LEGISLATIVE COUNCIL

Monday 30 May 2005

The PRESIDENT (Hon. R.R. Roberts) took the chair at 2.18 p.m. and read prayers.

DIRECTOR OF PUBLIC PROSECUTIONS

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I lay on the table a copy of a ministerial statement relating to the DPP made today by the Treasurer.

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order, the Hon. Mr Redford! It is a bit early for the benefit of your advice.

QUESTION TIME

BUDGET PAPERS

The Hon. R.I. LUCAS (Leader of the Opposition): Does the Leader of the Government acknowledge that, without the government having changed the definition of what is an 'accrual deficit', the budget papers that have been brought down would have meant that there were three deficits in the next four budget years?

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

BRUKUNGA MINE

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about the Brukunga Mine.

Leave granted.

The Hon. CAROLINE SCHAEFER: The rehabilitation of the Brukunga Mine has had more episodes than *Blue Hills*. It has been scheduled for rehabilitation over a very long period of time, with very little expenditure taking place. The 2004-05 Labor government budget allocated $1.2 million to be spent on the Brukunga Mine, and the 2005-06 budget reveals that only $235 000 was spent. This was spent on making Dawesley Creek suitable for livestock watering for the first time in approximately 50 years. The 2005-06 budget allocated only an extra new $970 9000 to the Brukunga Mine, which is due to be fully rehabilitated by 2011 at an estimated total cost of $26.1 million. My questions are:

1. Why was there such a significant underspend of almost $1 million on the Brukunga Mine in the last financial year?

2. Is it still estimated that the mine will be fully rehabilitated by 2011; if so, what savings have been made which have caused the cost of the rehabilitation to appear to be below CPI increases?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): A number of stages were originally proposed in relation to rehabilitating the Brukunga Mine; and there are probably even stages that go back further. Some work was done years ago to prevent run-off from the tailings dam (which is situated on a hill east of the mine) because, every time it rained, material from the tailings dam would collect and flow into the creek. So, some work was done on that years ago, but in the period that I have been the Minister for Mineral Resources Development the main priority has been to divert Dawesley Creek where the mining operations take place to prevent the leaching of waste contaminating the creek.

A pipeline was built from north of the mine site and underneath the training centre for the CFS (which is located in that area) to divert the water back to the creek south of the mine site. The section opposite the old mine site has been closed off, so the water that flows down from north of the Brukunga Mine site therefore does not collect any leachates from the old mine site. I am advised that that work has been far more effective than originally hoped in terms of restoring the quality of the creek.

The later phases of that rehabilitation project were to involve work on the actual overburden site which goes right along the western perimeter of the creek. Basically, that work was to lay that back. My advice is that, as a result of the success of the creek diversion that was done earlier and because it has been so effective, it may be possible to lay back and rehabilitate that area where the old mine was situated west of Dawesley Creek more cheaply. Rehabilitation work is still proceeding and, as the honourable member says, there is provision in the budget for that work to continue. However, it is hoped that, as a consequence of the recent experience of the mine, that might be able to be done in a much less expensive manner than was originally provided. I am happy to obtain further information about the details of that from the department, and perhaps the best thing would be to arrange a briefing for the opposition in relation to that matter. I am happy to arrange that for the honourable member.

WORKCOVER

The Hon. A.J. REDFORD: I seek leave to make an explanation before asking the Minister for Industry and Trade, representing the Minister for Administrative Services, a question about the WorkCover quarterly report.

Leave granted.

The Hon. A.J. REDFORD: I recently received a copy of the March 2005 quarter management performance report into the beleaguered WorkCover organisation. The report indicates that new claims lodged with WorkCover over that three-month period fell by some 466 new claims, whereas the active number of continuing claims grew by 820.

The Hon. T.G. Cameron: How can that be?

The Hon. A.J. REDFORD: Good question. It also does not disclose any figure in relation to the ever burgeoning unfunded liability that is continuing to approach State Bank levels. The report also indicates that WorkCover failed 12 out of 13 its own benchmarks. It shows that the cost of claims—that is, the management cost of claims—increased at double the rate of inflation. It also highlights the fact that no customer satisfaction survey has been conducted since June 2003, which happens to coincide with the appointment of the new board.

The report states that staff turnover—which, again, did not hit the level that it wanted—is continuing at a high rate of 10 per cent. The report indicates that payments out of the system were up by $10 million (or some 12.5 per cent) and that income was up by only $8 million (or 8 per cent) from the figure last year. That coincides with one good figure in this report, that is, that the return on investment over three years has increased from 3.5 per cent last year to some 6.6 per cent this year, which would indicate that, in the

absence of a good return on investment, WorkCover's position would be even worse than that which is reported in this quarterly report. In the light of that, my questions are:

1. Is the government happy with the performance of WorkCover?

2. Why have active claims numbers gone up by nearly double the number of new claims reported to WorkCover?

3. Why have customer surveys not been conducted since June 2003?

4. Can the government confirm that the unfunded liability has continued to grow over the past three months?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer those questions to the Minister for Industrial Relations in another place and bring back a response.

COAST PARK PROJECTS

The Hon. J. GAZZOLA: Can the Minister for Urban Development and Planning please inform the council on the funding for Coast Park projects and advise members on how these projects will protect and improve our metropolitan coastlines while providing a greater range of experiences for all South Australians?

The Hon. P. HOLLOWAY (Minister for Urban Development and Planning): I thank the honourable member for his question and for his interest in this matter. I am sure that all honourable members of this council are aware that Coast Park is an important initiative of this government's Parklands 2036 strategy. Under this strategy it is a major component of the metropolitan open space system (MOSS), which is intended to ensure a comprehensive network of useable and accessible open space provided throughout metropolitan Adelaide. In particular, the Coast Park initiative is aimed at achieving multiple outcomes, including the development of a shared use path along our coastal foreshores, the protection and rehabilitation of important remnant coastal dune systems and the enhancement of recreation, conservation and biodiversity objectives.

Since the launch of the Coast Park initiative in June 2001 (I think it was Diana Laidlaw who originally launched the Coast Park initiative, and I know from her lobbying of me that she still keeps a very active interest in the future of this project, for which I thank her), government agencies, local councils and community groups have worked collaboratively to plan, design and implement individual coast park projects that collectively will ensure that Adelaide's coastline is available for all to enjoy.

On Thursday last week my colleague Michael Wright and I announced the latest round of state government funding totalling more than $2.6 million to be provided to six metropolitan councils for Coast Park in their local areas. The reason for this joint announcement was to remind us all of the important physical activity benefits that these projects provide. It is intended that people of all ages will be able to enjoy a range of walking, cycling and interpretive trails that not only provide better access to the beach but also provide a broad range of cultural, environmental and physical activity experiences. It is anticipated that, in time, the Coast Park will span continuously from Sellicks Beach in the south to North Haven in the north.

The Onkaparinga council will receive $990 000 to assist in the redevelopment of the Christies Beach, Moana and Port Noarlunga foreshores. The construction of a shared use path between Christies Creek and Port Noarlunga will also be undertaken, as will a coastal vegetation survey to ensure better management of native vegetation along the Coast Park trails. Charles Sturt council will receive $250 000 for the development of a concept plan for Coast Park between the River Torrens and Adelaide Shores. Council will also undertake vegetation management plans to assist in the conservation of the important but fragile dune systems.

In addition to this funding, the state government will also spend a further $200 000 for the upgrade and construction of a shared use path on the Seaview Road bridge to ensure a safer pedestrian and cycling environment. In the West Torrens council area, funding of $300 000 will be provided for coastal revegetation works and the development of a shared use path at Adelaide Shores. Marion council will receive $50 000 to undertake a revegetation management plan and works along the coastline in that council area. I note that Marion council is not receiving such generous funding this year as it has in previous years, and it has been an exemplar in progressing Coast Park projects within its area. Port Adelaide Enfield will receive $675 000 to assist with coastal revegetation works and the redevelopment of Semaphore foreshore. Council will also undertake the construction of a shared use path at Semaphore South. In Holdfast Bay, $150 000 will be provided to design a concept plan for the development of Coast Park between the Brighton Jetty and the Seacliff Hotel and contribute to the redevelopment of Moseley Square. I think that this significant contribution by the government of $2.6 million should reinforce the fact that this government is committed to Coast Park for the important recreational benefits that it brings, and I trust that all members of the council understand the benefits of this important project to the public of South Australia.

RANN, Hon. M.D.

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development, representing the Premier, a question about the Premier's recently announced intention to marry.

Leave granted.

The Hon. SANDRA KANCK: First, on behalf of the Democrats, I extend our best wishes to the Premier and his bride-to-be, Ms Sasha Carruozzo. In keeping with the state's strategic plan where so many initiatives have been left until after the state election, I note that the Premier has adopted the same tried and true electoral tactic in deferring the date of the actual commitment until after the state election. In light of the Premier's penchant for ringing every drop of publicity out of every good news story, and given his recent efforts moonlighting as an actor in party political advertisements paid for by the taxpayer of South Australia, my questions are:election.

1. How many times can we expect the Premier to re-announce his engagement in the lead-up to the state election?

2. Will the taxpayers of South Australia be forced to fund advertisements featuring the Premier re-announcing his engagement to Ms Carruozzo?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I just add my congratulations to the Premier on that announcement. I do so in a totally unchurlish way, unlike, it appears, the Democrats.

The Hon. T.G. Cameron: I also add my congratulations to the Premier.

The PRESIDENT: Order!

The Hon. T.G. Cameron interjecting:

The PRESIDENT: The Hon. Mr Cameron shall curb his enthusiasm for adding congratulations. I thought for a moment it was a supplementary question—but I do not think it was.

ADELAIDE CASINO

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Gambling, questions about the rapid roulette game at Sky City casino.

Leave granted.

The Hon. NICK XENOPHON: On 24 February 2004 I asked a question regarding the rapid roulette game at the Sky City Adelaide casino. The game is attached to a note acceptor and operates in a similar way to a poker machine. I note from the answer provided to me by the minister on 3 May 2004 that the Liquor and Gambling Commissioner has ruled that it is not a gaming machine as defined in the Gaming Machines Act, and, therefore, not a gaming machine for the purposes of the Casino Act. I have concerns that this game will exacerbate problem gambling.

I was advised that the Independent Gambling Authority was investigating the matter and providing information to the Minister for Gambling in relation to these machines. Further, I note that the answer given on 3 May 2004 said the government would be concerned about any game that would lead to an exacerbation of problem gambling, and the minister indicated that he was advised that the turnover of touch-bet roulette is significantly lower than that of other roulette tables, suggesting no significant problem gambling issues have arisen. My questions are:

1. When did the Independent Gambling Authority provide its report to the minister in the context of its investigation with respect to this game; and what action was taken with respect to that report?

2. Will the minister advise whether the report will be released publicly?

3. Does the minister concede that there needs to be a review of the classification of the game?

4. The minister indicates that this game has a lower turnover than other roulette tables. Will the minister advise how it compares with other poker machine games?

5. Is the reference to other roulette tables reference to tables of a similar betting limit?

6. Failing reclassification, will the minister ban the note acceptors from these particular machines?

The PRESIDENT: Order! I draw members' attention to the fact that is there is a great deal of audible conversation in the council. It is very difficult to hear the Hon. Mr Xenophon. I ask all members to respect the member on their feet when they are making their contribution.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer that question to the Minister for Gambling in another place and bring back a reply.

COOBER PEDY, POLICE STATION

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Transport, a question about services in Coober Pedy.

Leave granted.

The Hon. T.J. STEPHENS: I have been informed that, at present, the Coober Pedy Police Station has been forced to undertake administrative duties for the motor vehicle registration and licensing functions, which have left police desk bound for long periods of time. Further, I understand that Mr Justin Jarvis, in his capacity as the regional manager of the Office for the North, was advised of this matter. Mr Jarvis advised the community that he would provide a resolution to the problem. That was now over 18 months ago. I am also advised that groups such as the Multicultural Forum undertake some administrative work on behalf of other government agencies. My questions are:

1. Will the government consider shifting these non-core duties from the police to another agency in Coober Pedy?

2. Can it report to the council what action was taken by Mr Jarvis and why he has failed to respond to inquiries from members of the community on this issue?

3. Why in fact was he subsequently promoted?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I am not sure whether that question is best directed to the Minister for Police or the Minister for Transport, but I will ensure that one of my colleagues in another place gets the question and I will bring back a reply.

MENTAL HEALTH PATIENTS

The Hon. J.M.A. LENSINK: I seek leave to make an explanation before asking a question of the Minister Assisting in Mental Health.

Leave granted.

The Hon. J.M.A. LENSINK: On Friday the 27th, the Australian Institute of Health and Welfare released a report entitled Australian Hospital Statistics 2003-04, and in it it refers in particular to a number of statistics relating to hospital separations, which are defined in its glossary as the total number of episodes of care for admitted patients which can be total hospital stays from admissions to discharge, transfer or death, or portions of hospital stays beginning or ending at a change of type of care; for example, from acute to rehabilitation that ceased during a reference period.

The report states that the highest proportion—and I think this is in relation to separations of public patients in the public hospitals rather than in private hospitals—was for the classification under mental and behavioural disorders. On page 179 it says that tables 9.3 and 9.4 contain detail on the pattern of hospital use in the states and territories for the diagnosis chapters in both the public and private sectors. These tables enable state-by-state comparisons of overall hospital use for the different diagnosis groups and the share of separations between the private and public sectors.

Further, on page 181 it states that the average length of stay was high for most of the disease groups and that only 18.1 per cent of separations were same-day separations—this is in relation to mental health patients—compared with 49 per cent in public hospitals overall. Then in table 9.3 it provides the separations by principal diagnosis in public hospitals for all states and territories in which, under mental health and behavioural disorders, it states that the number was 16 550, which I note is an increase of 4.2 per cent from 2002-03, which was 15 882. The table on the next page relates to the same issue for private hospitals, and in South Australia the measure is 3 061 separations in private hospitals in this state, which is actually one quarter of the previous year at 12 541. My questions for the minister are:

1. To what does she attribute the increase in hospital separations in the public system and such a dramatic fall from those figures so that the 2003-04 figures in private hospitals are merely one quarter of the previous year?

2. Given the amount of time that mental health clients spend in the hospital system, both private and public, compared to in the general hospital system, why is the government closing Glenside?

The Hon. CARMEL ZOLLO (Minister Assisting in Mental Health): I thank the honourable member for her questions, and I am sure that she joins everybody in the chamber in welcoming the $45 million funding boost for mental health in this state. The honourable member obviously was reading from a report which I have not seen, I must admit, and she raised some important issues in relation to operational matters, to which I am certainly not able to respond here on the floor of the council. I will take some advice and also refer those questions to the Minister for Health in the other place and bring back a response.

COUNTRY FIRE SERVICE AND SES VEHICLES

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Emergency Services a question regarding budget funding for replacement CFS and SES vehicles.

Leave granted.

The Hon. R.K. SNEATH: The South Australian Country Fire Service and State Emergency Service operate fleets of four-wheel drive vehicles for a range of operational and transportation purposes. Some of these vehicles were transferred from local councils to the services prior to the implementation of the emergency services levy. Will the minister outline any government plans for replacing these vehicles?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I thank the honourable member for his question. This government is committed to ensuring that our emergency services are properly resourced so they can continue to play their vital safety and security role in the community. As the honourable member stated, many of the four-wheel drive vehicles currently operated by the Country Fire Service and the State Emergency Service were provided by local councils before the introduction of the emergency service levy in 1999-2000. The vehicles are used by the services in a number of important operational and transportation roles. Last week's state budget included an allocation of $4.1 million over four years for a major vehicle replacement program for both the Country Fire Service and the State Emergency Service. The budget includes allocations of $630 000 in 2005-06, $954 000 in 2006-07, $1.133 million in 2007-08 and $1.47 million in 2008-09 for the vehicle replacement program.

The funding allocation will enable the CFS and the SES to replace key vehicles that are under 3 500 tonnes through lease arrangements. Leasing through Fleet SA provides a cost effective solution to the replacement of these important vehicles and reflects the unique character of low mileage emergency service vehicles. It will also ensure that the Country Fire Service and the State Emergency Service operate reliable, well equipped vehicles that can quickly respond to emergency situations. The Country Fire Service intends to replace 69 four-wheel drive vehicles, while the State Emergency Service will be able to replace 83 four-wheel drive vehicles. The CFS vehicles to be replaced include group command vehicles, which facilitate reconnaissance, provide transport for quick response strike teams and on-site control and command functions. They will also replace group logistics vehicles, which provide transport for relief strike teams, general transport for fire fighting personnel and the provision of equipment, mapping and catering.

The SES emergency vehicles to be replaced are all used for the provision of emergency response and recovery throughout the state. The first of the replacement four-wheel drives are expected to be leased, fitted and operational early in the new financial year.

The Hon. J.F. STEFANI: By way of supplementary question, will the minister advise the council how many vehicles are driven by diesel and how many are driven by petrol?

The Hon. CARMEL ZOLLO: I am afraid I cannot do that on the spot, but I will take advice and bring back a response.

The Hon. CAROLINE SCHAEFER: By way of supplementary question, of the 152 replacement vehicles will the minister advise how many will be replaced this coming financial year?

The Hon. CARMEL ZOLLO: Again I will take some advice and bring back a response. I do not have those specific details in front of me.

GOVERNMENT ADVERTISING

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Minister for Industry and Trade a question about TV advertising.

Leave granted.

The Hon. IAN GILFILLAN: I refer the minister in the chamber to the advertisements that have been appearing on commercial TV in particular, referred to incidentally by my leader, the Hon. Sandra Kanck, earlier in question time. For the benefit of honourable members who have not had the pleasure and privilege of seeing these advertisements, I point out that our Premier walks across the screen extolling the features of the budget, followed by what one must assume to be professional actors identifying particular blessings the budget has bestowed upon South Australia. The advertisement is terminated with the words, 'Authorised by M. Rann, Parliament House, Adelaide.' I am not sure that is exactly what is said, because it was said very quickly. My questions are:

1. How much public funding went into this advertising campaign?

2. As it is questionable whether these were advertisements for the next state election, will the government have those advertisements referred to the Auditor-General for assessment as to whether they are, in fact, genuine information from the government or a party political campaign?

3. Whatever the facts are in relation to my second question, will the government offer equal time to the Leader of the Opposition so that he, too, can walk across the screen with a gay smile and use some professional—

The Hon. T.J. STEPHENS: On a point of order, Mr President, the honourable member is not gay.

The Hon. IAN GILFILLAN: Mr President, I hope that you will not rule that as a point of order. I think that that three letter word covers a variety of qualities of a human being. I do not want to imply anything other than that the Leader of the Opposition would enjoy the publicly funded opportunity

to put balance into this advertising campaign. Perhaps, as additional variety, the minor parties and Independents could have a joint act, also publicly funded, so that all points of view could be presented, using television as a medium, rather than just one side paid for by the long-suffering public of South Australia.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): It has been a practice in this state for many years now that, after the budget comes down, governments have conducted a—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: No, we did not say that at all, and it is dishonest of the Leader of the Opposition to say so. If the Leader of the Opposition goes back and has a look at the ad—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Perhaps we need to revisit the Hon. Nick Xenophon's bill again. We have it after every budget, so I think this would be the fourth time. I put on record that, yes, the position I put on behalf of the Labor Party at the time the Hon. Nick Xenophon's bill came up—and I am sure this will come up later—was about the electricity sale, and that bill had not been passed by parliament. In relation to the budget, I made it quite clear that the Labor Party believed that it was proper for governments, including past governments, to advertise the budget because a significant amount of information comes out in the budget in relation to changes to expenditure, taxes, and so on. That has consistently been the position of this government, and it was consistently the position of past governments. What I find rather extraordinary is that, in the dying days of his political career, the Hon. Ian Gilfillan should raise this matter now. It has happened for the many years he has been in this place, and I am surprised that he has not raised this matter previously. But, there is nothing unusual or exceptional—

The Hon. IAN GILFILLAN: I rise on a point of order, Mr President. I take exception to the use of the word 'dying' in relation to any part of my aspect, be it in this place or anywhere else. I believe it to be unparliamentary.

The PRESIDENT: That is not normally considered to be a point of order.

The Hon. P. HOLLOWAY: That probably makes up for the three letter word the Hon. Ian Gilfillan used earlier. I was referring to the fact that the Hon. Ian Gilfillan is coming to the end of his term in parliament and what has happened in relation to budget advertising campaigns is nothing unusual. What this government has spent on them is very modest compared with what the federal government would spend in relation to these matters. I can remember a few years ago when the federal government spent Australia wide $400 million on the GST campaign of which this state's share would have been something like $32 million. That was extraordinary, and yet very little was said. There is nothing exceptional about what has happened. Regarding the amount of money, I will refer that part of the question to the Premier and bring back a response.

The Hon. T.J. STEPHENS: I ask a supplementary question arising from that answer. Given that the Premier commandeered the construction site at the new airport to shoot his advertisement, will the leader say how long it took to film that advertisement and whether it has delayed the completion of the Adelaide airport?

The Hon. P. HOLLOWAY: I can assure the honourable member that, according to my latest advice, the construction at the airport is well and truly on track.

The Hon. NICK XENOPHON: Will the government confirm that the budget for this year's advertising campaign on the budget is about $250 000 more than the $90 000 for last year, and how does that compare to the Olsen government's advertising in its last budget?

The PRESIDENT: It's not necessarily advertising; it's an explanation, I'm sure.

The Hon. P. HOLLOWAY: I will seek that information. As I said earlier, compared to the $400 million that the federal government spent on its GST campaign, of which South Australia's share at 8 per cent would have been about $32 million, whatever was spent would be very small indeed.

The Hon. J.F. STEFANI: Will the minister advise the parliament of the breakdown of the cost of advertising the state budget for the years 2003-04, 2004-05 and 2005-06 in terms of both print and television media?

The Hon. P. HOLLOWAY: Essentially, that question has been asked, but I will ensure that those extra details are included.

The Hon. R.I. LUCAS (Leader of the Opposition): Is it correct that the then leader of the Labor Party (now the Premier) in undertaking a joint press conference with the Independent member of the upper house, the Hon. Mr Xenophon, pledged to support the introduction of the Hon. Mr Xenophon's bill which would have banned the budget advertising which has just been expended by the government as part of its 2005-06 budget sales strategy?

The Hon. P. HOLLOWAY: I anticipated that question earlier. That is exactly what I was referring to in my answer when I said on behalf of the opposition that that bill was supported by us in relation to advertising the sale of ETSA. The massive amount of money that was spent was part of the $110 million that vanished from the ETSA sale proceeds to consultants of various kinds and advertising, and I made it quite clear at that time on behalf of the then Labor opposition that we excluded advertising for the budget from that.

The Hon. R.I. LUCAS: Is it correct that the then leader of the opposition, speaking on behalf of the Labor Party, did not make that exclusion at the joint press conference with the Hon. Nick Xenophon where he indicated his support for the Hon. Mr Xenophon's legislation?

The Hon. P. HOLLOWAY: When the Hon. Nick Xenophon introduced that legislation in this council, I put our view on behalf of the then opposition. I made it quite clear, and I will be quite happy to give the page reference of where I clearly set out the situation on behalf of the then Labor opposition.

The Hon. R.I. LUCAS: Is it true that the then leader of the opposition in outlining his support for the Hon. Mr Xenophon's legislation indicated that whenever you see a politician's face in a government advertisement you know that it is a party political ad, and does the Leader of the Government support the then leader of the opposition's description of advertising paid for by the government?

The Hon. P. HOLLOWAY: This government has just conducted an advertising campaign in relation to the budget like every government before it has, probably ever since

television was introduced in this state. There is no difference in relation to that matter.

The Hon. KATE REYNOLDS: Sir, I have a supplementary question. Can the minister confirm that people in regional areas will not be deprived of the opportunity to enjoy the Premier's acting skills?

