LEGISLATIVE COUNCIL

Wednesday 2 March 2005

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

LEGISLATIVE REVIEW COMMITTEE

The Hon. J. GAZZOLA: I bring up the 15th report of the committee.

Report received.

The Hon. J. GAZZOLA: I bring up the 16th report of the committee.

Report received and read.

QUESTION TIME

STATE DEFENCE SECTOR PLAN

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the Leader of the Government questions about the State Defence Sector Plan.

Leave granted.

The Hon. R.I. LUCAS: The opposition has been provided with a copy of a whole of government email that has been sent by Mr Ray Garrand, Chief Executive of the Department of Trade and Economic Development. The heading of this email makes that point by stating, 'This message has been authorised by Ray Garrand, Chief Executive, Department of Trade and Economic Development'. It advises all public servants that the Premier will be launching the government's State Defence Sector Plan on 11 March but, interestingly, as highlighted by public sector sources, the response to the invitations is to go to a private sector company called In Front Management at email address events@infront.com.au. I had a look at the In Front Management web site. Its speciality, as highlighted on its home page, is 'We create and deliver dreams. . . We love doing it!'

The web site also highlights the expertise of the company and the background of the management team. In relation to Mr Scott Ireland, it states:

> Our fearless leader, who motivates, spends and introduces change to our organisation at a rate of knots (you can tell who wrote this piece can't you?). Scott's regular quote is that 'event management is not rocket science. . . but it sure can look like it if the job is not done properly!'. . . With a 'wicked' sense of humour and an ability to laugh his way through the most demanding of shows while getting the best out of every supplier his style is more like a hardened farmer than that of suave salesman (however, he can sell ice to Eskimos as well!).

It then highlights the background of other members of the management team including Mr Les Penley, who many members would know given his background as CEO of Kangaroo Island Sealink and other interests.

Given the significant resources available to the government through its press secretarial corps and its marketing and public relations capacities available through various government departments and agencies, I have several questions; however, at the outset, I indicate that we are in no way critical of this management company. It may well be a very good company. Our questions are more in relation to the use of government resources by Mr Ray Garrand and others. My questions are:

1. Why did the minister and/or the Premier decide that it was necessary to have an outsource private sector company to manage the release of the state government's announcements in relation to the defence sector?

2. Can the minister indicate what resources he has approved in relation to the employment of In Front Management, and for the launch of the defence sector plan on Friday?

3. Can he indicate whether or not he is classifying In Front Management as a consultant or as a contractor in his departmental records and books?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): It is all very well for the Leader of the Opposition, having made fun of what this company has on its web site, to then turn around and say, 'I don't mean to say anything bad at all against the company.'

The Hon. A.J. Redford: He was quoting.

The Hon. P. HOLLOWAY: Yes, he was quoting from the web site. Why would he quote from it with great mirth? Do you think people are stupid? The opposition must think people are stupid.

The Hon. R.I. LUCAS: I rise on a point of order, Mr President. It was a deadpan delivery. There was no mirth in the delivery of the question from the Leader of the Opposition, I can assure the leader.

The Hon. P. HOLLOWAY: It was a dead-pan comic!

The PRESIDENT: That was not a point of order; it was a defence.

The Hon. P. HOLLOWAY: Anyone who reads *Hansard* will be able to make their own judgment, and I leave it up to any person who reads that to make their own conclusion. In relation to the details of that contract, I will take that question on notice and get back to the Leader of the Opposition.

The Hon. R.I. Lucas: Why do you need one?

The Hon. P. HOLLOWAY: The Leader of the Opposition knows that, when we had the old department of industry and trade, there were well over 300 employees. Now we have a new lean, mean Department of Trade and Economic Development, which has about 120 positions, and the reason it is so efficient is that, where expertise is required from outside, we are happy to use that. Defence is an incredibly important sector for this state's economy, and I am sure the leader would agree with me on that much.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Yes, it is a very important launch. The honourable member would know that, at this very moment, we are in the final stages of bidding for one of the most important defence contracts to come up for many years, and it is extremely important for this state. With the Premier's chairing of that defence sector, we are putting an enormous amount of effort into ensuring we have the best possible opportunity of winning that contract. In fact, an important group of people has been assembled, including Mr Ian McLachlan, the former federal defence minister, and of course Kevin Scarce, the head of the unit and a former rear admiral.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: It is a very important sector of this state, and I am not surprised—and no-one should be surprised—that the government is having a launch for this important plan that is as wide as possible, given that the state is seeking to gain that very important federal contract. I will obtain the specific details for the honourable member.

ANANGU PITJANTJATJARA LANDS

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about the Anangu Pitjantjatjara lands.

Leave granted.

The Hon. R.D. LAWSON: In May 2004, the budget announced an additional allocation of funds to solve problems on the Anangu Pitjantjatjara lands. The budget details, which had been leaked over the preceding weeks before the budget was delivered, included funding for eight police officers to be stationed on the lands. At that time there were no police officers stationed permanently on the lands. There was also an announcement that night patrols would be established and funded, and the Hon. Kate Reynolds mentioned that issue yesterday in a question directed to the Minister for Police.

My questions to the Minister for Aboriginal Affairs and Reconciliation are asked in the context of statements made yesterday that police stations and homes are being built on the lands and it is expected that police officers will finally be put on the lands in the second half of this year. Is the minister able to identify precisely what has happened in relation to the building of homes and police facilities on the lands since the budget announcement? How many officers are stationed on the lands at the moment, and when, precisely, will officers be sent to live on the lands?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): The honourable member is correct. The budget did make allocation for extra funding for the lands, some of which was put into programs through the APY and other service agencies such as Nganampa Health Services and NPY Women's Council, etc.

In relation to policing, the situation is—and I think I have answered this question in part in the council before—that it is difficult to get permanent police officers attached to the lands because of the lack of adequate housing. An assessment has been made, and I am not quite sure whether it has been completed, to work through the housing accommodation problems for police, given that it is far better for the police to establish themselves permanently, if that is possible, within our regional remote areas through housing assistance rather than flying in and flying out. My understanding is that those extra police officers that were added via the budget process through the police minister (and I will refer those parts of the question to the minister in another place and bring back a reply) have been flown in and out on a roster basis. My understanding is that there are seven police officers and a field sergeant, but I will verify that with the Minister for Police.

The position in relation to the night patrols is that, when they were set up as a pilot program with the commonwealth in conjunction with the communities, they were working. When they were put in place and supported, they were working. The intention of the government is to assist the communities through the police training programs to run their own patrols within the major communities where they have been requested, and that the police carry out those training operations with Anangu and provide support for them. I am uncertain with respect to the other question regarding how many police there are at this time. I will refer that question to the Minister for Police in another place and bring back a reply.

The Hon. KATE REYNOLDS: Sir, I have a supplementary question regarding some comments made by, I think, Inspector Gordon (I hope I have his name and title right) on ABC Radio yesterday, when he said that new police stations were being built on the lands. Can the minister clarify whether that means police stations or lockup facilities?

The Hon. T.G. ROBERTS: As I understand the situation, Amata will have a police presence. It does not have a permanent police presence now; Marla is the central police station for the lands. That has been found to be inadequate for the western regions of the lands, in particular. The time it takes for Marla police to respond to requests from the western side of the lands has proved to be a difficulty. An assessment is being made as to where to better place police stations in the lands. It may be that Amata becomes the central point for the western region but, again, I am not privy to the negotiations that are being carried out by the police. Assessments are being made—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: It is a logistical question in relation to where they can be placed and where housing will be made available. I am sure that, when the decision is made through the budgetary process and through the office of the Minister for Police, I will be informed. I did not hear the interview, but I suspect that the lockups and the police presence, although they may be connected, are not the same. Assessments have been made on the state of the lockups within the communities. They have been found to be inadequate and will be upgraded. If there is to be a change to the situation in relation to permanency, housing and adequate police presence for the western side of the lands, as I have indicated, Marla will not be the preferred position for those police. They would have to be placed closer to the western side of the lands for them to be effective and to cut back the time taken to travel to a destination when requested.

Those matters are being dealt with. Budgets have been prepared. Some moneys have been expended, and we hope to have the night patrols running in an effective way using trained Anangu to supplement the police presence. My understanding is that the request was given further impetus by an incident that occurred in Pukatja just recently in relation to the Pukatja store. The government is aware that more has to be done. The commonwealth and the state met after the incident at the store, and I think an MOU will be forthcoming out of that; an agreed position is being discussed at the moment. So, there is a lot of work in progress. Some of the programs have good traction already. I have raised some of the other issues in this council on many occasions—for instance, encouraging professional people to take up positions within the lands is difficult.

The housing issues, as I have raised in this council before, and the difficulties that arise with skills development and tendering processes with the industry booming, have narrowed the number of people available in relation to dealing with those issues. The government is wrestling with those difficult issues and trying to improve the number of houses being built for government employees and for the Anangu themselves, while dealing with service provisioning within the lands. It is a work in progress, and I am prepared to report to the council the progress that has been made in all those areas in a timely fashion.

The Hon. KATE REYNOLDS: By way of supplementary question, in relation to the location of any new police stations, will the minister ask the Minister for Police whether

the NPY Women's Council, Nganampa Health, the APY executive, his department (DAARE) and perhaps even the minister's own views will be formally sought by SAPOL and considered in that decision making process about where any new stations and/or lockups might be located?

The PRESIDENT: Some of the supplementary questions, with the greatest respect, contain a lot of opinion and supportive argument. Supplementary questions should be a straight question.

The Hon. T.G. ROBERTS: I give an undertaking that the location and the discussions around location will certainly be based on broad consultation. The process of locating any government services within the lands does by necessity require broad consultation with the APY executive and others to get permission to build government offices and/or facilities within the lands, and agreements have to be reached on who finally owns the assets the government puts in place.

The Hon. R.D. LAWSON: By way of supplementary question, with reference to the police accommodation at Amata, mentioned by the minister in his answer, will he confirm that there is a dedicated police residence at the Amata community and has been for a number of years, and will he advise the council when that residence was last occupied by police officers on the lands?

The Hon. T.G. ROBERTS: I will refer that question to the minister in another place and bring back a reply as I do not have an answer at the moment.

HEALTH SERVICES DEPARTMENT

The Hon. A.J. REDFORD: I seek leave to make an explanation before asking the Minister for Correctional Services, representing the minister responsible for WorkCover, a question about the Department of Health Services.

Leave granted.

The Hon. A.J. REDFORD: The Department of Health Services (or human services, as it was formally known) in its 2004 annual report claims to have 3 574 employees or 3 320 full-time equivalents—a substantial number of people by any reckoning. In the financial year ending 30 June 2001, the cost of new claims was $225 000, which climbed to $297 000 by 30 June 2003, a rise of some 32 per cent. Between June 2002 and June 2004 the cost of all claims, excluding lump sums, doubled. As members are aware, the department is an exempt agency, pursuant to section 61 of the Workers Rehabilitation and Compensation Act.

The department is an exempt employer and therefore manages its own WorkCover matters. If the department was a private sector employer it would be liable to be regularly audited to ensure that it was achieving better occupational health and safety standards than the industry standard. If it did not and was in the private sector it would lose its exempt status. I also note that the number of open claims has increased by 20 per cent over the past two years and that the total number of days lost has gone up from 53 to 498 in the year ending 30 June 2004—an almost 10-fold increase.

Earlier this year, I issued a freedom of information application seeking access to any occupational health and safety audit report concerning this department for the past two financial years. Members might recall I did the same for DECS, which showed an alarming failure in relation to asbestos in buildings. To my utter and complete surprise, I was advised that 'such an audit has not been carried out for this department for some years', a situation that would not be tolerated in the private sector. Indeed, in July last year, WorkCover announced that it would be auditing health and aged service industries because of estimates of $28.5 million resulting from poor patient handling. In the light of that my questions are:

1. Why has WorkCover not audited the Department of Health, which employs 3 574 employees, in the past two years?

2. Why is there one rule for the private sector and another for the public sector when it comes to worker safety?

3. When does the minister expect WorkCover to audit the department?

4. Has any actuarial assessment been undertaken to establish the current liability of the department to its workers?

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

NATIVE TITLE MINING AGREEMENT

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about Native Title Mining Agreement.

Leave granted.

The Hon. CARMEL ZOLLO: Last week I noticed in *The Advertiser* that there had been a new discovery of opal near Coober Pedy. I was reminded that a Native Title Mining Agreement between opal miners and the native title claimants was outstanding at Wellbourn Hill. What progress has been made on the Native Title Mining Agreement at Wellbourn Hill?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I am very happy to be able to tell the council that the Native Title Mining Agreement has been completed and signed. Just by way of background, in June 1998 the South Australian Opal Miners Association Incorporated (SAOMAI) negotiated a native title agreement (original agreement) pursuant to part 7 of the Opal Mining Act 1995 with the Yankantjatjara Antakarinja native title claim group over an area comprising parts of Lambina station (some people call it 'Lamina') in the far north-west of the state.

The original agreement, which was registered on 8 July 1998, is an 'umbrella authorisation' which has allowed SAOMAI members to peg, register and mine precious stone tenements within the Broken Leg and Seven Waterholes diggings subject to agreed terms and conditions. The South Australian Opal Miners Association recently negotiated an 'umbrella authorisation' with the same claimant group for three opal diggings on Wellbourn Hill station, and the parties agreed at that time that the original agreement should be updated to reflect the terms and conditions agreed to for Wellbourn Hill. The new Lambina agreement has been executed by the parties and lodged with this office for assessment and registration pursuant to section 59 of the act. It is intended to amend the original agreement and replace it to the extent of the amended clauses.

The original agreement was fully assessed to ensure total compliance with the notification procedures under both the act and the Native Title (South Australia) Act 1994 when it was first lodged in 1998. No notifications were required to be given in respect of the amended agreement, as the parties agreed to make appropriate changes to ensure that it was consistent with the Wellbourn Hill agreement. The agreement

is identical to the Wellbourn Hill agreement (apart from the areas authorised for mining) and provides for the following:

- South Australian Opal Miners Association members who wish to mine at Lambina must first execute a deed which will bind them to the terms and conditions of the native title agreement;
- those members who signed the original agreement may continue to mine their tenements but will need to execute a new deed when a new tenement is sought;
- all SAOMAI members authorised to mine at either Wellbourn Hill or Lambina will pay an annual fee of $200, which will be collected by the opal miners association and forwarded to the claim group in a lump sum at the end of each financial year;
- members of the native title claim group will have first right to noodle on dumps after the tenement holder has extracted the required opal and undertaken a final inspection of those dumps;
- claim group members and tenement holders may elect to enter into joint venture arrangements in respect of a tenement;
- a liaison committee will be established to oversee the working of the agreement and, if required, to assist with any disputes which may arise—the committee will comprise five members of the claimant group, three South Australian Opal Miners Association members, and one PIRSA officer;
- the agreement will be reviewed after five years;
- all mines are to be backfilled and, where practicable, covered by topsoil;
- and the Opal Miners Association will remove all litter and debris from the area left by its members.

The remainder of the amended agreement provides for other dispute resolution mechanisms and general obligations for all parties and sets out guidelines and procedures in relation to noodling rights and joint venture arrangements. This together with last week's discovery is excellent news for the region, the local communities and the state, and I wish all the parties well.

AMBULANCE SERVICE

The Hon. IAN GILFILLAN: I seek leave to make an explanation before asking the minister representing the Minister for Emergency Services questions about the management of volunteers in the SA Ambulance Service.

Leave granted.

The Hon. IAN GILFILLAN: In May 2003, a report by Lizard Drinking on the South Australian Ambulance Service was released. The report made some very strong criticisms of the management of volunteers in the SAAS. On page 6 of the report, it is stated:

> The management of volunteer-delivered services is an issue that has received much attention within SAAS. Some aspects of the Service and of its culture still do not sit well with volunteerism however. This must continue to be addressed as a high priority as SAAS cannot afford to replace existing volunteers and will need, we believe, to extend volunteering into community responder and similar programs in the future.

The report states further:

> Whilst recognising that SAAS has devoted significant attention to the maintenance and development of volunteer programs in regional areas, this review recommends that these efforts be upgraded and intensified. The decline in volunteer support is a major challenge for SAAS management, and further efforts to coordinate volunteer schemes with other organisations in regional areas should be undertaken.

This highlights the major concern in the service. I have been contacted by a country volunteer who has expressed grave concern at the treatment of volunteers in the service. There are about 1 300 volunteers throughout the state. The letter that I received which prompted my questions states:

> The process (The Gap Report) was begun some time ago but not made general knowledge until just recently. The notification was made general knowledge whilst the Volunteer Teams are on their Christmas break. During this time the Volunteers do not meet on a weekly basis and the various committees attached to the Volunteers do not meet. As well as this issue being raised during this time, the Volunteers have been told that they must have their input and comments raised by 30 January 2005, which is the day before most Teams resume.

The letter goes on to touch on a wide range of areas concerning: recruitment, training, management, personnel management, reimbursements and the Country Ambulance Service Advisory Committee. My questions are:

1. What progress has been made on the implementation of the Lizard Drinking report, particularly as it relates to volunteers?

2. What materials and direct or indirect support are given to stations to assist in the recruitment of volunteers?

3. Why has flexible learning for volunteers been abandoned?

4. How many information, clinical and procedural notices were distributed to volunteers in 2004?

5. Why were volunteer teams given notice of, and asked to provide their comments on, the Gap Report during their Christmas break?

6. Is the minister reassured that management through this treatment is not trying to frustrate and disillusion as many volunteers as possible to allow more paid staff to be employed to make up for the loss and lack of volunteers?

The letter expresses the concerns of hundreds of volunteers who are on the brink of tossing in their volunteer contribution in disgust at the way they have been handled.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): The South Australian Ambulance Service now comes under the responsibility of the Minister for Health. I will refer those questions to the minister and bring back a reply.

GAMBLERS REHABILITATION FUND

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Families and Communities, questions about the Gamblers Rehabilitation Fund.

Leave granted.

The Hon. NICK XENOPHON: I recently asked a series of questions about the government's promises on increased funding for the GRF which, according to the Premier's own media release of 1 February, indicated that, from that date, extra funding of some $850 000 for this financial year would kick in. The Premier also made contradictory statements on behalf of the Minister for Families and Communities on 22 February to Channels 7, 9 and 10, to the effect that the extra funding is subject to review of the fund, being a review by the Independent Gambling Authority requested of this parliament during the Gaming Machines Act debate. In fact, it was a motion of the Hon. Mr Redford which I and other members supported. The minister's response not only appears to contradict the Premier's statement of 1 February but it has

also let down counselling services and, more importantly, problem gamblers and their families. My questions are:

1. Since 1 February this year, what contact has the minister and his office had with gambling counselling agencies and gambling counsellors specifically? Further, what advice did he or his office give either orally or in writing to such agencies and gambling counsellors about any delays in increased funding following through?

2. When will the minister's office formally confirm when the additional funds for the GRF will be made available?

3. Does the minister's office monitor the waiting time from problem gamblers to get assistance with the Break Even Network both for a first face-to-face interview and for the very necessary follow-up appointments and, if so, when and on what basis?

4. What work has the minister's office carried out to compile, collate and publish statistics from the Break Even Network, and when can we expect to see such material made publicly available?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I think some of those questions have been addressed by the Minister for Gambling, but I will refer all those questions to the minister in another place and bring back a reply.

SALISBURY DRY ZONE

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Premier, questions about the Salisbury dry zone.

Leave granted.

The Hon. D.W. RIDGWAY: I have received a copy of an article in the news review in the *Messenger* dated 5 January 2005. Under the headline 'Rann rejects dry zone call', the article states:

> Premier Mike Rann is refusing to support Salisbury Council's push to turn its city centre into a dry zone, drawing angry responses from councillors. In a recent letter to Salisbury, the Premier said he would not endorse the council's application, made to the Liquor Licensing Commission in August. The letter said it would be 'premature' for Mr Rann to support the dry zone until local strategies to deal with public drinking are put in place and police deemed the move 'necessary.'

The article goes on to state:

> Salisbury councillors accused Mr Rann of being out of touch with his electorate on this issue.

The article goes on:

> '. . . he doesn't live here. . . anymore. . . as the local member he should be pretty well up on. . . what's happening', Cr Joe Caruso told the December 13 council meeting. Cr John Cotton told the meeting it was a 'typical example' of the Government trying to influence issues it did not understand. 'They're sitting on their padded seats in town making decisions that affect the community, they have no idea what the community wants.' The council applied for the dry zone after an 1 800-signature petition from shoppers and traders around—

The Hon. J.M.A. Lensink: How many?

The Hon. D.W. RIDGWAY: Eighteen hundred of the Premier's constituents signed a petition from shoppers and traders around the Salisbury retail hub. My questions to the Premier are:

1. How many hours each week does he spend in his electorate dealing with constituent issues?

2. When was the last time he spent any time in his electorate?

3. Does he consider 1 800 signatures from constituents a significant number?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I know that the Premier considers that if you have dry bans anywhere in this state, unless you take commensurate plans to deal with the underlying problem, you will simply shift it from one place to another. I am sure that the Premier is aware of that, and I think that all sensible members of parliament would be aware of that. The honourable member in his own question—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: In relation to Adelaide, I am sure my colleague will tell you the amount of resources that have been put into dealing with the underlying problems. The honourable member said himself, when he read out the Premier's comments, that he expected that, before he approves of it, the council should address those underlying issues. I would have thought that was a very obvious and sensible approach.

The Hon. T.J. STEPHENS: I have a supplementary question arising from the answer. Why does the Premier think that a dry zone is suitable for the Adelaide CBD and not for his own electorate?

HACC FUNDING

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Stefani has the call.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Stefani has the call, and I cannot hear his contribution.

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Ageing, a question regarding HACC funding to the Greek Pensioners and Aged Society of South Australia.

Leave granted.

The Hon. J.F. STEFANI: I have been contacted by the former secretary of the Greek Pensioners and Aged Society of South Australia regarding certain correspondence which has been sent to the Director of Ageing and Community Care, the Minister for Social Justice and the Attorney-General. This correspondence, dated 24 February 2004 and 4 November 2004, has been referred to by the Minister for Ageing, the Hon. Jay Weatherill MP, in a letter of response dated 10 February 2005 to the former secretary of the society. In his reply, the minister confirms that an independent report of an audit of the books and accounts of the society was carried out in February 2004. In his letter, the minister further confirmed:

> I am satisfied with the audit which was undertaken and do not propose to take any further action in this regard.

In view of certain concerns which have been raised in letters to the ministers by the former secretary of the Greek pensioners society, will the minister table the independent audit report of the books and accounts of the Greek Pensioners and Aged Society of South Australia Inc.?

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

KAURNA RECONCILIATION AGREEMENT

The Hon. G.E. GAGO: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about southern councils and the Kaurna reconciliation agreement.

Leave granted.

The Hon. G.E. GAGO: In recent times some media articles have reported on negotiations between a number of southern councils and Kaurna groups in relation to a reconciliation agreement. I am aware that the minister has previously reported to the council on progress being made in relation to the Kaurna people and local government. Given this, will the minister report to the council on any developments in this matter?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for this timely question. I indicated that I would report that progress has been made. Again, I thank local government for some of the initiatives that have taken place in some of these very difficult areas. Members would be aware that the signing of the historic Kaurna Unity Agreement on 30 October 2003 created the Kaurna Heritage Board. Until then there were five groups which I was made aware of when I came into government and which met separately. They rarely discussed issues together unless there was a practical reason for them to do so and, even then, some of those meetings were poorly attended. People did not take responsibility for the decisions that were made from those meetings.

The working group that was set up consisted of representatives of the Kaurna heritage associations (Kaurna Aboriginal Community Heritage Association, Kaurna Elders, Kaurna Meyunna) and the Kaurna native title claimant group Kaurna Yerta, and the four southern councils of Marion, Onkaparinga Holdfast Bay and Yankalilla. Once that was set up, communications were far more streamlined, and responsibility was taken for the decisions that were made around those tables. So I was very pleased that local government people had supported those groups and that they were working together.

The working group agreed on seven themes that have provided a solid framework for the discussion and development of initiatives. Since that time, the working group has been developing the draft Kaurna Tappa Iri Reconciliation Agreement, and there is a real indication that South Australia is leading the way in Aboriginal reconciliation. We have finally got it out of the ivory towers and down to the level where real practical reconciliation can occur.

This is a unique approach to reconciliation. I am sure that other government and indigenous groups throughout Australia are closely monitoring it. As I have said, the agreement addresses seven themes, which are: developing leadership, governance and administration capabilities; recognising traditional ownership; promoting Kaurna identity, culture and values; protecting significant places; returning culturally important land to Kaurna control; creating sustainable economic opportunities; and development of the Tjilbruke Dreaming Track.

The councils have now endorsed this draft agreement and it will go out for further public consultation. I take this opportunity to congratulate the mayors and the staff of the councils, the elected members and the Kaurna representatives involved in these negotiations for the patience that they have shown in sitting around tables through lots of meetings where detailed and sensitive subject matters were discussed and which, in a lot of cases, had a lot of history that lent itself towards poor outcomes, because of the conflict that was inbuilt in the resolution procedures. The local government officials, the elected members and the Kaurna representatives worked their way through all those difficulties, and we now have meetings that are called and well attended, and responsibility is taken for the carrying out of the resolutions after those meetings have been completed.

The ground-breaking nature of the draft agreement, as well as its potential to advance Aboriginal reconciliation in Adelaide's southern suburbs, makes the work of the council and the Kaurna representatives, and that of the parties involved, vitally important in progressing the state's commitment to reconciliation.

Out of that I would hope that, with the protection of the Tjilbruke Trail and the identifying of it, many of the schools and schoolchildren within that precinct south of Adelaide and in the fringe in the metropolitan area around Marion will be and are being exposed to aspects of Aboriginal culture which, up until now, has not been available. A better understanding of what the Kaurna people meant to the Adelaide Plains and to the hills area south of Adelaide is now being recognised by a whole range of non-Aboriginal children working alongside descendants of the Kaurna people in these schools, and it is leading to a far better understanding of each other's culture and requirements and, of course, it is working towards reconciliation.

RAIL, ADELAIDE HILLS

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Industry and Trade, representing the Minister for Transport, a question concerning freight train movements through the Adelaide Hills.

Leave granted.

The Hon. SANDRA KANCK: My office was contacted via letter by the chief executive officer of the City of Mitcham, following the Glenalta freight train derailment on 21 November, seeking support for the rerouting of the Adelaide Hills section of the Adelaide to Melbourne freight line. The current route is a relic from another age, with the track's curvature, if it is all added together, producing 16 complete circles in just 66 kilometres from Mount Lofty to Murray Bridge. Its alignment has not been altered since its opening in 1886. As part of Australia's freight movement task, this line places restrictions by virtue of the speeds that the trains require to negotiate the curves, the extra fuel that is required to drag those heavy loads up and down slopes, and the tunnels which prevent double stacking. These are all significant disincentives if South Australia is to be seen as a truly national transport hub.

