that always makes me feel really good about coming back to Australia is that it is a comfort to come home, because in this country unmarried women who get pregnant have a safety net, there are unemployment benefits and there are disabled benefits. We live in a country that provides a whole range of safety nets to underpin the poor and disadvantaged in our society. I thought that that was something that we in Australia are proud of. You come back home and you do not see people being picked up in trucks at five o'clock in the morning like you do in India because during the night the homeless have died on the streets from malnutrition and disease. We do not have beggars on every street corner because there are no safety nets.

There is a whole range of other things that will take place in countries when people who are desperate and have no choice make other choices, and often ruin their lives. Unless the Hon. Robert Lawson can convince me to the contrary, I see it as a good thing that we have minimum standards. One would have thought that a couple of week's sick or annual leave, and a whole range of other matters, can be the subject of a minimum standard. I do not see this as entirely different—I know it is different—to what John Howard is trying to do in his own way with the industrial relations scheme in this country. He is trying to simplify it and make it easier. If there are minimum standards that apply to all employers and employees, that will make life a hell of a lot easier and clearer for all employers and employees who are not bound by awards or who find themselves slipping through the safety net.

Unfortunately, from my observations from 10 years of working with the unions, of all the cases that I ever came across, it was always the worker in those situations who was getting a lousy wage, or some other condition of employment which was not up to scratch. For those of you who are independent and who may not necessarily adopt the party view on this matter, in the absence of any argument to the contrary, why would you not be prepared to support the establishment of minimum standards for workers? They are the hallmarks of a civilised society.

The Hon. R.K. SNEATH: It is very surprising that the opposition again resorts to scare tactics in mentioning labour behind the bar in various clubs. People voluntarily give their labour behind the bar in a club of which they are a member. I do not think that will change. I do not think minister Weatherill has anything to fear from me starting to charge minimum rates for my baby sitting. I think that I will continue to do it for nothing, and I am sure others will continue to baby sit for their friends for nothing when this is introduced.

It is rather marvellous that, now that the opposition has a wide gap between the rich and the poor (and, in Australia, it is getting wider every year), it also wants to put a gap between those who are protected by trade unions and those who are not, and those who can negotiate for decent wage increases because of strength in their industry and those who cannot. So, we have another gap, and that will get wider and, unless there is a minimum wage, the gap will continue to get wider. Once again, as it did last night and the day before, the opposition shows very little faith in the Industrial Relations Commission—the umpire. This bill gives the umpire the decision to make and, as I said the other night, the Industrial Relations Commission is made up of people from all walks of life who are intelligent and who should be trusted with making responsible decisions, yet the opposition seems to think that they should not.

The Hon. R.D. LAWSON: I indicate to the Hon. Terry Cameron that we certainly agree with many of the sentiments he has expressed. We do not believe that there should be no safety net, but the fact is that the existing act provides a mechanism for determining a minimum rate of pay to apply to those who are not covered by an award or an enterprise agreement. Schedule 3 provides for sick leave and specifies the number of weeks, and it refers to such matters as annual leave, so there are safety net mechanisms in the existing legislation. We do not believe that the government has identified to the committee the need to change those. We certainly agree that we do not want to see in Australia the sorts of things you see in other countries. Of course, we do not see them in Australia because we have a regime that protects workers, and I think that is worth mentioning.

The Premier says that we will get the new naval construction contract because of our wonderful labour relations—let us keep it that way. That is our labour relations record under this legislation. What is the need to change the legislation that has delivered this state so many benefits?

Clause passed.

Clauses 24 to 30 passed.

Clause 31.

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

Page 15, lines 15 to 17—Delete subsection (1)

We seek to delete subsection (1) of proposed new section 72A, which section will give to the Full Commission of the Industrial Relations Commission the power, on application by a peak body, to establish any other standard—that is, any standard in addition to those we have just mentioned, namely, standards in relation to parental leave, bereavement leave, annual leave, sick leave and carer's leave, or remuneration. This is an open-ended provision that gives the commission the power to fix any other standard at all that it chooses. There is no limitation on the sort of standard that might be imposed. There is no requirement that it come back before this parliament to determine whether or not it is appropriate to introduce a minimum standard in relation to such a topic.

