LEGISLATIVE COUNCIL

Tuesday 26 October 2004

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

PARLIAMENTARY PRIVILEGE

The PRESIDENT: I rise to make a statement on the subject of parliamentary privilege. I received a request to have a right of reply incorporated in *Hansard* from the Naracoorte Lucindale Council. It is in response to questions asked during the debate on matters of interest by the Hon. Mr R.K. Sneath on 15 September 2004. However, I have some concerns about this request. The citizen's right of reply is being provided by sessional standing order to enable, under parliamentary privilege, a redress for citizens who feel they have been aggrieved by what has been said in the Legislative Council to have their concerns incorporated by way of statement in *Hansard*. As President of the Legislative Council it is for me to decide whether the statement is incorporated in *Hansard*.

This process should not be turned into a 'political football' to enable persons or bodies who have taken other action to address their concerns to then seek parliamentary privilege to be applied to their statement after already publicising that statement. I received correspondence on Friday 22 October 2004 (which was dated 14 October 2004) from the Naracoorte Lucindale Council. I understand that the CEO of the council and councillor Bill Cobbledick earlier sought advice from the Clerk on 6 October 2004, and then emailed the draft response to her on 19 October 2004. Subsequently, the Clerk contacted Mr Dennis Hovenden on Thursday last to have removed from the draft right of reply certain statements which did not conform with the sessional standing order and, indeed, may have been actionable.

Accordingly, the amended formal request for the citizen's right of reply was received last Friday. I had at this time been inclined to agree to the request but, having raised the matter with the Hon. Mr Sneath, as I am required under your sessional order, he advised me that he was aware of this matter and had received correspondence from the Naracoorte Lucindale Council also dated 14 October 2004 and signed by the CEO, in which it was pointed out that the unamended response had been widely circulated to, among others, the Minister for Local Government (Hon. Rory McEwen), the Local Government Association of South Australia, Mr Mitch Williams (the member for MacKillop), the President of the Legislative Council, the Leader of the Opposition in the Legislative Council, the Hon. Angus Redford, Mr Patrick Secker (the member for Barker), all Naracoorte Lucindale Council councillors, and media outlets (the *Naracoorte Herald* and the *Border Watch*).

That piece of correspondence was provided to me, having been received by the Hon. Mr Sneath. Clearly the council, by writing to the Hon. Mr Sneath and others, had already aired its views not only to other individuals but, more importantly, to the media and therefore I am not inclined to agree to the request to have this matter incorporated in *Hansard*.

PAPERS TABLED

The following papers were laid on the table:

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

- Report, 2003-04—
  - Department of Treasury and Finance
  - Director of Public Prosecutions
  - Distribution Lessor Corporation
  - Essential Services Commission of South Australia
  - Funds SA
  - Generation Lessor Corporation
  - Guardianship Board
  - Legal Services Commission of South Australia
  - Lotteries Commission of South Australia
  - Motor Accident Commission
  - Office of the Public Advocate
  - Police Superannuation Board
  - RESI Corporation—Part 1 Chief Executive Officer's Report
  - SAICORP (South Australian Government Captive Insurance Corporation)
  - South Australian Asset Management Corporation
  - South Australian Classification Council
  - South Australian Government Financing Authority SAFA
  - South Australian Motor Sport Board
  - South Australian Parliamentary Superannuation Scheme
  - State Electoral Office
  - Super SA Board—Seventy-Eighth Annual Report
  - Telecommunications (Interception) Act 1988
  - The Legal Practitioners Education and Admission Council
  - Transmission Lessor Corporation
- Regulations under the following Acts—
  - Electricity Act 1996—Bushfire Risk
  - Liquor Licensing Act 1997—Long Term Dry Areas—Berri and Barmera
  - Victims of Crime Act 2001—Statutory Compensation
- Rules of Court—
  - Magistrates Court—Magistrates Court Act 1991—Debtors
  - Supreme Court—Supreme Court Act 1935—Criminal Rules

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

- South Australian Abortion Reporting Committee—Report, 2003
- Reports, 2003-04—
  - Advisory Board of Agriculture.
  - Animal Welfare Advisory Committee
  - Freedom of Information Act 1991
  - HomeStart Finance
  - Land Board
  - Office for the Ageing
  - PIRSA—Primary Industries and Resources SA
  - Report of the President, Industrial Relations Commission and Senior Judge, Industrial Relations Court—Tenth Annual Report
  - South Australian Community Housing Authority
  - South Australian Forestry Corporation
  - South Australian Housing Trust
  - South Australian National Parks and Wildlife Council
- South Australian Tourism Commission
  - State Records of South Australia—Administration of the State Records Act 1997
  - The South Australian Aboriginal Housing Trust Wildlife Advisory Committee
- Upper South East Dryland Salinity and Flood Management Act 2002—Quarterly Report, 1 April 2004 to 30 June 2004
- Regulations under the following Acts—
  - Fisheries Act 1982—Cockles
  - Freedom of Information Act 1991—Members of Parliament
  - Housing and Urban Development (Administrative Arrangements) Act 1995—Board of Management
  - Technical and Further Education Act 1975—Classifications