Mitcham council is also seeking an investigation into derailments that have taken place between Belair and Eden Hills stations. My own research following up this request suggests that such an inquiry is not necessary, particularly as the Australian Rail Transport Safety Bureau is obliged to investigate all major derailments. Additionally, I have ascertained that in the last 18 years, despite the issues of the curvature of the track and the slope, there have been only 11 derailments between Bridgewater and Goodwood and, of those 11 derailments, wagons overturned in just four instances and there were no deaths or injuries resulting from any of them. There would have been hundreds of deaths and

injuries from road accidents in that same 18-year time frame in the Mitcham council area.

It has been suggested to me that the most recent derailment may have been caused by incorrect loading of the train concerned but, regardless of the reasons, such incidents are not welcome in what have become residential areas. Also, I note that those residents who live beside those tracks have increasingly been subjected to the squealing and screeching of wheels on rails as wooden sleepers have been replaced by concrete sleepers.

For many years there have been calls for the rerouting of this line, taking it instead from Murray Bridge east beyond the Mount Lofty Ranges and coming back into Adelaide from the north. For economic reasons and for reasons of public safety, there are many justifications for such a line to be constructed. My questions are: has a feasibility study been conducted on rerouting the freight line from Murray Bridge to the north of Adelaide; and, if not, will the minister commission one?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I am certainly aware that a number of people have canvassed that proposal down the years, but I do not know whether or not a detailed feasibility study has been made. I know there was some sort of study some years back. I will refer that question to my colleague the Minister for Transport in another place and bring back a reply.

COMMUNITY CONSTABLES

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Health, a question about community constables.

Leave granted.

The Hon. A.L. EVANS: The community constable program has been operating in South Australia for a number of years. Community constables are employed across the state in both traditional and urban Aboriginal communities such as Port Augusta. The constables provide a valuable service of liaising with members of the Aboriginal community, Aboriginal organisations and non-indigenous organisations to:

- build partnerships between police and Aboriginal communities;
- develop crime reduction strategies;
- improve relationships between police and Aboriginal people; and
- reduce the number of Aboriginal people entering the criminal justice system.

The presence of community constables during major events such as Aboriginal sport and cultural events has been crucial to encouraging both a safe and positive experience for those attending such events. I understand that funding has also been allocated for a city visiting service and mobile legal service. My questions are:

1. Will the minister advise of the funding time frame for the two indigenous city police constable positions?

2. Will the minister provide a brief overview of how the mobile legal service will operate? In particular, how will the mobile service add value to the work already being provided to the Aboriginal community by the Aboriginal legal service?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer that question to my colleague in the House of Assembly and bring back a reply.

The Hon. KATE REYNOLDS: Sir, I have a supplementary question. How many of the community constable positions are currently vacant, and for how long have they been vacant?

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

The Hon. T.J. STEPHENS: Mr President, I also have a supplementary question. Is this an area in which the Minister for Aboriginal Affairs shows any interest, and what steps has he taken?

The PRESIDENT: Order! I have made the point before that there is no explanation as to this. If the member has a supplementary question, he should put it.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I meet with the Commissioner from time to time in relation to matters involving Aboriginal policing. I have raised issues associated with community constables. It is a very difficult area. There are many remote areas where community policing is very difficult when family or language groupings need to be disciplined by members of the same groups. Therefore, it is very important to work alongside our existing police in dealing with these matters. There are issues, in particular, that are associated with my other portfolio, correctional services, where community constables and services to Aboriginal prisoners become important.

From time to time I meet with people in justice and the Police Commissioner to discuss those issues. I have also met to discuss the issues around training for young police constables—that is, trainees—to look at ways in which cultural policing, or those issues associated with culture, can be built into the training programs when young police officers are being trained.

It is a combined effort of justice, police, Aboriginal affairs and corrections to make sure that we get the cross agency work right. I think the honourable member would probably see some of the benefits that come from community policing in regional areas, in particular. However, as I said, it is not plain sailing for community constables working with their own people, particularly in domestic situations, and there are some awkward situations when we employ Correctional Services officers to do the same thing when they come into contact with their own language group or family groupings.

SHOP TRADING HOURS

The Hon. J.M.A. LENSINK: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Industrial Relations, a question about shop trading hours.

Leave granted.

The Hon. J.M.A. LENSINK: I have an email newsletter dated 25 February which is entitled 'Shop talk', which is produced by the Property Council of Australia and the Shopping Centre Council of Australia. Under the title 'Public holiday trading hours for Easter and Anzac Day' it states the following:

> Trading hours restrictions around Australia over Easter and Anzac Day this year are the usual bewildering maze, with the exception of Tasmania and the two territories. To assist centre managers, the SCCA, with the assistance of the ARA and NRA, has prepared this summary of the arrangements in each State and Territory. What makes the situation even more frustrating is the inability of the South Australian Government, in particular, to respond to queries about what hours shops can trade over this period.

'Look at the act', you are told—but why the average retailer or shopping centre manager should have to sort their way through the myriad definitions, exemptions, sections and regulations (and then cross reference these with the public holidays that have been declared in each State), when the bureaucrats obviously cannot, is not clear. If governments insist on imposing such arcane and complex rules, then they have an obligation to at least explain those rules to those who have to comply with them. The NSW, Victorian, QLD and WA governments at least provide information on Easter, Anzac Day and Christmas-New Year trading hours on their websites each year. It is about time the South Australian government did likewise.

My questions are:

1. What consultation has the government had in relation to shop trading hours for these holidays?

2. Why has it not provided any information to assist retailers?

3. Does it consider that this is an acceptable situation?

4. When will it provide some answers to the retail sector?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): Shop trading hours has been a vexed question in South Australia for a long time. A referendum has just been held in Western Australia, which, I understand, changed shopping hours. I will refer the honourable member's important questions to the minister in another place and bring back a reply.

ALDINGA DEVELOPMENT

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Environment and Conservation, a question about the Aldinga Beach development.

Leave granted.

The Hon. T.J. STEPHENS: The Messenger Newspaper recently reported that a cat-proof fence, which had been planned in order to protect the natural environment from feral cats, will now not be built due to advice from the Department for Environment and Heritage indicating that it may affect native animals as well. In its place there will be an awareness program from the Onkaparinga council. The developer asked the council whether cats could be banned from the area as an additional measure. My questions are:

1. Will the minister advise what the success rate of cat-proof fences is in curbing the impact of feral cats?

2. What is the success rate of information programs in such matters?

3. What is the likely impact of feral cats on the Aldinga scrub?

4. What steps will the government take to stop this and to facilitate any recovery that may be necessary?

The Hon. A.J. Redford: How many cats do you think will turn up to an awareness night?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): Well, we have an animal advisory body for every other animal; we need a cat advisory body. I will refer those questions to the minister in another place and bring back a reply. The honourable member is correct about the damage cats can cause in outer metropolitan areas in particular. The responsibility of owners is often left out of the cat question. They should keep them indoors as much as they can, feed them adequately and prevent them from having too many kittens. There is an organisation which spays cats to prevent them from having kittens, and I encourage every owner to contact that organisation.

MATTERS OF INTEREST

KYOTO PROTOCOL

The Hon. G.E. GAGO: I rise today to condemn the federal government's failure to ratify the Kyoto protocol which came into force on 16 February this year. Australia is among only a handful of other industrialised countries which refuse to ratify Kyoto—and I am very distressed to see the United States amongst them. By refusing to ratify the Kyoto agreement, Australia has played a critical role in jeopardising the effectiveness that this treaty could have because we produce more pollution per head of population than any other industrialised nation—certainly nothing to be proud of. Scientists have been warning world leaders of the reality of global warming and the urgency to act for many years. Recently I read that the largest ever climate change experiment conducted by British scientists predicted that global temperatures may climb between 2°C and 11°C due to increasing levels of greenhouse gasses such as carbon dioxide.

The current prediction of a rise between 1.4°C and 4.5°C in temperature is expected to trigger dramatic changes such as melting glaciers, a rise in sea level and increases in the number of droughts, cyclones and extreme weather events. Moreover, Dr Pearman, in his address to the National Press Club, recently stated that a two degree rise in global temperature could put 100 million people at risk of coastal flooding; 300 million people at risk from malaria; and 3.5 billion people at risk of water shortages. The effects of global warming on our prosperous existence in South Australia include farmers facing extended periods of drought; the severity of bushfires increasing; and our coastal areas being flooded due to rising sea levels.

The federal Minister for the Environment and Heritage (Hon. Ian Campbell) in his press release of 16 February states that Australia is 'on track to meet its Kyoto emissions target', even though the federal government refuses to ratify the protocol. Senator Campbell might be correct—Australia may meet its Kyoto target—but by refusing to sign he has evaded making any guarantee or binding commitment that forces industry to reduce its greenhouse emissions. It also sends a very bad signal to the rest of the world that we either do not care or we are not genuinely committed to reducing emissions. The cost of failing to ratify Kyoto far outweighs the perceived benefits that the federal government, along with its powerful friend, the coal industry, thinks it is protecting. Senator Campbell states:

> If Australia were to sign up to this treaty. . . the competitiveness of some Australian industries would be severely harmed and job losses would follow.

However, the experience in the United Kingdom shows that it is possible for the economy to grow whilst greenhouse gas emissions fall. For example, between 1990 and 2002 the UK economy grew by 35 per cent, whilst greenhouse gas emissions fell by 15 per cent.

Australian industry stands to lose considerably because of the federal government's refusal to ratify this agreement. Australian industry could lose crucial business opportunities in the new renewable energy technology markets that will be established under Kyoto. The Australian Conservation Foundation estimates that Australia's GDP will be reduced by $2 billion per annum from this year onwards because Australia will be excluded from trading in the international

emissions trading markets from which Kyoto member countries will benefit. In addition, Australian products may face boycotts and trade restrictions from European nations which have ratified Kyoto and which do not want to purchase products that have been manufactured in an environmentally harmful manner. The tourism industry could also face a major downturn in business.

The Rann government has shown leadership in implementing strategies to ensure that South Australia meets its Kyoto target. For example, the Minister for Environment and Conservation (Hon. John Hill) together with the Adelaide City Council has introduced the Greenhouse Neutral Strategy, which sets a target of zero emissions in the city of Adelaide from buildings by 2012 and from transport by 2020. One way in which transport emissions are being reduced is by all public trains and buses being fuelled with 5 per cent biodiesel, which is comprised of recycled oils. This figure will hopefully increase progressively to 20 per cent in the future.

The federal government has blown a crucial opportunity to show the international community that Australia is strongly committed to preventing climate change and that we are willing to act on the global stage independently of the United States.

INTEREST RATES

The Hon. J.M.A. LENSINK: My topic for today is the interest rates letter written by the Premier during the week. He described it as an unprecedented direct approach to the Reserve Bank. I would label it as an embarrassing approach to the Reserve Bank. In this letter he emphasised to the board the need for caution, as if we did not already realise that homeowners, businesses and job seekers will be affected by this increase, as the Premier said, 'beyond just Sydney and Melbourne'. He said that South Australia should not pay the price for the overheated property market on the eastern seaboard.

The Reserve Bank, in an occasional paper published in November 2003, demonstrates that the states and cities which are now recording the largest increases are, in fact, Adelaide, Brisbane, Canberra and Hobart. It states:

> Initially, the strong upward pressure on house prices was confined to Sydney and Melbourne. Between 1996 and 2000, the median price increased in both cities by about 13 per cent per year, on average, while in the other capitals, increases averaged below 5 per cent. However, since early 2002, upward pressure on house prices has become much more widespread.

It cites a 20 per cent increase in the cities that I mentioned previously. As we would expect from the land tax experience, a number of people who may be relieved under the new regime may well end up in those brackets again with the rate at which increases are occurring in South Australia. He also stated that South Australia made major gains in employment following a slow growth period during most of the 1990s. He seems to have a bit of amnesia there, as the previous Labor government and the State Bank had a lot to do with that. He states:

> We don't want these efforts snuffed out by a heavy-handed slug with interest rates.

I find some of this language so incredibly patronising. In the usual way, it is clearly designed to be emotional, but I find it quite unprofessional. The Reserve Bank's board contains a number of people who have expertise, and I find that the Premier of the state that I live in and represent approaching such experts in this way highly embarrassing. He also states:

> A cautious approach should give priority to economic growth and job opportunities rather than a swift hike in interest rates that could choke the economy.

I do not know about you, Mr President, but, given the economic growth in this country in the past eight or so years, I would not be advising the federal government about how to manage the economy, because I think it is doing that quite well. He then states:

> I am urging the RBA to learn from past mistakes when the economy was undermined by heavy-handed interest rate rises.

I recall that that occurred under Paul Keating, the last Labor prime minister, who advised people who protested to get a job at the Adelaide Airport. The Reserve Bank has given the following as the reason that our trade deficit has increased to $2.7 billion, which is the 39th consecutive increase. An export fall of $50 million has contributed to that, while imports have increased by $260 million. The latest export figures from the Australian Bureau of Statistics released this Monday show that South Australia has actually contributed to that trade deficit as the worst performer. Our annual export growth is running at only 4.8 per cent, compared with the average for Australia of 10.8 per cent, and we are behind every other state, including Tasmania. In the last year of the Liberal government we had 9.9 per cent growth compared with national growth of just 1.3 per cent.

There are also a number of comments in the RBA publication which state that it would be a good idea, as far as home ownership affordablity is concerned, to reduce state stamp duties. It states:

> . . . a major limiting factor for the ability of many potential first-home buyers to enter the market is the difficulty of finding sufficient funds to cover the up-front costs. The largest of these costs (excluding the deposit on the loan) is stamp duty. . . as house prices have risen over recent years, the barrier to home ownership posed by stamp duty has increased considerably. . . state governments have not materially adjusted stamp-duty thresholds as house prices have risen.

Time expired.

LOCAL GOVERNMENT

The Hon. R.K. SNEATH: Today I would like to take the opportunity to speak about local government and two councils, one in Adelaide and one in the South-East. Some time ago, I raised a number of issues on behalf of constituents in Naracoorte. Since those issues have been raised in parliament and the council responded to those issues, the Hon. John Gazzola and I met with the council at Naracoorte. During that meeting several issues were raised by individual councillors. In the response given by the council CEO and Mayor, they denied that there was any bullying in the council. At the meeting that the Hon. John Gazzola and I attended, two councillors raised bullying issues within the council and also other issues that I had raised in parliament. I read in the *Naracoorte Herald* dated 17 February that a performance survey was carried out on the Naracoorte council, and the results have been reported to council by Mr Daryl Smith.

The survey was done by Roy Morgan Research on behalf of South Australian councils. The survey reveals that in 2004 there was a decline in community satisfaction with the Naracoorte Lucindale council. Results of the survey were presented to last month's council meeting. Mr Smith said there was a decline in community awareness of the council's strategic goals and direction, as well as a decline in commun-

ity satisfaction with the council's accessibility and community consultation.

I raised a number of issues concerning residents in Naracoorte on those two issues. I raised another two issues: the sale of the Naracoorte Holiday Park, which was a major concern for the residents, as indicated in this survey, and the replacement of an intersection with a roundabout at the Smith-McRae Street intersection, which was another concern raised by the residents in this survey. I am pleased to say that the community was satisfied with the council's financial and asset management, which was good.

I am also pleased to say that I understand that the council has put a number of things in practice to overcome the consultation with the residents and to stop some letters slipping through the net and not being answered. They are putting various other issues into practice to stop the bullying and to better communicate with the residents. So, I am pleased that the Naracoorte council has taken heed of some of the complaints by the constituents and me in parliament and that it is doing something about it. I congratulate it on those efforts, and I hope that it continues to work towards improving its relationships with the residents of Naracoorte and the surrounding areas. I also congratulate the Naracoorte residents for airing their grievances and taking them to a member of parliament. However, I am very disappointed with the member for MacKillop, who did not want to raise their concerns and did not seem to care about their concerns.

In the last minute available to me I would like to touch on some developments in the Port Adelaide Enfield council which run alongside the river at the end of Commercial Road. Recently, I was down at Port Adelaide and saw some magnificent old buildings there. It has the potential to be another Fremantle, if it were looked after and the planning were done properly. It is a shame that they have seen fit to pass for development the concrete square boxes that they call units fronting the river at Port Adelaide. They should be bulldozed into the river and proper bluestone or brick residences should be put along there to complement the environment that Port Adelaide is built on. It is a disgrace that they put ordinary properties like that on the river.

Time expired.

INFRASTRUCTURE INVESTMENT

The Hon. D.W. RIDGWAY: I rise to speak today on the matter of infrastructure. Some honourable members may know that I recently visited Western Australia to visit some of their infrastructure projects. It has been some 20 years since I was in Perth last, and I was astounded. Back then Adelaide and Perth were comparable cities: they both had about the same population and both had similar transport and infrastructure investment. Today, Perth is streets ahead in terms of infrastructure and transport; it almost depressed me. They have an efficient, modern system that South Australia just cannot compete with. During my visit I was able to visit the first operational fuel cell bus trial. Members may find it interesting to note that my colleague the Hon. Terry Stephens and I were the only interstate members to visit and inspect this trial since its inception.

It is rather unfortunate, but not surprising, that not one member of this government or any other state Labor government, in the preparation of their transport plans—and just recently the Hon. Gail Gago mentioned her disappointment that we have not signed the Kyoto protocol—has been to visit this exciting new trial. Perth is one of only 11 cities in the world—and the only city in the southern hemisphere—to trial such buses. The buses are made by Mercedes Benz and run on a combination of hydrogen and oxygen, which is almost the reverse of the electrolysis process. The only by-products from this process are water vapour and heat. It is rather impressive to see the accelerator pressed down on these buses and see nothing but steam come out of the exhaust. The use of hydrogen as a transport fuel has been found to be as safe as liquid petroleum gas and petrol.

I was encouraged by the hydrogen bus trial but, when I visited the northern extension of the electric TransPerth trail line, again I was drawn to the differences between Perth and Adelaide. Their rail system is, unfortunately, light years ahead of ours and better integrated with their roads than ours, and it struck me that Adelaide's transport system exists alone more than any other capital city.

This point led me to wonder why Adelaide's transport system lags behind and, in fact, is one of the worst cities for transport in Australia. One of the worst decisions was that of the Dunstan government to decimate the MATS Plan by selling off the land that was acquired for it. The majority of this land is now all sold, and it would be impossible to buy it back and, even if you were tempted to buy it back, it would be cost prohibitive. This disappointing lack of foresight means that other areas will have to be explored. Whenever the ministers of this current government are asked questions on infrastructure, they return to the same predictable answer: that successive Liberal governments underspent in this area and now Labor has to make up for it.

After a little bit of research into this area I found that in the past 38 years since 1967, when Dunstan began his premiership, until the present day, the Liberal Party has been in government for only 13 of those 38 years. So it seems those successive Labor governments, with their economic ineptitude and their lack of planning, have run down the infrastructure and transport infrastructure in this state. The ALP has never built a power station in this state and has not had any major initiatives in transport since Geoff Virgo was the minister. It is a shame that it lacks the vision which may have led to the current passenger freight traffic congestion that we have now.

I recently saw a web site that nominates the current minister, the Hon. Trish White, as the worst transport minister in the history of South Australia. One quote from a Public Service employee is:

> She is easily the most incompetent minister on the block at the moment. She ground DECS into the ground and so now she has moved on to transport.

This reputation has arisen from the minister's lack of action. Everyone who uses transport in South Australia wants to see the delivery of a transport infrastructure plan. Everyone who drives, catches a bus, tram or train wants to see whether the plan will contain any new announcements or will simply be a pork-barrelling exercise for the current government aligned and announced as part of its 2005 re-election budget. It is time for the Minister for Transport and the government to look to Perth and other Australian cities for an example and make some significant gains for South Australia.

SCHOOLS, CLASS SIZES

The Hon. T.G. CAMERON: I rise today to raise some concerns about the problem of class sizes in our public schools. The government has been harping on about the reduction in junior primary class sizes in schools for quite

some time, and it has made it a focus in its education policy, which states:

> Labor will make smaller class sizes in the early years its top priority for additional education funding. The Rann government will reduce the size of the classes for the first three years—reception to two—in schools. This could mean class size reductions of up to 30 per cent in priority schools, depending upon the complexity of students' needs.

A national survey conducted by the Primary Principals' Association for the Hands Up for Primary Schools Campaign identified smaller class sizes as a key issue to improved literacy and numeracy in the early years. That would not come as a surprise to a lot of MPs. Reports I have already received from parents and teachers in the beginning of this school year suggest that the government may be falling behind with its election promise. It has been suggested to me that in some schools teachers are trying to deal with, and educate, up to 25 or 26 reception/year one students.

That is quite unacceptable. Any parent knows the difficulty of dealing with two or three children at this age, let alone 25 or 26 children, all at different stages of their education. Whilst the government says it is committed to reducing class sizes in junior primary, this information is indicative of a promise left unfulfilled. It also leaves me wondering about the commitment to the public schooling of children in years 3 to 7. I have also received reports from a number of parents raising concerns that their children, mostly in grade seven, are in much larger classes. At one school a year seven student is sitting in a class of 33 children, half of which are year six and the other half year seven.

The Hon. Kate Reynolds: It is very common.

The Hon. T.G. CAMERON: If it is very common, it is a damn shame; because everyone knows it is much more difficult for a teacher to cope with a class of year six and year seven children than either year six or year seven children on their own. Another parent has informed me that their son is in a two-teacher classroom with 60 students. I understand that the early years of education are critical and build a foundation for later progress in life. However, I also believe that year seven is critical for students: it sets the foundations built throughout primary school for entry into secondary schooling. Schooling provides a foundation for young people's intellectual, physical, social, moral, spiritual and aesthetic development. By providing a supportive and nurturing environment, schooling contributes to the development of students' sense of self-worth, enthusiasm for learning and optimism for the future.

Under the Bracks Labor government, class sizes in Victorian primary schools have fallen to record lows, with average classes of 22.9 students, down from 26 students in the mid 1990s and the lowest levels in three decades. One wonders how that would compare with South Australia. Average sizes for preparatory to grade two have fallen from 24.3 students in 1999 to 21 students. Average class sizes in the upper primary levels were slightly higher—24.3 students in years three to six. But they were still well down on previous years.

My children have already grown up, and my concern now is for my grandchildren. It is my hope, and I suggest it would be the hope of most parents, that the same commitment to reducing class sizes was not only given here in South Australia but also is being implemented. We have heard the promises but we do not appear to see the implementation. This should be for not just junior primary students but also across all year levels of primary and secondary schooling. Many parents are increasingly choosing to send their children to private schools because of the belief they have smaller classes and greater individual attention, and this has been a widely accepted claim for many years. Smaller classes and greater individual attention is the desire of most parents, and it is about time this government set out to deliver that.

Time expired.

CHILD PROTECTION

The Hon. KATE REYNOLDS: The Democrats last year cautiously welcomed the government's Keeping Them Safe program, but it will surprise no-one when I say that we are still disappointed and frustrated by the government's piecemeal response to the 2003 Child Protection Review. Chapter 19 of the review on education says that, while the majority of staff, parents and volunteers are clearly dedicated to supporting the education, welfare and social needs of children and young people, education and children's services are environments that are highly attractive to child sex offenders and may provide significant opportunities for offending against children. One of the concerns noted within the review was 'increasing the capacity of schools and education sectors to respond appropriately to concerns about staff and volunteers who are suspected of abusing children in their care'.

In the introduction of the government's Keeping Them Safe brochure launched in May last year, the Premier and the Minister for Families and Communities both say that 'the protection of children and young people remains the core of our mandate'. The government says it recognises that qualities such as innovation, debate, openness to new ideas and challenging established practices are needed.

Both the ChildWise guidelines and the National Society for the Prevention of Cruelty to Children recommends screening of all staff and volunteers working with children in schools, as well as employment practices and reference checks for paid and voluntary staff and supervision arrangements for all staff, whether paid or voluntary. In January this year the government announced that up to 3 000 student teachers would undergo a national police check before they were allowed to teach in our schools. The government also announced that it was proposing to carry out police checks on all out-of-school-hours care staff and flagged that it would then turn its attention to others who work in schools and have less frequent contact with children. We welcome this, but we warn that confining screening to police checks is not only inadequate but that the government would continue to miss important opportunities to protect children from all forms of abuse and neglect.

Parents, grandparents, carers and siblings are involved in a great many activities in schools, providing one to one or group learning support, working alongside students, preparing for community events, supervising interschool sporting programs, transporting and supervising students at swimming classes, carnivals and so on. Frequently this participation occurs outside formal volunteering programs, yet it is an integral part of school activities. In many of these situations parents are ideally placed to identify children who might be at risk of abuse or neglect, but often the parents themselves are unsure about what to do when they see another parent acting suspiciously or they see a child who appears to have suffered physical or emotional abuse or neglect.

Currently schools are required to seek by way of written declaration an assurance that parents transporting students in

private vehicles for school activities hold comprehensive insurance protection. However, nobody asks whether the driver has a licence, whether the car is roadworthy or whether the parent or carer is a fit and proper person, as required of teachers and child care workers.

In my own family we have five children who have between them attended seven schools over 25 years. My partner and I have never been asked by any school whether we are fit and proper persons. We have never been offered education or training about protecting children, yet for all that time we have been volunteering in on and off-site education activities, including supervising children and young people as they change for sport or swimming.

We have a suggestion for the government, which says that it wants to be innovative and open: let us take an educative and preventative approach to child protection in South Australian schools. We propose that the government provide funds in the May budget for all schools to offer child protection training at the start of every year, based on the current mandated notifier training, at no cost to any parents or carers who may want to be involved in school activities. This would be the foundation for a community awareness program that not only sends a clear message that abuse or neglect is unacceptable but would provide parents and carers with the confidence to recognise the signs of abuse and neglect and take action. We are not suggesting that this should be compulsory, but instead we are calling on the government to educate school communities at a time when adults are paying the most attention to children about how they can help to stop child abuse and neglect before it starts.

GREET INCORPORATED

The Hon. J.S.L. DAWKINS: I rise to speak about the work of GREET Incorporated in the town of Gawler and surrounding districts. GREET is an acronym that stands for Gawler Region Education, Employment and Training. The GREET structured work placement (SWP) program was established six years ago to assist students in making the transition from the school environment to industry. More than 1 750 students have been involved as part of the school vocational education and training program. GREET Incorporated is all about fostering workplace learning partnerships and advancing professionalism in work placement.

Through GREET, schools have established partnerships with registered training organisations (RTOs) in order to provide students with up to date and nationally accredited training programs. The SWP allows substantial learning to occur in the workplace, with emphasis on the development of young people's skills and a positive approach to life-long learning. Foundations of support are laid down for students and employers, with regular contact and feedback ensuring that maximum competencies are obtained.

GREET is involved with employers in the district who generously provide SWP situations for students from secondary schools in the local area, including Craigmore Christian School, Gawler High School, St Columba College at Andrews Farm and Xavier College just north of Gawler. Students are involved in a variety of industry areas including business and administration, horticulture, hospitality, information technology, metal and engineering, sport and recreation and work education. Business and administration is one of the broadest areas available and includes a diverse range of avenues such as the hospitality, medical, legal, real estate, education, child care, retail, tourism and travel sectors.