We oppose the clause, but the most offensive part is the subsection I seek to delete, namely, that which gives the Full Commission a blank cheque—an open-ended power, one that is not limited or circumscribed and one that may be exercised without reference to any particular criteria or standard—with the potential to impose on employers, and on the South Australian community and the South Australian economy, standards that it chooses. It is offensive to the ordinary principles of legislation that such powers be given. It is also unclear how this mechanism will work, and statutory direction should be given. Accordingly, we oppose the whole

clause, but we seek to make it a little better by deleting the first subsection.

The Hon. P. HOLLOWAY: First, can I just clarify with the Hon. Robert Lawson whether his next amendment to delete subsection (7) is consequential or does that stand alone?

The Hon. R.D. LAWSON: It is not entirely consequential. We seek to make this offensive provision a little less offensive, and one way to do that is by deleting the first subsection; and another yet slightly different is subsection (7). I prefer to move them separately, although I will regard the vote on my motion to delete to subsection (1) as the test clause.

The Hon. P. HOLLOWAY: I thank the honourable member for that indication; that should help the committee. The amendment proposes to delete the clause in the bill which provides the commission with the capacity to set new minimum standards on application by peak bodies. There is currently no provision for additional minimum standards to be created by the commission. As such, new minimum standards that operate across the state jurisdiction may be established only by the parliament. This means that the industrial parties, together with the commission, are unable to work within the system to ensure that it keeps up-to-date with developments in industrial standards.

A party to an award can, on application, have the award excluded from a minimum standard created under this section provided they can satisfy the commission that there are cogent reasons for doing so, taking into account prevailing conditions in the industry. This allows the commission to incorporate decisions in test cases as minimum standards rather than requiring the time and expense of such standards being inserted in awards by separate applications. We oppose the amendment.

The Hon. IAN GILFILLAN: Will the minister indicate what other minimum standards, what other matters, are likely to be embraced by this? It appears to me as if the legislation has made a reasonable attempt, and properly, too, to be specific in the act as to what are the areas in which there can be minimum standards. I must say that, as far as we are concerned, we need to hear argument that there are cogent and acceptable matters that should be embraced by this.

It is not all that onerous to get legislation through this parliament as long as it is not quite as extensive as this bill. If there is a reasonable area to be introduced at a later time into the act, it is not impossible to be done.

The Hon. P. HOLLOWAY: I do not think that anyone could describe the passage of this bill through both houses of parliament as particularly easy. If every bill went through like this, I think that this council would pass very few bills. The honourable member asks a reasonable question: what sorts of matters might this be extended to. I can give the chamber three examples: first, a consultation; secondly, arrangements for the setting of working hours; and, thirdly, grievance procedures. Also, I am advised that, essentially, this provision was in the legislation in the 1972 act.

The Hon. NICK XENOPHON: Will the minister indicate which other jurisdictions have this power, and what is the effect of those additional powers or the powers being sought by the government in those other jurisdictions in terms of their practical application?

The Hon. P. HOLLOWAY: Western Australian legislation allows the commission to make general orders re any industrial matter to apply to employees, including award-free employees. If we take the case of—

The Hon. Nick Xenophon interjecting:

The Hon. P. HOLLOWAY: Well, yes: make general orders re any industrial matter, which, presumably, would include minimum standards. The Queensland legislation allows the commission to make a state decision, which may apply to all awards or other matters under the act. That is the case in those two states.

The Hon. R.D. LAWSON: In those jurisdictions which have these general powers, will the minister indicate any other minimum standards of the kind which we currently have in our statute, for example, relating to leave of various kinds or remuneration? In other words, what sort of matters does the government envisage that the commission will specify as a minimum standard? We all know that ambit claims are constantly being made in respect of industrial matters.