The Hon. P. HOLLOWAY: I am not sure what regional coverage will be given to these advertisements, but I hope the government will ensure that. Certainly, within the budget there is indeed a regional statement. I would be happy to go through it. Perhaps we could get some real questions in relation to some of the important things this government is doing, such as increasing the Regional Development Infrastructure Fund for a couple of extra years to $3 million a year. There is a very good regional statement as part of the budget. I hope that the government will spread the message to country areas. I will refer that question to the Premier and bring back a response.

The Hon. D.W. RIDGWAY: Sir, I have a supplementary question. Why does the word 'hospital' not appear anywhere in the regional statement in last week's budget?

The PRESIDENT: I do not know whether that has a great deal to do with the advertising campaign. If the minister is game, I am.

The Hon. D.W. RIDGWAY: In his answer the minister referred to the regional statement.

The Hon. P. HOLLOWAY: It is scarcely a supplementary question.

The Hon. R.I. LUCAS: Mr President, I have a supplementary question. Is it true that both the Premier and the Treasurer have apologised for the statements they made when in opposition supporting the bill introduced by the Hon. Mr Xenophon?

The Hon. P. HOLLOWAY: I am not aware of what statements were made on the bill other than by me, because I gave the official view. It was introduced in this council and I gave the view on behalf of the then Labor opposition. It is there in *Hansard* for all to see. I re-read it into *Hansard* after the last budget and, I think, the budget before that. I quite clearly said, on behalf of the Labor opposition at the time, that we supported the Hon. Nick Xenophon's legislation and that we regarded expenditure on explaining budget measures as a legitimate use. That was the position that I put on behalf of the Labor Party then, and my views and the government's views are consistent with that.

The Hon. R.I. LUCAS: Sir, I have another supplementary question. Does the Leader of the Government agree with the statements that have been made by both the Premier and the Treasurer that it was a mistake for them to indicate when in opposition that they would support the legislation by the Hon. Mr Xenophon?

The Hon. P. HOLLOWAY: The Leader of the Opposition can ask the same question in as many ways as he likes but he will still receive the same answer. I put the view on behalf of the Labor Party, and I stick by the view that I put when that bill was debated before 2001.

DENTAL SERVICES

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Emergency Services, representing the Minister for Health, questions about children's dental services.

Leave granted.

The Hon. T.G. CAMERON: Today's *Advertiser* carries a report that tooth decay in South Australian children has become so bad that health experts are holding a crisis meeting. Latest figures show that, among five-year-olds starting school, one in eight has decay in a quarter of their teeth. There has also been a 30 per cent increase in tooth decay in 12-year-olds over the last six years. SA Dental Service executive director Martin Dooland said that decay in children's teeth is so widespread that strategies to deal with the problem are urgently needed. He said that the $10 million a year school dental program comes into contact with up to 19 000 new school children each year. Mr Dooland is quoted in the article as saying the following:

> The last six years have been a disaster. Alarm bells are ringing and it is across the board in all children, although it is obvious the problem is starting young. . . The more we spend on treating decay, the less we spend on reducing two year long waiting lists for other services.

The article states:

> The decay is not evenly distributed, according to the service's data. . . Children from rural areas and in Adelaide's northern and north-western metropolitan areas have higher levels of decay.

My questions are:

1. How much has the government spent on children's tooth decay programs and what new initiatives has it introduced to reduce tooth decay since its election in 2002?

2. Does the minister accept Mr Dooland's description of the state of tooth decay amongst school-aged children as a disaster and that more money should be spent on preventative programs? If so, what initiatives does the government propose?

3. What strategies has the government undertaken to reduce the levels of decay in those areas identified as well as educating their parents and caregivers on the benefits of good dental hygiene?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I thank the honourable member for his important question in relation to children's dental services. I will refer his questions to the Minister for Health in another place and bring back a response.

The Hon. J.F. STEFANI: I have a supplementary question. Can the minister advise the council how many children come from underprivileged homes, and will the government refer this matter to the Social Inclusion Unit for further consideration?

The Hon. CARMEL ZOLLO: I will refer those supplementary questions to the Minister for Health in another place and bring back a response.

LONG LIFE ROADS

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Transport, a question about the Long Life Roads package.

Leave granted.

The Hon. D.W. RIDGWAY: On 22 May 2005 an article appeared in *The Advertiser* indicating that the Minister for Transport had announced Long Life Roads (it is a package, and it sounds a little like long life milk). It was announced by

the government 'to stem the spiralling road toll'. The article goes on to say:

> The Long Life roads package—which will be detailed in full in Thursday's budget—will include extra overtaking lanes, improvement of road surfaces, shoulder sealing, stabilisation of unstable rock slopes and installation of road verge rumble strips.

It went on to say:

> The budget will also include additional funds for existing programs. . .

There were no additional funds for new programs, I add. In this week's *Sunday Mail* an article speaking of the RAA's disgust at the government's lack of attention to detail stated:

> The state's peak motoring body has stepped up its attack on the government, saying its 'denial of our substandard roads' is costing lives. The RAA said the Rann government had largely forgotten our 'dangerous and crumbling road system' in last week's budget. . . . John Fotheringham [the CEO of the RAA] said the government was not committed to reducing crashes on [South Australian] roads.
>
> He said the government needed to commit $80 million over three years rather than the $22 million allocated as part of the budget's Long Life Roads package.

He went on to say:

> The fact cannot be ignored that the single most effective way to reduce road trauma is to make our roads safer to use.

He then said:

> The government remains in denial that substandard roads are often a major contributor to lives being lost.

The article further states:

> A spokesman for Mr Conlon said the government had made a significant commitment to improve roads. . . 'roads are less of an issue than speeding'.

That is not what the RAA is saying. The article goes on:

> 'We can understand why the RAA always wants more (money),' he said. The Long Life Roads package is targeted at more overtaking lanes, improving road services and fixing unstable road slopes.
>
> Mr Conlon said the three-year program aimed to clear the backlog of road improvements which had built up over too many years, 'particularly on rural roads'.

Last week I asked a question about the backlog of road maintenance in South Australia, and it is nearing some $200 million. My questions to the minister are:

1. How does $22 million over three years fund the backlog of $200 million of works?

2. Why is the government not recognising that $200 million needs to be spent on road maintenance in South Australia?

3. When will the minister start working with peak bodies such as the RAA instead of using his bullyboy tactics as we saw last week when he called the RAA 'absolutely pathetic'?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): Perhaps the honourable member could have done some research and found out how long that $200 million backlog has been around, because I can assure him that it did not come about last night.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: That is right, we are the government and we do set the priorities, and the budget sets the priorities of this government. That is why $22 million has been put into the Long Life Roads package. We are coming up to an election in about nine months, and the opposition will have its opportunity to put forward its policies. Certainly, as far as question time is concerned, all we have heard today is *The Advertiser*. *The Advertiser* has been writing most of its script. But in relation to—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: Well, that is the script of your questions. That is where they all come from. No doubt, members opposite will be criticising this government for not providing enough tax cuts in areas and not spending enough all over the place. At the end of the day, they will have to put forward their financial packages. I noticed a few weeks ago the shadow minister for health was offering rather extraordinary amounts of money about which he had effectively made a pledge in relation to a future Liberal government's policy. The Hon. Angus Redford was unveiling policies last week about zero tolerance of drugs in prisons. We look forward to seeing how he will do that and how he will fund that, particularly since three-quarters of the people in prison are there for alcohol or drug abuse in the first place. We all look forward with some interest to see what will come forward.

I make the point that, if the honourable member wishes more money to be spent on any area, be it roads or anything else, that money either has to go on to state debt or be funded from other areas by taking away money from other areas. If the opposition wishes to put that forward, it will have the opportunity at the election. It can say that, rather than spending money on health, education or police, that the money should go here. That is the prerogative of members opposite. We look forward to hearing exactly where they intend to do that. I point out that this goes back to the first question asked today by the Leader of the Opposition. This government has recognised the importance of infrastructure to the state and is significantly increasing its expenditure on infrastructure in this state.

HOUSING TRUST

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Families and Communities, a question about empty Housing Trust homes.

Leave granted.

The Hon. KATE REYNOLDS: Mr President, you will be relieved to know that my question does not refer to the Premier's latest venture into prime time television. Rather, I would like to talk about the article in the *Sunday Mail* of 15 May, which revealed that more than 1 600 Housing Trust properties are vacant while 25 000 people, or more, sit on waiting lists stretching beyond a decade. Agencies have described the situation as 'scandalous' and the system as 'in tatters'. They believe the state's public housing system is in crisis, with unnecessary homelessness causing social dislocation, crime and long-term community damage. This message is totally consistent with what I was told by homeless people when I spent a morning last week at the Hutt Street Centre, which is a very busy meal and day-care centre for homeless adults in the inner city of Adelaide. Sadly, an increasing number of younger people are approaching that centre needing support and help.

Figures published by the *Sunday Mail* show that 500 properties were available for immediate tenancy as at 28 February, but that many of these had been vacant for more than three months. Meanwhile, several hundred families with a category 1 listing—which means they have an immediate need for housing—were being accommodated in temporary accommodation by Centacare. Other non-government agencies are doing what they can with the resources available to them to support thousands more South Australians, who are either homeless or in a precarious housing situation.

In a subsequent article on 22 May, the *Sunday Mail* revealed that a home in Salisbury Downs is occupied by three dogs. In that article the minister's spokesperson is quoted as saying, 'The trust was satisfied with the existing arrangements'. In a letter to the Editor of the *Sunday Mail* yesterday—Mr President, you can see that I have been catching up on my reading of the *Sunday Mail*—a person in Mount Gambier wrote:

I have been waiting for a two-bedroom Housing Trust unit since February 1995. . . I am 63 and on the age pension (previously on a disability pension) and am paying $145 out of my pension of $290 a week, which includes rent allowance, for an old, run-down, salt damp-riddled house in original 1940s' condition.

Another person from St Mary's wrote:

This lamentable situation drives would-be tenants—

and he had been referring to the waiting list also—

to crisis accommodation which the welfare agencies find difficult to cope with. It also leads to other social problems, such as crowded houses with poor sanitary conditions, disease, drugs and crime.

Mr President, you are familiar with my comments about housing in remote Aboriginal communities, but clearly we have a number of individuals and families here in metropolitan Adelaide and regional South Australia who are suffering as well. My questions are:

1. Does the minister stand by his spokesperson's statement?

2. If so, will the minister write to every one of the 25 000 people on the waiting list and tell them this and explain why 1 600 Housing Trust homes are vacant?

3. Will the minister make a copy of that letter available to agencies such as the Hutt Street Centre, which provides services for homeless people, so that they can post the letter on their notice boards and homeless people can read about why they are homeless?

4. What is the government doing to ensure that people who are provided with Housing Trust homes actually live in them?

5. Does the state government have a target to reduce the number of vacant houses at any one time?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer that question to the Minister for Families and Communities and bring back a reply, but it is interesting that the honourable member should use the *Sunday Mail* as the source of all her information. I suggest that it is very easy to write—

The Hon. J.M.A. Lensink interjecting:

The Hon. P. HOLLOWAY: That is right. You spent a morning in the Hutt Street Centre which obviously made the honourable member, it would appear, an expert, but I do not think the honourable member should believe everything she reads. Being a member of the lower house for some years, in an electorate with a large number of Housing Trust houses, I am well aware of some of the issues in relation to public housing. Of course, the amount of public housing in this state has decreased steadily due to the demise of the Commonwealth-State Housing Agreement which for many years used to fund the amount of housing that was available in this state.

I do know that over the past decade there has been an enormous amount of redevelopment of Housing Trust properties throughout the state, to improve the amenity of the living conditions of many people who live in Housing Trust homes. Certainly I know as the former local member in the Mitchell Park area what a huge difference the redevelopment of that area has made, but that of course has gone right through the Parks area, through Elizabeth and other areas to try to improve the quality of public housing because so much of that stock was built in the 1950s and 1960s. What that means is that, with all the redevelopment that is going on throughout so much of the metropolitan area, there will be vacant houses from time to time, as those development plans are processed. They will be vacant either for demolition or for renovation. So, one needs to look at the statistics with a little bit more care, rather than just accepting the initial sensational headlines. I will get the information for the honourable member from my colleague in relation to that, because I think it is important that that be put on the record.

The honourable member also referred to the issue about people actually living in Housing Trust homes. In other words, it is probably pretty easy when you have 50 000-odd homes to find one or two where people might, for various reasons, not be living in the house at that particular time, but at what point does one evict those people? Perhaps the honourable member should reflect on that for a moment before she gives advice. There obviously will be occasions, particularly with elderly people, where they will be in and out of nursing homes or hospitals and their home will be vacant for considerable periods of time. What sort of criterion would the honourable member suggest we have to assess the fact that places may not be lived in? I am certainly happy to get that information from the minister about how they assess that, but again let me say that, from my experience as a local member with a large Housing Trust area, it is not very easy, necessarily, to make those sorts of judgments.

COUNTRY DOCTORS

The Hon. CARMEL ZOLLO: I table a ministerial statement on a package to support country doctors.

RADIOTHERAPY SERVICES

The Hon. CARMEL ZOLLO: I table a ministerial statement on radiotherapy services in the south.

OCCUPATIONAL HEALTH, SAFETY AND WELFARE (SAFEWORK SA) AMENDMENT BILL

In committee.

(Continued from 25 May. Page 1940.)

Clause 6.

The Hon. CARMEL ZOLLO: I move:

Page 11, lines 27 and 28—Delete 'in connection with their employment' and substitute 'during their employment with the employer'.

Following the debate in the other place on this matter the government proposed this amendment to clarify which training records have to be kept by the employer. Amendment No. 5 makes it clear that the clause only relates to occupational health, safety or welfare training undertaken by employees during their employment with the employer. It has always been the government's intention that records relating to training may be kept in any format the employer chooses so as to not be a significant burden. The way training records are kept is at the discretion of the business. SafeWork SA will provide guidance and assistance to businesses as necessary.

The Hon. A.J. REDFORD: Can the minister indicate what practical effect this amendment has, and would she give us some examples of what is not now required to be kept that might have been required to be kept prior to this amendment?

The Hon. CARMEL ZOLLO: Apparently, some concern was raised in the other place that the clause unamended could have implied that records needed to be kept from previous employment, and that is obviously not the case—it relates only to training.

The Hon. Ian Gilfillan: The honourable member is going to oppose this clause, is he not?

The Hon. A.J. REDFORD: I am going to oppose the clause, but I am not sure what I am going to do in relation to the amendment, because I do not understand what this amendment means. Perhaps it would help if I explain my reading of the amendment. The government is seeking to impose a burden on employers, and I will come to the reasons why we oppose that when we get to debate on the clause following this amendment. It goes on to state that these records relate to 'occupational health, safety or welfare training undertaken by any of the employer's employees'. The clause currently provides 'in connection with their employment', and the government seeks to amend the clause to provide that it is required only when it is undertaken by any of the employees 'during their employment'. I cannot see the difference between what is currently drafted and what this amendment provides, and I cannot understand what is the practical difference between the two clauses. I would be grateful if the minister could give me some practical examples of what might have been caught under the original proposal and what is now not caught under the amendment the minister proposes.

The Hon. Ian Gilfillan: I think your colleagues raised it in the lower house.

The Hon. A.J. REDFORD: Well, I do not know; I did not see that.

The Hon. IAN GILFILLAN: I indicate that the Democrats support the amendment. We believe that it is a minor improvement in the interpretation being more specific in the application of the clause.

The Hon. CARMEL ZOLLO: Perhaps the following will clarify the matter. It is not about training from previous employment: it is only about training in the particular job we are talking about. Concerns were raised in the other place that the clause unamended may have required the employer to keep records relating to a previous job. The amended clause would make it clear that the training records to be kept are only for the employment under way presently.

The Hon. A.J. REDFORD: That sounds to me like the tiniest improvement, so I will not oppose it.

Amendment carried.

The CHAIRMAN: Mr Redford, I believe that you are opposing the whole of the clause.

The Hon. A.J. REDFORD: I want to make a contribution about whether or not clause 6 should remain as part of the bill. It is the opposition's view that this clause should not remain as part of the bill. Currently, section 19 of the act requires an employer, so far as is reasonably practicable, to ensure that employees are safe from injury. This proposal requires employers to keep information and records regarding occupational health, safety and welfare training. Under this amendment, employers will be required to keep those records.

According to the Stanley report, there is a wide disparity across workplaces with workers being treated differently according to their status. It has been suggested that there is often a lack of understanding that engaging in occupational health, safety and welfare activities requires the taking of action which includes having documentation as proof of that action. The Stanley report states that employers do not often address this requirement until they are under investigation. The report argues that the proposal to maintain records is evidence that compliance activities have been undertaken and should not be an onerous task for employers.

The first problem that I have with this clause is its specific vagueness. It does not say what records and it does not outline the nature of the information to be kept. What the government could have done in relation to the drafting of this clause is set out in a schedule to the regulations what information needs to be kept, but the government has not done that. For some reason it has made this obligation on employers specifically vague. The committee that looked at this was told in a submission from a government officer that there were submissions in relation to the cost to small business of the original documentation requirements in the consultation draft of the bill and that, as a result of that, they changed the proposal so that it took out any requirement to keep records in a particular way and those sorts of things.

So the cost to small business was raised in relation to the documentation of records, which, as I say, has been amended in this bill. The specific vagueness of this provision and the fact that the government has allowed this to become specifically vague seems to me to completely undermine the broad objective in relation to this amendment. The employer groups strongly opposed this. The South Australian Farmers Federation gave evidence that its view is that the cost of compliance and the imposition of a sanction for non-compliance is over the top. Business SA argued that the existing law is adequate. Indeed, section 20 of the existing act already requires employers to prepare and maintain occupational health and safety policies and written arrangements. Absent from those requirements is the requirement to keep records of training.

There is no doubt that this would place an increased administrative burden on small business. I am pretty confident that the honourable member has never run a small business. Parliament (both federal and state) is continuously passing laws—millions of them—and people engaged in small business probably proceed with their day-to-day activities in ignorance of some of these huge numbers of requirements with which they are expected to comply. In my view this is the sort of flaw which, if passed, will lead to substantial non-compliance by small business. Anyone who starts a small business, after the initial blaze of publicity that this is likely to lead to, is unlikely to remember that they have to keep training records, and I suspect they will not do it.

Small businesses are hard-pressed, as it is. They have to fill out income tax returns, GST returns, payroll tax, and other returns for the taking out of tax for employees. Small business is required to comply with a whole range of duties. Parliaments in their wisdom require small business to do these things but, generally speaking, they demand some tangible outcome as a consequence. I fail to see what tangible outcome the imposition of this added burden on small business will bring. I fail to see whether the fact that an employer keeps a record about the training of its employees will make one jot of difference. If it does become an issue in some form of investigation by a workplace inspector, it would seem to me that there would be other evidence available to those people to determine whether or not training has taken place, such as receipts, invoices, and the like. But this

requirement is so vague that I do not see—nor does Business SA or small business—what on earth this burden on them will achieve. For those reasons, the opposition opposes clause 6.

The Hon. NICK XENOPHON: In relation to the points made by the Hon. Mr Redford, can the government indicate why consideration was not given to dealing with this by way of regulation so that it would be more prescriptive, or at least give some guidance, particularly for small businesses? I am supportive of the broad thrust of the amendment, but I want it to be as effective as possible.

I also ask the minister how the government sees it working in terms of information and records. For instance, if an employee has gone off to a particular course and can find the receipt for that course, will that comply with it? In terms of its definition, 'to keep information and records', does that mean that it has to be instantly available or, if one could find through a chain of evidence that an employee has been to a course, would that satisfy the requirement? Further, could 'information', indeed, be oral information? Could the memory of an employer, who says, 'I sent one of my employees off to this course six or 12 months ago,' satisfy the provisions of this amendment?

The Hon. CARMEL ZOLLO: Perhaps I will respond to the shadow minister first, in general, about this clause. The bill proposes that an employer shall, as far as is reasonably practicable, keep information and records relating to occupational health, safety or welfare training undertaken by any of the employees in connection with their employment. The opposition's amendment deletes the proposal in the bill. So, clearly, we are unable to support its amendment.

There are existing requirements under section 19(3) of the Occupational Health, Safety and Welfare Act 1986 for employers in regard to occupational health and safety training. For example, section 19(3) provides:

> . . . an employer shall, so far as is reasonably practicable—
> (d) ensure that any employee who is to undertake work of a hazardous nature not previously performed by the employee receives proper information, instruction and training before he or she commences that work; and
> (f) ensure that any employee who could be put at risk by a change in the workplace, in any work or work practice, in any activity or process, or in any plant—
> (i) is given proper information, instruction and training before the change occurs; and
> (ii) receives such supervision as is reasonably necessary to ensure his or her health and safety; and
> (g) ensure that any manager or supervisor is provided with such information, instruction and training as are necessary to ensure that each employee under his or her management or supervision is, while at work, so far as is reasonably practicable, safe from injury and risks to health;

In the event of an accident, or if inspectors are attempting to establish whether the law has been complied with, records of training that has been undertaken will assist an employer in demonstrating that they have met the existing legal requirements.

It is also highly likely that most employers keep records relating to such training for taxation or business accounting purposes. The majority of the parliamentary committee, including two non-government members, supported the proposal to require employers to maintain records of training provided to employees. The format for documentation is at the discretion of the business. This means that any existing records in any format that show training of employees may be used—it may be tax records, receipts relating to the training of employees or other normal business records. The shadow minister mentioned that the requirement for keeping records is not prescriptive enough. I am advised that this approach, which gives business flexibility in how they keep records, was specifically requested by business groups. So, the simple fact is that, if there is a written record, it stops arguments about what has actually taken place.

In response to the Hon. Nick Xenophon's comments, the minister in the other place has also indicated that non-binding templates will be available for those who choose to keep them. Also, 'record' is defined in clause 4 of the bill, and I ask the Hon. Nick Xenophon to look at that particular clause. That might be easier.

The Hon. A.J. REDFORD: I understand that there are something like 40 000 to 50 000 small businesses in South Australia which employ people. Not all of them avidly read *Hansard* or listen intently to what we do in this place. What does the government propose to do to let businesses know of this new obligation following the passage of this bill?

The Hon. CARMEL ZOLLO: We would propose to have a promotional campaign and work with business associations to advise small businesses.

The Hon. A.J. REDFORD: Given that we are being subjected to $200 000 worth of advertising—

The Hon. Nick Xenophon: It's $250 000.

The Hon. A.J. REDFORD: —$250 000—with the Premier marching up and down Adelaide Airport with a big grin on his face, is the government proposing to spend anything like that in promoting this initiative?

The Hon. CARMEL ZOLLO: I advise the honourable member that no final decision has been made as to the amount of money that will be spent.

The Hon. A.J. REDFORD: Can I get an undertaking from the government that, if there is likely to be a promotional campaign, the 50 000-odd small businesses will be spared the voice and the photo of the Premier?

The Hon. NICK XENOPHON: I am grateful to the minister for her response to my series of questions. My understanding is they are still unanswered in this respect. I asked about the definition of the word 'information'. The employer may say orally, 'I sent them off to this training course'. We know the definition of 'record', and I appreciate that and am familiar with the definition in the interpretation clause of this bill. But it says they must keep information and records. I am wondering how the word 'information' would operate in the context of this particular clause.

Again, I say that I am supportive of the concept that there ought to be records kept, and I agree with the government's intent. First, I am just trying to work out what work the word 'information' has to do in the context of this bill; and, secondly, given what the minister said in the other place about having non-binding templates, if people are not complying with this clause, will consideration be given to putting in place regulations and that we go down that path to make it more effective?

The Hon. CARMEL ZOLLO: I thank the honourable member for his indication of support for the concept. We would be looking for more than oral advice. The minister in the other place gave a commitment that we would not be making binding requirements about these records.

The Hon. NICK XENOPHON: Does the minister concede, in relation to the word 'information,' in order to comply some employers could say, 'Well, I'm just telling you orally what has happened.' Could some employers get away with that?