Also, students are expected to undertake and accomplish competencies such as working efficiently in an environment that requires team work, knowledge of a range of office equipment, filing, well developed communication skills, customer service and basic knowledge of their responsibilities regarding occupational health and safety procedures. It is GREET's aim to assist students to become ready for entry into the workplace by providing work placements relevant to their needs and providing 'work placement ready' participants for employers.

In the past year, the board of management has been working diligently to implement the GREET Incorporated Strategic Plan. Two key areas within the plan—the building of local community partnerships and sustainability—have been the focus of much tireless effort. These efforts have yielded the following successes: extra one-off funding from the federal government; sponsorship from individuals and businesses; strengthened relations with several schools and RTOs; an increased number of organisations being involved; and new initiatives being offered.

GREET also has developed a Transition Opportunities for Youth Scheme (TOYS). This program will introduce participants to volunteering; extend their knowledge of workplace ethics, values and attitudes; relay the finer arts of communication; enhance conversation and etiquette; develop a working knowledge of public transport; assist in the development of confidence and self-esteem; and establish essential support and mentoring networks.

A training scheme for employers and their employees called the Workplace Development Program is also in the embryonic stages. Working collaboratively with organisations such as the Murray Institute of TAFE (Gawler campus), the Virginia Horticulture Centre and CITYCorporate Consultants, GREET is developing a program that will be highly beneficial for all types of businesses and provide an avenue for the professional development and training of their staff.

I commend the GREET board of management for its vision, drive and persistence. I particularly note the efforts of Chairperson Andrew Bell and his fellow executive members, Lynn Martin and Peter Rogers. This contribution is matched by the dedication of the GREET coordinator Anna CTM White, whose commitment to the development and extension of young people is highly regarded in the Gawler region. Finally, I would like to mention, to highlight the effectiveness of GREET, that the funding is as follows: 51 per cent from schools, 38 per cent from the Department of Education, Science and Training and 11 per cent from community employers.

The Hon. J.S.L. DAWKINS: Mr President, I draw your attention to the state of the council.

A quorum having been formed:

CORRECTIONAL SERVICES

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

That the Legislative Council notes with concern the performance of the Minister for Correctional Services and the Department for Correctional Services and, in particular, a series of disturbing matters that have arisen since September 2002.

Since my appointment as opposition spokesperson for correctional services in April last year, I have become

increasingly concerned at the quality of management and the standard of behaviour in the Department for Correctional Services. I have also expressed concerns regarding resource outcome and parole issues (and they have been the subject of media comment), but this contribution is particularly directed at the quality of management and the standard of behaviour. On 27 December 2004, the Minister for Correctional Services issued a press release trumpeting the fact that departmental staff had 'foiled' an attempt to smuggle a firearm into Yatala.

The Advertiser reported on the same day that it is 'unlikely any charges would be laid' on the basis that the firearm never reached the gaol, ignoring possible conspiracy or attempt offences. This is not the first time that this has occurred. What I am referring to is illegal or criminal conduct without any sanction. There are a series of examples where illegal or criminal conduct has taken place and it has been reported in the media, yet nothing has transpired. Indeed, the incident of 27 December is part of a continuing pattern within this department where criminal behaviour appears to be undertaken without any appropriate criminal sanctions, and I will give a series of examples which demonstrate what I am saying. A former Department for Correctional Services officer wrote to me on 23 July 2004. He now works as a senior public servant in Victoria.

He tells me that in 2002 he witnessed a serious assault by an officer on a prisoner and that he was subsequently bullied and harassed. He also tells me that there was a subsequent investigation. He says in his correspondence to me that, in the prison environment, there is a concept known as 'blue code'—and I am told by this gentleman that 'blue code' is a situation where officers do not talk about inappropriate events that happen in prison. For example, officers bashing prisoners and officers harassing or bullying other staff.

I am not suggesting that that is systemic within the system; I am telling the council only what this individual has reported to me. He goes on to say in this correspondence that if something is reported it is a matter of deny everything or 'I didn't see anything' or 'I was doing up my shoe lace'. He goes on to say that officers who speak out about inappropriate behaviour within the Department for Correctional Services are blackbanned by other officers. He reports to me that a staff member in that situation is often threatened, bullied or harassed.

This young man says that he joined the Department for Correctional Services at the age of 20 and that he resigned last year because of systemic problems within the department and its culture. He indicates that there is a lack of action by many who can make and effect change. He says that, following an incident that occurred in 2002, the department took several months to investigate, and it took 12 months for a tribunal to be established. He says that to this very day he cannot find out the end result of that tribunal hearing, despite the fact that the department refers to him as the victim. He has been told that the department will not release information to him regarding the tribunal, and he knows nothing of the findings or the recommendations or what action was taken against the other officer. He says he does know that the other officer is no longer with the Public Service and that he has been informed that the tribunal agreed that he was justified in feeling at risk of physical assault by this other officer.

He tells me in this correspondence that at one point his home was patrolled by the police to protect him from this fellow officer. He tells me that he lodged a freedom of information request with the department and that he received a four-page document with at least three-quarters of it whited out. Other than that he has received no answers, no briefing, and no explanation. The best advice that he got from the Department for Correctional Services was to 'take leave' as the bullying and threats continued. He was told that it was in his best interests to seek alternative employment and that he should not return to the particular institution involved because the department 'could not guarantee his safety'. It was suggested that perhaps he go to another prison but, as he indicates to me in this correspondence, they could not guarantee his safety there either.

He tells me that he was sent to a psychologist so that he could deal with the various issues and that he was put on a displaced list. Ultimately, this young man resigned from the public sector. He was denied certain benefits, but I am not sure from his correspondence whether or not they are accrued benefits. These are serious matters. For the benefit of the minister, I will be communicating with this young man. I know who he is, and he has given me this information on the basis that his identity is kept strictly confidential, but I am happy to communicate the details to the minister subject to this individual's consent.

The September 2002 minutes of the Correctional Services Advisory Council—now defunct, because it has not met for nearly 12 months—indicate that there had been bullying at Mobilong. The minutes state: 'Greg Weir, Director Strategic Services, Bullying at Mobilong (update on what is happening)'. That matter was subsequently raised in the media and parliament, and to date there has been no full explanation to the community about precisely what was happening at Mobilong in relation to that reference and what steps have been taken to remedy it. On 14 January 2003, the Correctional Services Advisory Council advised that the department was 'faced with several sensitive issues' that would 'involve disciplinary action'. Again, questions were asked in estimates last year and, again, no detailed explanation has been provided to the parliament or to the community at large.

We also have on 31 May 2003 a report in *The Advertiser* entitled 'Illegal still in prison tunnel'. In that article it is reported—and this is nearly two years ago—that an excavated cellar at Cadell Training Centre contained a large still and that shocked prison officers discovered 49 litres of illegally produced alcohol spirit with the still. I can understand that things happen in gaols that ministers and correctional services officers are not always aware of and, particularly given the way prisons are run in this state, where prisoners are given absolutely nothing to do, they do get up to a bit of mischief. However, what I am concerned about is that, notwithstanding those serious assertions from *The Advertiser*, there have been no public statements from anyone about what happened in relation to that still, whether there was a proper investigation of how it got there and whether or not any action was taken in relation to it.

I will read the article, because I have a couple of comments to make. The article states:

> The Department for Correctional Services has been conducting a secret internal inquiry into the embarrassing discovery for the past month. Acting chief executive Greg Weir yesterday confirmed the inquiry and revealed a full security review of the complex had begun. Action already taken included the transfer of three prisoners responsible for the still to maximum security prisons.
>
> 'It was a reasonably sophisticated effort that was very well concealed,' Mr Weir said. 'Clearly, everyone expects us to take action to ensure this type of thing does not happen. We have put in place a security review, we have used the dog squad to go through the place and the new general manager, who starts next week, has firm instructions to examine everything.'

It is my view that that was not a good enough response to such a finding. Obviously, one would expect some sort of review about security and that sort of thing to take place, but I think the community is entitled to expect from those in charge some degree of explanation as to how it happened and, more importantly, I think the community is entitled to some explanation as to what sanctions, what punishments and what penalties were applied in relation to what clearly is illegal conduct. There is a pattern here because, as I stated at the beginning of my contribution, there is clearly criminal conduct yet, on the face of it, there have been no prosecutions, no-one has been brought before the courts and no action has been taken other than to shift it to one side with a review undertaken, and it is supposed to disappear from the radar screen.

The next incident relates to the Port Lincoln Prison. The Port Lincoln Prison was in the media this week (to refresh members' memories), where a Channel 7 report stated that some sort of bordello was being run in the Port Lincoln gaol. I have to say it is one of the few gaols I have not visited, but I propose to do so next week. On Wednesday 25 August 2004, in relation to the infamous Port Lincoln gaol, *The Advertiser* reported:

> A senior manager within the Department for Correctional Services who faced disciplinary action after two internal investigations into his conduct has been given his old job back. The officer will return to the country prison where the incidents occurred—a move which has upset female staff at the prison. They believe the officer should have been placed in another prison, away from those involved in one of the two internal investigations.
>
> In July, the officer was disciplined under the Public Service Management Act after an inquiry found he had sent pornographic emails. It was launched after one was sent to a staff member by mistake. At the same time, another inquiry was launched into allegations of sexual harassment of two female colleagues by the officer.

The correctional services Chief Executive Officer, Peter Severin, declined to comment in relation to the matter. It must be a bit of a lottery as to who will comment down at correctional services because sometimes it is Mr Weir, other times it is Mr Severin, and, on very rare occasions—and I can guarantee that it is only when it is good news—the minister's head pops out in front of the television camera.

The Hon. J. Gazzola: No!

The Hon. A.J. REDFORD: The Hon. John Gazzola is surprised, but I can assure him and even challenge him that if he can find anything incorrect in what I just said I will abjectly apologise. The problem with that is that a cloud hangs over the gaol. It is an issue of public confidence. The response from the minister and the department in relation to that report was simply insufficient. It does no good for public confidence to have those sorts of allegations left hanging in the air. One might have thought that if this particular officer was given his old job back there would be an explanation.

I do not know whether the allegations that were referred to in this newspaper are correct; if they are not correct, it is incumbent upon the minister and the department to say that an inquiry was held and the allegations were found to be unsubstantiated or incorrect. Alternatively, if they were found to be correct, an explanation should be given as to why this particular officer was given his job back. I am not putting it any higher than that. I am not suggesting that it was inappropriately dealt with. However, I am saying that it is impossible to have public confidence in our institutions if these sorts of allegations are made and no response is provided in a public sense.

Indeed, the Public Service Association was reported in the same article as saying that the state government needed to appoint new managers to Cadell and Mobilong prisons. In some respects some things have been done in relation to that. I raised that issue on 21 July last year in my contribution noting the Auditor-General's Report. That particular motion lapsed without any comment from the government when parliament was prorogued last year.

I am also told—and this has not been the subject of any media reports—that in late 2003 the general manager of a country institution was alleged to have stolen goods and to be bullying. It was investigated internally; it was not investigated by police, and it was not investigated externally. I understand that this general manager was actually promoted or shifted to a larger prison. I am not told whether any finding was made, and nor am I told whether any action was taken.

Normally I do not come in here and talk about matters which are the subject of rumours and statements to that effect; however, in the context and the environment that currently exists in the Department of Correctional Services, where inquiries are instigated, where criminal conduct is alleged, and then nothing appears to happen following that, it is the sort of environment where rumours to that effect flourish and thrive. That is not good for the management or for the morale of the institutions in question.

Mr President, you might be surprised to know that there is more. On 24 June last year the minister acknowledged, in response to questions asked by me, that there is disciplinary action against various officers and, in that respect, I was referring to the notes of the Correctional Services Advisory Committee. I asked whether the minister was aware of that action. Secondly, I asked: what were the sensitive issues and what disciplinary action was taken? The minister asked me the date and then he said:

> I certainly do not have the information the honourable member requires. I do not have the particular report in front of me. I will undertake to investigate the issues raised at that important meeting and bring back a reply.

I then pointed out that the minister had been asked the same question a week earlier. To my knowledge, no detailed explanation in relation to that matter has been forthcoming. The next big incident, because they are enterprising people in our gaols, was the infamous *Hogan's Heroes* incident reported in *The Advertiser* of 7 July 2004 where three prisoners were secretly leaving the Port Augusta Prison after a faulty alarm system was switched off. The prisoners were apparently slipping out at night, visiting friends and going to parties, before returning undetected in the morning, similar to *Hogan's Heroes*.

I acknowledge that, in response to questions from me, the minister provided me with as much information as he could at the time in relation to an internal investigation, with the names of people and incidents blacked out and, in that respect, I thank the minister. I think that, in relation to what I was requesting, it was an entirely appropriate response. The report was of some concern to me. Notwithstanding that we are looking at serious criminal conduct—escaping from one of Her Majesty's gaols—only one person looked like being prosecuted. I do not know, and there has been no report in the media or to me, what has happened in relation to that prosecution.

It just seems to me to be really strange, where you have people going in and out of gaol and, despite the fact that the alarm system was switched off—and I have no doubt that there were cameras in operation—there was only one

prosecution. Further, we are not aware—and the public are not aware—of the outcome of that prosecution. Again, that is of some concern. I note that probably the single biggest loser in relation to that unfortunate affair was Ms Les, who was the Director of Correctional Services, because she was subjected to disciplinary action. I think that so far she has probably, rightly or wrongly, been the biggest loser in this. If one engages in criminal conduct, you do not seem to get prosecuted or, if you do, no-one gets to hear about it. However, if you happen to be a public servant, you get the book thrown at you—particularly, I suspect, because it attracted so much media attention.

I know that Ms Les was found to be liable for disciplinary action, and I will go into my concerns in relation to that in a moment. On 17 July, *The Advertiser* reported that a bullied warder had moved out of Cadell, as follows:

> A prison officer who reported irregularities at Cadell Training Centre was moved to another prison because his safety at Cadell could not be guaranteed.

I cannot understand why, if someone's safety cannot be guaranteed, it is that person who is shifted. Why is it that person who suffers the penalty? That is what appears to be happening in this area and, indeed, in relation to other matters that I will raise with respect to the police force later this week—it seems to be happening in the police force as well. You would not want to be a whistle blower because, in these circumstances, it seems that it is they who suffer the penalty. The article continues:

> The prison officer alerted correctional services head office to matters including missing tools and machinery and the weekly disappearance of quantities of petrol. He took the action after his repeated request to the then management at the Riverland facility was either 'ignored or ridiculed' according to a former colleague. After reporting what he had discovered, the prison officer was assaulted, his car was vandalised and his home was broken into. Those involved in the bullying and intimidation belonged to one of two power groups identified in a top level internal review of the facility, which was reported by *The Advertiser* on Thursday.

The allegations of assault, the allegations of vandalism, and the allegations of breaking into someone's home all amount to serious criminal conduct. On the face of it, there does not appear to be any external investigation of this serious criminal conduct. If we expect prisoners to behave themselves, whether they are out in the community, whether they are on bonds, or whether they are within a correctional institution, we have to set an example. If an example is not set, and if external inquiries are not made that are open to public scrutiny and that encourage public confidence, how can we demand of our prison population certain standards of behaviour? I think it is fundamental to the sorts of comments that I am making in this contribution. The article continues:

> He raised this with his manager and asked for an asset register to work out what was unaccounted for. Despite repeated requests, he was not provided with a register, and met continued resistance from his manager. The prison officer's supervisory role also covered the on-site refuelling activities at Cadell. Over a period of several months, he noticed the discrepancies in fuel use and drops in the level of the storage tank overnight and at weekends. 'He knew and the prisoners knew what was going on', the former colleague said. He reported this to his manager, asking for the tank to be checked for leaks because of this. His request was refused and the petrol kept leaking from the tank. After the matters were reported to head office, an internal investigation was launched.

At the risk of repeating myself, an internal investigation of criminal conduct within the Department of Correctional Services is simply not good enough. It does nothing to engender any public confidence in the way in which our correctional institutions are managed. The article goes on:

> It is understood investigators encountered difficulties because staff and prisoners at Cadell were reluctant to speak out. Correctional Services spokesman—

and do not be surprised; it is not the minister—

> Greg Weir yesterday confirmed a full investigation had been conducted. While it could not substantiate the officer's allegations, it resulted in procedures for the recording of fuel and tool use being reinforced. 'There were some administrative procedures that were identified requiring some improvement', he said. 'We have no evidence before us to suggest that any of the activities alleged to have occurred then are occurring now.'

So we have an internal investigation into serious criminal conduct, and at the end of the day all we get out of it is a promise from a correctional services officer that it will not happen again. Perhaps I am out of step—and I would love to hear from other members—and I am demanding too much, but I do not think I am. I think there ought to be an external inquiry, and I think there ought to be a police inquiry in these circumstances and, if no action is to be taken, there needs to be a public explanation as to why no action was taken. I also find it really difficult to accept that investigators encountered difficulties because staff are reluctant to speak out. I find that very difficult in terms of an institution that is staffed by people who should set an example to those who have transgressed the law to the extent that they serve periods of time in our institutions. The article concludes:

> Mr Weir said it was his understanding the allegations were not referred to police or investigators because 'given the lower level of the nature of the allegations, they were mainly administrative in nature'.

If any of my departmental officers—if or when I become minister—stand up and publicly say that being involved in assault or being involved in the vandalising of cars or being involved in breaking into people's homes or stealing petrol is lower level, I would find some other duty for that officer because he has no understanding of the sorts of standards that this community, as I understand it, would expect from people in those positions. I think that statement made last year is of great concern because, if it is a reflection of that particular department and the standards that apply in it, then, on any analysis, it is simply not good enough. It is not an issue that can be easily remedied, particularly in the way the Premier seems to want to remedy it, that is, with a press release.

The other issue in relation to that particular matter is an acknowledgment that a prison officer's safety cannot be guaranteed, presumably, in relation to other prison officers. There is something seriously culturally wrong within an institution or an organisation in the public sector where steps have to be taken to shift prison officers who actually do the right thing in reporting irregularities. If this was an isolated incident, one might say you can overlook it, but I remind members of the young man formerly in the Department of Correctional Services who witnessed a serious assault on another prisoner. He was bullied and harassed, and the best advice he got from the department was, 'Well, shift out; go and get some counselling.' He was a young man who was well qualified and ultimately left correctional services. I can say that correctional services need all the good young men and women that it can get to administer its very difficult tasks and roles.

In October last year I raised an issue in parliament about the way different officers are treated differently, and I referred to Ms Les, who failed to report security breaches to the CEO of the department and to the minister. I asked the minister why that person had not been suspended. Another officer, who was the subject of disciplinary proceedings

regarding sick leave fiddling at the Adelaide Remand Centre, was stood down. I cannot find it in any of my records, but I have not received any specific answer to that question. I was told by the minister on that occasion:

> There would be rules laid down in relation to the way in which somebody would be treated if there is a breach of protocols that led to escapes. I am sure that there would be and there are rules that prison officers have to follow as they go about their work to prevent escapes.

He goes on and says:

> In relation to the breaching of sick leave requirements, I am not quite sure exactly how the rorting occurred—whether it was deliberate, whether it was a mistake or whether it was a misunderstanding of how rules were applied—but I will await a full report from the CEO.

I do not expect the minister to be a walking encyclopaedia when I ask him questions of that nature, and I am not criticising him for not knowing the answer on the spot, but the fact of the matter is that I stand up here and still have no deeper understanding of why one rule was applied in one situation and another rule was applied in another situation. Again, if one is to have public confidence in these institutions, one has to have timely and prompt responses to these sorts of allegations. Mr President, I have absolutely no doubt that you would agree that transparency and having rules applied fairly across the board, irrespective of what position you hold within an institution, is vital to public confidence.

In December last year, the Hon. Robert Lawson referred to items of women's clothing that were smuggled into Yatala for Bevan Spencer Von Einem by an officer. Again, it would appear that the matter was not referred to the police. Indeed, it is not clear what the government did in relation to that specific matter. I do understand why the Hon. Terry Roberts might be reluctant from time to time to give media interviews, because he is prone to making the odd comment that brings a wry smile to my face. In that respect (and I was not here at the time), he referred to the fact that Von Einem, 'like others, would have rights of access to education material and to programs.' I am not too sure what that has to do with women's clothing. He also said—

The Hon. T.G. Roberts: A question was asked about access to computers.

The Hon. A.J. REDFORD: Thank you; I acknowledge that. He also said, 'It may have been a fancy dress party; I do not know.' I hope he was saying that with his usual good sense of humour. He then issued a press release that stated, 'The Hon. Robert Lawson gets conned by a con', and the usual political argy-bargy then flowed through (that is the nature of the game that we are in from time to time). There is an important and serious issue here: there needs to be more openness in relation to how these matters are dealt with. To be absolutely fair, the Hon. Terry Roberts made a ministerial statement on 9 December 2004, in which he informed us that, in October 2003, the department became aware of the allegation that an officer had brought one unauthorised item of clothing into a prison. He indicated that an investigation was held, which resulted in disciplinary proceedings against the officer. The officer pleaded guilty and a penalty was applied that included loss of entitlements.

It is my view that these sorts of procedures ought to be public. If I am caught drink driving (as I was last year, and I should not have), it is a public process. If I am caught jaywalking and I want to plead not guilty, it is a public process. It is my view that serious consideration needs to be given to opening up some of these matters to greater public scrutiny. If we do that, we are more likely to develop greater public confidence in our institutions.

The other issue that I want to deal with today is that precise issue—public confidence—and, in particular, the Ms Les matter. Ms Les was subject to disciplinary proceedings, which were conducted behind closed doors. They involved a very serious issue of public administration, that is, the going in and out of gaol by three prisoners at their will because of a fundamental failure in our security system. We know that the procedure led to her dismissal. We also know that she is appealing that dismissal. But that is all we know. I, for one, think it is appropriate, in those circumstances, for those findings to be released publicly. At the end of the day, we all know that, if someone goes before the courts, judgments are written and published so that everyone can see them. If we deal with a disciplinary hearing in relation to whether or not a person holds a certificate as an electrician or their qualification as a plumber and the authorities wish to strip them of their right to practise in those areas, there is a full hearing, it is in public and we hear and read the reasons for any decision that is made. But not in this case.

It is my view that it is of great public importance that justice not only is done but that it is seen to be done. I have sought a copy, through the freedom of information process (and it is still an ongoing process), of the reasons for the decision. I was told by the FOI officer (and I assume it has the support of the government) that to release such information would have a prejudicial effect on the deliberations of the tribunal. All I can say is: what sort of tribunal do we have in relation to disciplinary proceedings against public servants in this state that would be prejudiced by the release of its very own reasons for making a decision? It certainly does not stop the release or publication of judgments in our criminal, civil and other courts in this state.

I just cannot understand why these matters are kept secret. Indeed (and, Mr President, this might really surprise you), I am told that the disclosure of the written reasons why Ms Les was disciplined (and we know that she was, because that has been in the media and no-one has corrected it; certainly, the minister has not come in here and corrected it) would, on balance, 'be contrary to the public interest'. The following was stated in relation to that decision:

> There is a general public interest in open government which is achieved by disclosure.

That comes as no surprise to any of us. It further states:

> There is a competing public interest in releasing the documents given that the issues contained in them have a direct or substantial relationship to current issues i.e., the appeals process to be undertaken by the Disciplinary Appeals Tribunal. It is in the public interest that material which may prejudice the adjudication of a case not be released into the public domain in order, in part, that public confidence in the impartial administration of justice be maintained.

Mr President, I am sure you would agree with me that, when you try to keep something secret, public confidence is not maintained. If you want to diminish public confidence in our institutions, if you want to absolutely adversely besmirch some of the good, lawful, hardworking corrections officers we have, then keep things a secret. But, for some unknown reason, there seems to be a culture within this department (and I hope it does not extend too much further than that) that keeping things secret, investigating things internally, is the best way to maintain public confidence.

If I am any representative of public confidence, I can say that it is not all that great as a consequence of internal investigations and of failing to disclose this information.

Public confidence is enhanced by openness and accountability—words which were used often by members opposite leading up to the last state election and which have been decreasingly used the longer they remain in government. Indeed, they say that, in order for public confidence in the impartial administration of justice to be maintained, it must be kept a secret. I say that that is absolute palpable nonsense. I mean, if there were any institutions if we go back in our history which did not have public confidence, or institutions which do not have public confidence now, it is the secret institutions—the star chambers of this world. That is what is important.

I was told that a disclosure of the original reasons would 'inhibit frankness and candour of future witnesses before similar inquiries'. If the current administration of corrections is anything to go by, where we have secret internal inquiries and statements in the media that witnesses—officers and prisoners—will not say anything in that context, then how will it be any worse by releasing that information? I will seek leave to conclude in a minute, because I want to finish this on the next Wednesday of sitting. My real concern is that the public confidence in the administration of corrections has been substantially diminished over the past two years, and a principal reason for that is that we as members of the community are being treated in a patronising fashion. With those words, I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

TAXATION, PROPERTY

The Hon. R.I. LUCAS (Leader of the Opposition): I move:

1. That a select committee be appointed to inquire into all matters relating to the issue of collection of property taxes by state and local government, including sewerage charges by SA Water, and in particular—
   (a) concerns about the current level of property taxes and options for moderating their impact and the impact of any future increases;
   (b) concerns about inequities in the land tax collection system, including the impact on investment and the rental market;
   (c) concerns about inequities in the current property valuation system and options to improve the efficiency and accuracy of the valuation process;
   (d) consideration of alternative taxation options to taxes based on property valuations;
   (e) concerns about the current level of council rates and options for moderating their impact and the impact on any future increases; and
   (f) any other related matters.
2. That standing order 389 be so far suspended as to enable the Chairperson of the committee to have a deliberative vote only.
3. That this council permits the select committee to authorise the disclosure or publication, as it sees fit, of any evidence or documents presented to the committee prior to such evidence being reported to the council.
4. That standing order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

The Liberal Party has indicated since some time late last year that it wanted to see a parliamentary inquiry into the issue of property taxation. Summarising the past few months as briefly as I can, the Liberal Party, through its members on the Economic and Finance Committee, successfully moved for an investigation by the Economic and Finance Committee into the broad issue of property taxes. Mr President, you will know that for some 18 months to two years the issue of property taxes in South Australia has increasingly been of concern to a significant number of South Australian taxpayers. In response to that, that motion was successfully moved in the Economic and Finance Committee; and, indeed, that committee expended precious taxpayers dollars on advertising in newspapers and on commencing an inquiry into property taxation generally.

It then became apparent to Premier Rann and Treasurer Foley that this issue was potentially of huge embarrassment to the Rann government, and the Rann government instructed its loyal foot soldiers on the Economic and Finance Committee to close down that inquiry without any further discussion. An inquiry which had been duly constituted, advertised and commenced and which had some submissions lodged, as a result of potential political embarrassment, the Rann government, as I said, instructed its loyal foot soldiers on the committee to close down the inquiry. At that stage, we expressed our concern. We indicated that the Liberal opposition would move for an inquiry in the Legislative Council. As I said, the original preference of the Liberal Party was to have this inquiry in the Economic and Finance Committee, but through the events which I have outlined that is now not possible.