The Hon. P. HOLLOWAY: I do not have any advice in relation to that. We would have to get that information. I just do not have that information at the moment.

The Hon. R.D. LAWSON: Could the minister also state for the committee the rationale for this provision which allows a minimum standard to override a preceding award to the extent that the former is more favourable? It is unclear to us how these provisions are intended to work alongside the provision for a minimum standard overriding a preceding award. What is the basis for that?

The Hon. P. HOLLOWAY: I am advised that this is the way that all the existing standards that apply under the act are currently applied.

The Hon. IAN GILFILLAN: I have a question for the Deputy Leader of the Opposition. If we support the amendment to delete subsection (1), which I indicate I am inclined to do because I think it is too wide a power and is ill defined; if that is successful and the subsection deleted, will that in his opinion leave the remaining subsections operable?

The Hon. R.D. LAWSON: I believe that the remaining subsections would have work to do. The provision would be undoubtedly severely circumscribed by removing the power of the commission under this division to fix any other standard. I indicate to the committee as I did at the outset that we are opposed to this general power. We will be voting against the clause itself. We are seeking to make it a little less odious.

The Hon. IAN GILFILLAN: I am not sure that I am convinced that if we delete subsection (1) there is sufficient work left with the other subsections to leave them in place. As I understand it, this clause in toto is not necessary for the full commission to make determinations on an award-by-award basis in any case. This would be necessary for minimum standards to all employers and employees. The minister may care to comment on this, because it may well be influential on how we vote, not only on the deletion of the first subsection but whether we support the retention of the remainder in the bill.

The Hon. P. HOLLOWAY: The advice I have is that if subsection (1) is deleted the commission would not be able to set new minimum standards.

The Hon. IAN GILFILLAN: Under those circumstances, it is probably better to deal with the whole thing in toto instead of mucking around clause by clause. If the deputy leader would like to indicate—

The ACTING CHAIRMAN: The Hon. Mr Gilfillan can continue if he wishes. He has the call.

The Hon. IAN GILFILLAN: I am actually paying some respect to the person of whom I was asking the question, who

is now being briefed. He was diverted previously by the shadow Whip and now by counsel. I am politely waiting until he gets back.

The Hon. R.D. LAWSON: In response to the Hon. Ian Gilfillan, I have consulted with Parliamentary Counsel and confirmed my view that the remaining provisions of proposed section 72A, namely subsections (2) to (6), would have work to do if subsections (1) and (7) are removed. Those are machinery provisions that relate to the full commission exercising its powers in relation to those other matters that are specified, such as bereavement leave. Those machinery provisions would continue to have work and that is why, subject to the leave of the committee, I will be moving for the omission of both subsection (1) and subsection (7).

The Hon. IAN GILFILLAN: I am not sure whether the Hon. Rob Lawson meant that he was going to be moving them together or as two separate amendments, because I have not yet considered the significance of deleting subclause (7). The Democrats will support the opposition in its amendment to delete subsection (1) and are prepared to hear argument as to whether we should support the opposition in the deletion of subsection (7).

The CHAIRMAN: There are two separate amendments, and I am dealing with amendment No. 20 in the name of the Hon. Mr Lawson, which would delete subsection (1).

The Hon. P. HOLLOWAY: From the government's viewpoint, if subsection (1) is deleted (and it appears the numbers are there for that to occur), there is no point in having subsection (7). If you are going to take out (1), you might as well take out (7) as well.

The Hon. IAN GILFILLAN: If that is the mood of the government, it can join with the opposition when the opposition, as it traditionally does, opposes every clause in the bill and then everyone will be merry.

The Hon. P. HOLLOWAY: Subsection (7) says:

> A contract of employment is to be construed as if it incorporated any minimum standard established under subsection (1) unless—

If subsection (1) is not there, it does not mean very much. Our point is simply that.