The Hon. CARMEL ZOLLO: I do not think they could because the legislation says 'and records'.

The Hon. T.G. CAMERON: I would like to follow up on the point the Hon. Nick Xenophon has raised. He referred to the words 'keep information'. It is followed by the words 'and records', which means we are able to look at information separate from what records are kept. The clause provides 'keep information relating to occupational health, safety and welfare training undertaken by any of the employer's employees' during their employment with the employer. I did not like the first draft the government came up with, but I am disposed towards supporting the second draft. The Hon. Nick Xenophon's question does cause me some concern. I have no doubt there will be penalties elsewhere for failing to abide by this clause.

If it is 'keep information relating to the occupational health, safety and welfare training', that would that mean every time an employer trains an employee in how to perform a function safely—because that is one of the intrinsic responsibilities they have under the act; that is, to provide a safe working environment and training—does it mean the employer will be required to keep information? If not, what are the special circumstances under which an employer is required to keep information that is consistent with the line the Hon. Nick Xenophon has been taking?

The Hon. CARMEL ZOLLO: I am advised that the language in the bill has picked up on the language from section 19(3) of the Occupational Health, Safety and Welfare Act. Section 19(3) provides:

(b) keep information and records relating to work-related injuries. . .

The Hon. T.G. Cameron interjecting:

The Hon. CARMEL ZOLLO: Well, if you are keeping something, you are keeping something that is in the written—

The Hon. T.G. CAMERON: An employer is charged with the responsibility of training people. Under the ambit of this act he is required to train people safely; that is, he is required to point out the inherent dangers when performing a function and what safety equipment and procedures should be complied with. If they are required to keep information relating to occupational health and safety, I wonder how far the net is being cast. It seems to me that an employer may be required to keep all this information. If that is the case, that would be onerous. Secondly, failure to keep information and records would incur what penalties?

The Hon. A.J. Redford: A $10 000 fine.

The Hon. T.G. CAMERON: It's just a nonsense.

The Hon. CARMEL ZOLLO: I am advised that all this really is subject to its being reasonably practicable, as is prescribed in the act.

The Hon. IAN GILFILLAN: The Democrats support the amended clause. I am very conscious of having been involved in small business through farming—perhaps a little smaller than it wants to be these days—and to be encumbered by a whole lot of onerous bureaucracy and red tape can be infuriating, particularly if it appears to be quite futile, which a lot of it does. This, however, does not. This actually goes to the heart of keeping people who are employed in any small industry—large industry as well—possibly safer and it seems to me to be a small obligation for us to have this measure as part of a requirement of an employer in whatever circumstances they are. So I indicate Democrat support for the amendment.

The Hon. A.J. REDFORD: Why has the government put it in such a form that this attracts a $10 000 fine?

The Hon. CARMEL ZOLLO: I advise the honourable member that this has been placed in section 19 and there are existing provisions in place for penalties in breach of that section.

The Hon. T.G. CAMERON: Perhaps I am not prepared to be as generous as the Hon. Ian Gilfillan in relation to this clause. Again I put the question to the government. I do this because it might serve as some guidepost to a small business or a small employer, but if they are required to keep information and records relating to occupational health, safety or welfare training—and that is what it says; it does not say specifically occupational health, safety or welfare training—and if an employer provides such training as part and parcel of the day-to-day instruction of how to perform work, that is, that they are required to train people safely, is an employer required to keep information and records relating to that, or is it only where an employer provides specific occupational health, safety or welfare training, because they are required to provide that with day-to-day instruction?

The Hon. CARMEL ZOLLO: I advise the honourable member that all this is governed by the fact that it is to be reasonably practicable, and there does need to be a flexible approach. It says so in the bill that we are debating.

The Hon. T.G. CAMERON: With due respect to the minister, her advice that it needs to be reasonably practicable and that it needs to be flexible is hardly informative.

The committee divided on the clause as amended:

AYES (10)

Cameron, T. G.	Evans, A. L.
Gago, G. E.	Gazzola, J.
Gilfillan, I.	Holloway, P.
Kanck, S. M.	Sneath, R. K.
Xenophon, N.	Zollo, C. (teller)

NOES (7)

Dawkins, J. S. L.	Lensink, J. M. A.
Lucas, R. I.	Redford, A. J. (teller)
Ridgway, D. W.	Schaefer, C. V.
Stephens, T. J.	

PAIR(S)

Roberts, T. G.	Lawson, R. D.
Reynolds, K.	Stefani, J. F.

Majority of 3 for the ayes.

Clause as amended thus passed.

Clause 7.

The Hon. A.J. REDFORD: The opposition opposes this clause. This clause seeks to substitute 'Advisory Committee' with 'Authority'.

The Hon. IAN GILFILLAN: The Democrats support the term 'Advisory Committee'.

Clause negatived.

Clause 8.

The Hon. A.J. REDFORD: The opposition opposes this clause. Clause 8 proposes to strengthen the statement relating to employers' and self-employed persons' responsibility to third parties. The principal act requires that employers and self-employed persons take 'reasonable care to avoid adversely affecting the health or safety of any other person'. This bill is said to clarify the extent of those responsibilities and carries a maximum penalty for noncompliance of $100 000 for a first offence and a maximum penalty of $200 000 for subsequent offences.

The opposition has some difficulty with the way in which this clause is drafted. The Stanley report argued that the current law is negative, as opposed to placing positive actions and delegations on an employer. As a matter of principle, the imposition of positive obligations on people attracting substantive criminal sanctions is not a preferred course of action. It is our view that, if you are going to maintain substantive criminal sanctions, it is more appropriate to express obligations on the part of employers and self-employed persons in a negative form (that is, thou shalt not undertake certain activity), as opposed to placing on them an unspecified and unstated positive obligation. In other words, what this clause can do is impose on employers and self-employed persons certain obligations which are not specifically defined and stated, and then thereafter seek to impose some pretty significant penal sanctions on those particular people—indeed, a $100 000 fine for a first offence and a $200 000 fine for a second offence.

Mr Chairman, you would no doubt be aware that it is not beyond the realms of a court to use provisions such as this to change obligations in terms of the development of the common law and keeping apace with developments in industry. We do not have a problem with that as a general principle, but when you juxtapose an onus such as that with such heavy penalties it is our view that that is wrong in principle.

I refer now to the third issue that concerns the opposition. Whilst section 22 imposes penalties and can lead to prosecutions, it is just as important to note that it can also lead to civil liability for the tort of breach of statutory duty. It is not clear—despite a series of questions put to various officers by the member for Heysen (Isobel Redmond) and me when we were sitting on the committee—whether or not this section could be used to avoid section 17C of the Wrongs Act which relates to duties of occupiers and owners of land to third parties.

We visited that piece of legislation not long ago. It was strongly opposed by the Hon. Nick Xenophon, and I am sure this amendment is bringing a big smile to his face because he knows that we do not have to worry about occupiers' liability any more. By imposing a positive obligation on landowners or occupiers, because generally employers and self-employed people actually occupy businesses where they come from, there will be an onus upon them which can found a substantial civil liability. So, all the work we did last year in terms of changing liability law so that we can drive down premiums, so that business and others can afford to have insurance, will be undone by this measure.

I can see that the Hon. Nick Xenophon, now that he has the gist of my argument, is very excited about this. He will probably lead, passionately, debate about the need for a clause such as this. I say this in the nicest possible way, but I know that the Hon. Nick Xenophon will be able to look us all in the eye because by supporting this at least he will be consistent, which is something of which the government cannot be accused. While we have the Treasurer running around beating his drum about how tough he is on the legal profession and how he is going to fix up the insurance market, that genius, the minister for WorkCover, is wandering around sneaking through the backdoor provisions which will effectively and practically return the law to the way it was. Now the Hon. Nick Xenophon looks really excited, because that is a position for which he no doubt argued passionately and strongly.

That is the reason why we on this side of the chamber oppose the provision. In summary, we oppose it because, first, it imposes criminal sanctions on employers for unstated obligations—that is, positive obligations—and we think that is wrong in principle. Secondly, this is a good way to get around all the legislative amendments that we made to the Wrongs Act last year in order to drive down premiums. Those are the two reasons, and I look forward to the government's response.

The Hon. CARMEL ZOLLO: As I indicated, the government will object to this clause. The bill proposes to amend section 22(2) of the act which deals with an employer's duty to people who are not employees. The section currently provides that an employer or self-employed person must take reasonable care to avoid adversely affecting the health or safety of any other person (not being an employee employed or engaged by the employer or the self-employed person) through an act or omission at work.

The difficulty with the current section is not with what it actually means in terms of how the courts have interpreted it; it is how it is perceived. I understand that, as part of the Stanley report process, it became clear that the use of language in the negative in the provision to avoid adversely affecting health or safety has led to a wrong perception in the industry that there is not a positive obligation to protect health and safety. The wrong perception has been that there is simply an obligation not to diminish safety. The bill proposes to address this perception, whilst not disturbing the substantive meaning of the provision, by recasting it in positive terms to provide:

> An employer or self-employed person must ensure, so far as is reasonably practicable, that any other person (not being an employee employed or engaged by the employer or the self-employed person) is safe from injury and risks to health—
>
> (a) while the other person is at a workplace that is under the management and control of the employer or self-employed person; or
>
> (b) while the other person is in a situation where he or she could be adversely affected through an act or omission occurring in connection with the work of the employer or self-employed person.

I am advised that this reflects the way that the provision has been interpreted and applied by the courts. We want to ensure that the industry better understands its existing obligations. We want to make sure that obligations are well understood because, if they are not, it is less likely that the law will be complied with.

The shadow minister's amendment proposes to delete this clarifying provision and we believe that should not be supported. The Hon. Mr Redford said in his second reading contribution that it is not clear whether this section could be used to avoid section 17C of the Wrongs Act, which relates to the duties of occupiers and owners of land to third parties. I am advised that the Wrongs Act has been repealed and that it has been superseded by the Civil Liability Act.

I am also advised that this provision does not circumvent the relevant provision of the Civil Liability Act. In fact, the transcript taken by Hansard records the following exchange between the member for Heysen in the other place and Mr John Walsh, chair of the Law Society's Accident Compensation Committee, before the Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation when it was considering the bill. Mrs Redmond from the other place said:

Do you see this provision as extending the law as it applies at the moment? Would you see it as extending the law or simply restating the law as it is?

Mr Fountain responded:

I do not think it extends the common law. I think it restates the common law in a slightly different form.

The Hon. Nick Xenophon: Mr Fountain or Mr Walsh?

The Hon. CARMEL ZOLLO: Mr Fountain responded. Positively stated obligations are found elsewhere in this act: section 19 is but an example.

The Hon. IAN GILFILLAN: On page 26 of the seventh report of the Occupational Safety, Rehabilitation and Compensation Committee on the SafeWork SA bill, upon which both the Hon. Angus Redford and I served (my place has now been taken by the Hon. Nick Xenophon), it is stated:

The Committee was concerned that the proposed amendment to section 22(2) might impose a higher duty on employers to ensure that third parties are safe from injury. The Committee considered whether the employer's duty would be extended by the inclusion of 'others' into the wording of section 22(2) and impose a higher duty on employers potentially extending common law claims.

I intend to read from a couple of these pages because they are particularly pertinent to the discussion. The report stated:

Ms Patterson argued that the proposal is simply a clarification of the existing duty and does not extend the range of people to whom the employer owes a duty of care. She stated that the proposal should not result in increased cost to business because it is an existing duty. She went on to state that legal advice provided to Workplace Services stated that the common law duty of negligence already imposes a duty on employers to avoid causing unreasonably foreseeable harm to others and that '. . . the only effect of section 22 is to create a criminal offence in circumstances where the common law only imposes a civil liberty'. The minister confirmed that the proposal seeks to clarify the employers existing duty of care to 'others' and does not seek to expand that duty. The use of the wording 'must ensure, so far as reasonably practicable, that any other person is safe. . . from injury and risks to health' is a clear and more proactive statement than the 'must take reasonable care to avoid adversely affecting the health and safety of any other person . . . through an act or omission at work' contained in the current act.

Business SA supports the proposed amendment even if it extends to such things as building firms undertaking renovations at private homes. Mr Frith advised that he was comfortable with the principle of protection of the public from work activities and related risks. '. . . we have no problems with the principle. If it is in a domestic situation, again, third parties should not be placed at risk from the work being undertaken. So, inherently, I believe we would be supportive of it even if it extends to that level'.

Business SA and the Law Society both expressed a view that the proposed amendment did not fundamentally change the legislation. 'This clause will not provide a new course of action for third parties, as third parties can already seek compensation through common law.'

There is an observation that the Association of Independent Schools opposed the proposal and another paragraph, which stated:

The committee noted that the words 'reasonably practicable' are unclear because they were not defined. In a recent review of the Victorian Occupational Health, Safety and Welfare Act 1985 undertaken by Chris Maxwell QC (the Maxwell Report) it was noted that the 'so far as the reasonably practicable test' is ill-defined, Maxwell argued that '. . . the factors which determine what is and is not practicable are ill-defined and poorly understood. The relevant facts are: the severity of the risk; the state of knowledge about the risk and the means of eliminating it, and the cost of doing so'.

A further quote from Maxwell's report on this is as follows:

. . . a defendant employer should bear the onus of showing that it was not 'reasonably practicable' for the employer to take the necessary safety precautions. This is the position in New South Wales and Queensland.

The recommendations from the committee were:

Recommendation 4. A majority of the Committee supports the proposed definition relating to the employer's duty of care as outlined in the bill [with which I agree]. Recommendation 5. A majority of the Committee recommends that the term 'reasonably practicable' be defined in accordance with the recommendation of the Maxwell Report (e.g. 'whatever can be done to eliminate the risk must be done unless the cost of doing so is 'grossly disproportionate' to the risk'). The Committee further recommends that the assessment of cost and risk should be an objective measure.

I believe that that is a very constructive contribution and gives a background to the degree of support for the principle that exists in the outer community. I am sorry in a way that the government did not take a bit more note of the work of that committee and showed its concern about the vagueness, or apparent vagueness, of the words 'reasonably practicable'. Maybe the minister can be advised as to whether the government did consider the recommendations of this committee and its reasons for not responding to it.

The Hon. A.J. REDFORD: I think I can help. In the letter from the minister to the chair of the Occupational Safety, Rehabilitation and Compensation Committee dated 8 March 2005, in so far as recommendation 5 is concerned, the minister said as follows:

The recommendation is not consistent with the bill. The concept of 'reasonably practicable' has existed in South Australian OHS legislation since 1972, is used in all other OHS legislation around the country and is well established in case law. Other OHS acts in Australia do not define the term, although the committee notes the recent Victorian review of OHS legislation (the Maxwell review) recommended a definition. Workplace Services will continue to develop (in consultation with employers and unions) extensive guidance material to ensure understanding of requirements. The government does not propose to amend the bill as recommended by the committee.

I trust that answers the Hon. Ian Gilfillan's question—not that I am seeking to do the government's work.

The Hon. IAN GILFILLAN: I express my deep gratitude to the shadow spokesperson for the opposition in providing an almost word-perfect answer from the government. It will save a lot of time.

The Hon. CARMEL ZOLLO: Why does the member say that it will save a lot of time? I was going to say what the government did when we wrote to the committee. The Hon. Angus Redford has read what we wrote to the committee, so I thank him as well.

The Hon. A.J. REDFORD: That was the good bit. I also acknowledge and thank the Hon. Ian Gilfillan for sitting out the debate on the committee report, because I will be the first to concede—

The Hon. Ian Gilfillan: You disagreed with both those recommendations of the committee.

The Hon. A.J. REDFORD: Yes, that is right, and we disagreed with them for the reasons I have set out. I want to respond to the minister's comments about the difference between a breach of statutory duty and the responsibility on an occupier pursuant to, as the minister correctly pointed out, the new Civil Liability Act which was only proclaimed after the report was tabled. Section 19 of the Civil Liability Act 1936 defines certain terms and says:

'occupier' of premises means a person in occupation or control of the premises, and includes a landlord;

It then goes on and says the following, pursuant to section 20(1) of the act:

Subject to this part, the liability of the occupier of premises for injury, damage or loss attributable to the dangerous state or condition of the premises shall be determined in accordance with the principles of the law of negligence.

The position of a person who is liable pursuant to a breach of statutory duty is exactly that—that is, that liability in terms of a breach of statutory duty is determined in accordance with the law of negligence. But then section 20(2) says:

> In determining the standard of care to be exercised by the occupier of premises, a court shall take into account. . .

It then goes through eight matters which the court should take into account. They are eight matters which a court has to take into account in relation to an occupier's duty of care; they are not matters which are taken into account by any statutory direction in terms of a breach of statutory duty. The breach of statutory duty is considered by a court in terms of the old laws of negligence, and it is not constrained by those matters which are set out in section 20(2)(b), and on that basis I part company with Mr Fountain.

Let me quickly go through some of the things that are taken into account when considering an occupier's duty of care but are not taken into account when considering an employed person's or self-employed person's duty in so far as the third person is concerned pursuant to this clause. First, the nature and extent of the premises is to be taken into account; secondly, the nature and extent of the danger arising from the state or condition of the premises is taken into account; and, thirdly, the circumstances in which the person alleged to have suffered injury became exposed to that danger is to be taken into account. That is the sort of situation where you get criminals wandering on to properties and injuring themselves, and that is the provision that enables a defence lawyer or an insurance company to say, 'We are not liable. He wandered on and caused himself the problem.' That does not apply in relation to this breach of statutory duty.

Paragraph (d) talks about the age of the person alleged to have suffered injury and the ability of that person to appreciate the danger, and one might think that that would apply in relation to these circumstances because that is a matter that would be taken into account in terms of contributory negligence. Paragraph (f) says:

> the measures (if any) taken to eliminate, reduce or warn against the danger;

and paragraph (g) says:

> the extent (if at all) to which it would have been reasonable and practicable for the occupier to take measures to eliminate, reduce or warn against the danger;

Neither of those provisions is statutorily applicable to a breach of statutory duty. There are cases and examples where a breach of statutory duty can be imposed almost akin to strict liability. That is something that needs to be taken into account when considering the differences between an obligation placed on the owner of land as an occupier and the obligation imposed on an employer as a consequence of this provision.

There are other factors contained in section 20 of the Civil Liability Act which seek to reduce the incidence of liability on the part of occupiers which do not apply in relation to a breach of statutory duty by an employer or a self-employed person.

The Hon. Nick Xenophon interjecting:

The Hon. A.J. REDFORD: Yes, it is absolutely wrong, and I am sure the Hon. Nick Xenophon would be pleased to hear me say that on the part of his ongoing and consistent—unlike the government's—fight on behalf of plaintiffs throughout the state. Subsection (3) provides:

> The fact that an occupier has not taken any measures to eliminate, reduce or warn against a danger arising from the state or condition of premises does not necessarily show that the occupier has failed to exercise a reasonable standard of care.

That is a pretty good clause for an occupier. He can say, 'I did not do anything. Your Honour, that does not necessarily show that I have failed to exercise a reasonable standard of care.' In relation to the breach of this statutory duty, if you argued that point you would get laughed out of court. That does not apply. That protection to employers who are occupiers no longer exists if this clause is successful. It continues:

> (4) . . . an occupier's duty of care may be reduced or excluded by contract. . .

A breach of statutory duty cannot be reduced by contract. If someone agrees to take the risk in terms of an occupier's liability, then that can be used to restrict, reduce or alter the extent of the liability of an occupier. That does not apply at all in any way, shape or form in relation to an employer and that employer's duty—the now so-called positive duty—to a third party. It continues:

> (5) Where an occupier is, by contract or by reason of some other act or law, subject to a higher standard of care than would be applicable apart from this subsection, the question of whether the occupier is liable for injury, damage or loss shall be determined by reference to that higher standard of care.

There it is! Absolutely specifically it comes out in black and white. It points out, quite clearly, the extent and the degree to which Mr Fountain was wrong when he told us that it makes no difference. It provides that where there is a statutory obligation, a higher obligation—which is what this seeks to do—then it is the higher obligation that shall apply. There we have it!

Having spent hour after hour, and probably a number of days, seeking to ameliorate the insurance crisis last year and early this year, now, through the back door, we bring in this provision, and insurers will start saying, 'Sorry, we don't worry about occupier's liability any more, but your role as an employer or self-employed person, and your duty to third parties, is now higher, so your premiums will go back and all that work we did last year is not worth a zolt.'

Indeed, subsection (6) provides that an occupier owes no duty of care to a trespasser unless the danger was reasonably foreseeable or 'the nature and extent of the danger was such that measures which were not in fact taken should have been taken for their protection'. That provision does not apply. I hope the government understands that is what we are dealing with here. The government came in here last year with policies to avoid the insurance crisis and it now wants to bring in provisions which re-insert it. That is position of the opposition. We do not resile from it. The Hon. Mr Nick Xenophon has been consistent throughout this debate, the opposition has been consistent throughout the debate, but, typically, the government has been totally inconsistent.

The Hon. CARMEL ZOLLO: The Hon. Ian Gilfillan read out a paragraph that referred to the report of the Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation, which clearly did state the position, but the Law Society, Business SA and the government all agree that this does not fundamentally change the legislation. To the extent that there is any difference in substance between this legislation and other legislation, that difference does not change; and we obviously agree with this analysis.

The Hon. NICK XENOPHON: I want to take issue with the Hon. Angus Redford. He said earlier in his contribution that he thought I was very excited: I am just excited about this. I hope he is right. It does concern me that this government has continued to erode the rights of the injured. I support this amendment, because it will put a positive duty

on employers and self-employed persons in terms of the circumstances it seeks to encompass.

I have a question for the government: given that there will be significant penalties, what does the government say will be the educational program or publicity campaign to ensure people are aware of the new obligations? They are onerous—I am not saying unreasonably onerous—but they are significant positive obligations with significant maximum penalties. I think, in fairness, people should be aware of these new penalties. I support the principle espoused in it. I await with interest whether the Hon. Angus Redford or Mr John Fountain is right. I am just hoping it is the Hon. Mr Redford on this occasion.

The Hon. CARMEL ZOLLO: The honourable member's question is based on a wrong premise. There are no new penalties involved.

The Hon. NICK XENOPHON: But the scope of the legislation is broader than the existing legislation.

The Hon. CARMEL ZOLLO: No, it is not. That is the whole point we have been making.

The committee divided on the clause:

AYES (9)

Gago, G. E.	Gazzola, J.
Gilfillan, I.	Holloway, P.
Kanck, S. M.	Reynolds, K.
Sneath, R. K.	Xenophon, N.
Zollo, C. (teller)	

NOES (8)

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

PAIR(S)

Roberts, T. G.	Lawson, R. D.
Evans, A. L.	Cameron, T. G.

Majority of 1 for the ayes.

Clause thus passed.

Clause 9.

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

Page 12—Line 21—Delete 'Authority' and substitute: Advisory Committee.

It is consequential.

Amendment carried; clause as amended passed.

Clause 10.

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

Page 12—
Line 24—Delete 'Authority' and substitute: Advisory Committee
Lines 25 and 26—Delete subclause (2).
Line 31—Delete 'Authority' and substitute: Department.

I indicate that the amendments are all consequential.

Amendments carried; clause as amended passed.

Clause 11.

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

Page 13, line 9—Delete 'Authority' and substitute: Advisory committee.

The Hon. A.J. REDFORD: I indicate that it is consequential.

Amendment carried.

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

Page 13, line 12—Delete '10' and substitute'20'.

As I indicated in my second reading contribution, the opposition opposes the definition remaining at 20. As we indicated, it was our view that the ABS define a small business as having fewer than 20 employees, and we do so for good reason. It is our view that the definition of small business should remain consistent, and we seek to maintain that consistency.