The only other point I would make in terms of the background to this motion before addressing the detail is that I did indicate, when I flagged this at the end of last year, that I was hopeful that at least two or possibly three of our current load of select committees could be wound up by the start of this section of the parliamentary session. That has not occurred as yet, although I am advised that at least two of those committees are likely to be able to report by April, when next we sit. I think that is important. There is a natural restriction on the number of committees not only because we do not have enough members to staff them but also because we do not have the staff resources to look after their operations. I am hopeful that at least two, and maybe even three, of the current list of select committees in the near future might be able to wind up their meetings and also to report, thereby making resources available for this particular select committee.

The terms of the motion are clear. Today I do not intend to go through all the detail of some aspects—in particular, the land tax aspects. There has been a very extensive debate about that, and obviously I want to place some detail on the public record.

As members will be aware, there has recently been another protest meeting, one of a number of protest meetings on the imposition of land tax in South Australia. The Leader of the Opposition organised a series of meetings during the Christmas-New Year period at a time when many members were taking a well-deserved rest and spending time with their families. However, the Leader of the Opposition's concerns about this issue and its impact on South Australia were such that he, together with local members in various areas, organised a series of meetings which up to a couple of hundred people attended. Great concern was expressed by people at those meetings about the land tax impost.

Last year, the Hon. Mr Xenophon and I—and I think one or two other members—attended a big protest meeting organised by the Land Tax Reform Association, primarily headed by Mr John Darley—and due congratulations to him—a former Valuer-General in South Australia. Some 300 or 400 people turned up at Felixstow to protest at what they argue strongly is the unfair impact of land tax on South Australians. Throughout that period we heard nothing at all from members of the Labor Party about these concerns that

were being expressed by thousands of South Australian taxpayers.

Another meeting was organised in the marginal seat of Norwood for February. Because of the political insecurity felt by the Rann government in relation to that particular seat, in response to the pressure being faced by community groups and the Leader of the Opposition, Rob Kerin, the government hurriedly cobbled together a land tax reform package. What did we see in the last two weeks prior to the release of that package? For the first time, we saw the lifting of heads above the parapets by some of the Labor members of parliament. The member for West Torrens (Tom Koutsantonis), the man who still has not paid me my $50 for the bet that he had with me, finally and courageously lifted his head above the parapet to squeak a little concern about the level of land tax on South Australia. He was seeking to portray himself as a fearless defender of his constituents. Why did he do this at that time? Because he had been told that the government was going to respond by making some announcements of changes prior to the state budget. So fearless were the member for West Torrens and other members that they were not prepared to raise their heads until they were aware that the government was going to do something.

The Hon. A.J. Redford: Did Vini do anything?

The Hon. R.I. LUCAS: No, but of course when the press release came out it was a dead giveaway, because the Premier said that, as a result of strong representations—from, surprise, surprise, all the marginal seats—supposedly from the member for Norwood and the member for West Torrens—

The Hon. J.M.A. Lensink: Any grieves?

The Hon. R.I. LUCAS: No. Nothing was raised beforehand by the member for Norwood. There were no speeches to adjournment motions. When my colleague the Hon. Julian Stefani was relentlessly putting on the pressure on talkback radio, when the Leader of the Opposition was holding protest meetings all around South Australia, when my lower house colleagues (the member for Unley, the member for Hartley and others) were raising this issue, when my colleague the member for Morialta was raising the impact on bed and breakfast associations, there was not a squeak from the member for Norwood, the member for West Torrens or the member for Adelaide, but of course the relentless spin of the Rann government was put into motion when the announcement was eventually made. The marginal seat members were told: 'We're going to do something. Why don't you go out there and pretend that you've been fighting this issue all along the way and then you can claim credit for having done something in relation to pressuring the government on land tax.'

We would not have seen any change at all on land tax if it had not been for the actions of the Land Tax Reform Association—all credit to John Darley—and the Leader of the Opposition, the Hon. Rob Kerin. If there had not been that pressure there would not have been any changes to land tax, because the Premier and the Treasurer said on a number of occasions—indeed, the Leader of the Government in this place in response to a question from my colleague the Hon. Terry Stephens continued to say—that land tax was a lovely position to be in and, if you had that problem, you were lucky because you were getting increases in property valuation. That was the out-of-touch response of the Leader of the Government in this chamber and of the Treasurer and the Premier on this issue.

There was no pressure from marginal seat members of the government. These changes occurred only as a result of the Land Tax Reform Association and other similar bodies and the work of the Leader of the Opposition, the Hon. Rob Kerin, to put the heat on Mike Rann and Kevin Foley, and, when they went eyeball to eyeball, who blinked first? It was the Premier and the Treasurer who blinked first. Eyeball to eyeball they went, but Kerin prevailed, because the Premier and the Treasurer blinked.

They could not withstand the pressure; they could not withstand the political heat that had been turned on by the opposition and the Land Tax Reform Coalition and, 13 or 14 months prior to the election, they have supposedly coughed up $245 million in supposed land tax relief to the taxpayers of South Australia. That is the position this opposition will be adopting. We will continue to put the heat on the government, and we will see who blinks first.

We had the Treasurer out there last Thursday issuing a press release saying he was giving a deadline to the Leader of the Opposition of seven days to deliver a policy by 5 o'clock on Thursday. Well, let us just tell the Treasurer and Premier of this state that they do not set these sorts of deadlines: we have the pressure on them, and they will respond. We will not be responding to any deadlines imposed by the Treasurer of South Australia. We will make a choice as to when we release our policies, and it will not be the Treasurer of South Australia who tells us when we will release our policies. We will have our leader go eyeball to eyeball with the Premier and the Treasurer, and again we will see the Premier and the Treasurer cave in first; they will blink and cough up their policy 15 months before they wanted to, because the heat got too much for them and they could not withstand the pressure. The Leader of the Opposition prevailed on that issue, to the benefit of the long suffering taxpayers of South Australia.

On another occasion I will refer to a number of statements that were made by the Premier and the Treasurer as to how this set of circumstances came about, because the Premier and the Treasurer did not coordinate their explanations. When you look at the transcripts explaining how this policy change came about, you see that the Premier claims that it was a hot day in Norwood when he was at a street corner meeting with the member for Norwood and an elderly Italian and an elderly Greek gentleman came up to him and he was finally convinced—not by the members for Norwood or West Torrens, obviously, but by two elderly gentlemen in the electorate of Norwood.

Sadly, the Premier forgot to tell the Treasurer that that was how he had changed the policy because, when you look at the transcripts, you see that the Treasurer's story is different again. His version does not support the version of his own Premier as to how the change came about. When we put all the transcripts together there will be another opportunity, perhaps in the closing of this debate, to place on the public record the varying explanations from the Premier and the Treasurer as to how this policy change came about.

The Hon. T.G. Cameron: Nothing unusual!

The Hon. R.I. LUCAS: Nothing unusual, the Hon. Terry Cameron indicates, and indeed that is correct. A number of issues will have to be explored in relation to this land tax change. As was highlighted at this recent protest meeting, the collections in the last year of the last Liberal government (2001-02) were $140 million, and the most recent estimates for this year were precisely double that at $280 million—a doubling in the space of just three years. Even with the government indicating that it will hand back $20 million out of that $280 million, one can see that there is still a signifi-

cant increase in the impact of land tax on South Australian taxpayers.

A number of issues remain to be considered. Concerns have been raised about the impact of penalties and interest charges. As I indicated at the public meeting, this is an issue. The Liberal opposition has indicated that it will look to change aspects of that policy. We acknowledge that it has been there for many years under Liberal and Labor governments. The position I put at the Norwood meeting is that perhaps we should look at a situation where the most serious penalties are to be used in defined sets of circumstances. That is, where a taxpayer persistently and flagrantly refuses to pay, the most serious penalties could be brought to bear in relation to those taxpayers. But, where in the short term there are what one would call the minor end of transgressions—

The Hon. J.F. Stefani: An oversight of 50¢.

The Hon. R.I. LUCAS: The Hon. Mr Stefani has raised the issue of an oversight of 50¢, and the member for Unley has raised the issue of a particular set of circumstances where a penalty of $1 600 on $8 000 was imposed. We ought to look at those to see whether or not there ought to be some better structuring of the grade of penalties. Whilst obviously the commissioner should retain discretion, because in my view you can never codify all of these things, maybe through the legislation this parliament ought to be giving better direction to the commissioner in determining in what circumstances the 25 per cent or 75 per cent penalty rates ought to apply and in which circumstances it ought to be the lower end of the spectrum.

I certainly do not support the notion of getting rid of the higher penalties—and maybe there could be some adjustment as to what that level is—because you cannot have the situation where taxpayers can flagrantly and continuously refuse to meet their tax obligations, but there ought to be a more commonsense way of imposing more sensible penalties in the sorts of circumstances that have been raised by some members such as the Hon. Mr Stefani and the member for Unley. We have heard that message—

The Hon. T.G. Cameron: You can never have a bad debt, because it is a charge against the property.

The Hon. R.I. LUCAS: The Hon. Mr Cameron suggests that ultimately the Tax Commissioner can knock your property off if you do not pay.

The Hon. T.G. Cameron: They're pretty quick to issue summonses.

The Hon. R.I. LUCAS: Indeed, this committee should look at those sorts of circumstances and how those provisions are imposed because, when a statutory officer such as the Commissioner for Taxation has a discretion, there is the capacity for sensible use of the discretion, but sometimes it might not be sensibly used. I think this parliament deserves answers to a whole range of questions in that area to find out the sorts of issues the Hon. Mr Cameron and the Hon. Mr Stefani have highlighted.

Let me be the first to say that, having been a former treasurer, we sometimes get just one side of the story and that is why it is important to hear the alternative side of the story from the Commissioner and his staff. They will have the opportunity to put that point of view should this committee be established. I think that we can establish a more sensible mechanism in that area and I hope that the government, for the first time, will start listening to some of the concerns that are being expressed. It thinks that just by hurriedly cobbling together its package as it did it has listened to the concerns of a lot of South Australians: it has not. It has missed a lot of these individual issues. For example, now that the land tax regime and payments are much higher, can the option of quarterly payments be implemented? Can it be done in such a way as to minimise the impact on tax collections and cash flow into South Australia? What will be the impact of some of the changes we talked about earlier?

Some people are concerned about aggregation, although I note that the Land Tax Reform Association, having had a debate about it, is not supporting changes in relation to the aggregation policy. Nevertheless people have concerns, and we ought to have a look at that. Certainly, I have not given any commitment at this stage about making changes in the area of aggregation, but we need to listen to the concerns that are being expressed and see what the various options are in relation to that. Concerns continue about the prescribed rural areas within the greater Adelaide district—the definitions of that and what the exemptions are. John Darley has highlighted some concerns there and we need to consider those as well. There are a lot of issues—

The Hon. J.F. Stefani: The threshold.

The Hon. R.I. LUCAS: The threshold, obviously; but I am not going to go through all of them. The Hon. Mr Stefani has indicated thresholds but, clearly, the issues of the thresholds, rates, the progression of those rates, and those sorts of things will obviously need to be considered as part of the committee. I am taking all of that as a given in terms of what needs to be looked at. I just highlighted some of the additional areas in relation to the land tax that ought to be considered. I seek leave to have incorporated into *Hansard* a table which is purely statistical and which highlights the recent collections of land tax and property taxes.

Leave granted.

Source state budget papers	1997-98 $ million	1998-99 $ million	1999-2000 $ million	2000-01 $ million	2001-02 $ million	2003-03 $ million	2003-04 $ million	2004-05 (pre-relief) $ million
Land tax actual	143	133	133	140	140	157	198	282
Land tax budget in July 2002						149	153	157
Land tax budget at start of budget year						149	187	267
Property tax actual	588	602	824	803	731	838	1 071	1 046
Property tax budget in July 2002						664	703	724
Property tax budget at start of budget year						664	784	979

The Hon. R.I. LUCAS: This table looks at the budget papers from 1997-98 through to the most recent budget papers 2004-05. This highlights that, for the last five years of the last Liberal government, land taxes were virtually static

at about $140 million a year: $143 million in 1997-1998, $133 million in 1998-1999, $133 million in 1999-2000, $140 million in 2000-2001, and $140 million in 2001-2002. So, it was an average of about $140 million a year for five years. Of course, in the last two years or so, we have seen the huge property boom in South Australia in terms of valuations. That $140 million increased to $157 million in 2002-2003, $198 million in 2003-2004, then in the mid-year budget review, the estimate for this year was to be $282 million—almost an exponential increase in the last two years or so. It is no wonder that people were complaining about their collections. Also, on this table, another line shows the land tax budget in July 2002—that is, the estimate at the start of the last three years for 2002-2003, 2003-2004 and 2004-2005.

The next line is the land tax budget at the start of each budget year. That is the third line which highlights the estimate at the start of each year; for example, this year the estimate for land tax collections was $267 million and at the mid-year budget review that had increased by another $15 million to an estimate of $282 million. I hasten to say that the land tax actual line, as it relates to 2004-2005, is not actual: it is the most recent estimate in the mid-year budget review, and it was $282 million.

The table also looks at property taxes. Basically, the property tax collections in the last year of the Liberal government were $731 million. This year, in the mid-year budget review, the estimate is $1 046 million—an increase of over $300 million in property tax collections since the last year of the Liberal government. That highlights the fact that we are not just talking about land tax collections—we are talking about property taxes generally and the impact on South Australian taxpayers.

More interestingly, I urge members to look at the bonuses that this government has been enjoying as a result of the booming property market. If you look at the first financial year of the Labor government in 2002-2003, it estimated that at the start of that year the collections from property taxes would be $664 million. It actually ended up collecting $838 million in that year, so it actually had above budget a surplus of almost $180 million that it received in that year. In 2003-2004, it estimated $784 million at the start of the year, but the actual collections were $1 071 million—almost a $300 million surplus in property taxes in that one year. In the government's first year it was $180 million, almost $300 million in its second year, in terms of surpluses. In just two years the government was surfing this revenue boom of property tax collections to the tune of almost $500 million that it did not expect to get.

The Hon. Nick Xenophon: That's a big wave.

The Hon. R.I. LUCAS: It's a big wave. Of course, at the same time, the GST revenue was coming in. It was almost $500 million it did not expect to get from property tax revenues flowing through. This year its estimates were $979 million; we do not yet have an actual for this year. The mid-year review was $1 046 million, which is still an increase of another $60 million or so, but for the actual collections we will have to wait and see. From the two years that we know, the government got almost $500 million extra that it did not budget for in surplus property taxes.

The Hon. J.F. Stefani: Where is the money? Door snakes?

The Hon. R.I. LUCAS: It has gone on door snakes and extra ministers and a variety of other things, but what we have there is an indication that we are not just talking about land taxes, and that is why this government has not really got the message. There have been protests about land taxes, but, believe me, people are protesting about the level of property taxes on their properties, as are the people who are having to pay stamp duties. In the government's first budget, Mr President, as you will know, stamp duties on property conveyances above $200 000 were significantly increased, and, in percentage terms, up to 27 or 28 per cent increases in some cases.

The Hon. J.F. Stefani: Broken promises.

The Hon. R.I. LUCAS: As the Hon. Mr Stefani says, a clear broken promise, because the Premier promised no increases in taxes and charges and no new taxes and charges. The argument at that stage was that that was only going to hit wealthy families. I say to the Premier and the Treasurer they are just out of touch with the property market in South Australia. If we go through marginal seats like Norwood and Adelaide, and also, say, Salisbury North, Thebarton, Woodville, Hackham and Port Adelaide—anywhere—we find that the median value of house prices in those areas is now in and around the order of $250 000. In Salisbury North it is more than $250 000 for those packages. So, to argue that their increases in stamp duties on property conveyances above $200 000 was only going to hit a small percentage of wealthy South Australian families is an indication that this Labor government is out of touch, I am afraid to say.

I would hope that you, sir, and others, perhaps as a minority in the caucus, might occasionally speak up on behalf of the working class South Australian families, but I have to say that the Premier and the Treasurer and other ministers have long lost touch with what is going on out there in the real world if they think that they can blithely increase stamp duties on properties greater than $200 000, and argue that it is going to impact on only a small percentage of wealthy South Australian families.

That table indicates that not only were there significant broken promises but significant surpluses that have been generated by the Rann government in the property tax area, and members should bear in mind that a new property tax was introduced—the Rann water tax. They include the catchment levies and the emergency services levy, which was introduced by the former government and which this government pretended to oppose, and when it is convenient it says it did not introduce it, but of course it has left it there and added to it the stamp duty impost. The government has also added to it the impost of collections in property taxes right across the board.

The motion before the chamber highlights that we ought to look at not just land tax but all property taxes by state and local government, including sewerage charges by SA Water. The member for Unley and my colleague the Hon. Mr Stefani have been vocal in the areas of the council rates and sewerage charges, and I will not go through all the detail of those. I hope my colleague the Hon. Mr Stefani at some stage will be able to expand on his strong views on council rate collections, in particular. This select committee ought to look at a number of these issues because the government's response in that area clearly is lacking credibility.

The committee should look at possible responses in relation to council rates. Other governments, such as the New South Wales government, have adopted different policy responses in a number of those areas. We need to look at those. We need to look at what the impacts might be on local government. We should hear from the Local Government Association and from others who are concerned about the

level of council rates, and the increases in council rates, that we have seen over recent years.

Similarly, I will not go into great detail in relation to sewerage charges, but again they are based on property valuations and we need to have a look at the concerns that have been expressed in that area. I also want to indicate (and I am sure he has probably forgotten that he said this) what the sewerage minister, the Hon. Mr Wright, Minister for Administrative Services, said on 7 December last year, when he was being quizzed about water and sewerage issues by David Bevan and Matthew Abraham. They asked:

> What about their sewerage value? Is that based on the property?

The transcript I have shows that the minister said:

> We all do it a bit different. I am starting to come to the view that it may be timely to have another look at the way we do sewerage.

I am assuming what he means by that is the way we impose sewerage rates. The transcript continues:

> I do not think theirs has been around for a long time. It was last looked at in the year 2000, but property values have gone up quite considerably and, with our system being based upon property values, I think it is probably timely to have another look at it.
>
> MR BEVAN: Are you looking at it because you can see that there is some inequity in a property-based taxing system?
>
> MR WRIGHT: Yeah. If there is a better way, we should look to that and be open to consider different ways of doing things. We currently revise down with the rate in the dollar to reflect increases in property values. That is done on average. For some people, if they have a significant increase in property value that affects their sewerage, we should be open to looking at it. If there are other ways of doing it, we at least need to consider those.

So that is the minister for sewerage, the Hon. Mr Wright, indicating that at least in response to those questions he was saying that it was time to have a look at another way of adopting or imposing a sewerage rating.

To be fair to him, he did not say he was going to change it, and I do not expect him to, but it is an indication from at least one minister that what we are proposing in this committee would at least give us the opportunity to open up the sorts of debates and issues that he indicated he was prepared to have opened up. I know my colleagues have said that we ought to look at it. The Liberal Party has not locked itself into it and neither has the government in terms of a change to the sewerage rating system, but let us at least look at it and see whether there are any sensible alternatives.

This motion also suggests that the committee should look at inequities in the current property valuation system and options to improve the efficiency and accuracy of the valuation process. In recent months, John Darley and others have raised significant concerns about the way the property valuation system operates. There is another provision which asks the select committee to look at alternative taxation options and taxes based on property valuations. Again, neither the government nor the opposition is committed in any way to making those changes yet. What we are saying is: let us look at it. But, for example, you could have poll-based taxation systems which do not increase at the rate of property valuations, and it is per property.

That raises a particularly significant problem for some taxpayers—and for governments, because it might mean a significantly less take into the revenue system. But, alternatively, some are arguing that we ought to move away from property-based valuation taxes completely. I suspect that the position of Leon Byner, of FiveAA, is probably pretty close to that in terms of what his preference would be. Then there are others who say that we have to stick to a property-based valuation system for some of our taxes and charges but let us improve the efficacy of that system. So, all of those options are flagged for this committee to look at.

If we do continue a property-based valuation tax system, I think some of the issues that John Darley and others have been raising need to be addressed seriously. At the meeting at Norwood, Rob Kerin indicated that, upon being elected to government and if there is no government-based inquiry into the property-based valuation system, a Liberal government would institute such an inquiry.

The Hon. Nick Xenophon: Such an inquiry would go a long way.

The Hon. R.I. LUCAS: I agree with the Hon. Nick Xenophon that this inquiry would start that process and hopefully inform all of us to a much greater degree in respect of what the problems are with our current system. I refer members to the transcript of an interview between Leon Byner and John Darley on 8 February of this year, as follows:

> Byner: . . . well what is the problem with the Valuer-General valuing properties? You have always said those evaluations can be 40 per cent inaccurate. . .
>
> Darley: This is another problem. We believe, in fact, from our investigations there's a lot of inconsistency in valuations across the state. I mean, you have some evaluations that are at full market value, others at 50 per cent below, and others at 20 per cent above. Now, in fact, in New South Wales, the Valuer-General is currently under investigation from the Ombudsman there for exactly the same situation. Now as I have mentioned to some people. . . if they think the situation is bad in [New South Wales] then have a look at South Australia. In other words, there's no equity in the valuation system.

Subsequently, in an interview on 17 February, again between John Darley and Leon Byner, Mr Darley says:

> It's even worse than that because in every case that I'm involved with I always ask the Valuer-General for details of the sales evidence that they used in arriving at the valuation. And my last communication with one of their senior officers was to the effect that. . . we're not obliged to give that information. In other words, they can serve up any old value.

Further on, Mr Darley says:

> Oh, there's no doubt about that. It's got to be open-ended. . . if this system is to continue, the Valuer-General has to be more open in how he arrives at valuations and has to be prepared to divulge the evidence.

Further on he says:

> . . . my contention is if you change one [valuation] on objection or because of a sale you've got to at least look at the others to see if they're all in parity.

There was an interview also with Mr John Hanlon, the CEO of the Burnside council, and, without going into all the detail of his contribution, he agreed with the concerns that John Darley had been raising and indicated that he believed it was time to have another look at the operations of the Valuer-General's department. He argued that valuations should be done more locally so that you understand the local market more, and John Darley also agreed with that, and he indicated that in a previous time we had more valuers and local Valuer-General's officers in local regions. I do not know the background to this and whether they were removed by a former Labor government or a former Liberal government, but certainly, when you had a situation where property taxes were at a relatively stable level, that issue was not a great concern.

In an environment where land taxes and property taxes are ballooning, the issue of the accuracy of property valuations takes on an even greater significance, and it may well be that more locally-based valuers will be one of the possible policy options that governments ought to consider. I am advised that that would not require major changes in terms of operation.

I am told that these officers can be on line to the central office of the Valuer-General's department. They just need to be in the local community and plugged into what is occurring in the community in terms of local valuations.

I am sure all members who follow this debate will have had lobbying from individuals who have given the detail of their particular property valuation and struggled to understand why it has been valued in that way, and we have all shaken our heads at some particular examples as to how the Valuer-General's department may or may not have arrived at that particular valuation. Again, it would be important to hear the other side of this story, because you do not always get accurate information—

The Hon. Nick Xenophon interjecting:

The Hon. R.I. LUCAS: —yes—about some of these concerns and complaints. To be fair to the Valuer-General and his officers (who I am sure are hard working and well intentioned), we need to hear their views as to some of these issues that have been raised publicly. But, hopefully, we can also hear how we can improve this system. It is obviously not just a problem in South Australia, as Mr Darley has highlighted the concerns in New South Wales. I refer members to a recent article in the *Sydney Morning Herald* entitled 'Land tax outcry prompts check on valuations' in February this year to indicate that the concerns we are talking about here in South Australia are also mirrored in other states such as New South Wales.

I think that is a fair summary of the length and breadth of the proposed inquiry. I hope that the committee can get its teeth into as many of those issues as possible and reach some conclusions before the end of this year so that, when we come to debate tax policy during the 2006 state election, we are better informed as to what the options might be for potential change and we can be better informed, I hope, in relation to the detail of the land tax changes announced by the government.

In relation to land tax, we have in this place asked for information from the Treasurer as to what the land tax collections will be for this year in the forward estimate years after the government's proposed changes. So far, we have had no response from the Treasurer in relation to that information. Certainly, Mr Darley and others from the Land Tax Reform Coalition believe that the value of these changes will be reduced (I think the Hon. Mr Xenophon has that view as well) and will almost disappear over the coming years if we see the projected increases in valuations of 20 per cent this year and modest increases of 5 per cent or so in the forward estimate years. Under that scenario, the value of the government changes might almost completely disappear.

If the Treasurer is prepared to start answering some of these questions that are put to him in the parliament about what are the forward estimates and some of the other questions that will be addressed not only to the Treasurer but also to Treasury and Revenue SA officers, again, all of us might be better informed. For example, we need an assurance from the Treasurer that all the $245 million that he is talking about will be a benefit received by private land tax payers in South Australia, and that none of that benefit is to be received by the government in terms of the cross charging that goes on between departments and agencies.

It is interesting to look at the figures that the Treasurer is claiming now. He is claiming that, of the $280 million, $170 million is paid for by private land tax payers. He is claiming that he will take $50 million off that. If one listens to his figures, that takes it down to about $120 million, and in the past two days he has complained that the Land Tax Reform Coalition wants to get rid of another $110 million. Something does not jell with the two figures that the Treasurer is claiming. If he is claiming that private land tax payers were paying only $170 million and he is taking $50 million off it, that takes it down to $120 million. Then he is claiming that the Land Tax Reform Coalition's policies will take another $110 million. That would mean he is arguing that the Land Tax Reform Coalition is saying it wants to collect only $10 million in land tax per year. I think that would be a bit of a surprise to John Darley and the association.

We would like to see the Treasury advice provided to the Treasurer as to this costing of the Land Tax Reform Coalition's supposed policy package, which will cost $110 million a year. There is a lot of information that members require for what is one of the more important issues that confronts not only South Australian taxpayers but also the parliament. We think that this committee will give us a good opportunity to highlight those issues.

I thank the Hon. Mr Stefani for his wonderful research capacities. He has managed to very quickly dig up a number of the quotes that I was paraphrasing in relation to the government's attitudes to these land tax issues prior to the pressure from the Liberal Party and the Land Tax Reform Coalition. Let me put them accurately on the public record. *The Advertiser* of 24 January stated:

> Treasurer Kevin Foley and Acting Economic Development Minister John Hill describe the targets of the tax [that is, the land tax] as wealthy, property accumulating opportunists.

On 30 March 2003 Treasurer Foley said that the government still was deliberating over its 2003-04 budget, as follows:

> 'Rising property valuations reflect the growth in the community and that is good,' Mr Foley said. 'As for the impact on the Budget, that is something that we are still working through.'

The government's position on this is more than adequately summarised by that *Advertiser* quote of January 2004 from the Treasurer, where he described the targets of land tax as wealthy, property accumulating opportunists'. As I said, it was not until the political heat was turned on them through the Land Tax Reform Coalition, Rob Kerin and other members of the Liberal Party and the minor parties in South Australia—

The Hon. Nick Xenophon: And the Independents.

The Hon. R.I. LUCAS: That is right. I was referring to the Hon. Mr Xenophon as a minor party—the Independents, the Hon. Mr Xenophon and others. As I said, the Treasurer and the Premier blinked on this issue and hurriedly cobbled together their $245 million land tax package. I urge members to support the establishment of this committee.