The Hon. R.D. LAWSON: In view of the intimation of the government and the Hon. Mr Gilfillan, I move:

> Page 15, lines 35 to 40—delete subsection (7).

The committee divided on the amendments:

AYES (10)

Dawkins, J. S. L.	Evans, A. L.
Gilfillan, I.	Kanck, S. M.
Lawson, R. D. (teller)	Lucas, R. I.
Redford, A. J.	Schaefer, C. V.
Stefani, J. F.	Xenophon, N.

NOES (5)

Gago, G. E.	Gazzola, J.
Holloway, P. (teller)	Sneath, R. K.
Zollo, C.	

PAIR(S)

Ridgway, D. W.	Roberts, T. G.
Stephens, T. J.	Cameron, T. G.
Lensink, J. M. A.	Reynolds, K.

Majority of 5 for the ayes.

Amendments thus carried.

The Hon. IAN GILFILLAN: I move:

> Page 17, after line 13—Insert:
>
> 72C—Special contribution relating to parental leave
>
> (1) This section applies to an employee who takes parental leave in terms of the minimum standard under section 72 rather than under a contract, award or enterprise agreement that provides for paid leave that is more favourable than the employee's entitlement under this section.
>
> (2) Subject to this section, an employee to which this section applies is entitled to the payment of an amount as follows:
>
> (a) in the case of an employee who takes 4 or more weeks' parental leave—an amount calculated as follows:
>
> $$A = 4 \times MW$$
>
> (b) in the case of an employee who takes less than 4 weeks' parental leave—an amount calculated as follows:
>
> $$A = \frac{LT (4 \times MW)}{4}$$
>
> where—
>
> *A* is the amount of the entitlement
>
> *LT* is the amount of parental leave taken, expressed in weeks to 1 decimal point
>
> *MW* is—
>
> (a) in the case of a full-time employee (as determined immediately before the commencement of the leave)—the minimum wage that applies to a person of the employee's age under the minimum standard for remuneration for working ordinary hours in a week;
>
> (b) in the case of a part-time or casual employee (as determined immediately before the commencement of the leave)—the minimum wage that applies to a person of the employee's age under the minimum standard for remuneration for work in a week assuming the person worked, in the week, the average number of hours per week worked by the employee over the preceding period of 12 months (as determined immediately before the commencement of the leave).
>
> (3) A person's entitlement to a payment under this section is reduced by the amount of any payment also made under this section to the person's spouse with respect to the birth (or expected birth) of the same child.
>
> (4) An application for a payment under this section is to be made to the Minister.
>
> (5) An application—
>
> (a) must be in a form approved by the Minister; and
>
> (b) must contain the information required by the Minister.
>
> (6) An applicant must provide the Minister with any further information the Minister requires to determine the application.
>
> (7) Information provided by an applicant in or in relation to an application must, if the Minister so requires, be verified by statutory declaration or supported by other information required by the Minister.
>
> (8) A person must not provide information in relation to an application that is false or misleading in a material particular. Maximum penalty: $5 000.
>
> (9) If or when a person has made due application under this section, the amount payable will be taken to be a monetary claim due to the applicant from the Minister (and the Court has jurisdiction to determine the claim).
>
> (10) The Minister may make a payment under this section by electronic funds transfer, by cheque or in any other way the Minister thinks appropriate.
>
> (11) The Minister may delegate to a person (including a person for the time being holding or acting in a specified office) a function or power of the Minister under this section.
>
> (12) A delegation—
>
> (a) must be by instrument in writing; and
>
> (b) may be absolute or conditional; and
>
> (c) does not derogate from the ability of the Minister to act in any matter; and
>
> (d) is revocable at will.
>
> (13) A function or power delegated under subsection (11) may, if the instrument of delegation so provides, be further delegated.