The Hon. CARMEL ZOLLO: The government opposes the amendment. The bill proposes that if an employer employs 10 or fewer employees, and the employer is not subject to a supplementary levy, the health and safety representative, deputy or member of a health and safety committee may take time off only to attend training as reasonably allowed by the employer. The opposition's proposal is to change the threshold to 20 or fewer employees. The shadow minister said in his second reading contribution, 'So, I do not know where this figure of 10 employees came from. Obviously the minister plucked it out of the air.' It is obvious where this figure came from: it has been in the act since 1990. The threshold in the existing act is 10, and no change is proposed in the bill. The rationale is that, if a business is very small—fewer than 10 employees—it may be unreasonable for all employees to attend training at the same time. The use of a threshold number is for the purpose of defining entitlements to time off for the training of health and safety representatives. This has existed in the Occupational Health, Safety and Welfare Act since the early 1990s. Many small businesses have complied with their obligations under the act over many years.

The Hon. IAN GILFILLAN: I refer again to the report that I quoted earlier—the seventh report on the SafeWork SA bill. At page 33 it indicates how the committee deliberated on the matter. There are a couple of quotes to be put into the debate, one being from the Law Society, which supports the principle of increased training requirements but argued 'we believe the threshold of 10 contained in section 31A(2)(a) is probably set too low for some reason'. A little higher on the same page is this statement:

> The bill appears to set the threshold too low in comparison to the Australian Bureau of Statistics definition, which defines 'small business' as a business with fewer than 20 employees.

A majority of the committee (and I was in the majority) recommended that the threshold number of employees for small business be set at the level defined by the Australian Bureau of Statistics, which is 20, which indicates that the Democrats will be supporting the amendment as moved by the Hon. Angus Redford. I am unclear on what is happening because there are two pages of the Hon. Angus Redford's multitudinous amendments. There are three amendments to clause 11. If I am reading it correctly, the original draft indicated that the clause would be opposed. I am assuming that all four amendments are alive.

The Hon. A.J. Redford: Yes.

The CHAIRMAN: The Hon. Angus Redford is seeking to amend it to make it more acceptable, based on the premise that, if he fails in his opposition to this clause, it is in a better state. I am assuming that that is the logic behind it.

The Hon. Ian GILFILLAN: If he is successful in the amendments to the clause, does the opposition still intend to oppose the clause as amended? We will support the amendment to substitute 20 for 10. However, I would like that question answered by the Hon. Angus Redford.

The Hon. A.J. REDFORD: We will still oppose it.

The committee divided on the amendment:

AYES (11)

Dawkins, J. S. L.	Gilfillan, I.
Kanck, S. M.	Lensink, J. M. A.

AYES (cont.)

Lucas, R. I.	Redford, A. J. (teller)
Reynolds, K.	Ridgway, D. W.
Schaefer, C. V.	Stefani, J. F.
Stephens, T. J.	

NOES (4)

Gago, G. E.	Holloway, P.
Sneath, R. K.	Zollo, C. (teller)

PAIR(S)

Lawson, R. D.	Roberts, T. G.
Evans, A. L.	Gazzola, J.
Cameron, T. G.	Xenophon, N.

Majority of 7 for the ayes.

Amendment thus carried.

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

Page 14, line 18—Delete 'Authority' and substitute 'Advisory Committee'

This amendment is consequential.

Amendment carried.

The Hon. A.J. REDFORD: The opposition opposes this clause. I went through this in some detail in my second reading speech, and I do not propose to do so again. However, this is the requirement vis-a-vis training.

The Hon. CARMEL ZOLLO: Under the existing legislation, only health and safety representatives have a guaranteed right to undertake occupational health and safety training without loss of income. Clause 11 of the bill proposes to provide rights to undertake occupational health and safety training without loss of income to deputy health and safety representatives and health and safety committee members. This amendment proposes to delete that extension of health and safety training. Training and education about workplace safety is one of the best ways to deliver safer workplaces. The more people are educated about identifying risks and determining how to take appropriate action, the more injuries, diseases and workplace deaths we can avoid.

Health and safety representatives do an extremely important job and often get little or no thanks for their efforts. I would like to take this opportunity to thank them on the record. If health and safety representatives are to do their job they need decent support from people who take on roles as deputy health and safety representatives and who serve on health and safety committees. If we are serious about workplace safety we need to make sure that the people who perform these roles get access to training.

The shadow minister said that there is no provision for credit to be given to existing occupational health and safety programs provided by employers. I am advised that at present employers can be and are given credit for prevention programs that they undertake. That will not change. The shadow minister also said that the bill sets out provisions in relation to the election of health and safety representatives but that there is no requirement for any consultation with employers regarding the process or the timing of such elections. The shadow ministry is plainly wrong. Clause 10(3) of the bill, which was inserted in debate in the other place, provides:

The employer must be consulted about when the election is to be carried out before the arrangements for the election are finalised.

The Hon. IAN GILFILLAN: I indicate the Democrats' support for the clause as amended. For the record, the Occupational Safety, Rehabilitation and Compensation Committee's report supports the proposal and the transitional provisions provided that there is adequate consultation with the relevant industry bodies. I am not in a position to say how thoroughly the consultation process was followed, but it is interesting that in this case the committee appears to have been unanimous in supporting this measure.

The Hon. NICK XENOPHON: I indicate my support for this measure in terms of training. In terms of the transitional provisions to which the Hon. Mr Gilfillan refers, what consultation will there be before this provision is implemented?

The Hon. CARMEL ZOLLO: I am advised that the advisory committee would be involved, and that would be a key part of the consultation. We ordinarily also consult with industry bodies about these issues.

Clause as amended passed.

Clause 12.

The Hon. A.J. REDFORD: Mr Chairman, before moving my amendment, I understand the government has an amendment. It may well be that on hearing the explanation from the government we will accept the government's amendment.

The Hon. CARMEL ZOLLO: I move:

Page 14, line 22—
Delete 'Authority' and substitute:
Advisory Committee

The effect of this amendment would be to allow consultants to be approved by the advisory committee, as had been intended for the authority.

The Hon. A.J. REDFORD: I note that, if the government's amendments are accepted, the minister would not have any role, whereas our amendments would have allowed the minister to continue to have a role. I just wonder what the explanation for that is.

The Hon. CARMEL ZOLLO: I advise the honourable member that we wanted to give a role to the stakeholders. That was the nature of our bill, and we stand by that.

The Hon. A.J. REDFORD: I understand giving a role to the stakeholders: I just wonder why the government is removing the minister out of the equation.

The Hon. CARMEL ZOLLO: The answer to that would be that we thought this was an appropriate thing for them to make a decision about.

The Hon. A.J. REDFORD: Given that the minister is struggling with his existing workload, to take something off him is probably not such a big thing. The opposition supports the government's amendment and will not be proceeding with its amendment.

Amendment carried; clause as amended passed.

Clause 13.

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

Page 15—
Line 7—Delete 'consult with' and substitute:
obtain the agreement of
Line 8—After 'subsection (4)(b)' insert:
(and that agreement must not be unreasonably withheld)

The opposition is seeking to ensure that there is a greater level of agreement between a health and safety representative and an employer in relation to expenses that might be claimed under subsection (4)(b). At the moment, because of the way in which the government has drafted its bill, all the health and safety representative needs to do is consult and, irrespective of the result of that consultation, he or she can then proceed to help themselves to their employer's expenses in terms of travelling, meals, accommodation, parking fees or other matters prescribed by regulation.

At the moment, the health and safety representative can go to an employer and say, 'We want to stay at the Hilton,'

and the employer might say, 'Hang on, that is a bit unreasonable. We think that the Parkroyal or the Travelodge is a much more reasonable standard.' Under the way in which the government clause operates, having had that consultation, the health and safety representative can go off and stay at the Hilton. We are seeking to amend it so that an agreement must be reached. We also go on and say that that agreement must not be unreasonably withheld; in other words, an employer cannot be a dog in the manger. Obviously, the commission would intervene if an agreement cannot be reached. We are trying to be a bit more in the middle of this than the government's proposal.

The Hon. CARMEL ZOLLO: It is critical for health and safety representatives to be independent, to feel that they are independent and to be seen to be independent. The amendments moved by the shadow minister detract from that principle. We must reinforce in the minds of all concerned—health and safety representatives, employees and employers—that the role of the representative is, in fact, an independent one, and provisions that give the impression that they are beholden to the employer are inconsistent with that. In any event, the provision requires reasonable steps to be taken to consult with the employer and, for those reasons, we oppose the opposition's amendment.

The Hon. IAN GILFILLAN: The two amendments are acceptable to the Democrats, and we support them as a package. We believe that the right balance is achieved. Certainly, if it were essential that agreement had to be achieved in the face of an obstinate and aggressive employer there could be unacceptable difficulties. The foreshadowed amendment, which is to put after the clause '(and that agreement must not be unreasonably withheld)' is the clause that gives it an effective line of operation. I think that the extremes on either end are unacceptable. If you have such a hostile climate in which a health and safety representative is going to attack the employer by demanding quite unreasonable costs there needs to be some sympathy and recognition that that is not acceptable. On the other hand, we ought not to accept the obstinate employer who does not want to have a bar of this and is refusing to accept reasonable expenses. So, provided both those amendments are successful, we support both amendments. We hope they are successful.

The Hon. NICK XENOPHON: I indicate my support for these amendments. I agree with the sentiments of the Hon. Mr Gilfillan. I think this is a fair compromise. As the Hon. Angus Redford pointed out, having it open-ended and simply requiring consultation but not having any checks and reasonable expenses did not strike the right balance. That is why I support this amendment and the subsequent amendment of the Hon. Mr Redford.

The Hon. CARMEL ZOLLO: I indicate that we will not seek to divide. The numbers clearly are not with us.

Amendments carried.

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

Page 15, line 9—Delete 'Authority' and substitute: Advisory Committee

I indicate that this is consequential.

Amendment carried.

The Hon. IAN GILFILLAN: I feel obliged to make the observation that it seems a shame that there have been constructive amendments moved and worked through by the Hon. Angus Redford and it is regretful, having done that work, to oppose the measure, because I think it does not reflect what have obviously been some constructive contributions to the general formation of the legislation.

The CHAIRMAN: The Hon. Angus Redford has conceded that it was consequential on another vote and he is not proceeding with it. Is that the case, Mr Redford?

The Hon. A.J. REDFORD: I am not proceeding with my amendments, and the pertinent observations of the Hon. Ian Gilfillan have not been missed.

Clause as amended passed.

Clause 14 passed.

Clause 15.

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

Page 15, lines 23 and 24—Delete subclause (1) and substitute:
(1) Section 38(1)—delete 'or the Corporation'

I will be corrected if I am wrong, but my understanding is that this is consequential.

Amendment carried.

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

Page 15, lines 25 to 40, page 16, lines 1 to 21—Delete subclauses (2), (3) and (4)

I gave a fairly lengthy dissertation on the powers of inspectors in my second reading contribution and I do not propose to go through them again. Members might recall that pages 35 to 38 set out the arguments both for and against the increase of inspectors' powers. The opposition notes that the extensions were generally opposed by employer groups, and in my second reading contribution I went through the basis upon which these amendments were proposed. Indeed, a paper distributed by Business SA states the following, and we on this side adopt its reasoning:

> The proposed substantial increase in respect of inspectors' powers is not justified and must be reviewed. The powers of OHS inspectors currently already exceed those of the police. The proposed change regarding a requirement to provide name and place of residence has issues associated with personal privacy and must be deleted.

Indeed, we seem to be ever-increasing the powers of people and the state in all sorts of intrusive ways in the community today and it is pleasing to see that business is saying, 'Let's draw a line in the sand.' The report goes on:

> The requirement that a person must furnish information even if it leads to self-incrimination must be deleted, as it is contrary to acceptable community standards and expectations. While inspectors already have substantial powers, there is nothing in the act to provide for situations where an inspector is acting inappropriately.

It goes on and talks about restricting the powers of inspectors in relation to inappropriate action on their part, although I do not believe we have any amendments in relation to that. Our position is that we simply oppose this substantial increase in inspectors' powers.

The Hon. IAN GILFILLAN: The committee had a majority decision supporting the increase in inspectors' powers as proposed—which is code for indicating that the Liberals opposed the recommendation. I indicate Democrats' support for the proposal. It is far more complicated than just the simple impression that these people suddenly will be given draconian police-type powers. It is interesting that employer groups indicated that the number of inspectors was too low in comparison with interstate jurisdictions. There are various aspects to improve the efficiency and effectiveness of the powers of inspectors, which will need to be looked at sensitively.

SAFF quoted, quite accurately, that a farmer's having to virtually drop tools and then present in some totally physically awkward place is just unacceptable in the concept that this

should be a cooperative enterprise. I will not try to find the quote, but I think the meaning of what I am saying is clear. On balance, we believe the proposal should be supported.

The Hon. CARMEL ZOLLO: This amendment proposes to delete subclauses (2), (3) and (4). Clause 15(2) provides that inspectors or authorised persons may require people to state their full name and address, produce evidence of qualifications or competencies, attend for interview and produce relevant evidentiary material. It provides that other requirements reasonably connected with their role in administering the act may be imposed. This is clearly directed at allowing the proper investigation of workplace safety issues. If we want to get to the bottom of workplace safety issues and stop people getting hurt, reasonable powers are required for the people who have the tough job of enforcing our laws and helping people to comply.

Clause 15(3) provides that interviews may be recorded by video or audio. Again, this is a straightforward proposal to assist in investigations and protect potential defendants. Clause 15(4) provides for an increase in the rights of potential defendants. Under the existing act, the only basis for a refusal to answer questions is legal professional privilege—and that it is relevant to proceedings that are under way. I am advised that means that, even if information would incriminate a person, they are obliged to disclose it, unless it falls within the exceptions to which I have referred. This proposal helps to ensure that full information is available to protect people against self-incrimination except in relation to specified dishonesty situations. This provision is an important balance to other provisions where the powers of investigators are increased.

The majority of the parliamentary committee supports the clause as proposed in the bill. I am advised that the powers for fisheries officers under section 28 of the Fisheries Act 1982, the Environment Protection Authority under section 87 of the Environment Protection Act 1993, food inspectors or authorised officers from various state and local government bodies—and I refer the Hon. Angus Redford and the Hon. Ian Gilfillan, in particular, to section 37 of the Food Act 2001—and, also, officers from the Office of Consumer and Business Affairs under sections 77 and 78 of the Fair Trading Act are all the same as, or wider than, the proposed amendment to OH&S inspector powers. If we are serious about workplace safety, we must be serious about investigating safety issues. These provisions give the inspectorate the tools they need to do their job.

The Hon. A.J. REDFORD: Will the minister outline in as much detail as possible what training and qualifications inspectors have in relation to their current jobs?

The Hon. CARMEL ZOLLO: I advise the honourable member that they need to have done a six months' training course for national competencies for government inspectors. When recruited, they must have either industry experience or OH&S qualifications. I undertake to bring back further information at another time for the honourable member.

The Hon. A.J. REDFORD: I would be grateful if the minister could provide me with details of the six months' training and the prerequisites for industrial inspectors. The current section 38 gives some pretty broad powers to inspectors. They can enter at any time any workplace or any other place where plant to which the act extends by virtue of schedule 2. They can inspect the place, anything at the place and work in progress at the place. They can require a person who has custody or control of books, documents or records to produce such books, documents or records. They can examine copy and take extracts from any book, document or records, or require an employer to provide a copy of any books, documents or records. They can take photographs, films or video or audio recordings. They can take measurements, make notes, and record and carry out tests. They can require any person to answer, to the best of that person's knowledge, information and belief any question relating to the health, safety or welfare of persons at the workplace, or to any other matter to which the act applies.

That is a very broad power and, for the life of me, I do not know why the government wants to extend that particular provision. An employer can be required to produce a copy of any statement or record that is required to be prepared or kept under this act. That is a very broad set of powers. No-one came along to the committee and said, 'Hey look, we need these extra powers because we failed in that prosecution,' or 'We missed out in that investigation, because we didn't have sufficient powers.' Not one person, not one shred of evidence was brought to the committee other than to say, 'We just want to be consistent with other inspectors.' I am sorry, but that is not good enough. We continually watch people's rights being eroded over and over again. We have seen some pretty draconian legislation go through in the last few years, and we are continually given some justification for an increase in powers. I know that the Hon. Ian Gilfillan and I have voted from time to time for an increase of powers, but I also know equally that, when we have voted in favour of increases in powers, we have had a pretty compelling argument about the public interest put to us.

Nothing that has been put to us either at the occupational health and safety committee level or subsequently that indicates that there needs to be a significant increase in powers. All we have had in justification for this significant increase in powers is, 'Everybody else has got this power. Why can't we?' That is simply not good enough. If inspectors or government officials want an increase in powers, they had better come to this Legislative Council with a good reason. In the absence of a good reason these people are going to find out that the Legislative Council will protect those rights, and that is one reason why I am so proud to have served and continue to serve in this place: our passion is to protect these rights.

The Hon. Nick Xenophon: But you are going to leave us soon.

The Hon. A.J. REDFORD: Another 10 months. There is plenty to go.

The Hon. Carmel Zollo: You can come back.

The Hon. A.J. REDFORD: No, I will not be coming back. I urge all members to dispatch this claim and this grab for an increase in power to the boundary where it belongs.

The Hon. NICK XENOPHON: Whilst this should not be a determinant by itself as to whether the clause should be supported, I would be interested to find out from the government how similar these additional powers are to those in other states. If so, it might be a useful measure to learn how they are operating in those states if they have been in operation for some time.

The Hon. CARMEL ZOLLO: I advise the honourable member that there are variations from state to state but these are broadly similar.

The Hon. A.J. REDFORD: With respect to that answer, is the minister saying that there is identical legislation or there is not identical legislation?

The Hon. CARMEL ZOLLO: I do not think I said that. I said it is broadly similar.

The Hon. A.J. REDFORD: Which begs the question, what do you mean by 'broadly similar'? You are better off saying you do not know.

The Hon. CARMEL ZOLLO: I advise the honourable member that we do know, and we can go through all of them but it will take a long time. I will give New South Wales as an example. There is further power there to request proof of identity. There is general power to require anyone to furnish information and produce any documents. As I said, it is just an example.

The Hon. A.J. REDFORD: I do not know what 'broadly similar' means to the minister's mind but it is certainly different from what the average person would understand that 'broadly similar' means. I will give an example. This clause requires that, if an inspector or other authorised person suspects on reasonable grounds that a person has committed, is committing or is about to commit an offence against the act, the person must state his or her full name. The minister says that is broadly similar to New South Wales because New South Wales says you have to produce evidence of one's identity. There is nothing in this clause that requires anyone to produce any evidence of one's identity, so it cannot be said to be broadly similar. This is the problem. Government ministers cannot guess answers in the committee stage in the Legislative Council. They might be able to do it in another place because the government has the numbers, but they cannot do it here. There is nothing broadly similar about the example that the minister gave and what we have here, with the greatest of respect.

The Hon. CARMEL ZOLLO: I disagree with the honourable member's analysis. Our advice is that it would make us consistent with New South Wales, Victoria and Western Australia.

The Hon. A.J. REDFORD: Can the minister point out where there is any requirement in this bill on the part of a person to show proof of one's identity, because I cannot see it?

The Hon. CARMEL ZOLLO: As I said at the outset, our legislation is broadly similar. I refer the honourable member to clause 15(2), which inserts, after new section 38(1)(h), paragraph (i)(i), which provides:

> (i) to state his or her full name and usual place of residence;
>
> (ii) to produce evidence of any qualification or competency that is required. . .

The Hon. A.J. Redford interjecting:

The Hon. CARMEL ZOLLO: As I said at the outset, it is broadly similar but not identical. It makes us consistent with New South Wales, Victoria and Western Australia.

The Hon. A.J. REDFORD: Let us look at the next one. I do not need to comment on the previous answer as the minister is damned by her own answer. It provides:

> (j) if the inspector or other authorised person has reason to believe that a person is capable of providing information or evidentiary material relevant to the investigation of a suspected breach of this Act and the inspector or other authorised person believes that it is reasonably necessary to exercise a power under this paragraph, require the person to attend before a specified person on a specified day and at a specified place and time. . . to be interviewed and to produce any evidentiary material relevant to the investigation;

If you read that clause, you could walk up to just about anybody in the street and say, 'I want you to turn up at a particular time on a particular occasion because I think you've got some information and you have to answer these questions'.

The Hon. J.F. Stefani: Not even the police have those powers.

The Hon. A.J. REDFORD: As the Hon. Julian Stefani quite correctly observes, not even the police have such powers. If we look at the act itself, it says that if a person does not do that there is a $20 000 fine, so an inspector who wants to put someone out of business or go after someone can exercise that power. There is nothing in this bill that says it has to be done reasonably. There is nothing in the bill that would seek to protect people from the use of that power. We are not talking about employers but about anyone. There is not one jot of evidence, not one example or one circumstance brought to the parliamentary committee or to this committee to justify that extraordinary extension of power. An inspector could just about pull up anyone in the street and say, 'I think you've got information on this; I want you to turn up at such and such a place at such and such a time and you'll answer questions.'

The Hon. J.F. Stefani: Or else!

The Hon. A.J. REDFORD: Or else a $20 000 fine. If they turn up that day and don't like the answers they might get you back again and again until you give the right answers. We sit here being holier than thou about the Indonesian justice system, but we then start passing stuff like this, where inspectors are given carte blanche to harass employers going about their lawful business, trying to pay taxes so the minister can have a white car and a pension. It is unfair.

The Hon. CARMEL ZOLLO: I point out to the honourable member that statutory powers are always subject to common law requirements of reasonableness and fairness and to review by the courts. Our advice is that it is sometimes the case that some people decline to attend an interview for investigation.

The Hon. A.J. REDFORD: It is a $20 000 fine. Does the minister agree that, if an inspector wants you to turn up at such and such a place at such and such a time—you may not be the owner of the place—you are liable to a $20 000 fine if you do not turn up?

The Hon. CARMEL ZOLLO: There is a maximum penalty, but statutory powers are subject to the common law requirements of reasonableness and fairness and review by the courts.

The Hon. NICK XENOPHON: Will the minister indicate what the protocols or training will be for inspectors in respect of the exercise of these proposed powers? In particular, has a manual been prepared or is one in the process of being prepared in terms of how these powers will be exercised? As I read it—and the Hon. Mr Redford may take a contrary view—there is an implied base of reasonableness in this in terms of both the wording of the legislation and in common law fetters to it. I would like to know from the minister how it is proposed that these powers will be exercised and what training there will be for inspectors with these increased powers and whether any manual has been prepared or is in the process of being prepared with respect to the exercise of these powers.

The Hon. CARMEL ZOLLO: I advise the honourable member that I have already spoken about training. There is a compliance and enforcement manual, which will be reviewed in light of the changes made by this parliament.

The Hon. J.F. STEFANI: I share the concerns that my parliamentary colleague the Hon. Angus Redford has put on the public record. My experience is that when an inspector approaches a small operator or an individual about the process of obtaining information, the fear of the individual

is very much present because usually the inspector waves the government badge. He often refers to his or her authority in requesting such information, and an individual or small operator will not have the presence of mind or the financial backing to challenge the inspector and would certainly be fearful that, if such a challenge occurred, it would cost money and, therefore, they reluctantly comply.

The Hon. A.J. REDFORD: The police have a Police Complaints Authority, such as it is, where people can take complaints about the abuse of power by police officers. Will the minister advise whether there is a workplace inspectors authority where employers can take their complaints about their conduct?

The Hon. CARMEL ZOLLO: I understand that the minister in the other place has already answered that question. However, they can go to the Ombudsman or the Executive Director of Workplace Services, or to the CEO.

The Hon. A.J. REDFORD: So, there is no-one independent, apart from the Ombudsman? Bearing in mind that the CEO is the employer of these people, and bearing in mind that the Commissioner for Public Employment is a fellow public servant, am I to understand that the only independent recourse for complaint is the Ombudsman?

The Hon. CARMEL ZOLLO: That is why we have an Ombudsman; he is independent, as far as I know.