The Hon. NICK XENOPHON: I commend the Hon. Mr Lucas for moving this motion. I indicate my strong support for the motion. I had great pleasure in chairing the meeting last week at the Norwood Concert Hall and the meeting that occurred just over a week earlier on 11 February at the Payneham Community Centre. That meeting was attended by some 400 people and, notwithstanding the changes the government announced several days before this meeting on 7 February 2005, there were about 600 people there.

The Hon. R.I. Lucas: The government was spinning that there were only 400 there.

The Hon. NICK XENOPHON: That is not the case. There were 600 seats on the floor of the concert hall. I chaired the meeting, I had the roving mike and knew how

many people were there. There were 20 or 30 seats vacant throughout the whole hall, but at least 20 to 30 people or more were standing up around the margins. So, 600 people would be a very solid estimate. I got involved in this issue back in October 2003 when I was contacted by a small businessman—hardly a wealthy, property accumulating opportunist, as they have been described—who told me that he had had a very significant jump in land tax on a property in the city and he was very distressed by not only the jump in the tax but also the fact that Revenue SA wanted to get the money from him several weeks earlier than it did the previous year, and he was having trouble budgeting for that, given the retail sector.

I have dozens, if not hundreds, of examples of people who have contacted my office in the past 15 months in relation to this issue. This issue has hit hard in middle Australia for ordinary, not wealthy, people who are trying to save for their future. One telephone conversation, which I received only a few weeks ago and which stuck in my mind, was from a woman who was in tears over a massive jump in land tax for a property that she and her family had saved for. I understand it was rental accommodation and that the land tax had jumped $1 500 a year for a relatively ordinary property. This woman made the point that she and her husband work hard, pay their taxes, and do not invest in the stock market. They thought they were doing the right thing by investing in real estate in this state, and the jump in land tax was making it extremely difficult for them to make ends meet in their commitment on this property.

This issue has hit many South Australians—the over 100 000 South Australians who pay land tax. I acknowledge the government's package will mean some relief, but I see it as a band-aid because, if you accept that there is a lag in land valuations, there will be a whittling down of the benefits with respect to the land tax relief the government announced. I see it as a stop-gap solution. It is important that we have this committee as a first step in getting the policy framework right, getting in the information and looking at anomalies in the land tax system, one of which has been for bed and breakfast operators.

I have asked in this place questions on behalf of Beverley Pfeiffer, one of the people involved in the Land Tax Reform Association. She had put her property on the market because it was not worth her continuing, given the anomalies in the system. The government said that matters are being attended to and that these anomalies for bed and breakfasts will be dealt with. The Hon. Jane Lomax-Smith, as the responsible minister, put out a media release. I received a very disturbing phone call this afternoon from a woman who was given certain advice from the office of the Commissioner for Land Tax (and I am getting further information tomorrow) with respect to the potential relief that the government announced, but there was no guarantee when the relief would come into force, and there appears to be some confusion, based on the information this woman received, as to whether the relief package would be dealt with by an act of parliament and whether that relief package would be in place for these anomalies, which the government has acknowledged, by 30 June. I do not know if the Hon. Mr Lucas or anyone can assist me on that, but it concerns me that there appears to be some confusion as to when the anomalies will be cleared up.

The Hon. R.I. Lucas: I just work on the basis that, if you never trust anything Rann or Foley tell you, you will not go far wrong, for example, gambling.

The Hon. NICK XENOPHON: I am an optimist. I like to think the best of people, and I am always an optimist, even if I am disappointed.

The Hon. R.I. Lucas interjecting:

The Hon. NICK XENOPHON: I like to think that people come good in the end. In relation to some of the anomalies (and I do not propose to deal with them as there are simply too many to give examples of), one of the principal issues has been the bracket creep where the marginal rate can jump almost 400 per cent under the previous scale. It has now gone back a bit with what the government proposes, but this is not so much bracket creep but bracket wallop with what it does to people who have a property that has been in the family for generations, where a 20 per cent increase in the property can mean an exponential increase in the land tax payable. Unlike stamp duty where the government has had a significant windfall because of the booming property market, which is a one-off charge, land tax is payable year in year out.

The Hon. J.F. Stefani interjecting:

The Hon. NICK XENOPHON: Of course, as the Hon. Mr Stefani has pointed out, it is the whole issue of the increase in rates. I welcome the terms of reference of this inquiry because land tax is at the sharp end of these increases and it is where we have seen massive increases. However, for people on fixed incomes and who are struggling to make ends meet, particularly those who are retired, council rates have risen way beyond the CPI. I am indebted to the assiduous and tenacious research that the Hon. Mr Stefani has done in relation to how council rates and some of the associated costs have increased.

The Hon. P. Holloway interjecting:

The Hon. NICK XENOPHON: The Hon. Mr Holloway makes the point that income tax has increased as well. That is true, but the difference between income tax brackets and even the new proposed scale of the government's land tax rates is way above what ordinary taxpayers pay in relation to income tax. Land tax is much steeper in terms of the burden on ordinary taxpayers. I pay tribute to Mr John Darley (a former Valuer-General) and his committee which has worked tirelessly on this issue for many months. I believe that their aim is to obtain some equity and fairness. At the public meeting last week, one of the comments that stuck in my mind was by Mr Robin Turner, the President of the Real Estate Institute of South Australia. Hopefully, I will paraphrase him correctly, but Mr Turner made the point that there was a need for equity, fairness and predictability.

That is one of the problems that many people face, including self-funded retirees, with land tax; that is, there appears to be a lack of predictability with the way in which valuations are carried out and the fact that there is a massive increase because of the way in which land tax brackets and their thresholds are set out. Some say that this is about wealthy property accumulating opportunists. One of the last questions asked at last Wednesday night's meeting was from a woman who was a very frail senior citizen and who was very concerned about the land tax she was paying because she was renting out a granny flat on her property. This poor woman was really quite distressed about the massive increases she was facing. She would hardly fit into the category of a wealthy property accumulating opportunist.

To be absolutely fair, I must give credit to the Treasurer (Hon. Mr Foley) for fronting up at that meeting. It was really a case of Daniel in the lion's den. I understand that he fielded some 43 questions without notice from the floor—

The Hon. R.I. Lucas: He didn't answer any of them!

The Hon. NICK XENOPHON: I think that is a bit unfair on the part of the Hon. Mr Lucas. He dealt with all the questions. Whether all those who asked questions were satisfied with the answers is another matter altogether. But full credit to him for turning up when the easy option would have been—

The Hon. J. Gazzola: And staying.

The Hon. NICK XENOPHON: And staying. The shadow treasurer was there for the entire meeting and fielded questions. As I—

The Hon. R.I. Lucas: Wasn't Rann invited?

The Hon. NICK XENOPHON: As I understand, the Premier was invited, but he had another engagement—and I will not be critical of him for that. However, the important thing is—

The Hon. R.I. Lucas interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! The Hon. Mr Xenophon does not need any assistance.

The Hon. NICK XENOPHON: That meeting was a very good example of grass roots democracy in action in terms of members of parliament making themselves available to hear the arguments and the distress amongst many in the audience about the impact that land tax is having on their savings and on properties which were supposed to be their retirement nest egg. This issue will not go away in terms of public importance and the impact it is having on the community, even with the changes which the government has announced. Obviously they are a step in the right direction, but many in the land tax reform movement see it only as a bandaid solution. I welcome this motion of the Hon. Mr Lucas as at least being a significant move to obtain the facts, to hear both sides of the argument and to at least begin to develop some policies which are in the interests of all South Australians and which are equitable, fair and predictable.

The Hon. J.F. STEFANI: Given the hour, my contribution will be very brief and to the point. I wish to congratulate the Leader of the Opposition in this place for bringing the motion before us, which, hopefully, will establish a select committee to look at the range of issues which have been bugging many members of the community, certainly the ones who have contacted my office. I must say that it has been very difficult for many people to cope with the substantial increases in government charges not only in land tax but also the related increases in sewerage rates, the emergency services levy and local government taxes and charges.

In considering the increases, we often forget that many of these increases affect people who are on fixed incomes, such as self-funded retirees who put a plan in place over 10 years ago. They have sought advice and planned their retirement—and their plans have been smashed by this Labor government through the increases in charges and its very greedy grab for money. In February 2004, the Treasurer said:

> Prudent budget management tells me we need to see how the market performs over the next couple of months before making any decision. I appreciate that there are concerns about land tax in the community, but I need to balance that against a considerable increase in personal wealth.

The Treasurer forgets that paper wealth is not personal wealth. The capacity to pay increased government charges does not equate to a paper value increase on any property. That is the real difficulty that a lot of people face. I cite the situation of a lady whose husband died. They had a small flat in Gawler, which was rented out. This lady was in receipt of a part pension but, because of the property revaluation, not only did the land tax bill increase substantially but also, because of the increased valuation of the property, Centrelink deemed that the property took her over the threshold and made her rich. Therefore, she has lost her part pension, and she has also lost the benefits that go with it such as health subsidies and other rebates that she was receiving. This is a typical example. This person is now forced to sell the property because obviously she cannot afford to be without a pension. She will become totally dependent on the public purse.

There are many other such examples that I can quote, but I will not. I have a file at least 75 or 80 millimetres thick which contains correspondence from people who have written to me about the explosion of land tax charges. I welcome the move to establish this committee. I congratulate John Darley and the Land Tax Reform Association for conducting the public fora where the message has been able to be brought home to those who attended, including, in particular, the Treasurer. I congratulate the opposition, including the Leader of the Opposition, for persisting with this issue. I raised it in February 2004 and I have persisted with the problems that have been brought to my attention by writing to the Valuer-General and sending copies of my correspondence to the minister. To date, the replies have been rather patronising, and a lot of constituents are still very angry with the way this government has grabbed their money. They feel that they are only getting back part of their own money. I commend the motion.

The Hon. J. GAZZOLA secured the adjournment of the debate.

VICTIMS OF CRIME ACT

The Hon. J. GAZZOLA: I move:

> That the regulations under the Victims of Crime Act 2001, concerning statutory compensation, made on 21 October 2004 and laid on the table of this council on 26 October 2004, be disallowed.

This morning the Legislative Review Committee moved to disallow these regulations. Since this morning's meeting, the Attorney-General has written to each member of the Legislative Review Committee. For the assistance of honourable members, I will read parts of that letter. He states:

> On 8 February I wrote to the LRC proposing a course of action to take us out of the longstanding impasse. I understood that the LRC had accepted that these negotiations would take place in the good faith I had proposed. On 23 February, the Chair of the LRC wrote to me to let me know that the matter would again be debated by the LRC on 2 March. Alas, this letter was not brought to my attention nor the attention of my Chief of Staff. I am informed members of the LRC have expressed concern at my lack of response in the week between the letter and today's LRC meeting. I can assure you that there is no deliberate affront.

I am informed that members of the LRC in the council have confirmed that they accept the explanation and the undertakings outlined in the Attorney-General's letter. Therefore, I now seek leave to conclude my remarks later.

Leave granted; debate adjourned.

[Sitting suspended from 6.04 to 7.45 p.m.]

LOCAL GOVERNMENT SUPERANNUATION SCHEME

Order of the Day, Private business, No. 3: Hon. J. Gazzola to move:

That the Rules under the Local Government Act 1999, concerning Local Government Superannuation Scheme (Portability), made on 23 November 2004 and laid on the table of this council on 7 December, be disallowed.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): On behalf of the Hon. Mr Gazzola, I move:

That this order of the day be discharged.

Motion carried.

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

Adjourned debate on second reading.

(Continued from 16 February. Page 1107)

Order of the day discharged.

Bill withdrawn.

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

In committee.

(Continued from 1 March. Page 1262.)

Clause 60 passed.

Clause 61.

The Hon. R.D. LAWSON: Clause 61 contains a new provision about which we have some questions. This deals with registered agents, and the amendments will provide that the Governor may establish that a code of conduct be observed by registered agents. Of course, such a code of conduct would be subject to ordinary parliamentary scrutiny and would be open to disallowance. Clause 61 makes amendments to section 152 dealing with the subject of registered agents. It provides that the Governor may, by regulation, establish a code of conduct. Such a code of conduct would, of course, be subject to parliamentary scrutiny and could possibly be disallowed, although it is highly unlikely that a code of conduct would be disallowed, bearing in mind that under the current provisions of our legislation any disallowance of a regulation must be a disallowance of the whole regulations.

It is not possible to amend regulations. That is something about which we feel strongly, and we will certainly be introducing some legislation to endeavour to change that position. Subsection (6) goes on to say that the code of conduct may, for example, deal with the following matters—the third of those matters being that it may limit the extent to which a registered agent may act on the instructions of an unregistered association. It clearly envisages that registered agents may act on the instruction of unregistered associations and, of course, the regulations might seek to limit the capacity to act on the instructions of unregistered associations.

I signal that we are concerned about this; we will not divide on the issue, but we do not believe this is an improvement. We believe that the capacity to make regulations about limiting the extent to which registered agents can act for unregistered associations is something that should be the subject of legislation. The government of the day should not be in the position where it can make regulation to regulate the activities of registered agents in this way. I have indicated before that we will vote against the third reading of this bill. This is a particular provision which we think is offensive.

The Hon. NICK XENOPHON: Can the government indicate what it envisages as the sorts of qualifications and experience that will be required by regulation for registered agents? It may be that someone does not have tertiary qualifications but has had extensive experience working for either an employee or employer organisation, and I would not want them to jump through hoops when they clearly have an expertise in working in this particular field.

The Hon. P. HOLLOWAY: If one looks at the current Industrial Employee Relations (Representation) Regulations, you can see the sorts of qualifications and experience that are prescribed at present:

(a) extensive experience in industrial relations;

(b) a high level of written and oral communication skills;

(c) a sound understanding of the human, social and political factors which influence industrial relations;

(d) experience in undertaking negotiations in the industrial relations field;

(e) experience in appearing as an advocate before industrial authorities;

(f) experience in the interpretation and implementation of awards, industrial agreements and industrial relations policies;

(g) reasonable knowledge of the legislative framework within which industrial relations operate.

That would give a guide but, on behalf of the government, I can undertake that there will be consultation with the appropriate people before the new regulations are introduced. While some other changes are being made, we are really just retaining the regulation power that exists at present.

Clause passed.

Clause 62 passed.

Clause 63.

The Hon. R.D. LAWSON: I oppose this clause. The bill will amend section 155 of the act. That section presently provides that the court or the commission has a discretion to give any form of relief authorised by the act, irrespective of the form of the relief sought by the parties. Accordingly, the court or the commission cannot refuse to grant relief on some technical grounds. If the appropriate words have not been used to express the relief sought, this clause prevents the commission or the court being overly technical. That is something that is permitted not only in the Industrial Relations Commission and industrial tribunals but also in the civil courts.

We are now well past the time when technical objections to the nature of the relief sought can be objected to. However, what the government has done in this amendment is to insert the words 'irrespective of the nature of any application that has been made and irrespective of the form of relief'. So it means that, technically, the commission or a court can grant relief that is not even sought at all, so that a party to an industrial dispute can go along to the court facing a particular application and having the court, out of the blue, making a completely different order, for example, ordering reinstatement instead of underpayment of wages.

The Hon. Nick Xenophon: How likely would that be, though?

The Hon. R.D. LAWSON: The Hon. Nick Xenophon asks 'How likely would that be?' One would hope that it might be unlikely, but the principle is that, when anyone goes to a tribunal to have some matter arbitrated, they really know what they face and what the consequences are; what is going to happen—are they going to be ordered to pay money or not? Giving the tribunal jurisdiction to give whatever relief it sought, irrespective of what is actually applied for, is something that is inappropriate.

The Hon. T.G. Cameron: Can't that happen in any court?

The Hon. R.D. LAWSON: No, it cannot, and the point is that the reason this is being inserted is to enable the court to give some relief that is not even sought in the original application.

The Hon. T.G. Cameron: Why is that a bad thing?

The Hon. R.D. LAWSON: It is a bad thing because anybody who is dragged along to a court or a commission should know the sort of case they have to face and the possibility of orders being made, and be able to address that by giving evidence. Let us take an entirely hypothetical example. If you are facing any sort of claim, such as the alteration of an award, and the commission comes out of the blue and says, 'Well, you might not have been asking for this, but we're going to order it', you might say, 'If we thought we were going to order that, we would have called some evidence to show that that is entirely impracticable and unreasonable, but anyhow we haven't called that evidence and now you're ordering this. We should be told in advance what you are seeking, so we know what we have to present to prevent it.' Otherwise, it will actually expand the costs and the length of hearings generally, because you would have to go in and present a case to meet not only what they are asking for but also anything else that they might possibly get. So it is for that reason we are opposing this extension of the capacity of the court or the commission to order relief.

The Hon. P. HOLLOWAY: The proposal in the bill is to give the court and the commission some clarity and flexibility in terms of the remedies that can be ordered. It is sometimes argued, for example, that, if an unfair dismissal application states only that reinstatement is sought, compensation cannot be ordered as an alternative. This makes clear that the commission has the relevant flexibility in determining an appropriate remedy. Also, it is possible that in dealing with, for example, a dispute notification, having begun to hear the matter the commission may form the view that the matter is more appropriately dealt with as an unfair dismissal. Natural justice would of course be provided to the parties about these matters. Section 154 (2) of the existing act states that:

> The court and the commission must observe the rules of natural justice.

The court and the commission are, of course, sensible, and this allows for a flexible approach so that the appropriate remedy can be applied in any given circumstances. Whether it is seen to be likely or not, the question ought to be whether it is just. To suggest that people will not know what they are facing is false. The court and the commission must, under the law, provide natural justice. That is procedural fairness. We want the court and the commission to be able to do the most just thing in the circumstances.

The Hon. R.D. LAWSON: With the greatest respect for the government's response, let us say that a case is being made before an industrial magistrate for underpayment of wages. It is not a reinstatement claim or unfair dismissal claim: it is actually a claim for underpayment of wages. And the magistrate, out of the blue, says, 'I am going to order a reinstatement.' That is not something that was sought; it was not asked for in the application; and the employer did not present evidence to show that that would be inappropriate because the particular type of work that this worker was doing is no longer performed by the firm, or whatever. There ought to be appropriate notice of the extent of the remedy claimed so that the respondent can provide all of the evidence in response to the claim.

The Hon. P. HOLLOWAY: You cannot do it 'out of the blue', as the deputy leader says. That is the whole point of natural justice. Natural justice means giving people a chance to respond. So I really do not see that the example that has been given by the deputy leader is relevant.

The Hon. IAN GILFILLAN: To assist the committee, I indicate that the Democrats support the clause.

The committee divided on the clause:

AYES (9)

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

NOES (10)

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

PAIR

Roberts, T. G.	Redford, A. J.

Majority of 1 for the noes.

Clause thus negatived.

Clause 64.

The Hon. R.D. LAWSON: I indicate that we oppose this clause, which creates new sections 155A and 155B, which deal with conciliation conferences. I will outline what the current situation is so that the changes can be identified. Presently, the Industrial Relations Court (usually an industrial magistrate) conducts voluntary conciliation conferences regarding monetary claims, usually for underpayment of wages, under section 14. So, the court conducts voluntary conciliation conferences in money claims. With unfair dismissal claims, the commission (usually comprised of a single commissioner) conducts a compulsory conciliation conference regarding any unfair dismissal application. Section 106 requires that there be that compulsory conciliation conference. We think it is entirely reasonable that those unfair dismissal conciliation conferences be compulsory. They are very effective, with the experienced commissioners, in settling many unfair dismissal claims.

What these new provisions will do is, as it were, converge these two types of conferences. The division will apply to all sorts of proceedings, namely, monetary claims, claims for unfair dismissal and any other proceedings to which it is extended by regulation or by rule of the commission. I will ask the minister at the end of this initial contribution what other types of proceedings are envisaged to be included by regulation. So, it applies to monetary claims, to claims for unfair dismissal and to anything else that might be prescribed by regulation. And it prescribes that there be a compulsory conference for all these sorts of claims. Will the minister indicate to the committee exactly what other types of proceedings are envisaged to be included in this regulation or to allow the court, by rule, to include them?

The Hon. P. HOLLOWAY: None are planned other than the two we have previously mentioned: the monetary claim and the relief against unfair dismissal. None are planned under new subsection 155A(c), but it could theoretically include declaratory judgments and compliance notice disputes.

The Hon. R.D. LAWSON: I do emphasise that; this is obviously, then, in aid of declaratory judgments. We have expressed very strong opposition to the power to enter declaratory judgments. I believe that, unfortunately, the committee wrongly allowed that part of the bill. But, given the fact that no formal proceedings are planned, we think it is entirely inappropriate to say that it is two things that are certain, and then, 'While we have not made any plans, we might just include these other things.' I think that creates some of the uncertainty about this provision, because this is a provision to assist in the offensive notion of declaratory judgments. This is part of the attack on the labour hire and subcontract industry.

This clause is in aid of that declaratory judgment proposal, and that is one of our strongest oppositions to it. Our other objection is that presently the commission deals with unfair dismissal; the court deals with the under payment of wages. That is a system that has worked well, and it is well understood. What is envisaged in this clause is that the commission might be able to make an award in relation to a monetary claim, or the court might be able to make a ruling in relation to an unfair dismissal. In other words, what are now presently two separate jurisdictions could be merged—and that is something that we are opposed to. We are opposed to the fact principally because the justification for it is not made out. It will create difficulties about appeals. For example, section 155B(1)(b) provides that, if there are two proceedings in progress, the two proceedings might proceed concurrently.

At the moment, you cannot do that because a commissioner cannot hear what a magistrate can hear and a magistrate cannot hear what a commissioner can hear, which, as I say, has worked well. If the jurisdictions were being merged, that would be a separate issue altogether, but they are not being merged—they are being kept separate. At the moment, there are different avenues of appeal. If a magistrate makes a decision on an under payment of wages, there is an appeal through the court. If a commissioner makes a decision in an unfair dismissal claim, there is a different avenue of appeal, and that is only a question of jurisdiction. It is also apparent from new section 155B(4) that, if after this conciliation process it is not resolved by conciliation or withdrawn, it will be set down for hearing before the court or the commission, as the case may require. That seems to envisage that in some amalgamated claim either the court or the commission will have jurisdiction.

We believe that this is a confused and confusing measure. It will create a lawyer's picnic. It will create uncertainty and additional expense. As I mentioned at the outset, at the moment on an unfair dismissal there is an automatic conciliation conference. There is not such a conference on a claim for under payment of wages. If you want to improve the system, it would be reasonable to have a compulsory conference in both areas, but not one that is, as it were, a combined conference. It is for those reasons that we oppose this clause.

The Hon. P. HOLLOWAY: We really had this substantial debate on clause 54, and this is essentially consequential upon that earlier clause, so I do not want to go through the whole debate again. The committee passed that clause and really there is no point going over it again. I point out that parliament can disallow both the regulations and the rules of the court, if it so chooses. There is that capacity, which is a point we have already made previously. This measure provides for the court and the commission to deploy its resources in the most efficient way. The commission cannot make awards on monetary claims. The court cannot make rulings on unfair dismissal. The opposition has made an entirely false claim. This clause is about conciliation; it is not about final decisions.

The Hon. T.G. CAMERON: I indicate support for the opposition.

The Hon. IAN GILFILLAN: I would like to indicate the Democrats' support for conciliation—an attempt to resolve conflict and to avoid expensive and protracted proceedings. We will definitely support the clause as worded in the bill.

The Hon. R.D. LAWSON: The implication of what the honourable member just suggested is that we are not in favour of conciliation. We are certainly in favour of conciliation. What we are not in favour of is combining two jurisdictions together, and also this provision, which, as the minister admitted, will facilitate declaratory judgments under division 4A—and that is the purpose of this provision.

The Hon. P. HOLLOWAY: This is purely conciliation. It says: '64—Insertion of new division. After section 155 insert: Division 4A—Conciliation conferences'. It is not about decisions; it is about conciliation.

The Hon. NICK XENOPHON: As I understand it, the concern of the business community and the opposition is that there is a blurring of jurisdictions between conciliation and the court. Could the minister clarify whether there is a potential for any blurring, or are we dealing with matters by way of conciliation in terms of what is proposed?

The Hon. P. HOLLOWAY: I can only repeat the point I have already made; that is, this is purely about conciliation. How can it blur matters when it is purely about conciliation?

Members interjecting:

The Hon. P. HOLLOWAY: It doesn't blur it. We've had this debate. Let me remind the committee that this is consequential upon a lengthy debate that we had the other day in relation to the previous clause. This clause is consequential on the other clause that has already been passed. It would be absurd to delete it. Members should be aware that if this is voted down there will be no conciliation conferences. It would be an absurd proposition. It would make this council look stupid given that we passed the consequential bit the other night.

The committee divided on the clause:

AYES (9) AYES t.)

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

NOES (10)

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

PAIR

Roberts, T. G.	Redford, A. J.

Majority of 1 for the noes.

Clause thus negatived.

The Hon. P. HOLLOWAY: I rise on a point of order, Mr Chairman. During the past two divisions I have had some difficulty in counting the numbers because a member whom we included in the vote on this side of the committee moved over to the other side late, and we have had to change the division count on several occasions. Another member coaxed

that member to go to the other side. I believe that is against standing orders. It makes it difficult to count the votes.

An honourable Member interjecting:

The Hon. P. HOLLOWAY: How can you count the votes? If a member crosses over after the division has begun, at what stage does that count, Mr Chairman?

The CHAIRMAN: There is no specific standing order involving the pace at which members cross the floor. What I am concerned about is that there are no time limits—

Members interjecting:

The CHAIRMAN: Order!

The Hon. R.I. Lucas interjecting:

The CHAIRMAN: Order! The Leader of the Opposition will come to order.

The Hon. G.E. Gago interjecting:

The CHAIRMAN: Order! the Hon. Ms Gago will come to order. There is no standing order on how fast members will cross the floor. The time of the count is when both sides have taken their position. There is no time limit on committees of this council, which I believe to be a good thing. Once a division is called, debate is concluded. There should be no attempt at proselytising, intimidation or any other activity to influence a member's decision. The time of the decision is when the first vote is taken, when the ayes or the noes are called. Having made that decision, it is expected that honourable members have made up their mind.

When the bells are ringing, it is not the time for other members to move around the chamber to proselytise, intimidate, encourage, or do any other activity designed to influence the vote at that stage; you have every opportunity to put your case during the committee stage. This is not the first occasion. There is no point of order, but it is an observation that I have made over this set of committee proceedings in particular, and I want honourable members to pay attention to it. Members' decisions should have been made when they voted the first time. In my view, moving about intimidating and trying to proselytise people is just not parliamentary.

The Hon. R.I. LUCAS: Mr Chairman, with the greatest respect, I disagree with your comments. I do not think there is any standing order that supports the comments that you just made, given that when a division is called quite often the majority of members are not in the chamber. When they come into the chamber, it has always been the convention in all of my time in this place for members to be able to consult with other members up until the time they actually take a seat, one way or the other. If you are seeking to indicate that, once a division is called, no member can speak to any other member in relation to what on earth the vote is about, I do not believe you have a standing order, convention or a precedent to support that.