We regard this as one of the most significant amendments. It is to establish universal parental leave, government funded, on what is a very modest parental leave program of four weeks.

Just to indicate some of the ramifications of it, I would like to say that it reflects what has been a general political observation. That birth rates are unsatisfactory is the lament of governments of all persuasions almost universally

throughout Australia, and it is starkly obvious that a lot of couples are leaving it for some considerable time to start families and some are choosing not to have families, and it is naive not to expect that some of that decision making is influenced by the financial difficulties and the stresses of parenting. It is not as if it is a new concept. Government and major employers have included paid parental leave as part of workplace agreements for some time. For example, the South Australian Public Service currently pays four weeks at full pay and negotiations are taking place to extend this provision. Incidentally, my colleagues in Canberra have been proposing a 14-week parental leave structure for the Australian work force.

However, it is clear that smaller organisations, smaller employers, will probably never financially be able to afford this measure—it is reasonable to assume in the short term that it is an impossibility—and so we believe that, as there is talk of safety nets and minimum standards in other areas of employment, this should arguably be the highest rated or at least one of the most highly rated minimum requirements in employment. I think it is reasonable to say—I hope it is not too trite an observation—that parliament should recognise that there is no future for South Australia if our population replacement declines to zero, and a parental leave structure universally across the workplace, aiding the natural replacement of people through families having children and rearing them under amenable circumstances, will make a big difference.

The actual details of the amendment are that parental leave would only apply to people who are not entitled to or receiving a better deal elsewhere, either in their award or an existing enterprise agreement. The amendment would provide four weeks of paid leave at minimum wage if the person qualifies for unpaid parental leave as per schedule 5 of the Industrial and Employee Relations Act 1994. The minimum wage is currently $467 per week gross as per the State Wage Case 2004. A lot of people—possibly even the government—have not seriously looked at the costing of such a proposal, but in our estimate it would range between $19 million to a maximum of $35 million a year and, as I will indicate, it is much more likely to be in the range of $19 million or $20 million per year. The actual number of births in South Australia in 2003 was 17 445. That is the Australian Bureau of Statistics population data.

If we take some assumptions, namely, that there were no twins or triplets, that all parents were employed at the time and that no parents had access to existing paid parental leave, under the formula, the 17 445 births would all be entitled to the $467 for the full four weeks, so the maximum would gross to $32.5 million. Even if it were that amount, it is a minimum cost compared with the huge social benefits and the very clear message that such an across-the-board consideration would give to parents and intending parents in South Australia. However, I believe that in real terms we ought to consider that the number that would actually be eligible and therefore receiving the amount that we have indicated in this amendment would be no more than 50 per cent of the actual births in any one year in South Australia, and so the cost would be more in the range of $20 million per year.

I have dwelt on that because this amendment is not a money matter. It really is a principle in the same way as we have dealt with other minimum factors such as bereavement leave, parental leave as already covered in clause 30, sick leave and carers leave. They have all been considered in this legislation, but not as a money detail, and neither should this amendment. However, for the committee to consider this as an appropriate amendment, it is reasonable to have some idea of what would be the global cost of such a scheme.

I move this amendment with enthusiasm so that it will fire up a like response from the government, the opposition and my colleagues the Independents, and send a strong signal that the family is not to be discouraged because society in this day and age requires that both parents work. It sends a signal that there is a caring structure governing this state, recognising the particular financial pressures of parenting, and goodness knows they certainly do not stop with just those four weeks. It is a very modest estimate of the time that this would be useful. I know—the Democrats know—that the financial pressures go on and on. However, so do the joys and the rewards, both to the parents and to the state.

I urge members to pass this amendment and send a clear signal to young couples, to intending parents right across the work force in South Australia that this parliament does care and does recognise the extra burdens of parenting. It does show a signal that, where they wish, they have support in a tangible form from this parliament to have the baby or babies, and we are supporting them as best we can. Even if this does appear to be a minimalist position, at least it is a position where currently there is nothing. I urge members to support the amendment.