The Hon. A.J. REDFORD: I take that answer to mean yes. If that is the case, what additional resources is the government proposing to give the Ombudsman, bearing in mind that since this government took office the Ombudsman has been subjected to a continuous decline, in real terms, in resources and, following the health complaints act, almost a carving up of his office? What capacity does the Ombudsman have to deal with these matters?

I will give some examples. I win most of my freedom of information reviews, which, on average, take six to eight months of diligent work on the part of the Ombudsman. I am a member of parliament, so I suspect that I get treated a little bit better than some poor mug employer who might make a complaint about a workplace inspector's activity. So, what confidence can employers have in a complaints system that is deliberately under-funded by the government—there is nothing in this budget for the Ombudsman—and whose office resources have been continuously attacked by this government since it took office? What confidence can employers have that their complaints will be adequately and properly heard in a timely fashion? Absolutely none. If the government was serious about this—and not only in response to this matter—it would fund the Ombudsman in a proper and adequate fashion. It is unreasonable to expect us to agree to a substantial increase in powers for inspectors in the absence of any reasonable complaints mechanisms.

I take members back to the provision that says that anyone at any time can be asked to attend any place at any time and, if they do not do so, a $20 000 fine will be imposed. The only protection this government can offer in relation to the abuse of power by an inspector in those circumstances is the Ombudsman, and that is not good enough.

The Hon. NICK XENOPHON: Proposed section 38(5) provides:

> An inspector who has seized anything under subsection (4) must, on request, provide a receipt for the thing seized.

Will the minister advise how a person who has had their material seized know that that right exists? Will there be a positive obligation on the inspector to provide that information? Why simply have the words 'on request'? Why not use the wording 'provide a receipt as a matter of course'? I do not understand why the words 'on request' are there. I would not have thought it would be unduly onerous on the inspector to provide that.

The Hon. CARMEL ZOLLO: I advise that that is the wording in the existing act, and I am not aware of any concerns. Under the operating procedures, the inspectors inform people of their rights.

The Hon. NICK XENOPHON: I indicate that I am inclined to support this clause, but with some reservations. If this clause is passed in its current form and, if amendments were moved to deal with some of the concerns of the opposition, I may be prepared to support that on a recommittal. So, I support the clause but with some reservations. If it does not pass, there might be a need to recommit this clause, if that is what the government wishes to do.

The committee divided on the amendment:

AYES (9)

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

NOES (8)

Gago, G. E.	Gazzola, J.
Gilfillan, I.	Holloway, P.
Kanck, S. M.	Reynolds, K.
Sneath, R. K.	Zollo, C. (teller)

PAIR(S)

Lawson, R. D.	Roberts, T. G.
Cameron, T. G.	Xenophon, N.

Majority of 1 for the ayes.

Amendment thus carried.

Progress reported; committee to sit again.

ROAD TRAFFIC (EXCESSIVE SPEED) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 May. Page 1724.)

The Hon. A.L. EVANS: I rise to make a brief contribution to this bill. The government states that the aim of this bill is to address a significant road safety issue: excessive speeding on our roads. The Minister for Industry and Trade advises that the bill targets those people who show little regard for the community by choosing to drive at irresponsible and frightening speeds. The statistics provided by the minister illustrate that excessive speed is a major cause of motor vehicle accidents each year, in some cases causing death and in others serious injury. More specifically, crash data attributes excessive speed as a contributor in approximately 19 deaths and 60 serious injuries in South Australia each year. Moreover, during the five years from 1999 to 2003, excessive speed was identified as a factor in the deaths of 96 South Australians.

The above statistics represent an unacceptable rate of death and serious injury caused by such irresponsible, senseless and avoidable behaviour. Such death and serious injuries adversely affect many families in South Australia. For this reason, my constituents would support measures to deter excessive speeding on our roads. In addition to the above devastating effect on South Australian families, the annual monetary cost to the community of death and serious

injury caused by excessive speeding is estimated at $100 million, with $25 million being attributed to health costs alone. We would all agree that this kind of burden on our health system is a paramount issue for this parliament.

It is not difficult to imagine the additional services that could be provided to South Australian families with even a fraction of the $25 million. This just illustrates the ancillary benefits to the South Australian community that could be achieved if this parliament legislates to curb excessive speeding on our roads. The urgency of this matter is further validated by the data collected by the South Australia Police. From that data it appears as though the number of incidents of excessive speeding on our roads has increased over the past few years. A continuation of this trend can only lead to increased deaths and serious injuries in our community. Dissimilar to legislation in the other Australian states, South Australian legislation does not appropriately address the issue of excessive speeding and, therefore, has failed to address the impact that such behaviour has on our families and communities. I commend the government for its effort in this regard.

My constituents would support measures aimed at protecting our community and families from exposure to reckless and potentially life-threatening behaviour such as excessive speeding. Not only will such methods reduce the incidence of death and serious injury on our roads but also they can potentially bring much-needed savings to our health system.

The bill defines 'excessive speeding' as exceeding the speed limit by 45 km/h. I believe that this is a fair and appropriate threshold speed. This would, for example, apply to motorists who travel at or in excess of 105 km/h on main roads where the speed limit is set at 60 km/h. It adequately ensures that the provisions of the bill are aimed at motorists who deliberately drive in a manner that causes risk to the community. More importantly, the bill states that excessive speeding is an offence attracting an expiation fee of $500, six demerit points and an immediate six-month loss of licence. Currently there is no legislative provision for a loss of licence. If an offender elects to be prosecuted for the offence, the bill requires the court to impose similar penalties for first-time offenders and stricter and even more severe penalties for repeat offenders.

I believe that the above amendments will go some way to protecting the communities and families of South Australia. It brings South Australian law in line with a majority of other states and, more importantly, curbs irresponsible behaviour that places other responsible motorists on our roads at significant risk of serious injury and even death. The bill also increases the court-imposed penalties for the existing offence of reckless and dangerous driving to bring consistency with the newly created offence of excessive speeding. For the above reasons, I support the second reading of the bill.

[Sitting suspended from 6.03 to 7.47 p.m.]

The Hon. CAROLINE SCHAEFER: This piece of legislation is an attempt to decrease the number of accidents and fatalities on South Australian roads. One would have to be somewhat sceptical about how successful this may or may not be, given that every time we introduce some sort of reforms to road safety laws in this state we actually increase the revenue to the government of the day, whichever it may be, and we have been spectacularly unsuccessful in reducing the number of accidents. This year there have been about, give or take, 13 more fatalities than at this time last year. So, when I say we are spectacularly unsuccessful, we are spectacularly unsuccessful by the standards that we have set for ourselves.

However, if one takes any other look at road safety within South Australia, the statistics are somewhat different. If one looks at accidents per registered vehicle 15 or 20 years ago, fatalities per registered vehicle 15 or 20 years ago or, indeed, any of the per capita statistics, there has been, in fact, a gradual decline in the number of serious accidents on South Australian roads. The words of my friend the Hon. Diana Laidlaw ring in my ears. She was a great one for saying that one road fatality is an unacceptable statistic, and certainly that is so.

I think that my attitude to road safety is well-known within this chamber. I have said many times in the past, and will say again, that we are failing to address the real causes of road accidents. We have safer cars now than we have ever had—we have things such as air bags and ABS brakes, and cars that drive much more safely than ever before. In my view, we have failed to keep up with driver education. We do not have drivers who are capable of managing the cars that they drive, and we certainly do not have roads that are capable of taking the cars that we currently have. My understanding, and I have not looked this up myself and I perhaps should have, is that our accident rate per car is greater than middle European accident rates, similarly compared, yet Europe has huge motorways with no speed limits. The difference is that their road structure is capable of taking the vehicles that are driven at this time.

The Hon. J.F. Stefani interjecting:

The Hon. CAROLINE SCHAEFER: As I said, we fail to address driver education and we fail to maintain our roads. We now have this marvellous scheme called Long Life Roads. The only interpretation I can put on that is that you have to live a long life before you will see any of those roads finished. Certainly, regional South Australian roads are in probably the most parlous state that I remember them for, again, at least 15 or 20 years.

If we look at the road statistics, the main cause of fatalities within South Australia is people hitting immovable objects such as large trees or Stobie poles, yet no-one mentions that because it would be politically unpopular. It is politically popular to simply say, 'Okay, we've had another spate of fatalities, so we will lower the speed limit'. Every time we lower the speed limit, there is another source of revenue to the government of the day. In fact, it does not stop dangerous driving. The fatalities we have seen in the past 12 to 18 months have been, largely, young, inexperienced drivers who have been doing anything up to double the speed limit; so dropping the speed limit from 110 to 100 km/h or 60 to 50 km/h will not stop kids going on what are suicidal drives.

I suppose that is where my view of this legislation fits. I have long said that the punishment for dangerous driving should be increased, but more commonsense should be applied to road safety laws, generally. There should be more flexibility as to where the road is, who is likely to be driving on it and whether the hazards are at night or during the day. Again, there should be greater emphasis on driver education. This legislation is about punishing people who are driving dangerously, and, as such, the opposition will not be opposing it.

Basically, the speed limits in this state were set in the late 1960s for cars that were nowhere near as safe as the cars we have now, but anyone who falls into the category at which this legislation is aimed will be doing 45 km/h over the

designated speed limit. That could be 95 km/h down North Terrace. By anyone's standards that could be, and would be, dangerous driving. The opposition will not be opposing this legislation for that reason.

This legislation seeks to increase the penalties for a first offence to a fine of not less than $600 and not more than $1 000, and licence disqualification for a minimum period of six months; and, for a second or subsequent offence, a fine of not less than $700 and not more than $1 200, and disqualification for a minimum period of two years. I may have personal views as to whether those particular penalties line up with some of the other penalties in the state, such as aggravated assault, but, nevertheless, they aim to penalise those who are driving dangerously, and, as such, I do not object to that.

Within the legislation there is a change which allows some leeway where a 50 km/h sign, for instance, has been changed to a 40 km/h sign for roadworks. In that case, the 50 km/h limit would apply, if there were no workers present—and those of us who have driven from Adelaide to Port Augusta in recent years would know that those signs stay up day and night, week after week, month after month, regardless of whether or not workers are in the vicinity. So, there would be an exemption to allow a person to be doing the 45 kilometres over the 40 km/h sign, but not over the 50 km/h sign, and, of course, they would still incur a speeding penalty.

For the purposes of this legislation, a second offence is considered to be an offence committed within five years, and similar penalties apply to the owner of a vehicle where a photographic detection device is used. Therefore, a speed camera under certain circumstances could be the cause of someone losing their licence instantly. The penalties for reckless and dangerous driving have been doubled, essentially. However, the period of imprisonment remains the same. There are exemptions for emergency vehicles. The section which applies to excessive speed also applies in addition to the impounding offence. A hoon driver exceeding the speed limit by 45 km/h may have their vehicle impounded, lose their licence and pay a hefty fine.

The opposition will not be opposing this bill, but I appeal to the government to apply at least some commonsense to the application of some of these laws. Hoon driving, in particular, is far more dangerous in some situations than other situations; speeding is far more dangerous in some situations than others. All in all, 45 km/h over the designated speed limit, in my view, is generally driving dangerously. The opposition will not be opposing this legislation. However, I will have more to say about the commonsense application of these laws during debate on the next bill, which we are to debate either tomorrow or the next day.

The Hon. SANDRA KANCK: I was working under the illusion, based on the letter that the Leader of the Government sent out to all members on 27 May, that we had until 2 June to deal with this piece of legislation. At about 5.30 tonight I was advised by a member of the staff of the Minister for Transport that we were going to be dealing with this bill. I mentioned this to the Hon. Paul Holloway, who said that he had been told that everyone was ready to proceed with it. I am not quite sure from whence that readiness came.

The Hon. J.S.L. Dawkins: The *Notice Paper* has a question mark because we knew you were reluctant to deal with it.

The Hon. SANDRA KANCK: Yes, but there was no consultation with me about whether we were ready to proceed with it. I mentioned to the Hon. Nick Xenophon before the dinner break that we were about to deal with this, and he too was surprised that it was coming on. I just want to put that on the record that, if we are advised beforehand that we have until a certain time for something to be dealt with, I tend, because of the number of things I am dealing with, to work on that basis, and it would be appreciated in the future if there was some direct communication.

As regards this bill, I think probably the one comment I have to make about it is that this appears to be another of those bills where there really are no alternatives. You get to lose your licence. You do not get an opportunity to take it to court. That seems to be something that is going by the way in a lot of the government's priorities. There are very few excuses for exceeding the speed limit by 45 km/h, but I can think of odd circumstances where that might occur, such as a woman who is about to give birth to her baby, when a husband is tearing along through the suburban streets to try to get his wife to hospital. That is the sort of thing that can happen in a panic situation, and with this sort of legislation there is no leeway.

There is really no opportunity to go into a court and say, 'Please, your honour, I was rushing my wife to hospital because she was about to have a baby.' Those sorts of examples I suppose are few and far between and are probably not enough reason to oppose the legislation, but I do want to put on the record that on behalf of the Democrats we do not like this continual erosion of the rights that we have taken for granted where we were able to take these things to court if we needed to and be able to argue a case where a judge could look at all of the facts on merit and make a decision and maybe decide that a lesser fine is valid. As I say, they are few and far between and it is probably not enough to cause us to vote against the legislation. So, I indicate support for the second reading.

The Hon. NICK XENOPHON: I rise to support the bill and flag that I believe that this is an important piece of legislation. My concern is that the government is not going far enough in some respects. I also take note of what the Hon. Caroline Schaefer has said with respect to the whole issue of revenue raising. That is why, when the government's package of road safety legislation was in this place some time ago, I moved an amendment to have a speed camera advisory committee. The government opposed that. The opposition supported it for the sake of keeping that clause alive, but the opposition did not maintain its support for that amendment at the subsequent negotiations with respect to the bill. That was a real pity, because I think it is important that we do have some independent scrutiny of where speed cameras are placed and the impact they have on road safety, so we are targeting genuine black spots rather than targeting essentially revenue raising where there is an argument that it is primarily to make a quick buck rather than to target those particular black spots, which may not be so easy to get a speed camera to but which would have a much greater impact in relation to reducing the risk of accidents, serious injury and death.

As an aside, it still perplexes me that in this state we have a list of where speed cameras are going to be placed the next day. I would have thought that it is enough if the drivers of South Australia know that speed cameras are widely disseminated through the metropolitan area and through regional South Australia. Simply flagging where the speed cameras are located I think encourages those who are reckless to be lulled into a false sense of security that they can speed on

those roads that are not notified by the media warnings as to where speed cameras are placed.

In relation to some statistics I have obtained from the Australian Transport Safety Bureau, there is a clear link between speed and the consequences of speeding. If you are travelling at 65 km/h in a 60 km/h zone, you are twice as likely to have a serious crash; at 70 km/h, you are four times as likely to have a serious crash; at 75 km/h, you are 10 times as likely to have a serious crash; and, at 80 km/h, you are 32 times as likely to have a serious crash than if you drive at 60 km/h.

There is a clear difference between the speed at which you are going and the time it takes to stop. The Australian Transport Safety Bureau sets out that, in dry conditions, there is a very significant difference between a situation where a child runs on to the road 45 metres ahead of you while you are travelling at 65 km/h and you brake hard. Will you stop in time? At 50 km/h you will stop in adequate time. At 55 km/h, you will stop five metres short of the child. At 60 km/h there will be a literal touching of the pedestrian, but presumably no serious injury. At 65 km/h, you hit the child with your motor vehicle at 32 km/h; at 70 km/h, you hit at 46 km/h; at 75 km/h, you hit at 57 km/h; and, at 80 km/h, you hit at 66 km/h. In wet conditions it is even worse: at 55 km/h you hit the child at 14 km/h; at 60 km/h you hit at 32 km/h; and, at 80 km/h you hit the child at 70 km/h. So speed does kill and this legislation should be about discouraging drivers from speeding.

The Hon. J. Gazzola: Hear, hear!

The Hon. NICK XENOPHON: I agree with the Hon. Mr Gazzola, but I do not believe that the government is going far enough with this legislation. The Australian Transport Safety Bureau also makes the point that the faster you travel the harder you hit, that dropping off three storeys is equivalent to crashing at 50 km/h and crashing at 100 km/h is equivalent to dropping off at 12 storeys. Even 5 km/h speed difference can make a difference between a near miss or a bad crash. That is why this legislation is simply too blunt by only cutting in with an automatic licence qualification at 45 km/h above the speed limit.

By way of contrast, the position in Victoria is that, if you are exceeding the speed limit between 25 km/h or more but less than 35 km/h, there is a minimum period of disqualification of one month. If you exceed the speed by 35 km/h or more but by less than 45 km/h you face a minimum licence disqualification of six months, and if you exceed the speed limit by 45 km/h or more you face a minimum period of disqualification of 12 months. The schedule to the act states that, for any speed of 130 km/h or more, not covered by items 1, 2 or 3, there is a one month minimum period. The probability of a fatal injury rises exponentially with the impact speed and statistics from the Australian Transportation Safety Bureau set out the probability of fatally injuring a pedestrian by the speed of the car on impact, and at anything over 40 km/h it starts to rise exponentially and at 40 km/h the probability of a fatal injury is in the vicinity of 15 per cent. Once you get to about 50 km/h impact speed it rises to about 80 per cent and it gets close to percentages in the high 90s at in excess of 55 km/h impact speed.

These are very serious matters and I am concerned that the government, by simply targeting a speed limit of in excess of 45 km/h, is simply not going far enough. We are aware of the extensive research being carried out by the road accident research unit in South Australia, which is highly regarded—the Adelaide University Centre for Automotive Safety Research—on the risk of crash involvement if you are speeding and how it is compared to having a blood alcohol level. Professor Jack McLean from the unit previously discussed that something like 5 km/h over the speed limit can make a difference. It is comparable to having a .05 blood alcohol concentration. Each 5 km/h above 60 km/h increases the risk of a casualty crash by roughly the same amount as each increase in blood alcohol concentration of .05 grams per 100 millilitres. If somebody is caught going over .05, .08 or .15, there are significant periods of licence disqualification.

Based on independent research, if someone is going at 45 km/h over the speed limit it would be equivalent to someone having a very high level—more than a fatal level—of blood alcohol concentration, and even 20 km/h over would be equivalent, as I understand it, of being .15 and above, yet there is no sanction in the government's bill for discouraging that sort of behaviour. Simply cutting in an automatic period of licence disqualification for 45 km/h or above is a poor attempt to deal with such a serious problem. The Victorians have a different approach where they are trying to make—

The Hon. Caroline Schaefer interjecting:

The Hon. NICK XENOPHON: The Hon. Caroline Schaefer says 'more money'. I suggest that if you are losing your licence it is about losing your licence—that is the primary penalty and that is the big disincentive. I agree with the Hon. Caroline Schaefer that the condition of roads is an important factor, but speeding is a major factor in terms of deaths on our roads.

In relation to the other matters dealt with in the bill, the penalties for reckless and dangerous driving, given that the government is taking steps to toughen penalties in another bill with respect to hit-run accidents to try to make some inroads in terms of our road toll and for reckless behaviour, I do not understand that for reckless and dangerous driving it is only a fine of $700 and not more than $1 200, and for a subsequent offence not less than $800 and not more than $1 200, with a period of three months' imprisonment.

I will be moving amendments to that effect, because I believe there ought to be a greater discretion for the courts to deal with that issue. If someone is driving, for instance, at 90 km/h or 100 km/h down North Terrace, I would have thought that the penalty set out in this bill goes nowhere far enough as a disincentive. That is why it is important that the penalties be strengthened.

Information from the RTA of New South Wales indicates that, in the year 1999, there was a total of 577 road deaths, 245 were from speeding, making up 42 per cent of deaths as a percentage of the road toll. The figures were similar for other years, with the percentages for 2000, 2001, 2002 and 2003 being 39, 43, 46 and 38 per cent, with the average being 42 per cent. There is a huge cost to the community, which the government and the opposition have acknowledged in relation to speeding. I believe that, if anyone is travelling at 20 km/h and above the speed limit on our suburban streets, there ought to be a stronger sanction than simply some demerit points. We ought to be looking at licence disqualification. Given that in Victoria it is 12 months for 45 km/h and above, I think we are lagging behind what I believe is best practice to toughen up and change the culture of speeding, which is such a significant factor, unfortunately, particularly amongst many young drivers, in relation to our road toll.

With those remarks, I indicate my support for the bill. I will be moving some amendments, which I believe the government—and, dare I say, the opposition—will be opposing. I am getting a nod of acknowledgment from the

Hon. Caroline Schaefer. I believe we will have to revisit this issue. I think it is simply too blunt an instrument for it to kick in only at 45 km/h and more above the speed limit when we know from the research that, when people are travelling at 15, 20, 25 or 30 km/h above the speed limit, it is equivalent to drink driving. Yet we seem to have a double standard when it comes to dealing with this issue in relation to speeding drivers.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank all members for their contribution. This bill addresses an issue of great concern to the Rann government, the police and the community. First, I want to respond to some comments made by the Hon. Sandra Kanck. I apologise to the honourable member, because I thought we were dealing with this later. It was my advice that we were ready to proceed, so I indicated to the Hon. Sandra Kanck that, if necessary, I would be happy to delay consideration. However, I think this is an important measure, and I would obviously like to get this bill through as soon as possible. However, I want to correct some of the comments made by the honourable member.

The Hon. Sandra Kanck commented that in this measure there was no alternative other than disqualification in relation to a person driving more than 45 km/h over the speed limit. I point out that disqualification does not proceed if the Commissioner of Police withdraws an expiation notice or if that person elects to be prosecuted. It was always intended that, if a person felt they had a defence, disqualification would be stayed and the person would have the opportunity to put their case or defence before a court in exactly the same way as exists with current expiation notices. It is important that that be pointed out.

The sad fact remains that speeding really does kill and injures people on our roads. There is no doubt that excessive speed is a factor in road crashes. Crash data attribute excessive speed as a contributor in around 19 fatalities each year on South Australian roads. In addition, each year just over 60 serious injuries can be directly and incontrovertibly attributed to excessive speed. The total annual cost of these deaths and serious injuries is estimated to be close to $100 million, with health costs alone in the order of $25 million. Data collected by South Australia Police show that some drivers travel in excess of 200 km/h on country and metropolitan roads. This bill is aimed at those drivers who choose to exceed the speed limit by 45 km/h or more. In doing so, this small group of drivers places other road users at a significant and unacceptable risk because of their irresponsible behaviour.

The science around speeding is cold and sobering. Travelling at 65 km/h in a 60 km/h sector doubles the casualty crash risk, and for every 5 km/h over 65 km/h the risk doubles again. Therefore, the casualty crash risk for a person travelling at 45 km/h above a 60 km/h speed limit on an arterial road is approximately 500 times greater than that for a person travelling at the speed limit. This bill—

The Hon. Nick Xenophon: Why kick in only at 45 km/h?

The Hon. P. HOLLOWAY: There has to be some limit. If the honourable member wishes to move an amendment, he is entitled to do so. However, the government has chosen this particular speed. Clearly, there has to be some threshold point above which it is clearly recognised that speeding is excessively dangerous. As I have indicated, all speeding is dangerous. Even at just 5 km/h, the risk is five times higher. However, when it is 500 times higher, no-one—and surely no-one in this council—would argue that 45 km/h over the speed limit is justified in any situation, even if someone is pregnant and going to a hospital, as the Hon. Sandra has suggested. With a risk 500 times greater, I do not believe that is sensible behaviour by anyone under any conditions.

This bill sends a clear message that, if you disobey the law and speed, you will be caught and punished. The government and the community are determined to bring down the road toll and to lessen the suffering of South Australian families brought about by fatalities and serious injury crashes in which excessive speed is a factor. This bill is a prudent precaution designed to safeguard our community by removing from the road as soon as possible drivers who, through their disregard for the law and irresponsible attitude to speed, pose a serious threat to all road users. I commend the bill to the council.