Indeed, if that was the case, this place would grind to a standstill, because the majority of members, as I said, when they come into this chamber on a division call would generally ask other members what the division is about—in particular, those members who are not members of either the government or the alternative government but are Independent or members of a minor party.

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: Exactly; they do not have to think about how they are going to vote. Mr Chairman, in my time in this parliament individual members have always consulted other members by asking, 'What is this vote about? Who is voting which way?' They then make a judgment. Mr Chairman, I do not believe that there is any basis for your observation that there is to be no discussion at all after there has been call in relation to a particular vote. Indeed, as I said, if that was to be the practice in this chamber, this place would grind to a standstill.

The Hon. A.L. EVANS: Mr Chairman, I was not intimidated. I had actually been thinking about this issue for the whole weekend. I mulled and meditated on this for a whole weekend. There are certain things in this that I was a little bit worried about, and that is why I voted the way that I did. I do not particularly like people coming to me just before a vote and telling me what to do or where to go, and I have mentioned that. It has happened to me in respect of all groups. They have come to me and said, 'What are you going to do?' To be honest, I do not particularly like that.

I had a long briefing on all of this stuff from the Labor side, although not particularly in respect of that clause, because every morning I have a briefing from them. I then sit down with my legal adviser and we try to work out what direction we are going to go. Then I like to think it through and hear the debate; then I make a final decision. I do not like being approached at that point, when I have made a decision and I have made it very clear. I am not a robust or rowdy kind of person by nature, but in my heart of hearts I know where I am going. I do not particularly like being confronted by anyone from any side just before the vote. I have thought it through and I go the way I go. As I said, with this one I could have gone either way. I struggled with this thing all weekend, and I came to a final conclusion today.

The CHAIRMAN: I thank the honourable member, on behalf of the committee, for his contribution. I think the clear implication of that is that some people do not want to be proselytised, intimidated or encouraged during the calling of a division when the bells are ringing. The Leader of the Opposition is right: there is no standing order which says that you must be honourable, you must be decent and you must act in a dignified way in the council without implied implication; he is right. If honourable members do not want to do all those things, I suppose they are at liberty to act in a way that I believe would be almost unconscionable. That is my opinion.

Clauses 65 to 73 passed.

New clause 73A.

The Hon. NICK XENOPHON: I move:

Page 41, after line 23—

Insert:

73A—Insertion of section 225A

After section 225 insert:

225A—Use of offensive language against a representative

An employer, or an officer,employee or representative of an association of employers, must not address offensive language to a duly authorised representative of an association of employees (insofar as the person is acting as such a representative).

Maximum penalty: $5 000.

I am sure honourable members could not possibly forget the debate we had last night about the whole issue of—

Members interjecting:

The Hon. NICK XENOPHON: Some honourable members are trying to forget, but I remind them that last night we had an extensive debate in relation to the use of offensive language against an employer. It was an amendment of the Hon. Mr Lawson. It had two parts to it, and it was successful. With this proposed new clause I am seeking to make it consistent.

The attempt is to have a focused amendment that is balanced. We have dealt with the issue of offensive language by union officials. This deals with cases where an employer or an employer's representative is using offensive language against a union official or representative in the context of that person acting as such a representative. If it is a bit of robust banter that has nothing to do with their job, this amendment does not seek to capture that. In some ways it is more focused than the other amendment. What was good for the goose should be good for the gander.

The Hon. J.F. STEFANI: I have a question for the mover of this amendment. Can the mover explain to me how an employer is going to control an employee to tell a union official where to go in certain circumstances that arise out of a workplace environment?

The Hon. NICK XENOPHON: I am happy to take further advice from parliamentary counsel on this, but my reading of it is that it is quite clear that it relates to an officer, employee or representative of an association of employers. If there is a representative from Business SA, for example, and I hasten to add that I could not imagine anyone from Business SA ever using offensive language, but if it was—

The Hon. R.D. Lawson interjecting:

The Hon. NICK XENOPHON: There are other representative associations. Perhaps I should clarify that I mean any current representatives of Business SA. In answer to the Hon. Mr Stefani's question, this is focused on either the employer or someone who is an officer, employee or representative of an association of employers.

The Hon. T.G. CAMERON: After watching the news on television tonight I am not sure I can agree with the Hon. Nick Xenophon that what is good for the goose is good for the gander. Putting that aside, I am wondering whether the Hon. Nick Xenophon could give us some practical examples of the difference between offensive language and robust language. As an industrial officer for a union, and having worked for the employers as well, I am not sure that a reading of that clause would not have made me liable, and the person I was negotiating with, for a $5 000 fine every time we sat down at the negotiating table. I would be very interested to see what the Hon. Mr Xenophon considers to be robust language by example compared with offensive language.

The Hon. NICK XENOPHON: Perhaps it was an ill-advised use of words to use 'robust'. This amendment is about offensive language, and I thank the Hon. Mr Cameron for pointing out my ill choice of words. Over the years, the courts have made a number of decisions about offensive language ,and I do not propose to put in *Hansard* what words are now offensive, but I think we have an approximate idea of what they are.

The Hon. T.G. Cameron: As a lawyer, what is an example of offensive language?

The Hon. NICK XENOPHON: I would be happy to—

The Hon. R.I. Lucas: Whisper in his ear.

The Hon. NICK XENOPHON: The Hon. Mr Lucas wants me to whisper something in the Hon. Mr Cameron's ear. I do not think that is something that either of us want to be involved in. Offensive language—the courts define it—is using four-letter words, whether it is the F-word or the C-word. Essentially, it is that.

The Hon. T.G. Cameron: 'Shit' is a four-letter word. That's not offensive. What if you called someone a deadshit?

The CHAIRMAN: Order! The Hon. Mr Cameron will come to order.

The Hon. NICK XENOPHON: The Hon. Mr Cameron asks whether the word 'deadshit' would be offensive language. My understanding of the authorities would be that that would not be offensive language. I could stand corrected, but I do not have the authorities in front of me.

The Hon. T.G. Cameron: I am trying to find out what words I could use without getting in debt.

The Hon. NICK XENOPHON: I am sure that the Hon. Mr Cameron does not need my help with a lexicon of words that may be offensive. Essentially, regarding the prohibition that was passed last night of addressing offensive language to an employer or an employee by a union official, whatever parameters there are for a union official ought to apply to an employer or an employer's representative. I urge honourable members who supported the whole issue of offensive language by a union official to support this, because it would be consistent to ensure that an employer or an employer's representative cannot do the same thing. Having said that, I acknowledge that the Hon. Mr Cameron did not support the offensive language provision—

The Hon. T.G. Cameron interjecting:

The Hon. NICK XENOPHON: Did not. He did not support it last night; no. I do not believe he supported it last night, because he felt that it would be inconsistent of him to do so.

The Hon. T.G. CAMERON: I want to make a brief contribution. I have some problems with this. I can just imagine the look of surprise on Martin O'Malley's face when he picks up this clause and says, 'What? You mean I can dob in the employer if he uses offensive language towards me?' They are just going to roll around the floor laughing at this. Offensive language is almost a byword at times in the negotiations and discussions that take place between employers and the employees. I am not necessarily talking about using profanities, but some of the language that is used can be—I won't use your word 'robust'—extremely earthy as we get stuck into each other during negotiations.

I have been involved in negotiations where filthy language has been used and when tempers have been lost. Two hours later when the agreement has been negotiated, we shake hands and go down to the pub and have a beer. If this gets up, I shall watch with interest what happens over the years. Excuse the way I put this, but I am just wondering what other union officials might say to a union official who did decide to utilise this clause and who dobbed in an employer for using the magic word, for example, during negotiations. I think he would be called a girl and a sissy by just about every trade union official in the state. Be that as it may, I will listen to the debate with interest.

The Hon. P. HOLLOWAY: There is one answer to that, of course, which is that the other night we passed a clause, against the wishes of the government and the Hon. Terry Cameron, as he points out, but we did pass the clause nevertheless, which provided that an employee or a representative of an employee must not address offensive language to an employer or an employee. So, the situation we have now—

The Hon. R.I. Lucas: Are you voting for this now?

The Hon. P. HOLLOWAY: Yes, we are. If you are going to say you cannot use it—I argued yesterday that I thought it was silly to have a provision against offensive language, and I believe that. There should be robust discussions. But you cannot have a situation where one party can use offensive language and the other one cannot. If you are going to prevent one from doing it, you might as well prevent both. That is why we will support it as a second-best

situation. The point is that the Hon. Terry Cameron gave the example that his colleagues would think a union secretary or a member of the union was a sissy if he were to use this.

Members interjecting:

The Hon. P. HOLLOWAY: The point is that, under the rules in this bill as it is now, an employer could claim that a unionist had used offensive language and have that person charged. What is good for the goose is good for the gander.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: The Leader of the Opposition is just making a fool of his own position. What he is saying is that it is okay for an employer to use offensive language against a union official, but the reverse cannot happen. We should at the very least have a basis of fairness, some balance—

The Hon. R.I. Lucas: You're unbalanced.

The CHAIRMAN: Order!

The Hon. P. HOLLOWAY: What's the point of having a debate when it is conducted like that?

The CHAIRMAN: Order! Everybody will come to order. People are starting to get jocular about 'offensive'. I remind honourable members that they are not covered by this legislation. They are covered by the standing orders, which are quite clear. Offensive and abusive language under standing order 193 is out of order. Let us not seek protection from the Industrial Relations Act. You are all covered by the standing orders, and I am going to start to enforce them, because I have to say that this committee is descending into a rabble.

The Hon. T.G. CAMERON: I make this by way of suggestion. If it is picked up, I think it would be a sensible compromise. What would be best is that if the previous clause that we passed was recommitted and withdrawn and this one defeated because, quite frankly, I find it very difficult to be placed in a position where I am going to treat one side differently to the other. That is my dilemma. Having opposed the first one that went through (and it was carried), even though I think this one is just as silly, if not sillier, because of the individuals involved, I would like to see this one go down as well, but I am not going to be put in the position of perhaps using a casting vote to create two classes. That just does not work. So, if anybody does want to recommit the previous item, we might get a different result, but let us wait and see whether this one gets up. I do not know where to go. With the other one getting up, I have to support this, and I do not want to.

The Hon. IAN GILFILLAN: I indicate that the Democrats will oppose this amendment. We felt that the reference to offensive language in a specific amendment to the act is dangerous, and it is very difficult to be specific. Currently the wording in the act about harassment seems a reasonable exercise as far as employee associations go. If the same restraint is put on employer organisations that is fair enough but, once one moves into this extraordinarily difficult and vague concept of offensive language, I think it is counterproductive.

The Hon. R.D. LAWSON: There is a well known provision in the Summary Offences Act which prohibits the use of offensive language in ordinary situations. It is a well understood legal concept. We on this side are all in favour of equity and fairness in industrial relations. We accept that, if union officials cannot use offensive language, neither should employers or employer associations, and we will be supporting the Hon. Nick Xenophon's amendment.

New clause inserted.

New clause 73B.

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

Page 41, after line 23—Insert:

73B—Insertion of section 230A

After section 230 insert:

230A—Affiliation of registered associations with political parties

(1) If a registered association is affiliated with a registered political party, then the following provisions will apply:

(a) a member of the association cannot be—

(i) taken to be a member of the political party; or

(ii) taken into account for the purposes of—

(A) determining the representation or other entitlements of the association; or

(B) determining the voting entitlements of any person representing the association,

at a meeting of the political party, or at any conference or convention held by the political party,

unless the member has provided to the association a written authorisation under which the member agrees to be recognised as being associated with that political party by virtue of being a member of the association (and such a member will then be a recognised member for the purposes of this subsection while the authorisation remains in force);

(b) a person is not eligible to represent the association under any rule or determination of the political party unless the person is a recognised member selected at an election where the only persons eligible to vote are recognised members;

(c) any fee payable on account of the association being affiliated with the political party must be paid by the recognised members (and must not be payable by any other member of the association) and, if the fee is calculated (in whole or part) on a per capita basis, must only take into account recognised members.

(2) A person may, by written notice furnished to the registered association, revoke an authorisation previously given by him or her under subsection (1).

(3) Any rule or determination of a registered association or a registered political party that is inconsistent with subsection (1) is void and of no effect to the extent of the inconsistency.

(4) The regulations may establish a scheme to regulate the collection or payment of any fee under subsection (1)(c).

(5) To avoid doubt, nothing in this section prevents a member of a registered association being a member of a registered political party on application by the member in his or her own right.

(6) For the purposes of this section, a registered association is affiliated with a registered political party if—

(a) the registered association is a member of the political party; or

(b) the rules of the registered association or the rules of the political party provide for any other form of affiliation with the political party.

(7) In this section—

'registered political party' means a political party registered under Part 6 of the Electoral Act 1985.

This amendment seeks to insert into the Industrial Relations Act an entirely new provision dealing with the affiliation of registered associations with political parties. The new section will provide that, if a registered association (that is, either a registered association of employees or employers) is affiliated with a registered political party, then the following provisions will apply. A member of the association cannot be taken to be a member of the affiliated political party, and a member of the association cannot be taken into account for the purposes of determining representation or other entitlements of the association, including voting entitlements, etc., within the political party or at any conference of the political party, unless the member has provided to the association a written authorisation under which the member agrees to be recog-

nised as being associated with that political party. If the member of the association agrees to be recognised as a member, he will be treated for the purposes of this section as a recognised member.

This section also provides that a member is not eligible to represent the association under any rule or determination of the political party unless the person is a recognised member. Any affiliation fee payable on account of the association must be paid by the recognised members and must not be payable by any of those other members who elect not to be affiliated with the particular political party.

It is a notorious fact, acknowledged in this debate, that union membership, for example, has been falling. There are many people who would want to join unions who support the industrial objectives of unions but may not support the political objectives of a union, and accordingly choose not to join the union because of political affiliations. Given our commitment to freedom of association and human rights, it is only fair that if somebody wants to join an industrial association they should not be forced into joining a political organisation or allowing their name and their dues to be taken into account in the activities of a political association. This is all about integrity and transparency and the liberty of individuals. We think, for example, that this will probably enhance the number of people who are prepared to join unions but who are not doing so at the moment because they do not like the political affiliations of the particular union.

These days, we believe in the integrity and liberty of individuals to make their own decisions and, if they want to join an industrial association and pay the dues, and be a part of the industrial part of it, they should be entitled to do so, but their membership should not be used by the association in any political activity. Accordingly, we urge support for this motion.

The Hon. P. HOLLOWAY: The effect of this amendment is to say that, if an association is affiliated with a political party, members of the association cannot be taken to be members of the political party unless they sign documentation to that effect. I am advised that these provisions are not in place anywhere else in Australia at state or federal level. This is simply a political game. It is just an attack on the ALP and unions who affiliate to the ALP. If the opposition was serious about these issues, it would look at amending the Electoral Act. This is not about industrial relations and it has nothing to do with employment. It is just about politics.

This is akin to saying that every shareholder of a company must approve company donations to a political party. It is like saying that every member of an incorporated association has to approve donations to a political party. Many institutions in our society have governance structures modelled on the Westminster system of government. Take companies, for example. There are shareholders, who are like the electorate; there is a board which is elected by shareholders and is analogous to a parliament; and there is management put in place by the board, which is analogous to the executive government. Similarly, unions have membership, they elect an executive, and there are elected officials.

The leadership of the union is elected to make decisions on behalf of the union members, just as the government is elected to make decisions on behalf of the electorate and just as company boards and management make decisions on behalf of shareholders. Shareholders do not expect to make a decision on every issue; nor do union members. If they do not like the decisions that are being made by the leadership about affiliation to the ALP or any other issue, they can vote them out of office.

This does nothing to help the committee; this does nothing to help families. At the end of the day, if union members are not happy about being affiliated to a political party, they have the opportunity to make their views known in the association's elections where they simply vote out the leadership. This is pure political mischief by the opposition, and it knows it full well. We oppose the amendment. I am also pleased to see that ministers McEwen and Maywald are in the chamber, and I point out that this is one of the—

The CHAIRMAN: Order! Minister, you know that members of the gallery are always invisible.

The Hon. P. HOLLOWAY: Yes, Mr Chairman, but it is interesting. I just remind the committee that, when this debate took place in another place, this was one of the two points in the bill where ministers McEwen and Maywald voted with the government because they recognised this was pure mischief-making.

The Hon. R.I. Lucas interjecting:

The CHAIRMAN: Order, the Leader of the Opposition will come to order.

The Hon. R.I. Lucas interjecting:

The CHAIRMAN: Order! The Hon. Mr Cameron is on his feet.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: The Leader of the Opposition will come to order. He is playing to the gallery, which is as bad as recognising it.

The Hon. R.I. Lucas: I didn't know there was one.

The CHAIRMAN: I can understand that. You have been here for 24 years: it might take you a long time to find out that there was a gallery here.

The Hon. T.G. CAMERON: That was not a bit of sarcasm from the chair, was it?

The CHAIRMAN: I was agreeing with the speaker's point.

The Hon. T.G. CAMERON: I thought the chair was supposed of to be independent. When one looks at the bill and at some of the amendments moved by the Liberal Party, one can see ideology on both sides of the equation. There is no doubt that this bill moved by the government is an ideological document aimed to shore up the trade union movement. Some people may agree or disagree with that, but that is basically what it is about. It is a little unfortunate that that ideology has been met with more ideology from the other side. This is one of these clauses that get slipped in as an amendment. The intention sounds good. It sounds like the intention is to support democracy, freedom and the rights of individuals to choose for themselves what they want to do.

The Hon. R.D. Lawson interjecting:

The Hon. T.G. CAMERON: The Hon. Robert Lawson's eloquent remarks were all about that. The clause is disingenuous. Whilst the motive or intention one could support, that is, if a member belongs to a trade union and that union is affiliated to a political organisation (it may not necessarily be the Labor Party but may well end up being the Greens)—

The Hon. R.I. Lucas: Or the Liberal Party.

The Hon. T.G. CAMERON: I do not know that any union would go that far.

The Hon. R.I. Lucas: They did in Tasmania.

The Hon. T.G. CAMERON: They did a deal—I don't think they affiliated with you, did they? At least they drew the line somewhere. Whilst I can appreciate the intention of the

mover, quite clearly if a trade union has 10 000 members and 1 000 of its members do not want the union to be affiliated—

The Hon. R.I. Lucas: What about Sneathy's 40 per cent factor?

The Hon. T.G. CAMERON: I think that difference was due to other reasons. I think he kept the votes high for his own preselection. It is just a rumour that he was over affiliated to shore up his own preselection so he could get in there. Getting back to the clause, I will not be diverted by interjections—

The CHAIRMAN: Order! The chamber has already decided about offensive language. It is covered by standing order 193. All members will remember standing order 193.

The Hon. T.G. CAMERON: The difficulty I have with the clause in the way it is constructed is the administrative procedure that the union would be required to undergo. If you follow the clause through 1(a), (b) and (c), it would place an onerous burden on the task of the unions. Perhaps there is also some merit in the argument that this could be better dealt with under the Electoral Act. What I would consider to be a more appropriate clause, other than the way this has been constructed, is giving union members the right to opt out if they so desire, in other words, a procedure that would allow a union member either to note on their ticket or to advise the union that they no longer wish to be taken into account for the purposes of affiliation. When I was at the AWU—and Mr Bob Sneath was never the secretary while I was there, thank God—

The CHAIRMAN: Order! I have advised that there will be no more offensive remarks to members of the parliament. It is now getting to the stage of tedious repetition and, under standing orders, if you continue with these sort of offensive and tedious remarks I will rule that way and the member who does it will resume his seat and no longer continue in the debate under the standing orders.

The Hon. R.I. Lucas: What was offensive?

The CHAIRMAN: It is tedious repetition.

The Hon. T.G. CAMERON: What have I said that is offensive? I take exception to that and I would like you to tell me.

The CHAIRMAN: He is casting aspersions and making derogatory remarks towards the Hon. Mr Sneath. Some members in this place think it is humorous—they have been doing it for some time.

The Hon. T.G. Cameron: Bob never dishes it out, does he, hey? He dishes it out, but can't take it.

The CHAIRMAN: Order! This committee has made clear determinations in the past 24 hours about offensive language—

The Hon. T.G. Cameron interjecting:

The CHAIRMAN: Order! The Hon. Mr Cameron will remain silent when I am speaking. The chamber has reinforced its embracing of non-offensive language in the past 24 hours. Beside that, the standing orders are clear: no member, under standing orders, will cast aspersions. Standing order 193 provides:

> The use of objectionable or offensive words shall be considered highly disorderly; and no injurious reflections shall be permitted upon the Governor or the Parliament of this State, the Commonwealth or any Member thereof, or upon any Judges or Courts of Law [unless by specific motion].

The Hon. T.G. CAMERON: I thank you for your advice and counsel, but again we are talking about two sentences I used and you have pulled me up for repetition and offensive remarks. What did I say that was offensive?

The CHAIRMAN: Order! I have drawn to your attention that you have engaged in offensive remarks in respect of the Hon. Mr Sneath on two occasions. That is repetition and I am telling you that, if you continue along that line, I will invoke the standing orders. The member will continue his remarks in a proper manner and in a parliamentary form.

The Hon. T.G. CAMERON: Mr Chair, you are quite entitled to invoke the standing orders, but for some of the other members of the chamber. Getting back to my comments, when I was an industrial officer with the Australian Workers Union, the union used to affiliate for 500 members less than its financial membership. In other words, if it had a membership of 12 000, it would affiliate to the ALP and the UTLC for 11 500. We would advise members who expressed a concern (and it was very rare) about their dues being used to support the ALP. We would remind them that we had affiliated for only 11 500 out of 12 000, that there was a 500 gap there, and on every occasion that happened it was acceptable. It might be a little difficult to make that explanation if you are over-affiliated by about 40 per cent. When one considers that there may be situations where unions have 4 000 or 5 000 ghosts on their rolls, one can see that there may be a need for some clause like this. If unions continue to over-affiliate or engage in ghosting, they will only invite some clause like this to be passed.

For the information of the opposition, I would rather see a clause—and I would support a clause—that allowed a union member to opt out: in other words, that would meet their needs. However, I would expect that something like 95 per cent of the union's members still would not opt out. On occasions members would say to me, 'Look, I vote Liberal—I've always voted Liberal—but I don't mind the AWU being affiliated with the ALP. You are affiliated because you are trying to improve our rates of pay and conditions.' They may not be aware that it may have had more to do with ensuring—

The Hon. R.I. Lucas: Preselections.

The Hon. T.G. CAMERON: —preselections. However, that was mostly acceptable. What I dislike about the process here—I do not have a problem with the intention: if someone wants to express the view that they do not want to belong to a union, that is fine—is that the way in which the procedure has been set up would make it impossible to work, in practical terms. We need a procedure that allows a union member to say, 'I feel so strongly about this; I do not want my' blah, blah, blah, and sign a form. That would take care of it. I do not think it will give you what you are looking for, but it would help to satisfy this problem.

The Hon. R.D. LAWSON: I am indebted to the Hon. Terry Cameron for his contribution. We have put in what is, in effect, an opt-in provision; that members of a union, for example, have to opt in under this proposal. I acknowledge that. The Hon. Terry Cameron is suggesting that a more appropriate procedure would be an opt-out system, where the onus is on the member to opt out of allowing his or her membership to be used for political purposes.

Members interjecting:

The CHAIRMAN: Order! The Hon. Mr Lawson has the call.

The Hon. R.D. LAWSON: The reason why we support an opt-in provision is that it gives the individual greater control over exactly how the individual's name is used. The opt-out system that the Hon. Terry Cameron is suggesting is really one that relies on inertia, and it relies upon the fact that most people will not do anything about it and that their

political masters will be able to gain advantage from membership without the knowledge or concern of—

An honourable member interjecting:

The Hon. R.D. LAWSON: Just because there is something wrong with the way in which our corporations are organised (and shareholders have not been as active in the past as they should have been—although, fortunately, they are now becoming more active) that is no reason not to introduce true democracy into industrial relations. The notion we see as highly offensive is that, if a person wants to be a member of an industrial association, irrespective of the wishes of that particular individual, their name and money can be used for a political purpose and they have no support, no say, and no interest.

The Hon. NICK XENOPHON: I indicate that I do not support the amendment for the reasons that I think were well put by the government. I am also grateful to the Hon. Terry Cameron in relation to his concerns about the mechanics of this. Again, I think this is something that could be dealt with in the context of the Electoral Act. I am pleased that the opposition has moved a number of amendments—I think it indicates its concerns about this issue—and the way to deal with it properly, I would have thought, is in the context of amendments to the Electoral Act.

The Hon. R.I. Lucas: You will support them then—

The Hon. NICK XENOPHON: In relation to the whole issue of campaign donations and disclosure, I think there should be some across-the-board reforms that apply to a whole range of associations, not just unions, but I cannot support this amendment.

The Hon. A.L. EVANS: To save the committee's having to divide, I am supporting the government on this one. My advice is that this should be in the Electoral Act and, therefore, I will be voting with the government.

New clause negatived.

Clause 74.

The Hon. R.D. LAWSON: The opposition opposes this clause. Presently section 235 of the act provides that a prosecution for an offence against the act must be commenced within 12 months after the date on which the offence was committed—that is, the 12-month limitation period. The government's bill has extended that period from 12 months to two years—double the period. We believe that prosecutions should be brought quickly when evidence and witnesses are available and proceedings can be initiated. We think extending time for initiation of prosecutions is really an invitation to sloppiness on the part of investigators and inspectors. This provision has worked well. When you have a 12-month limitation to start a prosecution, you ensure that you start the prosecution within that time. If you have 24 months within which to do it, it will be done in 23 months. Presently it is probably done in 11 months. We do not support an invitation to inefficiency of this kind.

The industrial relations system is all about summary remedies, getting on with things, solving problems quickly and not having festering sores. Today we live in a highly mobile work force where employees leave and get jobs elsewhere; therefore, it may be difficult to obtain witnesses and the like. It makes it more difficult to defend proceedings, if they are to be defended. We do not believe that any sufficient case has been made out for this doubling of the time within which proceedings are to be instituted.

The Hon. P. HOLLOWAY: I indicate that the bill proposes to extend the time limit for the initiation of a prosecution from one year to two years. This is to give consistency with the OH&S Act, section 58(6)(b). The government believes it is quite an appropriate period of time for the limitation of the initiation of prosecutions. I point out that, in the commonwealth Workplace Relations Act, a proceeding in relation to a breach of the term of an award or an agreement is to be commenced no later than six years. I am also advised that non-expiable summary offences also have a two year time limit just like this proposal, so there is some logic to it. I have also been advised by departmental officials that is not uncommon for these complaints about a breach of the act to come forward a significant time after the offence has allegedly occurred.

The Hon. R.D. Lawson interjecting:

The Hon. P. HOLLOWAY: Given that some people may not discover that they have been underpaid or whatever, it may take some time, but we would argue that two years is an appropriate time and is consistent with other measures.

The Hon. T.G. CAMERON: Could the leader let us know what the situation is in the other state jurisdictions? In an issue like this I can see commonsense in having some consistency or uniformity across Australia amongst the state jurisdictions. If he has that information, I would appreciate that.