The Hon. P. HOLLOWAY: The government does not support this amendment. I think most members would agree with the central thesis that the Hon. Ian Gilfillan is putting; that is, there are problems within our society at present in relation to parental leave and, as he puts it, the reluctance of many young couples to have children. However, there are other issues in relation to this matter. While we very much support access to parental leave, in our industrial system the primary responsibility to pay employees rests with the employer. Employers pay employees' wages and leave entitlements. In Australia the responsibility to meet these sorts of requirements generally rests with employers. That is quite appropriate.

The proposal of the Hon. Ian Gilfillan, I would argue, is quite inconsistent with that basic principle of Australian industrial laws. If this proposal were to be adopted it would create a disincentive to provide paid parental leave for staff. What would be the point? If they did nothing the government would have to step in and pick up the cost. The government believes this would lead to fewer employers providing paid parental leave, not more. While we certainly agree that a significant social issue is involved here and that it does need addressing, we do not believe this is the way to do it.

The Hon. NICK XENOPHON: I know this clause is the 'go forth and multiply' amendment. I think it does have merit. I understand there may be teething problems with respect to its implementation, but we do have a crisis in this state with respect to our ageing population. We have significant problems with population growth in South Australia. We have problems in terms of a declining birth rate. While I am not suggesting that this amendment will make a substantial difference, I think it sends a signal that as a society we place a priority and value on and support the decision of people to have children.

In some ways I see this as being complementary to federal legislation and the federal moves we saw in the last federal budget by the federal Treasurer (Hon. Peter Costello) with the so-called baby bonus. I see this, in a sense, providing that additional support. I think we need to have measures such as this to help turn the corner so that we can do something

substantial. We can have a change in attitude in the way in which we are dealing with what I think is a significant problem for the state in terms of our population growth.

The Hon. R.D. LAWSON: Certainly, the intention behind this amendment is commendable, but we are deeply disappointed to find that this hard-hearted government is not prepared to support it.

The Hon. Nick Xenophon: Do you support it?

The Hon. R.D. LAWSON: We are surprised that the Treasurer, who at a public meeting in relation to a bridge at Port Adelaide could find $20 million at the drop of a hat, cannot find $35 million to fund parental leave. I ask the Hon. Ian Gilfillan whether a similar provision applies in any other jurisdiction. I do not believe he mentioned this in his contribution. If he did, I did not hear it, and I apologise.

The Hon. IAN GILFILLAN: I am not sure whether the question is directed at jurisdictions in Australia or internationally, but certainly internationally there are regimes which are far more generous than Australia's. I do not have evidence of schemes that are applying in other states. Whether there is or is not, I do not regard that as being the criterion upon which this committee should consider whether or not it supports it. It may be a rather exciting event if, after a long lapse, South Australia did lead another social reform. I would not feel the least bit uncomfortable if that is what we did. I apologise for not having that information to put before the Hon. Robert Lawson this evening.

The Hon. R.D. LAWSON: I can indicate to the committee that we consider this an idea before its time and we will not support it at present.

The Hon. IAN GILFILLAN: I am sorry to hear that. I think there was a question or point made by the government in relation to what point would there be for private employers to extend parental leave if a government scheme was in place. For employers who are currently enlightened and caring enough to be providing parental leave, if there was a government scheme which augmented that, they would then be inclined to extend that leave to a further period of time. As I indicated earlier, no-one would argue four weeks is the total adequate time for proper parenting. There may be an incentive from this scheme for private employers to extend the time, because their previous scheme is added on, but the actual intention is that this would apply primarily to those employees and employers who at this stage do not have any parental leave structure.

I think it is tragic that both Labor in government and the Liberals in opposition are not prepared to pass this amendment, because I believe that it sends a very sad signal to intending parents in our community that the two parties that vie for government in this state are not showing the inclination to give them support when they make this momentous decision in their lives to have children while they are still struggling to survive in the workplace.