Bill read a second time.

In committee.

Clause 1.

The Hon. NICK XENOPHON: If the bill passes tonight, when does the government expect it to come into force, and how will the legislation be publicised?

The Hon. P. HOLLOWAY: There will be an advertising campaign, but I do not think anyone should need to be reminded that they should not be travelling at 45 km/h above the speed limit. Nonetheless, to try to have a salutary impact on motorists to ensure that the deterrent effect of this legislation is maximised, there will be an advertising campaign. I will check on the likely date of proclamation, but my advice is that it is proposed to tie in these changes with some computer system changes that are being made in relation to other drink driving and road safety measures, so it is likely to be in several months. The idea is to lock some of these measures together, because I gather they will require some changes to computer systems to make them administratively expedient.

The Hon. NICK XENOPHON: What was the rationale behind the government's saying that automatic licence disqualification will only cut in at 45 km/h above the speed limit? The research to which I have referred indicates that at 80 km/h the accident risk relative to 60 km/h is 32 times. The government acknowledges that it is about 500 times at 45 km/h and my quick calculation is that, at 90 km/h it is about 128 times the accident risk. So, why have a threshold of 500 times the accident risk relative to 60 km/h? Why not have a threshold well below that? Has the government looked at the Victorian figures to see what impact having graded thresholds for automatic licence disqualification has had in terms of reducing the road toll?

The Hon. P. HOLLOWAY: I am advised that the date for commencement of operations will be about October-November. It locks in with some new computer systems that are being installed in the department in relation to this and other road safety measures such as drink driving. I am advised that those computer systems are necessary for the operation of this legislation.

Why was the threshold of 45 km/h chosen? I am advised that for other jurisdictions there is a limit of about 40 km/h. I am advised that, for any speed over 40 km/h, the police investigate to see whether a reckless and dangerous driving charge applies. So, it locks in current police practice. It also fits in well with our current incremental system of fines. I think that up to 15 km/h there is a certain fine, and the next increment is up to 30 km/h hour. A further 15 km/h, which is the really excessive speeds with this 500 times increased risk, is where this much more severe penalty comes in. I

believe that it neatly follows those steps. We do not have any information at the moment in relation to how effective that has been in Victoria. We will have to take that question on notice and respond in writing, if the honourable member is happy with that.

The Hon. NICK XENOPHON: I thank the minister for indicating that he will respond in writing in due course with respect to that matter. It gives some perspective. I am still baffled as to why we were not prepared to bite the bullet and take a tougher approach, but at least the government's position is on the record.

The Hon. P. HOLLOWAY: As I said, there is a tougher penalty at 15 km/h, another tougher penalty at 30 km/h and now this one at 45 km/h. There are these three steps at 15 km/h increments.

The Hon. CAROLINE SCHAEFER: I had not expected to be asking any questions, but the minister's previous answer would indicate to me that anyone driving in excess of 40 km/h over the speed limit—

The Hon. Nick Xenophon: 45.

The Hon. CAROLINE SCHAEFER: —no, 40 was what he said—automatically triggers an investigation into reckless driving, which is a criminal offence, which begs the question: why do we need these increased penalties as suggested in this bill?

The Hon. P. HOLLOWAY: My advice is that, in determining that matter, speed is only one element that the police would take into account. That is the threshold, but other elements have to be in place to establish reckless and dangerous driving. Under the current measures, if a driver is driving in excess of 30 km/h there is an expiation fine of $343. That applies even for speeds over 45 km/h or more. So, to bring in this fine, it puts a fall-back position to 45 km/h. If someone is driving at those very excessive speeds there is a penalty, even if it could not be—

The Hon. Caroline Schaefer interjecting:

The Hon. P. HOLLOWAY: It is not to say that it is safe—in fact, it is 500 times the risk, as we have said. However, for various evidentiary reasons, it may not be possible to prove that it is necessarily reckless and dangerous driving.

The Hon. CAROLINE SCHAEFER: The minister has mentioned (and I did pick it up myself) that there is the right to elect for prosecution, but is there any other means of appeal within this bill?

The Hon. P. HOLLOWAY: Essentially, no. I am advised that a driver could either elect to be prosecuted or, if the offence was a speed camera detected offence, one could firstly nominate another driver. If the person who received the expiation notice claimed not to be driving the vehicle, they could nominate another driver or they could write to the Police Commissioner setting out the reasons why they believe the charge should be withdrawn—I guess that is the reason they would put. Essentially, they are the only options available to someone who receives a notice for this.

The Hon. NICK XENOPHON: I have another threshold question about the policy rationale behind this. On its web site, the Road Traffic Authority of New South Wales indicates that the risk of a crash at 68 km/h in a 60 kilometre zone is the same as driving with a blood alcohol level of .08. The risk at 72 km/h in a 60 km/h zone is the same as driving with a blood alcohol level of .12, which is more than double the general legal limit. Are they figures that the government acknowledges or disputes? If that is the case, it seems we are saying that it is equivalent to people drink driving at these excessive speeds well below 45 km/h and above, yet they are just getting a slap on the wrist below that 45 km/h and above threshold.

The Hon. P. HOLLOWAY: As I indicated earlier, there are thresholds that apply at 15 km/h. The expiation fine increases again at 30 km/h, and at 45 km/h above the limit these new measures kick in. If the honourable member thinks they should be even heavier, it is up to him to move an amendment. We believe that with this bill we are filling a void in the legislation by recognising that this sort of speed does have a very substantial increased risk with it and, therefore, it warrants more serious treatment, and that is what this bill provides. I guess one can have an argument about where that threshold should be but, certainly, for the reasons I indicated earlier, we believe that this is an appropriate threshold to introduce this new measure. I certainly accept that one can have lots of views. It is essentially arbitrary but, for the reasons I have indicated, we believe that this is the best choice.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

The Hon. NICK XENOPHON: I move:

Page 2, line 13—Delete '45' and substitute:
20

I indicate to my colleagues that I will treat this as a test clause with respect to amendments Nos 2 and 3. This amendment relates to reducing the threshold at which a licence disqualification will cut in to 20 km/h over the limit, and that licence disqualification would apply (this also relates to amendment No. 6) as follows: between 20 km/h and 29 km/h, not less than one month; between 29 km/h and 44 km/h over the limit, not less than three months; and above 45 km/h, as it now is, not less than six months. I indicated in my second reading contribution and also in relation to clause 1 the risk of death or serious injury that increases exponentially, and the research I referred to shows that travelling at even 12 km/h over the limit in a 60 km/h zone is equivalent to driving with a blood alcohol level of 0.12, which is twice the legal limit. That is why I think it is important that if we are serious about this we ought to make it clear that the threshold should not cut in at 45 km/h but ought to be much lower than that.

The Hon. P. HOLLOWAY: It is important to note that speed is a major contributing factor in road trauma and that a reduction in speed by drivers will have a positive impact. As I have indicated already, the government is committed to reducing the incidence of speed-related crashes and has put forward in the 2005 budget a number of measures, including an increased number of red light cameras, speed detection units and funding for rural road saturation programs. These initiatives, coupled with the new offence of excessive speeding, will provide a deterrent to those drivers who believe it is okay to endanger the lives of other road users. The bill currently before us provides for immediate loss of licence for drivers travelling at 45 km/h above the posted speed limit. This proposal was put forward to ensure that drivers who exceed the speed limit by the highest level, and hence creating a greater than usual road safety risk to themselves and other road users, receive a sanction commensurate with the seriousness of excessive speeding—immediate loss of licence.

The honourable member, of course, with his amendment, seeks to provide automatic loss of licence for speeds that are above the speed limit by a lesser amount. I point out that

South Australia is unique in that it has both school and roadworks zones with a speed limit of 25 km/h. Under the amendments foreshadowed by the Hon. Nick Xenophon, this may result in drivers losing their licence if travelling at 45 km/h—that is, 20 km/h above the limit. So, imagine if someone is doing 45 km/h in a school or road work zone: they could lose their licence for a month if—

The Hon. Nick Xenophon interjecting:

The Hon. P. HOLLOWAY: Well, the point is that I think one needs to contemplate the first person who does that and what would happen through talk-back radio and the rest of it. People would end up losing faith in the system, and it is important that people have faith in the system because what we want to do is deal with people who are driving at excessive rates of speed in extremely dangerous situations.

Under the current government proposal of immediate loss of licence for 45 km/h and above, SAPOL personally would be serving the expiation and licence disqualification to a driver who is detected by a photographic detection device. Approximately 700 drivers per annum are detected by camera travelling at a speed of 45 km/h or above the posted limit. The proposal to serve expiations personally was made due to the relatively small number of detections and the fact that police may, in some instances after investigating the incident, withdraw an expiation for excessive speed and issue a charge of reckless and dangerous driving.

Due to the high number of detections (approximately 38 000 for exceeding the speed limit by 20 km/h and 30 km/h), the resources implications would mean that personal service would not be able to be accommodated by SAPOL. The only viable alternative is service by mail. However, unless receipt of the expiation notice can be proved beyond reasonable doubt, a person may continue to drive and claim in their defence that the licence disqualification was not received.

Speeding offences have been nominated as offences that will be subject to double demerit points. Drivers who exceed the speed limit by 15 km/h or more but less than 30 km/h will be subject to six demerit points during the period of double demerits. Likewise, drivers who exceed the speed limit by 30 km/h or more but less than 45 km/h will be subject to eight demerit points during double demerit point periods. This will affect the ability of a number of drivers to maintain their licence, with all full-licensed drivers being able to incur only 12 demerit points in a three year period before their licence is suspended by the registrar. It is anticipated that double demerits will provide a further incentive for drivers to think about their behaviour on the roads, and it would be beneficial to monitor the introduction of this scheme together with immediate loss of licence for excessive speed before introducing further reforms for speeding offences.

When introducing reforms to combat the incidence of speeding, consideration should be given to the effect that licence disqualification will have on a person's ability to maintain employment and mobility (especially in regional areas), and the possibility that it may result in persons choosing to drive unlicensed. The Hon. Nick Xenophon's amendments would have a considerable impact on a large number of drivers—for example, in 2004, SAPOL detected approximately 32 000 drivers exceeding the speed limit by 20 km/h to 29 km/h, and approximately 6 400 drivers exceeding the speed limit by 30 km/h to 44 km/h.

The government has indicated that in 2005-06 expiations for speeding offences will increase. It may be that the impact of a harsher financial penalty will be a deterrent effect that changes driver behaviour, without the need for further loss of driving periods. For a number of reasons, the government believes that it should stick to the measures contained in the bill; that is, disqualification applying for excessive speeds, namely, speeds in excess of 45 km/h.

The government believes that, combined with the other measures that it has announced, it will have a significant impact on driver behaviour. Should that not be the case, then we have the option of considering other measures, but, at this stage, we believe that the proposal contained in the bill is effective and reasonable. Therefore, we do not believe at this stage it is warranted to increase those penalties as suggested by the Hon. Nick Xenophon. Again, I point out there would be significant logistical problems associated with it, if we accept this amendment.

The Hon. NICK XENOPHON: I think the minister might remember that ad of the Motor Accident Commission a few years ago, which looked a little like the Demtel ad, where it gave a sure-fire way to save money from speeding fines. There was a guaranteed, 100 per cent sure-fire way not to ever get another speeding fine, and it showed fists full of dollars going back to motorists. The solution was: you do not speed.

In terms of 45 km/h in a 25 km/h zone, we have 25 km/h zones because of schoolchildren and roadworks where people are working. If that is the only objection the government has to this amendment, I would be happy to concede that for the purpose of getting it through at the higher speed levels. The government says that it is concerned about talkback—and I love talkback radio.

The Hon. Caroline Schaefer: We hadn't noticed.

The Hon. NICK XENOPHON: I am sorry about that. Surely, the principal issue ought to be about changing driver behaviour. I cannot see how this will do it. I cannot see that having a 45 km/h threshold will be enough of a deterrent. I see this as a bit of a law and order con. We know now that if you do 40 km/h and above the police investigate it for reckless and dangerous driving. I am grateful for the Hon. Caroline Schaefer's highlighting that earlier on. All this will do is free up some police resources—which is a good thing—so it will automatically kick in at 45 km/h and above, but the consequences of this legislation will be very similar to the current legal position.

The minister has indicated that he expects that there will be a significant impact with this and other measures of the government, including double demerit points—which I support. What figures, research and information does the government have to indicate what the significant impact will be; and over what period? When will the government reconsider this legislation, if there is not a significant impact? In other words, at what level will the government say, 'This is not working because the road toll has not gone down in terms of deaths and serious injuries, and significant accidents below a certain percentage'? What will be the threshold for the government to say, 'We will revisit the legislation to look at a range of measures to toughen it up or deal with this'? How will it be monitored? Will we be able to compare apples with apples? In terms of raw statistics, a death is a death, but in terms of serious injuries how will it be monitored? Will it be monitored by hospital stays as a result of being involved in a motor vehicle accident? What will be the basis of assessing and monitoring the effect of this legislation?

Another matter, which was highlighted by the Hon. Caroline Schaefer and which the minister acknowledged in his usual straightforward fashion, is that if you are going over

45 km/h it goes to the police for assessment. This bill will mean that, at 45 km/h above the speed limit, a person will face automatic loss of licence. Has any estimate been done as to the number of drivers who will taken off our roads in terms of licence disqualification by virtue of this measure? In other words, presumably, quite a few drivers are losing their licence under the current provisions for reckless and dangerous driving. How many more licences will be lost each year as a result of this amendment?

The Hon. P. HOLLOWAY: Approximately 700 drivers per annum are detected by speed cameras travelling at a speed of 45 km/h or above the posted limit. Some of those may have been charged with reckless driving, depending on other conditions.

The Hon. NICK XENOPHON: Do you know how many were charged? Is that a statistic?

The Hon. P. HOLLOWAY: I do not know whether we have the figure of how many of the 700, but, obviously, it would be a lesser figure than 700. Whatever the difference between that figure and 700 is the number we expect to take off the road. SAPOL issued 664 traffic infringement notices for exceeding the applicable speed limit by 45 km/h or more in 2002-03, and 772 in 2003-04—which is an interesting statistic in itself. Over 100 more—which is a big increase—or approximately 15 per cent (doing the sums in my head) is a significant increase over that year. From this data it can be extrapolated that an average of 720 individuals per year would receive expiation notices for the proposed offence of excessive speed and a further six month period of immediate licence disqualification. We would have to try to see how many were actually charged for that. What was the other question?

The Hon. NICK XENOPHON: I would be quite happy for the minister to respond to me by way of correspondence in relation to the question that he has answered in part. The minister said, 'We expect there will be a significant impact with all these measures.' How are you going to measure it? What would be the threshold before you say, 'We haven't got the road toll down for deaths and serious injuries'; how will you measure that and what will be the threshold before we revisit it again, and for what period?

The Hon. P. HOLLOWAY: There are a number of measures obviously that the government uses, and some of those are in the strategic plan. I should point out that there is a number of measures that the government has introduced in recent times, such as the graduated licence that is yet to take effect. Parliament has changed laws and toughened laws in relation to drink-driving. We have the double demerit proposal which we will debate shortly, and there is this measure and other road safety measures that have been introduced. Also, of course, the government has foreshadowed new laws on driving while affected by drugs, which will be introduced in the future.

So there are a number of measures that have been taken. All of these, one would expect, would have a noticeable impact on the road toll. We have one useful benchmark on the performance of our road rules by those in other states that have adopted similar measures. Some of those states have introduced measures ahead of this state and, in other cases, I think we are the first state to introduce some measures in respect of hoon driving. So obviously we look with interest at what happens in other states to see how effective they are, but with a whole suite of measures that have been introduced recently we would expect that would show up in the road toll statistics.

It is clear that there has been a downward trend in the fatalities and other measures of road accidents over recent years, but in the recent future it appears that the message to some drivers is no longer getting through. Other measures have lost their impact and therefore it is necessary to up the ante to ensure that those drivers do get the message, and we expect this suite of measures would show up in those measures we do use, such as the road toll, but I would not like to say that we have any specific numbers or the like.

Obviously we would rely on the experts. We have a Road Safety Advisory Council that looks at these measures. It has experts from the medical profession, engineers and so on, who of course advise the government on these measures, and we would accept their advice in relation to the need for further measures. Again, I would hope that, in all those usually normally accepted measures of road accidents, this suite of measures that the government has introduced in the past and will introduce in the future will have a noticeable effect on those statistics.

The Hon. CAROLINE SCHAEFER: The committee will not be surprised, I do not think, to learn that the opposition will not be supporting the Hon. Nick Xenophon's amendments. The title of this legislation is Road Traffic (Excessive Speed) Amendment Bill, and the Hon. Nick Xenophon wants to make excessive speed 20 km/h over the current limit. He could drop that to 10 km/h, or he could indeed drop it to no kilometres per hour over the current speed limit; or he could revert to the original method of safety when the automobile was introduced and a footman could be required to walk in front of each of our vehicles, ringing a bell and waving a red flag to indicate the danger of being on the roads. We could ban any vehicle above 3 cylinders. We could make pushbikes mandatory.

We could introduce any of those things and they may or may not make life on the road safer. It is not something I usually do, but I am moved to say that this series of amendments has been introduced by someone who has the luxury of being able to catch a bus to work every morning. We could do all of those things and it would save a lot of money on road maintenance as well because we would not have any cars on the road, and it would probably save some lives. It would be economically a tad inconvenient for many of us, but we could do all of that, or we could punish those who drive dangerously, which is what this legislation is about, and we could look to taking some practical steps, like educating our drivers.

You, sir, like me, spend a lot of time on the open road, and the thing that never fails to amaze me is that, when you see some of the people who are totally incapable of driving outside the city, there are not more accidents instead of less. So we could do some concentrating on improving the standard of our driving within the state. We will not be supporting a series of amendments that simply make commonsense go out of the door and have very little to do with those of us who actually have to drive on our roads.

The Hon. SANDRA KANCK: I indicate that the Democrats will not support the Hon. Nick Xenophon's amendments. On first examination they had some degree of attraction but, when I began the process of working out what it would mean in practice, I had to change my view. I noted the comments that the Hon. Paul Holloway made about school zones. Every day when I drive Monday to Friday, apart from school holidays, I go past a kindergarten that has a 25 km/h speed zone and, because of the way that the cars

park there, you cannot see any child until you are probably, in some cases, 2 metres away from them.

Each morning as I drive through that area I drive at 50 km/h, slowing down to 45 km/h in anticipation that I will suddenly have to go for the brake and put myself at 25 km/h. With the Hon. Nick Xenophon's amendments, that 25 km/h plus 20 km/h equals 45 km/h, which is the speed at which I tend to drive through, I would still face an immediate loss of licence as I go through that school zone. About 30 per cent of the time eventually I will see a child, but I will be well and truly into the zone. That is one example.

I do not know how many times many of us would have driven through after hours when no roadworks are occurring on a particular road, but the signs have been left up. You are in an area that might be an 80 km/h or 60 km/h speed zone and suddenly there is a 25 km/h sign and, if you are going to follow the law, you are obliged to slow down. My husband always gets a bit frustrated by the fact that I observe it. I say that I can imagine the headline, 'Democrat transport spokesperson caught speeding'. I will be driving at 25 km/h in this 25 km/h zone and all the other cars are pushing past at 60, 70 or 80 km/h and you know that it is not serving any real purpose. That is another example where you can easily be caught out.

Another practical example where the Hon. Nick Xenophon's amendment would see that immediate loss of licence would be coming off the freeway when you are going to Mount Barker and are travelling at 110 km/h and a red sign says 'Reduce Speed'. It does not say to what you should reduce your speed. You go from a 110 km/h zone to a 60 km/h zone. You start taking your foot off the accelerator and, by the time you get to the sign that says 60 km/h, you are probably doing 90 km/h, which is 30 km/h above the speed limit at that point. Under the Hon. Nick Xenophon's amendments you would find yourself losing your licence immediately.

There are probably lots of examples, but as I started to cast my mind around I found that there were certainly a number of examples where people are not driving in an irresponsible manner but can be caught. For that reason we will not support the Hon. Nick Xenophon's amendment.

The Hon. NICK XENOPHON: Very briefly, it seems that even if I call 'divide' it will not do me any good as you need two voices to divide.

The Hon. Caroline Schaefer interjecting:

The Hon. NICK XENOPHON: I think I have called 'divide' a couple of times in relation to gambling legislation. The Hon. Caroline Schaefer talks about common sense: I would have thought that there is a lot of common sense in listening to and taking heed of the statistics from the road safety experts, which indicate that at 70 km/h one is four times as likely to have a serious crash in a 60 km/h zone; and at 80 km/h—the threshold to which I am seeking to apply this legislation in terms of being 20 km/h over—you are 32 times more likely to have a serious crash. I would have thought that there is a lot of common sense with respect to that. In relation to the historical tour the Hon. Caroline Schaefer gave us about red flags and walking in front of cars—

The Hon. J. Gazzola interjecting:

The Hon. NICK XENOPHON: I will not repeat what the Hon. Mr Gazzola said as I do not want him to be thrown out. This is a serious issue because speed does kill. We know from research that in over 40 per cent of fatalities speed has played a very real factor in those accidents. That is what this should be about. The threshold is too blunt. The Hon. Caroline Schaefer talks about having a red flag in front of a vehicle. I will never put up a white flag when it comes to road safety.

Amendment negatived.

The Hon. NICK XENOPHON: I will not proceed with my amendments Nos 2, 3 and 6 as they are consequential. I will proceed with amendments Nos 4 and 5.

Clause passed.

Clause 5.

The Hon. NICK XENOPHON: I move:

Page 5, lines 38 and 39—Delete 'a fine of not less than $700 and not more than $1 200' and substitute 'imprisonment for 2 years'.

I will treat this amendment as a test clause to the other amendment. The current penalties are, for a first offence, between $300 and $600 by way of fine. I know the government is increasing that from $700 to more than $1 200. This amendment seeks to substitute that for a maximum period of imprisonment for two years. Under the Criminal Law (Sentencing) Act the court has a discretion to impose a fine. The point is that, if someone has been found guilty of reckless and dangerous driving, the only difference between that and causing death by reckless and dangerous driving is that no-one has been injured, so in a sense it is fortuitous that no one was injured or killed by virtue of that driver's behaviour. If someone is travelling down North Terrace in peak hour at 120 km/h and by some small miracle no-one is injured, the maximum penalty that that person faces is a fine of not less than $700 and not more than $1 200; and for a subsequent offence not more than three months' imprisonment.

I think there is an anomaly there in terms of the appropriate penalties, because it is not sending the right message if you have been convicted of reckless and dangerous driving. I think that at present the penalty for going something like 45 km/h above the speed limit in a 60 km/h zone (and this is my understanding and recollection of the legal decisions) is quite paltry. It beggars belief that there is no sanction of sending a message to anyone who drives like a lunatic down North Terrace in peak hour and just misses by a whisker killing some pedestrians and all they will get is a fine of up to $1 200. I hope it does not happen, but there is the potential that, if such a circumstance arises, there will be a public outcry about the penalty, given that it was such a near miss.

The intention of this amendment is, in a sense, to be consistent with the current legislation, which provides a penalty of up to 10 years if someone causes injury or death by way of dangerous or reckless driving. I am not expecting to be overwhelmed with support for this amendment. However, I ask the government to at least explain its rationale behind not having a tougher penalty than that proposed in this bill.

The Hon. P. HOLLOWAY: In fact, there is a stronger penalty than currently exists. Currently, if someone is convicted by a court of reckless and dangerous driving, the first offence attracts a $300 to $600 fine, six demerit points and a minimum licence disqualification of six months. What is proposed here is a $700 to $1 200 fine (which is a doubling of the fine), six demerit points and a minimum licence disqualification of 12 months. So, there is a significant additional penalty. Of course, for second and subsequent offences, the penalty has also been increased. I will get further advice from parliamentary counsel in relation to what other measures might arise.