The Hon. P. HOLLOWAY: Unfortunately, there is not a particular uniformity across the states. In New South Wales, section 398 of the Industrial Relations Act provides that proceedings for an offence against the act or regulations may commence not later than 12 months. However, in Queensland the act provides that proceedings for an offence must be commenced within one year after the offence was committed or within six months after the offence comes to the complainant's knowledge, but within 18 months after the offence was committed. Proceedings for an offence against section 138, which is an order setting a tool allowance; section 406, contributing occupational superannuation; or section 666, non-payment of wages, must be commenced within six months after the offence comes to the complainant's knowledge, but within six years—

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: No, this is Queensland. It is within six months after the offence comes to the complainant's knowledge, but within six years after the offence was committed. In Western Australia it is six years from the time of the alleged contravention or failure to comply. Six years is fairly common, but Queensland has this system where it is within six months of knowledge of the offence but within six years of the offence actually being committed.

The Hon. R.D. LAWSON: The minister said in response to my first question that it may be the case that someone does not discover an underpayment of wages until after the expiration of 12 months. This is not about recovery of underpayment of wages. In South Australia one can recover wages for up to six years. That is the same when those other states talk about six years—you can do that. However, we are not talking about recovery of underpayment of wages: we are talking about prosecutions for offences against the act. The present system is 12 months and, as the minister indicated, that is the same as New South Wales. It is pretty much the same as Queensland.

The Hon. T.G. Cameron: Not really.

The Hon. R.D. LAWSON: When the honourable member says, 'Not really', there are six-year provisions in those jurisdictions, but they are really to accommodate the underpayment of wages, and that is the general period of limitation for making any claim in contract. If the government was

serious about that, it would not be going from one year to two years: it would be saying, 'It should be six years.'

The Hon. P. HOLLOWAY: First, let me point out that the under-payment of wages can be an offence. Breaching an award is an offence. So, I suggest that the comments I made earlier were entirely relevant. The deputy leader is trying to blur the difference between civil and criminal proceedings. Here we are talking about criminal proceedings, so the suggestions are not relevant.

The committee divided on the clause:

AYES (11)

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

NOES (8)

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

PAIR

Roberts, T. G.	Redford, A. J.

Majority of 3 for the ayes.

Clause thus passed.

Clause 75.

The Hon. R.D. LAWSON: I oppose the insertion of proposed new section 236A which will create a new offence in the following circumstances: where a body corporate commits an offence, and a member of the governing body of the body corporate intentionally allowed the body corporate to engage in the conduct comprising the offence. We are unconvinced by the necessity for an amendment of this kind, and I would ask the government to indicate any circumstances or instances of cases which have occurred but which could not be prosecuted because of the absence of an offence such as this.

The Hon. P. HOLLOWAY: The bill provides:

> (1) If—
>
> (a) a body corporate commits an offence against this act; and
>
> (b) a member of the governing body of the body corporate intentionally allowed the body corporate to engage in the conduct comprising the offence,
>
> that person also commits an offence and is liable to the same penalty as may be imposed for the principal offence.
>
> (2) a person referred to in subsection (1) may be prosecuted and convicted of an offence against that subsection whether or not the body corporate has been prosecuted or convicted of the principal offence committed by the body corporate.

Paragraph (b) provides: if 'a member of the governing body of the body corporate intentionally allowed the body corporate to engage in the conduct. . . '. So, directors who intentionally allow companies to commit offences are clearly doing wrong on a personal level, and there should be consequences for that. I am advised that provisions of this nature are found in a range of other acts, for example the Conveyancers Act, the Land Agents Act, the Meat Hygiene Act and the Building Work Contractors Act.

The Hon. R.D. LAWSON: Our concern with this amendment is that so many employers in this state are, in effect, one-man companies, where a particular individual is the owner and the director of the company. If both the company and the individual who controls the company can be prosecuted for the same offence, it really is a double jeopardy situation, except in the case of a public company where the directors deliberately direct the company to commit an offence. In that case, one can understand the circumstances where it would be appropriate that the directors suffer some criminal sanction. However, in what is typically the case with most employers in South Australia, a one-man company, there is a risk that that particular individual, who is the controller of the company, will be prosecuted, and his company which is, in effect, himself, will also be prosecuted. You will simply be doubling the fines and penalties. Unless the government can demonstrate that this is a significant problem, we are not convinced it is an appropriate solution.

The Hon. NICK XENOPHON: I support this particular clause as proposed by the government. My understanding of the remarks made by the Hon. Mr Lawson—I will stand corrected—is that, in the circumstances he raises for that particular issue, a court will take into account, for the purpose of a penalty, how much of a fine has been paid by the individual and what ought to be the fine for the corporation. I support this provision because it relates to imputing knowledge in certain circumstances, and it is entirely consistent with what I am proposing with respect to the industrial manslaughter bill that I have before this place. I think that, in a sense, in appropriate circumstances, it acts to lift the corporate veil.

The Hon. P. HOLLOWAY: The Hon. Nick Xenophon is quite correct; if it is a one-man band, clearly, the courts will take account of that in determining a penalty. I think it needs to be pointed out that people do choose to use corporate structures for advantage but, if people are going to do that, that brings responsibilities as well.

The Hon. IAN GILFILLAN: I indicate Democrat support for the clause as in the bill. Our assessment is that it clearly spells out the case of an individual who has intentionally engaged in an offence. I find it very hard to see any reason why that activity should not be vulnerable to prosecution. It is also, I think—and this has been alluded to by the minister—that a body corporate is regarded as a separate entity. It is a measure which is used in our economic structure, for various reasons, to protect liability.

For all intents and purposes, a limited company, or any form of corporate structure which has that capacity, is regarded as 'a person', so it is not extraordinary for it to be treated as a separate entity to a person who is either on the board or, in the words of the bill, on the governing body. Where there is a court assessing the degree of guilt and penalty, we believe there will be flexibility to show the distinction between what may be a relatively small enterprise compared with a larger one. We believe it is an improvement on industrial legislation in South Australia.

The Hon. J.F. STEFANI: I have a question for the minister: if a body corporate is controlled by a trust, what are the possibilities of the discretionary trust being sued? We all recognise that discretionary trusts are at arm's length and even in terms of corporate liability they cannot be touched.

The Hon. P. HOLLOWAY: I am advised that only natural persons can be directed, therefore trusts cannot be prosecuted, only natural persons can be.

The Hon. R.D. LAWSON: I see where the numbers are and will not be dividing on this clause.

Clause passed.

Clauses 76 to 80 passed.

Clause 81.

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

Page 57, after line 21—

Schedule 12—Campaign donations—registered associations

1—Interpretation

(1) In this Schedule—

disposition of property means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, and includes—

(a) the allotment of shares in a company; and

(b) the creation of a trust in property; and

(c) the grant or creation of a lease, mortgage, charge, servitude, licence, power or partnership or any interest in property; and

(d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action or any interest in property; and

(e) the exercise by a person of a general power of appointment of property in favour of another person; and

(f) a transaction entered into by a person with intent thereby to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person;

gift means a disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration;

officer, in relation to a registered association, means a person who holds an office in the association;

property includes money.

(2) In this Schedule, *office*, in relation to a registered association means—

(a) an office of president, vice president, secretary or assistant secretary of the association; or

(b) the office of a voting member of the governing body of the association; or

(c) any other office that allows the holder of the office to participate directly in any of the following:

(i) the determination of policy for the association;

(ii) the making, alteration or rescission of the rules of the association;

(iii) the enforcement of the rules of the association, or the performance of functions in relation to the enforcement of such rules,

other than any office of a kind excluded from the ambit of this Schedule by the regulations.

2—Returns by candidates

(1) A person who is a candidate for election to an office in a registered association must, within 6 weeks after the conclusion of the election, furnish to the Registrar a *campaign donations return* in accordance with the requirements of this Schedule.

(2) A campaign donations return must set out—

(a) the total amount or value of all gifts received by the candidate during the disclosure period; and

(b) the number of persons who made those gifts; and

(c) the amount or value of each gift; and

(d) the date on which each gift was made; and

(e) the name and address of the person who made the gift.

(3) For the purposes of subclause (2), the disclosure period is the period that commenced—

(a) in the case of a candidate who is an officer standing for re-election—30 days after the person was last elected (or, if relevant, appointed) to the relevant office, or 12 months before the relevant election, whichever is the earlier;

(b) in any other case—12 months before the relevant election,

and that ended at the end of 30 days after the day on which voting closed for the relevant election.

(4) In addition to the requirements of subclause (2)—

(a) if—

(i) a person is a candidate for election to an office in a registered association; and

(ii) the person is not successful at the election; and

(iii) the person, within 3 years after the end of the disclosure period that applies under subclause (2), receives a gift (other than a private gift or a gift of less than $250),

the person must, within 6 weeks after the receipt of the gift, furnish to the Registrar a *supplementary campaign donations return* in accordance with the requirements of this Schedule; or

(b) if—

(i) a person is elected to an office in a registered association; and

(ii) the person does not stand for re-election when his or her term of office expires,

the person must, within 6 weeks after the conclusion of the election to fill his or her vacant office, furnish to the Registrar a *supplementary campaign donations return* in accordance with the requirements of this Schedule.

(5) A supplementary campaign donations return must set out—

(a) in the case of a return under subclause (4)(a)—

(i) the amount or value of the gift; and

(ii) the date on which the gift was made; and

(iii) the name and address of the person who made the gift;

(b) in the case of a return under subclause (4)(b)—

(i) the total amount or value of all gifts received by the person during the disclosure period; and

(ii) the number of persons who made those gifts; and

(iii) the amount or value of each gift; and

(iv) the date on which each gift was made; and

(v) the name and address of the person who made the gift.

(6) For the purposes of subclause (5)(b), the disclosure period is the period that commenced at the expiration of the disclosure period that applied with respect to the person's election to the office in the registered association (see subclause (5)(b)(i)) and that ended at the conclusion of the election to fill his or her vacant office.

(7) A return must be in the prescribed form and be completed in the prescribed manner.

(8) A return need not set out any details in respect of—

(a) a private gift made to the candidate; or

(b) a gift if the amount or value of the gift is less than $250.

(9) For the purposes of this clause—

(a) 2 or more gifts (excluding private gifts) made by the same person to a candidate during a particular disclosure period are to be treated as 1 gift;

(b) a gift made to a candidate is a private gift if it is made in a private capacity to the candidate for his or her personal use and the candidate has not used, and will not use, the gift solely or substantially for a purpose related to an election.

(10) If no details are required to be included in a return under subclause (1) or subclause (4)(b), the return must nevertheless be lodged and must include a statement to the effect that no gifts of a kind required to be disclosed were received.

3—Inability to complete returns

If a person who is required to furnish a return under this Schedule cannot complete the return because he or she is unable (through the taking of reasonable steps) to obtain particulars that are required for the preparation of the return, the person may—

(a) prepare the return to the extent that it is reasonably possible to do so without those particulars; and

(b) furnish the return so prepared; and

(c) give to the Registrar notice in writing—

(i) identifying the return; and

(ii) stating that the return is incomplete by reason that he or she is unable to obtain certain particulars; and

(iii) identifying those particulars; and

(iv) setting out the reasons why he or she is unable to obtain those particulars; and

(v) if the person believes, on reasonable grounds, that another person whose name and address he or she knows can give those particulars—stating that belief and the reasons for it and the name and address of that other person,

and a person who complies with this clause is not, by reason of the omission of those particulars, to be taken, for the

purposes of this Schedule, to have furnished a return that is incomplete.

4—Amendment of returns

(1) A person who has furnished a return under this Schedule may request the permission of the Registrar to make a specified amendment of the return for the purpose of correcting an error or omission.

(2) A request under subclause (1) must——

(a) be by notice in writing signed by the person making the request; and

(b) be lodged with the Registrar.

(3) If—

(a) a request has been made under subclause (1); and

(b) the Registrar is satisfied that there is an error in, or omission from, the return to which the request relates,

the Registrar must amend the return, or permit the person making the request to amend the return, in accordance with the request.

(4) The amendment of a return under this clause does not affect the liability of a person to be convicted of an offence arising out of the furnishing of the return.

5—Public inspection of returns

(1) The Registrar must keep at the office of the Registrar each return furnished to the Registrar under this Schedule.

(2) Subject to this clause, a person is entitled to inspect a copy of a return, without charge, during ordinary business hours at the office of the Registrar.

(3) Subject to this clause, a person is entitled, on payment of a fee fixed by the regulations, to obtain a copy of a return available for inspection under this clause.

(4) A person is not entitled to inspect or obtain a copy of a return until the end of 8 weeks after the day before which the return was required to be furnished to the Registrar.

(5) The Registrar is only required to keep a return under this clause for a period of 3 years following the election to which the return relates.

6—Restrictions on publication

(1) A person must not publish—

(a) information derived from a return under this Schedule unless the information constitutes a fair and accurate summary of the information contained in the return and is published in the public interest; or

(b) comment on the facts set forth in a return under this Schedule unless the comment is fair and published in the public interest and without malice.

(2) If information or comment is published by a person in contravention of subclause (1), the person, and any person who authorised the publication of the information or comment, is guilty of an offence.

Maximum penalty: $10 000.

7—General offences

(1) A person who fails to furnish a return that the person is required to furnish under this Schedule within the time required by this Schedule is guilty of an offence.

Maximum penalty: $5 000.

(2) A person who furnishes a return or other information—

(a) that the person is required to furnish under this Schedule; and

(b) that contains a statement that is, to the knowledge of the person, false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: $5 000.

(3) An allegation in a complaint that a specified person had not furnished a return of a specified kind as at a specified date will be taken to have been proved in the absence of proof to the contrary.

8—Certain gifts not to be received

(1) It is unlawful for an officer of a registered association to receive a gift made to or for the benefit of the officer the amount or value of which is not less than $250 unless—

(a) the name and address of the person making the gift are known to the officer; or

(b) at the time when the gift is made, the person making the gift gives to the officer his or her name and address and he or she has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.

(2) It is unlawful for a candidate in an election to an office in a registered association, or a person acting on behalf of a candidate in an election to an office in a registered association, to receive a gift made to or for the benefit of the candidate the amount or value of which is not less than $250 unless—

(a) the name and address of the person making the gift are known to the person receiving the gift; or

(b) at the time when the gift is made, the person making the gift gives to the person receiving the gift his or her name and address and the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.

(3) A person who acts in contravention of this section is guilty of an offence.

Maximum penalty: $5 000.

(4) This clause does not apply in relation to any gift excluded from the ambit of this clause by the regulations.

9—Requirement to keep proper records

(1) A person must, to such extent as is reasonable in the circumstances, keep in his or her possession all records relevant to completing a return under this Schedule.

Maximum penalty: $2 500.

(2) A person must keep a record under subclause (1) for at least 3 years after the date on which the relevant return is required to be furnished to the Registrar under this Schedule.

Maximum penalty: $2 500.

10—Failure to comply with Schedule

A failure of a person to comply with a provision of this Schedule in relation to an election does not invalidate that election.

11—Related matters

(1) For the purposes of this Schedule, the amount or value of a gift consisting of or including a disposition of property other than money is, if the regulations so provide, to be determined in accordance with principles set out or referred to in the regulations.

(2) For the purposes of this Schedule—

(a) a body corporate and any other body corporate that is related to the first mentioned body corporate is to be taken to be the same person; and

(b) the question whether a body corporate is related to another body corporate is to be determined in the same manner as under the *Corporations Act 2001* of the Commonwealth.

The purpose of this amendment is to insert a new schedule 12 dealing with the subject of campaign donations for union elections. It does not only extend to union elections but to elections in all registered associations, both employer and employee associations. The essence of the scheme is that candidates for election to an office in a registered association must within six weeks after the conclusion of the election furnish to the Registrar a campaign donations return, that return to disclose the total amount of gifts received during the disclosure period, the number of persons who made the gifts, the amount of each gift, the date on which the gift was made and the name and address of the person who made the gift.

There are provisions for supplementary donations returns. These returns relate to all gifts, which is defined to include any disposition of property so as to catch not only cash gifts but also other forms of transaction. We believe that transparency and accountability ought to be maintained in union elections. Where people obtain support from third parties, they should be required to divulge the nature and amount of that support.

In another place, the scheme that we propose, which was not supported by the committee there, had these disclosure returns being filed with the chief executive of the department. However, we have changed that to now read the Registrar of the Workplace Relations Court and Commission, that being a more appropriate repository.

The schedule contains quite extensive provisions about offences for non-compliance with the requirements. It is also stipulated that the register of donations be available for public inspection. There is also a prohibition against any gift to the value of $250 or over. It must be appropriately recorded. Anonymous gifts are not to be allowed. There are requirements to keep proper records. The reason for this is that industrial associations enjoy particular privileges and status within our law and there ought be transparency in respect of the way in which elections are conducted. We have moved along where we now have the Electoral Commissioner supervising many union elections. We believe it is only appropriate that donations should be registered so that anyone with a legitimate interest can examine the record. We have similar provisions under the commonwealth Electoral Act. We think it is high time that similar provisions applied in our industrial relations system.

The Hon. P. HOLLOWAY: The effect of this amendment is to say that when elections for union positions take place there is to be a regime of disclosure about campaign contributions. This is unwarranted and unnecessary. It is nothing but a political stunt. Where else does this exist other than for elections for parliament and councils, which are elections for public office? I am advised that local government elections have disclosure requirements and, of course, federal electoral legislation has disclosure requirements. That is about publicly elected office, not elections from membership-based organisations.

Do members of the opposition really think that sporting clubs should have these requirements? What about incorporated associations? What about RSL clubs? What about contests for the boards of companies? Even political parties which are registered under the State Electoral Act do not have to disclose donations. If the Liberal Party is in any way genuine about this, surely political parties would be the first bodies which need to be disclosing donations. I am advised that these provisions are not in place anywhere else in Australia at state or federal level. Also, campaign disclosures were introduced into federal electoral legislation when the public funding of election campaigns was introduced.

It is only fair that, if you get public money, there should be disclosure. Unions get no public money for their elections. There is no community benefit in this whatsoever; there is no benefit to families or communities whatsoever. This is an unfair and unwarranted measure on one part of our society. What is next when the Liberal Party feels that another group in our community does not think the same as it does? Will it try out repressive laws against them as well? This would be a terrible precedent to set. I am advised that no employer group has asked for this or come to the government asking it to support this; in fact, I am advised that no one at all has come to the government in support of this. I would suggest that this is simply an act of vandalism that members should wholeheartedly reject. It has nothing to do with employment or industrial relations. It is simply a political stunt by the Liberal Party. We oppose the amendment.

The Hon. R.D. LAWSON: This amendment is not a stunt. It is all about openness and accountability. The reason it is necessary to have provisions of this kind is that donations, and quite significant donations, are made in connection with campaigns for union elections. One does not make donations for elections to bowling clubs, RSL clubs and the like. There is no problem there; no problem has arisen. Indeed, unfairness can arise in elections within unions when donations are made secretly and are undisclosed and the membership is unaware of them. The membership is entitled to know who is supporting particular candidates. It is a notorious fact that union elections are hotly contested, and donations are made from various sources and they should be disclosed.

The Hon. T.G. CAMERON: I want to say a few words about this clause, but I want to come at it from a slightly different angle to the Hon. Robert Lawson. As I understand it, some unions declare the political donations that they make in their annual general reports to their members. It would perhaps be more appropriate if a clause encapsulated that.

To rebut a little bit of what the Hon. Robert Lawson has said, my concern does not revolve around the concerns of union members because most of the unions would put it in their reports. What concerns me is the campaign donations, and I do not know whether this clause picks that up. I am not concerned about the campaign donations that unions make to political parties and charities (and I think most members of this place are aware that unions make donations to charitable organisations), but I am concerned about the secret donations that are made to unions to help determine who will win a union election.

If one goes back 20 years or 30 years when unions proliferated, the unions were pretty small. The AWU and the metal workers were the two biggest unions, and that is going back to, say, the 1950s, the 1960s and the 1970s. Then we went through a period of union amalgamation; so, instead of having dozens of relatively small unions, we created super unions. We now have the metal workers, the AWU and the SDA who, between them, represent well over half a million members. I am being hypothetical, but if you are talking about a union, for example, such as the shop assistants, it is a large union and has approximately 200 000 members around Australia.

An honourable member interjecting:

The Hon. T.G. CAMERON: No, only one that I can see. Having worked for a union and, dare I say it, having provided logistical support and perhaps a bit of advice to union secretaries over a 10 year period, I probably have far more experience with union elections than anyone else here—having run something like 15 union campaigns over a period of time. I am pleased to advise the committee that I never lost a union campaign that I was involved in. I knew it was mostly myself campaigning against Peter Duncan. He was on one side and I was on the other side.

As some of the former union officials here would know and appreciate, some of them have been involved in quite bitter internal ballots within their union, and I am sure the Hon. Bob Sneath could cast his mind back over a number of AWU elections. In some union elections today—principally, the metal workers and the AWU—it is not like the old days, where they would go out and campaign on the job and hold a few stop-work meetings and the best man or woman won (in those days it was always a man). However, about 20 years ago union elections started to change significantly, because there were political operators (perhaps not unlike me) in there wheeling and dealing to try to ensure that preselection and affiliation numbers for the ALP did not get out of hand. In some union elections, millions of dollars are now spent on direct mail, television advertising and radio advertising. Sometimes up to a dozen fancy coloured brochures and pamphlets are sent; and there are telephone campaigns, where every member of the union is rung up on the telephone.

The Hon. R.I. Lucas: Who pays for that?

The Hon. T.G. CAMERON: I will come to that. In the course of a union campaign for, say, 20 000 members (only 20 000; not 200 000, like a national campaign, say, for the SDA or the metal workers), to run a reasonably hard fought campaign, where there was genuine opposition, it would be quite easy to spend $10 to $20 per member.

The Hon. R.I. Lucas: You're joking!

The Hon. T.G. CAMERON: No. You might do two or three direct mail print-outs. I can recall—

The Hon. R.I. Lucas: Where does the money come from?

The Hon. T.G. CAMERON: I will come to that. I had left the Australian Workers Union when a particularly bitter internal union election was conducted—and I do not expect to be booed for it, but I was supporting the Hon. Bob Sneath in that election campaign. The Hon. Bob Sneath had the rare distinction of being supported by both the incumbents and the opposition, so one could suggest that there may not have been much point in opposing him, anyway. As the secretary of the ALP, of course, I could not get involved. But my thoughts and best wishes were with Bob.

The Hon. R.K. Sneath interjecting:

The Hon. T.G. CAMERON: Of course.

The Hon. R.K. Sneath: And I still won.

The Hon. T.G. CAMERON: You were on all tickets, but there were about 600 or 700 that still did not vote for you, even though you were on every ticket. I do not want to be distracted by going into that. In that union election campaign, where the number of members on the electoral roll was about 10 000, well over $100 000 was spent—and I am going back nearly 20 years. If it is adjusted for inflation, you are probably talking about a union ballot for 10 000 members which, in today's money, probably would have cost somewhere in the vicinity of $250 000.

The Hon. R.I. Lucas: Where does the money come from?

The Hon. T.G. CAMERON: The Hon. Mr Lucas has asked a number of times: 'Where does the money come from?'.

An honourable member: X-Lotto?

The Hon. T.G. CAMERON: No, it does not come from X-Lotto.

An honourable member: Pokies?

The Hon. T.G. CAMERON: No, it does not come from poker machines. I understand that, from time to time, some of the election funds or the campaign account have been wagered on a horse to try to top it up, but that is about all I am aware of. The practice in most unions is that they usually levy each other a certain amount of money between elections. But I am sure that members would be quick enough with their maths to work out that, if there are only eight positions up for grabs and they are spending $250 000 on a campaign, the weekly contributions from the incumbent members would be more than their weekly wages. Obviously, the weekly contributions that are made by the union officials are topped up.

The Hon. R.I. Lucas: Who tops them up?

The Hon. T.G. CAMERON: That is what I will get to. That is what brings me to why I think that an extremely cogent case can be made (whether this is the appropriate act or it is the Electoral Act is a matter for another debate) for requiring donations that are made to all candidates in a union election to be declared so that it is quite clear where the money comes from. If we had a situation where all campaign donations had to be declared after a union election then I suggest we would not be spending millions of dollars on union election campaigns, because they just do not have the money. They are not allowed to use the union members' funds; the moneys for the election campaign have got to come from somewhere else—just one dollar from the union can disqualify them in the election ballot.

I support something going into the act to make all campaign donations for union elections transparent and open, because it is often the case that bosses involve themselves in a union election and make a decision to support one side or the other. If you need any examples of where that has happened just go back and have a look at the metalworkers over the last 20 years. We have had employer groups, the NCC, I think the industrial action movement, and a whole host of people in there funding union election campaigns and spending millions of dollars. The NCC spent so much in one election campaign that even the union members got sick of it and rejected it.

If campaign donations had to be disclosed it might also do something about stopping political intervention in the internal affairs of a trade union. I have seen the leadership of trade union after trade union, all around Australia, change over the last 30 or 40 years, and I would estimate that probably 90 per cent of incumbent union officials who were defeated at an election were defeated because of political interference by people who did not give a damn about the union but who wanted control of the preselection coupons for ALP conventions. They were not worried about Business SA: that is what it was about.

To sum up—because I do not want to get involved in tedious repetition: I want to vote on this issue—I believe making campaign donations, just like they are in state and federal politics, local—

The Hon. Nick Xenophon interjecting:

The Hon. T.G. CAMERON: No, not a state act but every party in this state, unless it is only registered in this state, is required to conform to the federal act, you are right.

The Hon. Nick Xenophon interjecting:

The Hon. T.G. CAMERON: Only in a federal election, that is correct. This would, in my opinion, stop employers from interfering in union elections because they do not like the union officials they have to deal with or those union officials are performing their jobs too well and representing their members too well. Time and time again I have seen hundreds of thousands of dollars made available to candidates in union elections because employers do not like the leadership of that particular trade union—and in most cases it is usually because they are considered to be too left wing. I do not think I can ever recall employers donating money to oust a right wing trade union official; they are usually pouring money into his coffers to keep him there if he is under challenge.

I do not want members to think that all the money spent on union election campaigns comes from employers. I do not know how many raffle tickets I have bought; how much functions I have attended; how many dinners I have attended; how many cheques I have written out; and how many $100 notes I have handed across from time to time to one side or another in a union election campaign. I think on two occasions I even financially supported both sides. It was a trick I learned from Peter Duncan—always be on the winner.

An honourable member: Two bob each way.

The Hon. T.G. CAMERON: Two bob each way. By making campaign donations transparent, I believe that we could stop the bosses from interfering in trade union elections. We could stop outside external interference in trade union elections and we could help—we will not wipe it out

completely—stop the political interference that occurs in trade unions as people seek to get control of a union for purposes other than what is in the best interests of their members.

The Hon. NICK XENOPHON: I believe that this matter ought to be dealt with in the context of the Electoral Act. I am grateful to the Hon. Mr Lawson for raising this. I think there is an absurdity that we are seeking to impose standards on unions which we ourselves are not subject to in terms of state election law disclosures. The only reason there are disclosure laws applying to both the Liberal and Labor Parties in this state and, indeed, to the Australian Democrats and, as I understand it, Family First is that they are federally registered parties. However, Independents, state registered parties—

The Hon. D.W. Ridgway interjecting:

The Hon. NICK XENOPHON: The Hon. Mr Ridgway suggests that I could register myself as a federally registered party. I do not think that is possible.