Workers Rehabilitation and Compensation Act 1986—Anaesthetic Services
Australian Government National Occupational Health and Safety Commission—National Code of Practice for Noise Management and Protection of Hearing at Work, 3rd Edition—June 2004
District Council By-laws—Cleve—
No. 1—Permits and Penalties
No. 2—Moveable Signs
No. 3—Roads
No. 4—Local Government Land.

JOINT COMMITTEE ON A CODE OF CONDUCT FOR MEMBERS OF PARLIAMENT

The Hon. J. GAZZOLA: I bring up the report of the committee, together with the minutes of proceedings and written submissions.

Report received.

ABORIGINAL LANDS PARLIAMENTARY STANDING COMMITTEE

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a report of the committee 2003-04.

Report received and ordered to be printed.

ADELAIDE MAGIC MILLIONS PROGRAM

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I lay on the table a copy of a ministerial statement relating to the Adelaide Magic Millions program made earlier today in another place by my colleague the Premier.

BUS CONTRACTS

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

DEPARTMENTAL FUNDS

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to departmental funds made on 25 October 2004 in another place by my colleague the Minister for Environment and Conservation.

QUESTION TIME

TRADE AND ECONOMIC DEVELOPMENT DEPARTMENT

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the Leader of the Government a question about the DTED appointments.

Leave granted.

The Hon. R.I. LUCAS: As members will be aware, I have expressed some criticism of the minister's stewardship of the Department of Trade and Economic Development and also significant concerns about his appointment of Mr Ray Garrand as the Chief Executive Officer of that department. I understand that, in about June this year, Mr Garrand approved the advertising and appointment of a number of significant positions within the Department of Trade and Economic Development. In particular, I refer to advertisements in *The Advertiser* of Saturday 12 June for the appointment of an adviser on business innovation, and another advertisement on Saturday 26 June in the Adelaide *Advertiser* for a manager of business innovation/business development. Both those advertisements were being managed by a consultancy that goes under the name of Locher.

I am advised that, after those advertisements, clearly, a significant number of people applied for those positions within the department. It went through an extended period of consideration and interview and reached the stage where decisions were being made about successful applicants, and also negotiation of salary, because in both cases the advertisement indicated that a salary was to be negotiated.

I have been advised by two people who have been involved in this process that, having gone to all that expense and trouble—and, as I said, having reached that particular stage of the negotiations—Mr Garrand's department (the minister's department) has now advised the applicants that it now does not have the money available to employ the people who were the subject of the advertisements—the manager of business innovation and the adviser for business innovation. Mr President, you would not be surprised that considerable concern has been expressed, therefore, by people who have gone to the expense of being involved in this process. My questions to the minister are:

1. Is it correct that he and his Chief Executive Officer approved the advertising of positions of manager, business innovation and also adviser, business innovation within the Department of Trade and Economic Development?

2. Is it also true that applicants are now being told that the department does not have any money to continue with the appointment of these positions?

3. If that information is correct, will the minister demand a response from Mr Garrand as to how he has allowed this set of circumstances to eventuate, and will he bring back an urgent response to the council in relation to these circumstances?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): The leader made a number of allegations within his question. I will have those matters examined—

The Hon. R.I. Lucas: You know nothing about it, though?

The Hon. P. HOLLOWAY: The Leader of the Opposition would well know that, under the Public Sector Management Act, the chief executive officers are responsible for the appointment of staff. So, one of the questions that the leader asked me—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Certainly, Mr Garrand was appointed during the time that I was the minister responsible.

The Hon. R.I. Lucas: He's your man.

The PRESIDENT: Order! The question was heard in silence. The answer should be heard in the same manner.

The Hon. P. HOLLOWAY: The point is that the Leader of the Opposition well knows the situation—and he should know because, after all, he appointed a CEO at one stage who his predecessor had to get rid of at a significant amount of money to the taxpayer and who was the subject of significant comment in the Auditor-General's Report some years ago. I do accept that he is experienced in matters such as dealing with chief executives, because he had that particular experience.

The Hon. R.I. Lucas: That is not correct.

The Hon. P. HOLLOWAY: He would be aware that his predecessor had the experience in relation to that person. The

leader asked whether I approved advertising. The Leader of the Opposition would be well aware that, under the Public Sector Management Act, the chief executive has responsibility for the appointment of staff. It is a cabinet decision that determined the new structure of the department. I will refer the matter to the chief executive and bring back a response on those specific details. I am certainly not aware of the allegations made by the leader that applicants for the position were told certain things. I will make inquiries as to whether or not that is the case and bring back a response.