The Hon. NICK XENOPHON: In relation to this type of offence, will the minister advise whether other jurisdictions have the penalty of imprisonment for a first offence? If that is something that cannot be answered now, so be it. However, it is something about which I would appreciate receiving correspondence from the minister.

The Hon. CAROLINE SCHAEFER: Again, Mr Chairman, you will not be surprised to learn that the opposition does not support this measure. The Hon. Nick Xenophon is a lawyer, sir, and I am but a simple farmer. However, I thought there had to be some degree of intent for criminal proceedings to take place. It would therefore seem to me that, if you were a big enough idiot to be doing 95 km/h down North Terrace in peak hour, you would have to have a low flying aircraft because you could not drive over the top of all the other vehicles: it would actually be impossible to do 95 km/h down North Terrace during peak hour. However, if you were a big enough idiot to be doing it late at night, that makes you an idiot, not a criminal. Surely, there needs to be some differentiation between someone who drives recklessly with the intent of killing themselves or someone else and just some kid who is an idiot. If their offence requires that they go to gaol, they will quickly learn to be a criminal, if they were not before. I see absolutely not one skerrick of commonsense in that—not even waving the red flag.

This seems to me to be one of the Hon. Nick Xenophon's more imaginative amendments. I suggest that the Hon. Nick Xenophon tries doing 95 km/h in peak hour down North Terrace. He will find that, if he can do more than 25 km/h, he is a better driver than most of us.

The Hon. NICK XENOPHON: Perhaps a better example would be doing 95 km/h or 100 km/h down a suburban street where there are kids and where the speed limit is 50 km/h. In relation to the quite legitimate question asked by the Hon. Caroline Schaefer about the issue of intent—whether someone is an idiot or a criminal—if you are posing such a risk to public safety by increasing by something like 500 times the risk of an accident on our roads by travelling at that speed—for instance, on a suburban road—I would have thought there ought to be an appropriate deterrent in that the intent, in a sense, is the speed you are driving. If you have driven at that speed, you have crossed that threshold in terms of posing a significant risk to the public. Essentially, the legislation reflects that in the way in which it is structured. I am simply saying that there should be a stronger penalty. I take the point made by the Hon. Caroline Schaefer, and I acknowledge that a better example would have been of someone driving down a suburban street at double the speed limit.

The Hon. CAROLINE SCHAEFER: I repeat that the penalties for these offences have been doubled in this legislation, and it would make sense to me to at least give that a go first. Let us be honest about this: the people who are most likely to be charged under this legislation are those who drive on open roads with very little traffic about. The thought of some of them spending time in gaol for what may be inattention seems to be quite ridiculous.

The Hon. P. HOLLOWAY: There is currently a bill before the lower house that really is in response to the McGee case which seeks to increase the penalties under the Criminal Law Consolidation Act. That case, as members would be aware, revealed some deficiency in the legislation. One of the difficulties we have here is that there is a range of offences under the Road Traffic Act, and the Hon. Nick Xenophon is seeking to increase the penalty to the severest. One could put the argument that, in some cases, imprisonment may be justified, but that would affect the relativity of the whole series of offences, and it would really need to be considered in that light.

The Hon. Caroline Schaefer has put some reasonable arguments which should be considered by the committee, but I make the point that you often get a young person in a brand-new vehicle, they take it out for a drive at night to try it out when no-one is about and exceed the speed limit. That young person could be hauled before the courts and told not to be so stupid. Often that will be all that is required, and those people will not commit offences again. Whilst one does not condone that behaviour continuing, I think experience shows that, if people who behave like that are called before the court, that is a sufficient deterrent for them not to do it again, so imprisoning those people may not necessarily be appropriate.

For all those reasons that the Hon. Caroline Schaefer and I have given, we do not support the measure. However, as I indicated, a bill to amend the Criminal Law Consolidation Act will come before the parliament shortly. There is always the option of reviewing these penalties at some time in the future, if warranted.

Amendment negatived; clause passed.

Remaining clauses (6 and 7), schedule and title passed.

Bill reported without any amendment; committee's report adopted.

Bill read a third time and passed.

OCCUPATIONAL HEALTH, SAFETY AND WELFARE (SAFEWORK SA) AMENDMENT BILL

In committee (resumed on motion).

(Continued from page 1986.)

Clause 15.

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

Page 16, line 27—Delete 'or the Authority'

This is a consequential amendment.

Amendment carried.

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

Page 16, lines 29 to 32—
Delete subclauses (6) and (7) and substitute:
(6) Section 38(11)—delete 'or to the Corporation'
(7) Section 38(11)—delete 'or the Corporation's'

I believe this amendment is consequential.

The Hon. CARMEL ZOLLO: Yes, it is consequential.

Amendment carried; clause as amended passed.

Clause 16.

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

Page 17, after line 8—
Insert:
(6) An expiation notice cannot be issued under subsection (5) after the third anniversary of the commencement of that subsection.

The amendment provides that an expiation notice cannot be issued under subsection (5) after the third anniversary of the commencement of the subsection. Effectively, we are seeking to insert a sunset clause in relation to the powers to issue expiation notices. This is an issue that relates to improvement notices. The process by which improvement notices are issued involves, as I understand it, an inspector attending at a workplace who, upon inspecting the premises, can issue an improvement notice. Following the issuing of an improvement notice the employer is required to complete a certificate

of compliance if this bill is passed, and the opposition supports the notion that a compliance notice can be issued to an employer and an employer can tick the boxes and post it back to the department to indicate compliance. I know that there is some opposition from some employer groups to that but, notwithstanding that, the opposition is with the government on that issue.

The Stanley report gave a detailed and, I think, reasonably fair analysis of this issue of expiation notices. It acknowledged that opinions were divided on the use of expiation notices (sometimes known as infringement notices) as part of a compliance scheme, with employer groups being opposed to and employee groups being supportive of the proposal. The Stanley report said as follows:

> The adoption of infringement notices would prevent viable punitive penalties where current circumstances are not conducive to prosecution, e.g. too costly or inefficient or not in the public interest to proceed to prosecution.

However, the Stanley report went on and recommended their introduction, although it did so with some degree of caution, because it did not want a perception that expiation notices could be seen as a revenue-raising tool. The Stanley report also said that a post implementation review should be undertaken after two years and that their use be limited to four specific offences, and it outlined the four offences as follows: firstly, when an employer fails to consult with employees about occupational health, safety and welfare issues; secondly, when an employer fails to comply with a notice of agreed compliance; thirdly, when the employer fails to control health and safety risks; and, fourthly, when the employer fails to ensure the health and safety of employees and others at the workplace.

That recommendation has not been adopted in full by the government. It has (and, in my view, quite correctly) confined the use to which expiation notices can be put. I note that employers were opposed to the principle. They were concerned that this would be used as a revenue-raising exercise. Indeed, the arguments they put are set out at pages 39 and 40 of the report. However, the committee reviewed a recent working paper of the National Research Centre, which argued that relatively small fines can lead to improved occupational health and safety compliance when used in conjunction with publicity campaigns.

That paper noted that, whilst there is some difference of opinion about the optimal penalty for an infringement notice, payment of the notice should not prevent proceedings being taken against an offender if there is continued failure to comply with the act. Recommendation 12 of the committee was as follows:

> The committee supports the use of expiation notices but recommends that their use be restricted to the failure to comply with an improvement notice within the prescribed time frame. The committee also recommends that a post implementation review be taken after three years.

The minister in his response to the committee said:

> The recommendation is consistent with the bill.

He then goes on to say:

> A post-implementation review of the provision after three years will take place.

The opposition wants to ensure that it does take place—it is pretty easy to overlook these things—so we seek to amend accordingly.

The Hon. IAN GILFILLAN: I indicate Democrat support for the amendment.

The Hon. CARMEL ZOLLO: The bill provides that an improvement notice must make provision for a statement of compliance, which is a statement by the person who has to address the safety issue, to be sent to the inspectorate within five business days of resolving the safety issue. This is important because it closes the loop on the action taken by the inspectorate and allows it to assess whether the issue has been properly resolved. Under the bill, failure to comply with that requirement may result in an expiation fee of $315.

The shadow minister's amendment proposes that a sunset clause be put in place that prevents expiation notices being issued after three years. We believe this proposal is simply unnecessary. One of the advisory committee's functions is to keep the legislation under review and, if it is determined that there is a need to make changes to this provision in the future, it can be addressed. I indicate that the government does not support the opposition's amendment.

Amendment carried; clause as amended passed.

Clause 17.

The Hon. A.J. REDFORD: The opposition opposes this clause. The principal change that this clause seeks to initiate is to enable the inspector to issue a prohibition notice in a situation where there could be an immediate risk, and the emphasis is on the words 'could be'. Obviously, the current law allows the inspector to issue a prohibition notice where there is an immediate risk. The position of the opposition is set out in some detail in both the report and the dissenting report of the committee.

The Stanley report was of the view that this would improve the bill. Employer groups raised concern over the frequency of reference to Australian Standards in the legislation and indicated some concern about this provision. They were concerned that this would enable inspectors to issue improvement notices or prohibition notices in circumstances where plant or machinery is not in current use but could, if used, pose a threat to health and safety.

It was the view of the minority in its report that this is an unnecessary provision and, indeed, has the possibility of inspectors issuing notices in respect of equipment that there is no intention on the part of an employer to use. I will give an example. On many occasions on farms—and that is probably the best example—old cars may be sitting in the back, and they are probably not that useable and the brakes probably do not work but they are sitting there being pretty harmless. It seems to us that to issue an improvement notice or prohibition notice on a farmer in those circumstances is totally unnecessary—and, indeed, on occasions, can be unfair and oppressive. The committee was not given any specific examples where the absence of this provision caused problems so, in those circumstances, we have decided to oppose clause 17.

The Hon. CARMEL ZOLLO: At present, if an inspector discovers, for example, a piece of machinery which is not in use but if it was switched on would create an immediate risk, they cannot issue a prohibition notice. As many would be aware, a prohibition notice can prohibit the use of something until the defect is remedied. This is a serious gap in the legislation which means that inspectors cannot take the appropriate action when they identify risks to health and safety. If a prohibition notice is complied with, there is no fine or anything of that nature involved. Once the defect is remedied or the safety issue addressed, the activity can be undertaken again.

It would be a terrible thing if this parliament did not support this aspect of the bill and in the future an inspector

was unable to act and an injury or death resulted. The shadow minister asserted wrongly that this would involve forcing small business to fix something 'just in case you might use it'. That is absolutely not correct. A prohibition notice is about saying that something that is defective cannot be used until it is fixed. If you do not want to use the item it does not have to be fixed. This is much like a defect notice used by police on cars. If you do not want to use the car again, you are under no obligation to fix it. The opposition's proposal to delete this clause should be rejected. Business SA, the Engineering Employers Association and the Master Builders Association support the government in relation to this stance.

The Hon. IAN GILFILLAN: The Democrats support retention of this clause in the legislation. The majority of the committee, to which I have referred earlier, supported that. The recommendation states:

> The majority of the committee supports the clause as proposed and recommends that work be undertaken to provide easily accessible information to employers on effective risk identification and management processes.

This document—which is the report—was the result of many hours of arduous and unpaid work, and I would be very disappointed if the government was not prepared to look at some of the other clauses, not just pick out the eyes which suit its particular agenda. I make that strong recommendation to the government. The committee in the main supported the contents of this bill, and the government owes this committee the respect to look at some of the less prominent recommendations that were made. It appears from evidence given to us that there are not many occasions on which there has been serious altercation between an employer and an inspector. In fact, the Industrial Registrar, Mr Correll, said that only five disputes have occurred in the past six years, and there have been no instances where an inspector has been found to have acted unreasonably. I do not need to go into the argument further, other than to indicate that the Democrats oppose the amendment.

The Hon. A.J. REDFORD: I think the argument has been had, but I have one query. I can count and I can see where this will go. I agree with part of the recommendation as follows:

> The majority recommended that work be undertaken to provide easily accessible information to employers on effective risk identification and management processes.

The government's response indicated that Workplace Services would undertake further work on providing easily accessible information to employers on effective risk identification and management processes. Will the minister give us an update as to where Workplace Services is at in providing easily accessible information on effective risk identification and management processes?

The Hon. CARMEL ZOLLO: I am advised that Workplace Services has produced further information packs in a booklet form for businesses, and it is close to finalising another initiative on which we will brief the shadow minister once the work has been completed.

The Hon. NICK XENOPHON: I indicate my support for the government's position in relation to this clause. My particular interest, for instance, is with respect to cases of asbestos. I foresee that paragraph (b) would have work to do in cases of asbestos exposure. I support this clause, and I hope it leads to a change of culture at some workplaces and improvement in workplace safety.

The Hon. CARMEL ZOLLO: I thank the Hon. Nick Xenophon for his indication of support.

Clause passed.

Clause 18 passed.

Clause 19.

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

> Page 18, line 6—
> Delete 'Authority' and substitute:
> Advisory Committee

The amendment is consequential.

Amendment carried; clause as amended passed.

Clause 20.

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

> Delete this clause and substitute new clause as follows:
> 20—Amendment of section 54—Power to require information.
> (1) Section 54(1)—delete 'or the Corporation' wherever occurring.
> (2) Section 54(1a)—delete 'for Industrial Affairs or the Corporation'.

This amendment is consequential.

Amendment carried; new clause inserted.

Clause 21.

The Hon. CARMEL ZOLLO: I move:

> Page 18—Line 17—Delete 'Authority' and substitute:
> Advisory committee.

The government's intention with this amendment is that the proposed authority would be able to access information in its own right under this provision. To give effect to that intention, this amendment has been moved to give the advisory committee that right.

The Hon. IAN GILFILLAN: The words of the government's amendment seem to be identical in their inference and intention to the series of amendments moved by the Hon. Angus Redford. I do not understand the distinction. Are we all now in harmony here?

The Hon. CARMEL ZOLLO: Basically, we understand the numbers.

The Hon. A.J. REDFORD: The government wants the advisory committee to have a role in the provision of information, and the current provision says that WorkCover will, to the extent required by a scheme established by the minister, after consultation with WorkCover, furnish to the authority and the department any of a defined set of information. We sought to delete 'the authority'. The government has indicated that it wants information to be furnished to the advisory committee, and I think that the government's amendment is better than my amendment. I will not be proceeding with my amendment and indicate that I will support the government's amendment.

The Hon. CARMEL ZOLLO: I thank the honourable member for his support of the government amendment and his explanation.

Amendment carried.

The Hon. A.J. REDFORD: I have some questions on clause 21 as amended. The clause enables WorkCover to provide information to the committee and to the department, which I think is very important and, indeed, information, in my view, that should be and should have been provided to the department. I understand that there has not been as good an exchange of information between WorkCover and the department as there might have been. Some of that includes information about any work-related injury, or about any specified class of work-related injury, or steps taken by any employer or any employer of a class to protect employees, or information relating to the cost or frequency of claims, or the outcome of any investigation undertaken by WorkCover or any other information prescribed by regulations. I am

surprised that we need a clause such as this because it is a positive and constructive measure brought forward by the government. Is this currently happening and, if not, why not?

The Hon. CARMEL ZOLLO: I am advised that there is quite a good exchange of information going on at the moment. It has improved on what was happening in the past. We have taken the opportunity to reinforce the importance of that and strengthened the legislative basis for such information exchange.

The Hon. A.J. REDFORD: Section 112 of the Workers Rehabilitation and Compensation Act states that a person must not disclose information if the person obtained information in the course of carrying out functions and the information is about commercial or trading operations, about the physical or mental conditions or personal circumstances or affairs of a worker or information provided in a return in response to a request for information under this act. Subsection (2) then sets out some exceptions to that prohibition against disclosure on the part of WorkCover. My concern in relation to this clause is that I would hope that it would prevail over the general prohibition of disclosure that is set out in section 112 of the Workers Rehabilitation and Compensation Act. I would be interested to hear whether or not that is the case. If it is not, I assume that the minister may authorise a disclosure by regulation pursuant to this proposed section 54A of the act.

To make some general comments about section 112, I think it has been misused quite substantially by WorkCover. Occasionally the Hon. Ian Gilfillan criticises WorkCover. I do it more often than he does. Because of section 112, WorkCover says it will not say anything. In some respects WorkCover has been using section 112 as a bush, cover or excuse not to respond to, on occasions, quite substantial criticism made of it in the management of certain claims. That concerns me. I am of the view that people's claims and personal matters should be kept confidential. However, when criticism is made of WorkCover we are constantly met in this corner with the response that, 'We can't comment about this particular case because of section 112', so the allegation is left standing there.

There needs to be a rethink about section 112 of the Workers Rehabilitation and Compensation Act. If WorkCover is going to hide behind section 112, as it has done so far with criticism made by myself and on rare occasions by the Hon. Ian Gilfillan, and use that section in the same way when it comes to an important occasion to disclose information to the department and the advisory committee, that would be of great concern to me and the opposition.

One of the arguments put in relation to taking occupational health and safety out of WorkCover is a lack of communication. I suspect that the fault may well lie with WorkCover on the basis that it is interpreting section 112 in the broadest possible fashion and using it as some sort of wall behind which to hide when it is asked to account for its actions. With those general comments I would be interested to hear the minister's response in relation to the juxtapositioning of section 112 of the Workers Rehabilitation and Compensation Act with proposed section 54A of this act.

The Hon. CARMEL ZOLLO: I am advised that it is not so much a matter of a difference: it is more likely to fall under section 112(2)(a) and (b) of the existing Workers Rehabilitation and Compensation Act, which provides:

> A disclosure of information is permitted if it is—
> (a) a disclosure in the course of official duties; or
> (b) a disclosure of statistical information. . .

The Hon. A.J. REDFORD: So, can I accept an assurance then from the minister that section 112 will not be used at all in relation to the provision of information by WorkCover to the department and/or the advisory committee?

The Hon. CARMEL ZOLLO: I am advised that problems of that nature are not expected to be encountered.

The Hon. A.J. REDFORD: I am just wondering whether I can get some assurance from the government that, so far as the government understands, WorkCover will not be inhibited by section 112 when it comes to disclosing information pursuant to proposed section 54A.

The Hon. CARMEL ZOLLO: I advise the honourable member that the government has no expectation of any such problems, and I particularly draw his attention to section 112(2)(a).

The Hon. A.J. REDFORD: I understand what the minister is saying. The minister has actually drawn my attention to 112(2)(a) and (b) in relation to disclosure in the course of official duties. I will give an example, and it is something that really happened to the Hon. John Gazzola, the Hon. Ian Gilfillan and me. We were asking questions in the course of our duties as members of the Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation in relation to WorkCover—and we were not asking questions of junior officers: we were asking questions of the chair and the CEO of WorkCover, and I am sure the Hon. John Gazzola will remember this. The chair and the CEO had the foresight to bring along a highly paid lawyer, and I suspect the lawyer was paid at the rate of about four times the rate at which WorkCover pays its other lawyers—

The Hon. Nick Xenophon: The ones they have just sacked.

The Hon. A.J. REDFORD: Yes, the ones they have just sacked. We were busily asking questions as a parliamentary committee. I was always taught that parliament is supreme in these things—that we stand above these things and represent the people. The executive is accountable to us, and we are accountable to the people. That is how I understood the basic constitutional structure within which we were working. Even the Hon. John Gazzola's jaw dropped to the floor when, on asking a pretty straightforward question, we were told, 'We're sorry; we cannot answer that question pursuant to section 112.' In other words, WorkCover was saying to the Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation—a committee that was elected by both houses of parliament—'We're refusing to answer because section 112 prevents us from answering the question.'

I did what the minister just did, and I did so with as much naivety as the minister just demonstrated. I said, 'Surely, Mr Carter, a question from a parliamentary committee, or a member of a parliamentary committee, requiring an answer would be a disclosure made in the course of official duties, given that, ultimately, you are responsible to the parliament; and an answer to a question from a parliamentary committee would involve the provision of information "in the course of official duties"?' I awaited the answer with some degree of interest. There was a short conversation between the highly paid lawyer and the chair of WorkCover and, much to my surprise (and much to the surprise of the Hon. John Gazzola, if I am any judge of the puzzled look on his face), the answer was that, based on legal advice, they doubted whether an answer to a parliamentary committee, which I understand is pretty close to the top of the food chain of our constitutional structure—

The Hon. Ian Gilfillan: And so it should be.

The Hon. A.J. REDFORD: And so it should be. We were denied an answer. We were told that the lawyer and WorkCover would look into it, but that was the last we heard of it. I am sure that the Hon. John Gazzola will correct me if my recollection is wrong. So, to this day, the questions we asked remain unanswered. My concern is that the minister has given an answer—and I accept the veracity and the good intent of the minister, but she has probably not had to deal—

The Hon. Ian Gilfillan: She is doing her best.

The Hon. A.J. REDFORD: She is. However, I suspect that the minister does not know what sort of animal she is dealing with, because that is the sort of answer we received. My real concern is that, when the advisory committee needs or wants important information—information that might relate to not just a class of workers or employers but to individual employers or employees—the minister (who, as I understand our constitutional structure, is slightly lower in the food chain than the parliament) will be met with the same stonewalling encountered by the parliamentary committee from these people. What I really want is something a little more than just the assurance of the minister, which I accept she has given to this parliament in good faith, as she has not had to deal with what we have on this committee.

Perhaps I could be so bold as to suggest that the minister give an undertaking that, if WorkCover refuses to provide information, a direction be given to WorkCover to provide that information to the committee and/or the department as and when the committee and the department require it.

The Hon. CARMEL ZOLLO: We do not share the concerns expressed by the honourable member. If there were problems in the future, they would be addressed. The advice I have received is that directions that may be given to WorkCover must be general in nature and therefore are unlikely to be validly used with respect to specific information.

The Hon. A.J. REDFORD: I ask the minister to assume the factual circumstance that I set out. Does the minister think it is appropriate for WorkCover to refuse to give information to a parliamentary committee?

The Hon. CARMEL ZOLLO: WorkCover must abide by its legal obligations. It is not clear to me how section 112 may have interacted with other legislation in the circumstances described by the shadow minister.

The Hon. A.J. REDFORD: If disclosure of information to a parliamentary committee is not a disclosure in the course of official duties in the view of WorkCover, how can the provision of information pursuant to section 54A be considered to be a disclosure in the course of official duties?

The Hon. CARMEL ZOLLO: Section 54A clearly mandates the provision of information and therefore makes it very clear that it is a proper thing for WorkCover to be doing.

The Hon. A.J. REDFORD: I indicate to the committee that we will vote on this clause, but I will probably seek to have this clause recommitted in the light of the answers I have received from the minister—I acknowledge that the answers have been given in good faith—to put beyond doubt that the provision of information pursuant to section 54A is important and that WorkCover cannot treat the advisory committee or the department in the same fashion as it sought to treat the parliamentary committee on that day.

Clause as amended passed.

Clause 22.

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

Page 19, line 3—
Delete 'Authority' and substitute:
Advisory Committee

This amendment is consequential.

Amendment carried; clause as amended passed.

Progress reported; committee to sit again.

DEVELOPMENT (SUSTAINABLE DEVELOPMENT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 May. Page 1781.)

The Hon. SANDRA KANCK: I consider that this bill is probably one of the more significant pieces of legislation I have dealt with in the past few years, because decisions that we make about planning impact on everyone. It is a controversial bill and there are extremes in viewpoints. Last week we saw a rally outside Parliament House organised by the Friends of the City of Unley Society and Save our Suburbs, and that group strongly opposed the bill. On the other hand, in representations from the Property Council I have heard a view that is totally in support of the bill.

The draft was released about 15 months ago and it was controversial from day one. Principally, the controversy has centred on the powers of local councils to make planning decisions. There is a proposal in the bill that we have independent members on the development assessment panels of councils and that the independents would have the majority position on those panels. Once the draft bill was released last year, I started receiving correspondence on it very soon thereafter, and in the first four months after the release of the draft I attended presentation seminars and met with groups on five occasions, which is not bad for a bill that is in the draft stages and 12 months out from its final presentation to the parliament. Since the introduction of this bill into the parliament six weeks ago, the lobbying has gone into overdrive.