The Hon. T.G. Cameron: Impossible. Liberal and Labor got together and did a rotten little deal to make it almost impossible for a small party to register.

The CHAIRMAN: Interjections are out of order.

The Hon. NICK XENOPHON: Mr Chairman, whilst I know interjections are out order, I am very grateful for the Hon. Terry Cameron putting on the public record that deal of the major parties to snuff out Independents and make their lives more difficult at a federal level, particularly for Senate campaigns. I believe this ought to be dealt with in the context of the Electoral Act. I think the Hon. Mr Cameron makes a number of very interesting points which ought to be the subject of further debate. As the government has indicated, if we are to go down this path, we also need to look at incorporated associations, for instance, or public companies in terms of their campaigns. I remind members of a campaign a few years ago for the directors of Coles Myer and Solomon Lew and his campaign, and the enormous amounts of money that were spent.

I think that this ought to be dealt with in the context of the Electoral Act. The fact that it has been raised by the Hon. Mr Lawson is a good thing, and we can look at issues of consistent reform down the track but in the context of the Electoral Act.

The Hon. T.G. Cameron interjecting:

The Hon. NICK XENOPHON: The Hon. Mr Cameron asks whether I would support this in the Electoral Act. I think it is worth looking at in that context, but this is the wrong bill in which to do it. Also, if I can take my lead from the Hon. Mr Lucas and others, in the context of gambling legislation when I suggested—

The CHAIRMAN: That could be dangerous.

The Hon. NICK XENOPHON: It is not always dangerous, Mr Chairman. In the context of debates in respect of poker machine legislation and the gambling industry, I have moved amendments concerning the banning of political donations from the gambling industry to political parties. The point made by members on both sides was that it was more appropriate to be dealt with, as I understand it, in the context of the Electoral Act, and I take those comments on board.

The Hon. R.I. Lucas interjecting:

The Hon. NICK XENOPHON: There is nothing wrong in admitting that you have been swayed by good argument and good logic and, on this occasion, let us look at some Electoral Act reform. I urge members on both sides of the chamber to consider some very broad reforms to the Electoral Act so that we do have decent disclosure laws, but let us start with political parties.

The Hon. T.G. CAMERON: I was very interested in the Hon. Nick Xenophon's speech. Perhaps I could suggest to him that he might like to consider introducing a private member's bill in relation to campaign donations. He has done so on just about every other damn thing!

The Hon. Nick Xenophon: Be careful what you wish for!

The Hon. T.G. CAMERON: It will not bother me. I do not expect to be spending a lot on the next election campaign. However, you might like to consider introducing a private member's bill to ensure that South Australian registered parties and Independents are required to notify where all the expenditure they use on election campaigns comes from. I am not sure that the Hon. Nick Xenophon would spend a lot of money in an election campaign. I have watched him now for seven years and he does not spend a lot on props, although they are usually pretty effective, such as the rubber duckies and the little car he gets around in. So, it would not be the Hon. Nick Xenophon we are trying to get. However, I make this suggestion nevertheless.

The Hon. NICK XENOPHON: The Hon. Mr Cameron has inspired me—to the dread of parliamentary counsel who will read this tomorrow morning. Something is already in the pipeline, and I am sure that honourable members would love to debate a bill on reform of the Electoral Act in the coming months.

The CHAIRMAN: I presume that the Hon. Mr Lawson will speak on this proposition.

The Hon. R.D. LAWSON: Yes, indeed, Mr Chairman. To say that, because these provisions only presently apply in relation to elections with respect to parties registered under the commonwealth Electoral Act (which is most parties), and also apply, of course, to local government elections and not elsewhere, it is inappropriate to extend that to the industrial context is, in our view, entirely inappropriate. They started off in the political and public arena, and we are still in the public arena when we deal with industrial associations which fulfil an important public role. Unions and employer associations have a great effect upon the lives of families and workers and on the economy of Australia. We think it only appropriate that such important bodies now join the growing list of entities required to disclose their sources of donation.

The Hon. Terry Cameron, who has had more experience than anyone else in this chamber (and probably more experience than most of the rest of us collectively) has highlighted the fact that very big campaign donations are made in union elections. Those significant donations obviously can affect the result. We know from experience in America, where vast amounts of money change hands during election campaigns, that money buys votes. We are all in favour of disclosure in relation to political donations. We make disclosure here, and we believe that it should be extended to the industrial context. To say that it should be isolated in one particular area is wrong. We believe that this is an appropriate reform. Those opposite keep saying how they want to lead the nation. Well, here is an opportunity to lead the nation in relation to industrial relations.

The Hon. P. HOLLOWAY: One must comment on the palpable nonsense of the honourable member when he suggests that the Liberal Party is in favour of disclosure; one only has to look at the body that, effectively, gets around the disclosure laws, so let us have none of that. The point that needs to be looked at is why the Liberal Party wants to single out unions but does not look at other bodies, such as sporting

clubs. Look at football clubs: the amount of money spent in those elections is enormous. They have a lot of impact on our community. What about public companies? As the Hon. Nick Xenophon interjected, companies like Coles Myer and James Hardie—thousands of those companies—have a huge impact on society, but they are organisations responsible to their members. It is not public offices we are talking about, but bodies responsible to their membership.

The Hon. R.D. Lawson: Give us an example of a donation for an election to a company board.

The Hon. P. HOLLOWAY: If you want to get into company elections there are all sorts of ways—through the use of proxies and the like. Would the opposition want proxies in union elections? This is the sort of double standard. It is not worth spending any more time on the clause. We all know what it is about and that it is more to do with politics than with substance. We do not require this of other groups of a similar nature that are responsible to their own members. We do not require sporting clubs, incorporated associations, RSLs, boards of companies and the like, so we should not require it here.

The Hon. IAN GILFILLAN: The Democrats will not support the amendment. It may be an issue that could be properly addressed in other legislation, but we do not believe it is appropriate here. The trail of donations is an obscure one in lots of ways. To deal with it in this way and in this bill seems to us to be inappropriate. Will the Hon. Robert Lawson explain—because it could be a matter of interest in other contexts—the meaning and significance of clause 11(2) of the schedule?

The Hon. R.D. LAWSON: I understand it is a standard clause to avoid evasion by use of corporations in the same group making donations of $249. They are associates for the purposes of this scheme. A number of provisions deal with related corporations. It is my understanding that that is the only purpose of this provision: to ensure that all related corporates are treated under the same umbrella or as the same entity. This scheme only relates to donations of $250 or more.

The committee divided on the amendment:

AYES (9)

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

NOES (10)

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

PAIR

Redford, A. J.	Roberts, T. G.

Majority of 1 for the noes.

Amendment thus negatived; clause passed.

Clause 82 passed.

Schedule 1.

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

Clause 3, page 58, lines 8 to 13—Leave out all words in these lines and substitute:

(1) A member of the commission holding office immediately before the commencement of this clause may, by notice in writing to the minister, elect to hold office under section 32 or 35 (as the case requires) of the principal act, as enacted by this act.

(2) If a member of the commission holding office immediately before the commencement of this clause does not make an election under subsection (1) within one month after the commencement of this clause, it will be taken that the member wishes to hold office on the basis on which he or she was appointed and accordingly his or her term of office will cease at the end of the term for which he or she was appointed (unless the term comes to an end under the principal act sooner), although such a member is then eligible for reappointment under the principal act as amended by this act.

This is an important amendment. The committee will recall that the government's bill changed the terms of office of members of the commission, but it changed the terms of office only of new appointees to those positions. We believe that it is important that members of the court and commission—those who are presently appointed—should be able to elect to hold office under the same terms and conditions as new appointees. The danger of the current system is that it will allow a government of any political persuasion to pick and choose those members of the commission who are presently holding office.

The Hon. P. HOLLOWAY: In view of the time, it is unlikely that we will finish this debate before the agreed time of closure, so I suggest that we report progress.

Progress reported; committee to sit again.

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

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

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

That this bill be now read a second time.

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

Leave granted.

Introduction

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

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

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

Background

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

The existing co-operative scheme for electricity market regulation came into operation in December 1998. The lead legislation is the *National Electricity (South Australia) Act 1996*. The current National Electricity Law is a schedule to this Act, and that Law, together with the Regulations made under the *National Electricity (South Australia) Act 1996*, are applied by each of the other national electricity market jurisdictions, that is, New South

Wales, Victoria, Queensland and the Australian Capital Territory, by way of Application Acts in each of those jurisdictions. The initial rules for the national electricity market, contained in the National Electricity Code, were approved by the relevant Ministers in accordance with the current National Electricity Law.

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

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

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

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

New regulatory arrangements

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

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

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

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

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

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

Consultation

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

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

National electricity market objective

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

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

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

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

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

The single national electricity market objective replaces and subsumes the more specific list of "Market objectives" and "Code objectives" under the current Code. A significant catalyst for making this change was the policy position agreed to by governments in the *Australian Energy Market Agreement*. This policy position was that the Australian Energy Market Commission will be required to

consider the "long term interests of consumers" in making any Rule change decisions. The single objective has the benefit of being clear and avoiding the potential conflict that may arise where a list of separate, and sometimes disparate, objectives is specified.

It is important to note that all participating jurisdictions remain committed to the goals expressed in the current market objectives set out in the old Code, even though they are not expressly referred to in the new single market objective. Applying an objective of economic efficiency recognises that, in a general sense, the national electricity market should be competitive, that any person wishing to enter the market should not be treated more nor less favourably than persons already participating in the market, and that particular energy sources or technologies should not be treated more nor less favourably than other energy sources or technologies. It is the intention of the Ministerial Council on Energy to issue a statement of policy principles under the National Electricity Law which will clarify these matters. The Australian Energy Market Commission, in performing its rule-making functions, is to have regard to this policy guidance.

Ministerial Council on Energy

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

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

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

Australian Energy Market Commission

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

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

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

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

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

Australian Energy Regulator

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

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

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

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

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

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

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

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

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

National Electricity Market Management Company

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

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

Reliability Panel

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

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

Rule making under the new National Electricity Law

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

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

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

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

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

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

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

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

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

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

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

Rights of review including merits review

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

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

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

Enforcement

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

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

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

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

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

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

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

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

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

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

Information sharing

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

Any information provided on a confidential basis to one regulatory body, including information provided on a "commercial-in-confidence" basis, may be provided to the other regulatory body

subject to any conditions imposed to protect that information from unauthorised use or disclosure by the receiving body.

Immunities

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

Access

The access arrangements for the national electricity market are yet to be settled by the Ministerial Council on Energy. Accordingly, the National Electricity Law is silent on the issue and the status quo will be maintained for the present time. Until the Ministerial Council on Energy finalises its position on access, there is no intention to seek approval of the Rules by the Australian Competition and Consumer Commission as an industry access code. It is intended that the Ministerial Council on Energy will decide on this matter in the first half of 2005. Prior to implementation of the agreed approach on energy access issues for the future, appropriate opportunity for consultation with industry participants and other stakeholders will be made available.

Renewable energy

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

Regulations made under the National Electricity Law

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

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

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

Savings and transitionals

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

Tasmania's national electricity market entry

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

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

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

Interpretation provisions

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

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

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

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

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

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

4—Amendment provisions

This clause is formal.

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

5—Repeal of Preamble

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

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

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

7—Repeal of Part 3

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

8—Amendment of heading to Part 4
Part 4 of the *National Electricity (South Australia) Act 1996* provides for the making of regulations for the purposes of the National Electricity Law. This clause amends the heading to the Part so that it will also now refer to the making of the Rules.
9—Amendment of section 11—General regulation-making power for National Electricity Law
The general regulation-making power for the National Electricity Law is widened. All Regulations under the *National Electricity (South Australia) Act 1996* may now only be made on the unanimous recommendation of the Ministers of the participating jurisdictions.
10—Substitution of sections 12 and 13
Section 12 of the *National Electricity (South Australia) Act 1996* currently contains certain limited specific regulation-making powers for the National Electricity Law. The section is replaced by a new provision containing a regulation-making power to deal with transitional matters relating to the transition from the application of provisions of the current National Electricity Law to the application of provisions of the new National Electricity Law. The provision is closely modelled on provision in the *Corporations (Ancillary Provisions) Act 2001*.
Section 13 of the *National Electricity (South Australia) Act 1996* currently provides for regulations to be made relating to the civil penalties scheme of the National Electricity Law. The new National Electricity Law does not require any such supporting regulations relating to civil penalties. As a result, section 13 is repealed. In its place there is to be a new provision making it clear that the provisions of the *Subordinate Legislation Act 1978* relating to rules will not apply to the Rules under the new National Electricity Law.
11—Amendment of section 14—Freedom of information
These amendments are consequential on the removal of a role for NECA in the proposed new national electricity administrative arrangements.
12—Substitution of Schedule
This clause provides for the replacement of the National Electricity Law which is contained in the current Schedule of the Act.
Schedule—National Electricity Law
Part 1—Preliminary
1—Citation
Provides that this Law may be referred to as the National Electricity Law (the NEL).
2—Definitions
Sets out definitions used in the NEL.
3—Interpretation generally
Provides that Schedule 2 to the NEL, which contains interpretation provisions, applies to the NEL, to Regulations made under the National Electricity (South Australia) Act 1996 (the Regulations) and to the National Electricity Rules made under the NEL (the Rules).
4—Savings and transitionals
Provides that Schedule 3 to the NEL, which sets out savings and transitional provisions, has effect.
5—Participating jurisdiction
Provides for the participating jurisdictions, which will be South Australia together with the Commonwealth, any other State and any Territory that has in place a law that applies the NEL as a law of that jurisdiction.
6—Ministers of participating jurisdictions
Provides for the relevant Ministers of the participating jurisdictions.
7—National electricity market objective
Sets out the national electricity market objective.
8—MCE statements of policy principles
Provides that the Ministerial Council on Energy (MCE) may issue statements of policy principles in relation to any matters that are relevant to the functions and powers of the Australian Energy Market Commission (AEMC); such statements must be published in the South Australian Government Gazette by the AEMC.
9—National Electricity Rules to have force of law
Provides for the Rules to have the force of law in each of the participating jurisdictions.
10—Application of this Law and Regulations to coastal waters of this jurisdiction
Provides for the application of the NEL and the Regulations to coastal waters.
Part 2—Participation in the National Electricity Market
11—Registration required to undertake certain activities in the national electricity market
Prohibits a person engaging in certain activities unless the person is registered or is the subject of a derogation or otherwise exempted from registration.
12—Registration or exemption of persons participating in the national electricity market
Provides for requests to the National Electricity Market Management Company (NEMMCO) for registration or exemption from registration.
13—Exemptions for transmission system or distribution system owners, controllers and operators
Provides for requests to the Australian Energy Market Regulator (AER) for exemption from registration in relation to transmission and distribution systems.
14—Evidence as to Registered participants and exemptions
Is an evidentiary provision relating to registration and exemption.
Part 3—Functions and Powers of the Australian Energy Regulator
This Part provides for the functions and powers of the Australian Energy Market Commission established by section 5 of the Australian Energy Market Commission Establishment Act 2004 of South Australia (the AEMC Act).
Division 1—General
15—Functions and powers of the AER
Sets out the AER's functions and powers.
16—Manner in which AER must perform or exercise AER economic regulatory functions or powers
Makes provision in relation to the manner in which the AER must perform or exercise the AER's economic regulatory functions or powers.
17—Delegations
Provides that a delegation by the AER under section 44AAH of the TPA is effective for the purposes of the NEL, Regulations and Rules.
18—Confidentiality
Provides that the confidentiality provisions of section 44AAF of the TPA are effective for the purposes of the NEL, Regulations and Rules.
Division 2—Investigation Powers
19—Definitions
Sets out definitions for the purposes of this Division.
20—Authorised person
Provides that the AER may authorise persons to be authorised persons for the purposes of this Division.
21—Search warrant
Provides for the issue of search warrants by a magistrate.
22—Announcement before entry
Provides for announcement before entry to a place in execution of a search warrant.
23—Details of warrant to be given to occupier
Requires certain details of a search warrant to be given to the occupier of premises
24—Copies of seized documents
Requires a certified copy of a seized document to be provided to the person from whom it was seized in execution of a search warrant.
25—Retention and return of seized documents or things
Provides for return of documents or other things seized in execution of a search warrant.
26—Period for retention of documents or things seized may be extended
Provides for extension of the period within which a document or other thing must be returned.
27—Obstruction of persons authorised to enter
Creates an offence of obstructing or hindering a person in the exercise of power under a warrant, for which the penalty is a fine of up to $2,000 for a natural person or up to $10,000 for a body corporate.
28—Power to obtain information and documents in relation to performance and exercise of functions and powers
Provides that the AER may serve notices requiring information to be furnished or documents to be produced and

creates an offence of failing to comply with such a notice, for which the penalty is a fine of up to $2,000 for a natural person or up to $10,000 for a body corporate.

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

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

Division 1—General

29—Functions and powers of the AEMC

Sets out the AEMC's functions and powers.

30—Delegations

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

31—Confidentiality

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

32—AEMC must have regard to national electricity market objective

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

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

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

Division 2—Rule Making Functions and Powers of the AEMC

34—Subject matter for National Electricity Rules

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

35—Rules in relation to economic regulation of transmission systems

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

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

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

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

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

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

38—The Reliability Panel

Provides for the AEMC to establish a Reliability Panel.

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

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

Division 4—MCE Directed Reviews

40—Definition

Sets out a definition for the purposes of this Division.

41—MCE directions

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

42—Terms of reference

Provides for the terms of reference of MCE directed reviews.

43—Notice of MCE directed review

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

44—Conduct of MCE directed review

Provides for the conduct of MCE directed reviews.

Division 5—Other Reviews

45—Reviews by the AEMC

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

Division 6—Miscellaneous

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

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

47—Fees for services provided

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

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

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

Part 5—Role of NEMMCO under the National Electricity Law

Division 1—Conferral of Certain Functions

49—Functions of NEMMCO in respect of national electricity market

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

50—Operation and administration of national electricity market

Provides for how NEMMCO must perform its functions.

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

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

52—Delegation

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

Division 2—Statutory Funds of NEMMCO

53—Definitions

Sets out definitions for the purposes of this Division.

54—Rule funds of NEMMCO

Provides for the continuation and establishment of Rule funds.

55—Payments into Rule funds

Provides for payments into Rule funds.

56—Investment

Provides for investment of moneys in Rule funds.

57—NEMMCO not trustee

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

Part 6—Proceedings under the National Electricity Law

Division 1—General

58—Definitions

Sets out definitions for the purposes of this Part.

59—Instituting civil proceedings under this Law

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

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

60—Time limit within which AER may institute proceedings

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

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

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

62—Additional Court orders for Registered participants in breach

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

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

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

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

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

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

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

66—Breaches of civil penalties involving continuing failure

Provides for breaches of civil penalty provisions involving continuing failure.

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

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

68—Persons involved in breach of civil penalty provision

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

69—Civil penalties payable to the Commonwealth

Provides that civil penalties are payable to the Commonwealth.

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

70—Applications for judicial review

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

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

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

Division 4—Other Civil Proceedings

72—Obligations under Rules to make payments

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

Division 5—Infringement Notices

73—Definition

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

74—Power to serve a notice

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

75—Form of notice

Provides for the form of the infringement notice.

76—Infringement penalty

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

77—AER cannot institute proceedings while infringement notice on foot

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

78—Late payment of penalty

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

79—Withdrawal of notice

Provides that the AER may withdraw an infringement notice.

80—Refund of infringement penalty

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

81—Payment expiates breach of relevant civil penalty provision

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

82—Payment not to have certain consequences

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

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

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

Division 6—Miscellaneous

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

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

85—Offences and breaches by corporations

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

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

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

Part 7—The Making of the National Electricity Rules

Division 1—General

87—Definitions

Sets out definitions for the purposes of this Part.

88—Rule making test to be applied by AEMC

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

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

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

Division 2—Initial National Electricity Rules

90—South Australian Minister to make initial National Electricity Rules

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

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

91—Initiation of making of a Rule

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

92—Content of requests for a Rule

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

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

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

94—Initial consideration of request for Rule

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

95—Notice of proposed Rule

Requires the AEMC to give notice of a proposed Rule.

96—Non-controversial and urgent Rules

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

97—Right to make written submissions and comments

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

98—AEMC may hold public hearings before draft Rule determination

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

99—Draft Rule determination

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

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

Provides for written submissions on a draft Rule determination.

101—Pre-final Rule determination hearing may be held

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

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

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

103—Making of Rule

Requires the AEMC to make a Rule as soon as practicable after publication of its final Rule determination; notice of the

making of a Rule must be published in the South Australian Government Gazette.

104—Operation and commencement of Rule

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

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

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

106—Evidence of the National Electricity Rules

Is an evidentiary provision relating to the Rules.

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

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

Provides for extension of set periods relating to Rule making.

108—AEMC may publish written submissions and comments unless confidential

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

Part 8—Safety and Security of the National Electricity System

109—Definitions

Sets out definitions for the purposes of this Part.

110—Appointment of jurisdictional system security coordinator

Provides for appointment of a jurisdictional system security coordinator.

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

Provides for the preparation of jurisdictional load shedding guidelines.

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

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

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

Provides for exchange of load shedding information in certain circumstances.

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

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

115—Shedding and restoring of loads

Provides for shedding and restoring of loads.

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

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

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

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

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

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

Part 9—Immunities

119—Immunity of NEMMCO and network service providers

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

120—Immunity in relation to failure to supply electricity

Provides an immunity in relation to failure to supply electricity.

121—Immunity from personal liability of AEMC officials

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

Schedule 1—Subject matter for the National Electricity Rules

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

Schedule 2—Miscellaneous provisions relating to interpretation

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

Schedule 3—Savings and transitionals

Sets out savings and transitional provisions.

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

PUBLIC SECTOR MANAGEMENT (CHIEF EXECUTIVE ACCOUNTABILITY) AMENDMENT BILL

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

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

That this bill be now read a second time.

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

Leave granted.

There is an increasing demand on government to address matters that cross the traditional administrative units. While certain services clearly fall within a single portfolio's obligations, many issues that the public sector must deal with are complex and difficult to resolve in traditionally aligned administrative units. There is clearly a need to encourage whole-of-Government problem solving and resource allocation.

The *Public Sector Management (Chief Executive Accountability) Amendment Bill 2004* amends the *Public Sector Management Act 1995* to increase the accountability of Chief Executives for the implementation of whole-of-Government policy. This will operate as a significant incentive to a new, more effective way of working across government.

Under the *Public Sector Management Act*, the conditions of appointment of Chief Executives of administrative units in the public sector are the subject of a contract with the Premier. The Premier and the Minister have a role in determining performance standards that are required to be set from time to time under this contract. However Chief Executives are responsible only to the Minister for the attainment of these standards and the Government's overall objectives. There is no clear, overt requirement or accountability mechanism connecting that obligation to the Premier.

The Bill amends section 14 of the Act to provide for a direct responsibility to the Premier for the implementation of the government's objectives, including whole-of-Government objectives. These objectives are defined clearly as those approved by Cabinet and relate to the functions and operations of all or a number of public sector agencies. The amendments to section 15 of the Act will provide the Premier with further powers to direct Chief Executives in relation to implementation of these objectives.

The Bill also makes amendments designed to make it clearer that the performance standards, which must be met by the Chief Executive under their contract, will be set from time to time by the Premier and the Minister. That is that these standards do not appear in the contract itself, but are set separately, in documents such as Chief Executives' performance agreements. A failure to meet these standards may result in termination of the Chief Executive's contract.

A new performance agreement process for Chief Executives will be put in place to assist in the enforcement of Chief Executive's statutory responsibilities for whole-of-Government objectives. The new process would involve the Premier in consultation with the relevant Minister, establishing a series of specific and measurable goals for each Chief Executive. These goals will relate to the implementation of whole-of-Government policies as well as portfolio priorities and will be assessed and revised as required on an annual basis.

The Bill and new performance appraisal process is consistent with and assists in the implementation of the OCPE Review, undertaken by Rod Payze, a former CEO in the public sector and Philip Speakman, a senior executive from the private sector. The review endorses the philosophy of performance appraisal. The Review states that in order to fulfil its potential, the public sector must embrace performance management, which commences with the Chief Executives and is championed by the Premier. The Review goes on to recommend the involvement of the Premier in the performance appraisal of Chief Executives.

These amendments contained in the *Public Sector Management (Chief Executive Accountability) Amendment Bill 2004*, will provide significant clarity in the governance and accountability framework for the public service. It will also mean that South Australia will be the first jurisdiction to overtly define responsibility of Chief Executives for the implementation of whole-of-Government policy.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Public Sector Management Act 1995*

3—Amendment of section 3—Interpretation

A new definition of ***whole-of-Government objectives*** is proposed to be inserted in the interpretation section, section 3, of the *Public Sector Management Act*. The term is defined to mean objectives for Government that are approved in Cabinet from time to time and relate to the functions or operations of all or various public sector agencies. The term is used in the amendments proposed by clauses 5 and 6.

4—Amendment of section 12—Termination of Chief Executive's appointment

Section 12 of the *Public Sector Management Act* sets out the grounds for termination of a Chief Executive's appointment. For that purpose the section refers (amongst other things) to failure to carry out duties to the performance standards specified in the contract relating to the Chief Executive's appointment. The wording of the section is adjusted by this clause so that the section more clearly reflects the fact that performance standards are not spelt out within the contract document itself but separately set from time to time by the Premier and the Minister for the administrative unit. In this connection, section 10(2)(b) of the *Public Sector Management Act* which deals with the contents of contracts for the appointment of Chief Executives requires only that a contract specify that the Chief Executive is to meet performance standards as set from time to time by the Premier and the Minister responsible for the administrative unit.

5—Substitution of section 14

Section 14 of the *Public Sector Management Act* is recast by this clause. Under the proposed new provision the Chief Executive of an administrative unit will be responsible to the Premier and the Minister responsible for the unit for—

- ensuring that the unit makes an effective contribution to the attainment of the whole-of-Government objectives that are from time to time communicated to the Chief Executive of the unit by the Premier or the Minister responsible for the unit and relate to the functions or operations of the unit
- the effective management of the unit and the general conduct of its employees
- the attainment of the performance standards set from time to time by the Premier and the Minister responsible for the unit under the contract relating to the Chief Executive's appointment
- ensuring the observance within the unit of the aims and standards contained in Part 2 of the *Public Sector Management Act*.

6—Amendment of section 15—Extent to which Chief Executive is subject to Ministerial direction

Currently section 15(1) of the *Public Sector Management Act* makes the Chief Executive of an administrative unit subject to direction by the Minister to whom the administration of the *Public Sector Management Act* is committed or by the Minister responsible for the unit. This provision is replaced with a provision under which the Chief Executive of an administrative unit will be subject to direction—

- by the Premier with respect to matters concerning the attainment of whole-of-Government objectives and
- by the Minister responsible for the unit.

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

ADJOURNMENT

At 11 p.m. the council adjourned until Thursday 3 March at 11 a.m.