The Hon. SANDRA KANCK: I was very interested in the short contribution from the Hon. Robert Lawson. He said that this was an idea before its time, and I was wondering whether through you, sir, he would be able to tell us when the time will be right.

The Hon. R.D. LAWSON: This is, of course, an important matter, but as the Hon. Ian Gilfillan has indicated, the argument for it is based upon some calculations on the back of an envelope and it could well have unintended effects. To introduce a measure of this kind without appropriate inquiries and costings, without an examination of its full implications for the whole economy, would be ill-advised. We by no means are dismissive of the sentiment behind this proposal, but there has to be a serious and long debate about whether publicly-funded maternity leave is granted, and simply this committee and this parliament have not been furnished with that sort of information.

The Hon. IAN GILFILLAN: Let me say this to the Hon. Robert Lawson who has had the carriage of this legislation in this place. Given the way this committee has deliberated and the fact that there has been variation of position from listening to argument—certainly the Democrats have listened to argument put forward, at times the persuasive argument of the Hon. Robert Lawson, and have varied our vote accordingly—I suggest to the opposition through him that no damage will be done if, in fact, the opposition supports this amendment in this chamber. It cannot follow through to be passed into the act unless it passes the assembly. It means that considerable time will be available for those who wish to pursue it further and, if it proves to be unsuccessful at that time, at least we have tried.

So with the bigness of the heart that I am sure is there in opposition members, if one could find it, I would urge them to reconsider at this stage and support the amendment, acknowledging that all the details have not been assessed and worked through, but that the principle is sound, and give the signal that the principle is sound. If at the end of the day it is proved not to be workable at this stage, I will be disappointed but at least we can say we have tried.

The Hon. R.K. SNEATH: I point out to the Hon. Mr Gilfillan, who I know means well with this amendment, that recently we debated clause 31, with particular reference to new subsections (1) and (7) of new section 72A. Subsection (7) states:

> A contract of employment is to be construed as if it incorporated any minimum standard established under the subsection unless—

The Hon. Mr Gilfillan voted with the opposition to knock those subsections (1) and (7) out of that clause. Those provisions would have given the opportunity to those most deserving and in most need to apply to the Full Commission to make application for various amounts of parental leave. I ask that, over the next couple of days, the Hon. Mr Gilfillan might reconsider his decision to vote for that amendment by the opposition and perhaps seek a recommittal.

The CHAIRMAN: Without debating matters that have already been decided.

The Hon. IAN GILFILLAN: I appreciate the somewhat circuitous logic of the Hon. Bob Sneath to wrongfoot us as to how we acted previously, but I would like to indicate again, if I need to, that our opposition to that was not so much that we objected to other standards being introduced, but that we believed that the measure should clarify which ones are relevant, and they could be identified in legislation. As I understand it, peak entities can apply through that process for certain minimum standards, without the subsections that we knocked out.

However, I appreciate the Hon. Bob Sneath's participation to that extent. I would like to think that in his heart of hearts he would support the measure of parental leave if he had the opportunity to do so. Under those circumstances, I rest our case and trust that the opposition will see merit in supporting it.

The committee divided on the amendment:

AYES (4)

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

NOES (12)

Dawkins, J. S. L.	Gago, G. E.
Gazzola, J.	Holloway, P. (teller)
Lawson, R. D.	Lensink, J. M. A.
Lucas, R. I.	Redford, A. J.
Schaefer, C. V.	Sneath, R. K.
Stefani, J. F.	Zollo, C.

Majority of 8 for the noes.

Amendment thus negatived; clause as amended passed.

Progress reported; committee to sit again.

STATUTES AMENDMENT (LIQUOR, GAMBLING AND SECURITY INDUSTRY) BILL

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

ADJOURNMENT

At 11.06 p.m. the council adjourned until Thursday 17 February at 11 a.m.