Many groups have an interest in this bill, and quite a few of the groups that have been writing to me are dependent on volunteers to do their research. They have all been working overtime to go through the new bill, track the changes compared to the draft bill, work out what those changes mean and decide where they stand on the legislation that we have before us. When the bill came out last year I thought, 'Sustainable development—that is a very good sign.' It certainly gave me some heart. However, once I looked at the bill my hopes were dashed because it had nothing to do with sustainability, and the bill that we now have to debate still disappoints in regard to sustainability. The Environmental Defender's office has said quite clearly that this bill does not deserve to have this title.

In 1987, the World Commission on Environment and Development (known more commonly as the Brundtland Commission) defined 'sustainable development' as follows:

> Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

That definition has been widely accepted. I looked for some other definitions on the Australian government's Department of Environment and Heritage web site. The Australian National Strategy for Ecologically Sustainable Development in 1992 (to which South Australia is a signatory, I suppose,

or a member) had the following definition of 'ecologically sustainable development':

> Using, conserving and enhancing the community's resources so that ecological processes on which life depends are maintained, and the total quality of life, now and in the future, can be increased.

I turn to clause 5 of the bill, and the following is the definition of 'sustainable development', not 'ecologically sustainable development':

> For the purposes of subsection (1), sustainable development means development that is assessed or undertaken taking into account the principle that decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations.

That is a long way off the definition that is used in the national strategy for ecologically sustainable development. It is certainly not what ecological sustainability is about and, if this is what the government intends, it is an absolute bastardisation of the term.

There is a much better definition in the Natural Resources Management Act which we passed last year. Section 7(2) of the Natural Resources Management Act states:

> For the purposes of subsection (1), ecologically sustainable development comprises the use, conservation, development and enhancement of natural resources in a way, and at a rate, that will enable people and communities to provide for their economic, social and physical wellbeing while—
> (a) sustaining the potential of natural resources to meet the reasonably foreseeable needs of future generations; and
> (b) safeguarding the life-supporting capacity of natural resources; and
> (c) avoiding, remedying or mitigating any adverse effects of activities on natural resources.

Again, it is a great improvement on the definition we have in this bill. The definition of 'sustainable development' in this bill is one that would bring a smile, perhaps even a smirk, to the faces of people such as Robert Champion de Crespigny, our Economic Development Board and Business SA.

I do wonder what the government is intending. The act already refers to ecologically sustainable development in section 3 under the objects of the Development Act. Section 3(c) states:

> To provide for the creation of development plans. . .
> (iia) to encourage the management of the natural and constructed environment in an ecologically sustainable manner.

As best as I can tell, the Development Act does not define 'ecologically sustainable development'. It is strange that we have ecologically sustainable development mentioned in the act with no definition, but in this bill that amends the act we have a definition of 'sustainable development' that has nothing to do with inter-generational equity, or the precautionary principles, and the sorts of things that one regards as basic when you are talking about ecologically sustainable development.

I do not know whether many members have come across the engineer, doctor and professor, Sharon Beder. I have read her book on the privatisation of Australia's electricity assets. She is certainly worth a read. She has some very interesting observations to make about the use, or probably more appropriately misuse of the term 'sustainable development'. That misuse or misappropriation is frequently done by people in the business world. In an article called 'The hidden messages within sustainable development', which was published in *Social Alternatives* in July 1994, she states:

> Sustainable development is not about giving priority to environmental concerns, it is about incorporating environmental assets into the economic system to ensure the sustainability of the economic system. Sustainable development encompasses the idea that the loss of environmental amenity can be substituted for by wealth creation; that putting a price on the environment will help us protect it unless degrading it is more profitable; that the 'free' market is the best way of allocating environmental resources; that businesses should base their decisions about polluting behaviour on economic considerations and the quest for profit, that economic growth is necessary for environmental protection and therefore should take priority over it.

I have concerns that the definition of 'sustainable development' in this bill is probably headed in that sort of direction and, as I say, it does not appear to have anything to do with ecologically sustainable development. I wonder whether this is what the government intends—to disguise an economic growth agenda in terms of a misguided and misused definition of sustainable development. I would like the minister to come clean on this.

In reflecting on this bill with my colleagues, we discussed whether we ought to consider introducing a private members' bill to stop the misnaming of bills by the government, this bill being just one example of it. The Law Society's submission on the draft bill commented that the title of the bill would add confusion because 'sustainability is not achievable through this bill'. I take it from that that the Law Society assumes that the government is talking about ecological sustainability. Members can be assured that the Democrats will have an amendment to define ecologically sustainable development and, if that is not achievable, we will consider finding a new name for the bill because, as it stands, the name of this bill misrepresents its intent and sets up expectations that cannot be met.

As I mentioned, there has been a lot of lobbying over the bill, and I want to put on record what some of the many groups say about it—and I am simply reporting rather than giving any particular personal point of view as to which view I support. The Conservation Council is generally supportive of the bill and was very heartened initially by the prohibited category of development, which is much stronger than the current noncomplying use category which is generally interpreted by developers as meaning, 'Have a go, anyway, and you might just get away with it.' The Conservation Council says that it is looking forward to a significantly strengthened act in which genuine consultation is ensured, the direction is clear, the ambiguities currently found in the legislation have been clarified and, most importantly, third party rights of appeal are strengthened and ensured.

The South Australian Division of the Planning Institute of Australia supports the overall thrust of the bill, although it has indicated that some of the measures contained in the bill are a little heavy-handed. It supports having a consistent structure of development assessment panels with a 'balance of local accountability and professional expertise'. It was interesting, I have to say, to read through its submission on the draft bill, which I thought contained some pretty sensible suggestions, and then compare it with its submission on the bill before us. Sadly, there is almost no variability in the two—and I say 'sadly' not as any sort of criticism of the Planning Institute but, rather, criticism of the government that most of the things that the Planning Institute said about the draft bill have not been acted on by the government as part of the consultation, so the Planning Institute has had to say it all again.

Save Our Suburbs has described the bill as 'draconian and oppressive'. The Burnside Residents' Association echoes those views and is critical of the government for blindly following the representations of the Economic Development Board. The Friends of the City of Unley Society say that this bill will facilitate the continued destruction of our built

heritage—in other words, it says this bill will make it easier for it to happen. The People's EPA (which includes under its umbrella more than 15 groups, such as Urban Ecology, the Dawsley Creek Catchment Group and the Dumps Coalition) supports the bill's intention to bring about more professional assessment of planning applications and welcomes the compulsory review of development plans.

They welcomed the five-year timetable for this but suggested that it could be brought down to three years. The Henley and Grange Residents Association went even further, suggesting that it should be an annual review. That same group was not happy with the minister being able to decide who the independent members of the development assessment panels would be. It also made suggestions about the sort of experience the independent members should have and recommended that there be one person who had small business and community planning experience, a second who has experience in social justice or social inclusion, and a third whose expertise is environment and sustainability. Although I said I was not going to give my own views on some of these things, I have to say that that one appears to me to be an eminently sensible contribution.

The Property Council has argued for the bill on the basis of transparency, certainty and ease of use. These are not all the groups that have communicated with me about the Sustainable Development Bill, but it does show that there is a very wide divergence of views about this bill. What is the rationale for the bill? That is a question that does need to be asked, given some of the wide-ranging changes that it contemplates. There is a little bit of history. We need to recognise that this is part 2 of a package, part 1 having been passed under the previous (Liberal) government in 2001 when Diana Laidlaw was the minister.

In 2003 the then Minister for Urban Development and Planning—I always find it strange that this government puts the 'development' before the 'planning'. It seems to me that you should put 'planning' before 'development'—nevertheless, they call him Minister for Urban Development and Planning. The minister in 2003 (Hon. Jay Weatherill), in an interview on 5AA, said:

> We believe that the current system is too much weighted in terms of putting an ambulance at the bottom of the cliff. Everybody focuses on the Development Assessment Panel, about whether you tick a development or knock it off. What we have to do is make sure that the rules that determine whether developments could go back, could succeed or not, are so clear that we cannot get inappropriate development.

It is a little bit difficult to follow, but that is the quote as he had it on 5AA, and it probably supports what I was saying: that it is probably better that the minister be called the Minister for Urban Planning and Development rather than the other way round. Bronwyn Halliday, who is the head of the Department of Urban Development and Planning, is the common denominator between the amendments in 2001 and what we have before us today. As, then, an independent consultant, she wrote the report that set these amendments in motion during the Olsen government. Ms Halliday told one of the meetings I attended that, in a nutshell, the intent of the bill is to plan first and assess later. That would appear to be quite an intelligent way to go about the process of planning.

However, in April last year, when I attended what the government called The Economic Summit One Year On, Warren McCann, the head of the Department of the Premier and Cabinet, proudly told the assembled people that, when this bill was passed, South Australia would have the fastest turnarounds on planning approvals in Australia. Up until that point, I had been thinking that in general principle this bill did not seem to be a bad thing but, once I heard that, that really set me on edge, because South Australia already has the fastest turnaround of planning approvals. The thought that the government was intending that it would be faster than it currently is was enough to leave me concerned that we would see a large section of our community disfranchised by this legislation.

However, my inquiries since then have reassured me that Mr McCann's claim is not substantiated by the legislation. Rather, it was more a case of the government doing some chest beating and saying to Business SA and the various business people who were there that it was prepared to do the economic lobby's bidding. One of the things we need to consider in what the government is proposing is that 95 per cent of planning decisions—and in some councils it is up to about 98 per cent—are decided through delegated powers in local government. That means that, for a large part, this bill is talking about the remaining 5 per cent or, if it is a council that has a 98 per cent throughput, the remaining 2 per cent.

Most planning delays occur because the applicant has failed to lodge sufficient information at the time of lodgment of the application. What is the problem that the government is trying to solve? Where is the evidence that councils are not operating in a timely fashion? I do not think that one can blame local government for delays. In fact, I would say that it could well be in the reverse. Burnside council had to wait seven years to get one plan amendment report approved by Planning SA, and Walkerville council had to wait three years, yet the government, Business SA, the Economic Development Board and the Property Council have argued that timeliness is one of the reasons for the bill.

Clearly, that is not the reason. Perhaps the reason is the politicisation of some planning decisions in the past. There was a debate about this bill (I think it was in April last year), organised by the Planning Institute, as to whether or not local government had a role to play in planning. I remember that one of the speakers representing the planning side of things gave a very simple statement. He said, 'Mitcham council planning—a contradiction in terms.' Everyone laughed, because, in the past, Mitcham council has opted for populist positions, going with the majority of what its electorate wants, which has resulted in developers then taking the council to court.

As one person said to me some 12 months ago, 'That is why so much of my rates bill goes to keeping George Manos in business.' However, I do recall that, when he was the minister for urban development and planning, the Hon. Jay Weatherill publicly berated Mitcham council for some of its planning decisions and behaviour. I was speaking last week with, I think, a former Mitcham councillor. Figures that I was given for 2004 about Mitcham planning showed that 1 940 applications were lodged with Mitcham council. Of those 1 940, 90 went off to its development assessment panel, and of those 13 were turned down and then appealed to the ERD court.

Of those 13, the council position was confirmed in two cases, one was confirmed as approved for the applicant, and there are seven ongoing. There is something here that I cannot read in my own writing, but, clearly, there has been quite an improvement in Mitcham council's performance on planning as, I think, councillors have got a better understanding of their responsibilities in relation to planning applications. I met with the Local Government Association a little

over a week ago in relation to this bill and, although the document it gave me does not spell it out, because it was putting things more in dot points, it made it very clear to me that it sees itself (that is, not the Local Government Association but local government, which it represents) as being under attack in this legislation.

I want to look a little at what the government proposes in regard to the responsibilities of local government. Clause 18 of the bill requires local councils to ensure that the development plan amendments of that council are implementing the planning strategy. What is the planning strategy? Clause 15 spells out that the state planning strategy is to include relevant parts of the South Australian Strategic Plan in which, I note, the average South Australian (and most of us here in the parliament) have had no say. It also includes the objectives of the River Murray Act, about which, we as MPs, did have a say, but about which almost everybody out in the community had no say. I refer to new section 22(3a)(c), which is found in clause 15, which provides:

> Prepared, adopted or applied under another Act (or a part of such a plan, policy, statement or instrument) adopted by the Governor for the purposes of the Planning Strategy by notice in the Gazette.

When we look at that, the sum total of what it is that councils have to be answerable to with their development plan amendments, we can start to get an understanding of why resident groups are feeling uneasy about this bill and, in some cases, alienated. It certainly is a very top-down proposal. To people out there in wider South Australia, it feels imposed.

One of the positives in the bill is that there is a requirement that each council must review its policies and development plan every five years. There is one problem in that. That is, councils can make the plans but, of course, the minister can knock them back. I pointed out to the Friends of the City of Unley (FOCUS) that, as part of the policy preparation, the Unley council could, for example, say that in a particular part of that council area every house has to have a one metre setback from the fence line, and that every roof, for example, must have a minimum angle on the roof of seven degrees at the front of the house. From that perspective, given their concerns about a lot of the recent Unley decisions allowing buildings to be knocked down (which council has had to approve because of the development plan), this would be a better option for them.

However, their response has been that the minister could or would turn it down. I would be interested to know from the minister, when he sums up in his second reading speech, just what sort of policies he would be likely to turn down. If a council were to say, just as I have surmised, that every building in a particular area has to have a one metre setback from the fence so that we do not have warehouse style developments, would the minister turn something like that down and, if so, what would be the grounds for doing that?

Another one of the questions that has been posed by a number of groups in relation to the bill is the structure of the development assessment panels. If a structure of independent members and chairs of these panels is to be imposed on local councils when they are quite happy with what they have, who is going to pay for these people? I have been informed by one local government councillor that their council has been told that these DAP members should expect to be paid $250 each for a sitting, and $300 for the chair. At that cost, with each council's DAP having an independent chair and three independent panel members, it will cost $1 050 for them to be involved in a meeting, and, if they meet monthly, it will cost each council $12 600 per annum.

I ran that past a councillor in another council who said that they had been told that they have been asked to provide $500 for the independent chair for a sitting. So if the higher figure is correct, we are looking at each council having to find at least $15 000 per annum for the independents on the development assessment panels. I am wondering to what extent the government has looked at the implication of funding. Does the government anticipate that elected councillors serving on the panel would be paid a similar amount?

The question arises of who will pay. If the government says that local government has to pay, what if the local government entity says that it cannot or will not pay? If the council takes that stance and the minister says that councils have to pay, will it mean that those councils will not have independent members on them or will the government somehow find money to pay for them?

I also remind members that smaller councils are already at a disadvantage compared with metro councils because of the number of ratepayers. The question of the regional DAPs arises as to who will pay. If the minister makes a determination that the local DAP will not be the suitable group to process an application and says that a regional DAP will be brought into existence, who will pay for it? I am not averse to having independent members with relevant experience or qualifications on these panels, but I am not sure whether the government has looked into the cost implications of the idea. This is something I will be listening to very closely when the minister responds, because it will determine some of the amendments the Democrats put forward. There are questions of accountability in having non-elected members on the DAP and I therefore signal the Democrat's intention to amend the bill so the elected members of local government will be in the majority.

The LGA argues that this balance is important because of democracy. I do not agree with it on that count. With the numbers of people who vote in local government elections, the argument of democracy does not have credence for me, but I will be moving that amendment in committee because of accountability. If the elected members are in the majority on the DAPs and they get it wrong, they can be turfed out at the next local government elections, but with the independent appointed members we cannot do that. There must be some answerability in this.

I would like to canvass the wider philosophical question of whether or not there should be independent members on the DAPs. Currently that is an option for local government, but this bill makes it compulsory. Is that a good thing or a bad thing? Campbelltown council, to which I belong, appointed an independent chair two years ago and, when I read my local *Messenger* to ascertain what is happening in councils covered by development, most often I see that other councils are having problems and not Campbelltown council. I am not saying that that has to do with there being an independent chair, but one could gain that impression. The Marion council also has an independent chair and it also does not appear to get in the headlines with its local residents opposing it. Those who argue against the inclusion of independents on the development assessment panels are taking the view that local councils are in touch with their residents and therefore get it right.

I make very clear that local government does not always get it right. I will give some examples that have occurred in the past two years since I have had this portfolio. Streaky Bay council allowed cliff-top developments almost a stone's throw from osprey and seagull nests. Onkaparinga council

allowed a large housing subdivision right up against a conservation park. The fault in that case was that, when councils were amalgamated, they did not bother to look at the particular planning decisions and the sort of development plans they inherited in that process. Burnside council failed to list Fernilee Lodge on its heritage list because the owners did not want it listed. As we now know, that was demolished. Charles Sturt council's plans for Henley Square are being pegged back, but only because the Henley and Grange Residents Association keeps asking questions and applying the blowtorch to that council.

We have seen secrecy on Kangaroo Island where the local council refuses to reveal the content of secret discussions that council members have had with the proponents of a marina at Kingscote. When I asked the local mayor about those, he said, 'We have no formal proposal before council and, therefore, I have nothing to talk about.' Unley council has developed a reputation for allowing the bulldozing of old cottages, to the chagrin of locals who, as a consequence, formed the group FOCUS to publicise the council's decisions and campaign against them. We have seen Walkerville council ride roughshod over the residents in regard to the destruction of cottages on Walkerville Terrace last year—cottages that dated back to the 1840s. Recently, Light council made a decision about a winery, and one of the local residents said in his correspondence to me:

> I feel that a better system is required if the people in council areas can be excluded at the expense of large companies, waving large amounts of cash about.

Last year, Adelaide City Council made a decision to allow buildings to overshadow the eco-city development, which is dependent on sunlight for hot water and photovoltaic power systems. Port Adelaide Enfield council failed to list the Ethelton Hotel for heritage protection resulting in a 125-year old hotel being demolished. Strathalbyn council on a number of occasions has prepared plan amendment reports to cater for the desires of each successive new owner and developer of the land at the gateway to the town.

Most recently, we had a very interesting example before the Environment, Resources and Development Committee where Charles Sturt council had rezoned, it put a PAR up for signing off, the minister had signed off on it, and this was to redevelop the land on which the former Underdale campus of the University of South Australia was situated. It started out being a retirement village, and then the Catholic institution that bought the land wanted to turn it into a school. So, there was a situation where this particular plan amendment report, which was going to turn the area into a retirement village, had been signed off by the minister, and the last vestige of hope for any change lay with the Environment, Resources and Development Committee. The committee was asked by the Catholic Church to substantially alter the PAR because there was no other way to do this, and to put it back to what it was, which meant saving some of the educational buildings that UniSA had for many years on that site.

The Environment, Resources and Development Committee agreed to do that, despite the fact that the PAR that we were dealing with said that it was to be turned into a retirement village. So, when Charles Sturt council appeared before us, I asked its representatives: what was the desired future characteristic for that land? What did Charles Sturt council want on that land? Did it want a retirement village or did it want a school? I asked the question a number of times and they would not tell me. It was doing exactly the same as Strathalbyn council—trying to have their plan amended to suit the developer. The only thing that I could get out of Charles Sturt council in that process was that there certainly was a shortage of land in the Charles Sturt council area for retirement villages. However, it clearly demonstrated that capacity, and even an intention, by many local councils not to have any proper plan per se but to be prepared always to amend it when a developer comes along.

I give you these examples of where local government does not get it right, because some in local government are creating the impression it always gets it right. It is very clear that local government does not get it right all the time, and often it is out of touch and simply responding in a knee-jerk way. So, there is nothing intrinsically good about decisions being made by local government and, too often in my opinion, it is making decisions behind closed doors without the accountability that is required. I think that there are some cases in which local government is absolutely the wrong group to be making decisions.

I gave this example to the LGA when I was meeting with it. I will give examples of two different councils on the question of having wind farms in their area. Victor Harbor council was not finally in a position to make a decision about a wind farm in its area; nevertheless, it had a debate about whether a wind farm should be located there and only one councillor was prepared to say yes—all the other councillors said no. They were responding to very effective lobbying from resident groups in the area—and I might say that I believe there was a good case for locating this wind farm a little further back from the coast.

It was a very emotional debate, very much dependent on lobbying that had been done and, in turn, very much dependent upon how people felt about it and the issue of loss of visual amenity. By the way, I felt that there were concerns about sea eagles that needed to be taken into account in any decision on that. However, most of the arguments I heard about this wind farm were about loss of visual amenity. Clearly, a local council is not in a position of being able to look at the big picture in terms of South Australia's future energy needs—and it does not have to.

In contrast to that, I think it was the Lower Eyre Peninsula council—and it may also have been Elliston council when I was over there for the regional Local Government Association conference a couple of years ago—that was enthusiastically talking about erecting wind turbines almost the whole length of the cliff. When we had lunch on one of these cliff tops I was simply appalled that the council would want to put wind turbines in a place of such scenic beauty. Its view was that having wind turbines there would create jobs for the community. I believe that this council, also, was not in a position to make an informed decision on this because it was being influenced by that desire to create jobs. So, one council is saying no and one is saying yes for different reasons, but in neither case was it a rational, scientific decision.

I must make an observation about that. In terms of what the government is proposing for the regional DAPs, when the minister can intervene and say, 'This council cannot make this decision on its own; we are going to combine a number of councils so that there will be a better informed decision', the government would, no doubt, have intervened in the Victor Harbor council situation and would have set up a regional DAP. However, in the case of Eyre Peninsula, I suspect that it would not have intervened because it would have fitted with what the government wanted, and I guess this might show some of the limitations of the strategic plan.

Getting back to the issue of independent members, the Democrats are certainly looking at the issue of the qualities and experience that these independent members should have, and I referred earlier to the submission from the Henley and Grange Residents Association which, I thought, had a lot of merit. The bill does not say what the qualifications should be, but the assumption in the public debate over the past 15 months has been that the people who will go on to these DAPs will be planners. In fact, I would say that some of the debate about this has been quite vitriolic and has been presented as a showdown between planners and councillors. I do not think it is a necessary or even a reasonable assumption that these independent people will be planners. Marion council's development assessment panel, for example, is chaired by a planning lawyer, and I can think of a number of people who could be on these DAPs.

We could perhaps have members of the community who have been active in planning issues; we could have architects; and, if it is a council that is located on the coast, we could have people with expertise in coastal management. I am quite prepared to name some people whom I think would be excellent members of these panels, such as Margaret Bolster from the Conservation Council of South Australia, who founded the Mount Lofty Ranges Conservation Association about a decade ago and who is on the board of the Upper South-East Dry-land Salinity Scheme; Marcus Beresford, former head of the Conservation Council and now active Friends of Brownhill Creek, who has probably lost count of the number of submissions he has written about what were then supplementary development plans and now plan amendment reports; and Mark Parnell of the Environmental Defenders Office, who goes into court regularly to bat for the little people in regard to planning decisions. Imagine if we had Diana Laidlaw as an independent member of the panel. To simply say that planners are the only suitable people is limiting ourselves and denying ourselves of a lot of expertise.

In conclusion, I know that I have not addressed all the aspects of the bill and all the concerns many groups have raised (I will be doing so via questions and amendments in the committee stage), but it seems to me and to the Democrats that there are both positive and negative aspects of the bill, and, as the Planning Institute has indicated, some of what the bill proposes is heavy handed. The Democrats support the second reading, with the intention of amending the bill in committee, including ensuring that third party rights of appeal are upheld. We will not be siding with any one group in this debate. Rather, we will look at what is going to produce a bill which is in touch with community needs, which ensures accountability and which does what this bill purports to do in its title—that is, to have a planning system that will produce ecologically sustainable outcomes for South Australia.

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

ADJOURNMENT

At 11.08 p.m. the council adjourned until Tuesday 31 May at 2.15 p.m.