The Hon. R.I. LUCAS: I have a supplementary question arising from the answer. Is the minister indicating that, as of this date, he has not been advised by Mr Garrand, his chief executive officer, of the problems relating to these two appointments?

The Hon. P. HOLLOWAY: As I indicated some time ago, there have been a number of issues in relation to the restructuring of the department. Every week we have had an item on the agenda of the CE's meetings. I have them every week when it is possible. Some weeks I am away or the chief executive is away but, certainly, we have those meetings most weeks of the year. There are items on the agenda in relation to staffing and budget. I know there are some matters in relation to some of these issues around business innovation that are awaiting the outcome of a cabinet decision. It may well be that it is related to that particular decision but, as I said, I will take the question on notice and bring back a response. In relation to several appointments within the business development section, a couple of appointments have been held up because we are waiting for a cabinet decision on one matter that was unresolved arising from the BMT review that was held.

The Hon. R.I. Lucas: Why would you advertise if you do not have cabinet approval?

The Hon. P. HOLLOWAY: There is certainly cabinet approval for 120 positions. However, in relation to one particular part of the old BMT division that was not considered in the BMT review, decisions need to be made. The question basically revolves around whether those officers need to be employed in a new section, if it is approved, or whether they would go to the existing business development services. As those matters are before cabinet at the moment, I do not want to say anything further about it. I know that, in relation to that particular issue, there has been some hold up following that decision on which way we would go in relation to that matter. I do not wish to say anything further at this stage.

The Hon. R.I. Lucas: Why advertise?

The Hon. P. HOLLOWAY: I have just explained that.

DIRECTOR OF PUBLIC PROSECUTIONS

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Leader of the Government, representing the Attorney-General, questions about the Director of Public Prosecutions.

Leave granted.

The Hon. R.D. LAWSON: It has been some time since the resignation of Paul Rofe QC as the Director of Public Prosecutions and the Premier's announcement at that time that the government would be advertising widely throughout Australia for a replacement and that the government was seeking to appoint an Eliot Ness-like character to this post. It has been widely reported that Ball Public Relations Pty Ltd has been appointed as the public relations consultant for the Office of the Director of Public Prosecutions and its acting director Wendy Abraham QC. My questions are:

1. Has any public money been expended on the engagement of Ball Public Relations Pty Ltd?
2. What was the purpose of the engagement of that firm?
3. What were its costs?
4. Was the engagement offered by public tender?
5. Will the Attorney confirm that the government proposes to appoint Mr Tim Game SC of the Sydney bar as the Director of Public Prosecutions?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer that question to the Attorney-General and bring back a response.

DROUGHT RELIEF

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the minister representing the Minister for Agriculture, Food and Fisheries a question on the subject of drought relief.

Leave granted.

The Hon. CAROLINE SCHAEFER: It has been widely reported that the government is going to reapply for exceptional circumstances drought funding for northern areas of the state, and I certainly commend it for that. But South Australia is notorious for being both slow and unsuccessful in its applications for drought relief under this government. We know that many of those in the north have now been pleading for some sort of assistance for several years.

There is a strip of country on Eyre Peninsula which reaches from north of Cowell to just north of Tumby Bay which has had below average rainfall for at least two years in a row now—in fact, I know of at least one farmer who has had less than 75 millimetres of rainfall for this entire year who has been unable to sow a crop, and he is quite typical of those in the area around Cowell. Needless to say, these people have had no income now for two years and will desperately need some assistance if they are to sow crops next year. My questions are:

1. Will the minister begin the process necessary to apply for federal assistance for these people?
2. What assistance will this government offer to property owners in the area I have just described?

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

MINERALS AND PETROLEUM EXPERT GROUP

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question regarding the South Australian Minerals and Petroleum Expert Group.

Leave granted.

The Hon. CARMEL ZOLLO: The minister recently mentioned a function held in Perth and hosted by members of the Minerals and Petroleum Expert Group. My questions are:

1. What information is the minister able to provide to the council on that function?
2. Are there plans for further efforts to attract exploration to South Australia?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I am very happy to be able to talk

about this event. It was held during the course of the Australian Nickel Conference on 12 October, and forms part of Theme 8 of the Plan for Accelerating Exploration, which is the mining ambassador program. Members of the expert panel who attended that event were Mr John Roberts, President of the South Australian Chamber of Mines and Energy; Mr Keith Yates, Executive Chairman of Adelaide Resources; and Mr Jim Hallion, Chief Executive of PIRSA.

The Australian Nickel Conference is Australia's foremost nickel event staged over two days at the Sheraton Hotel in Perth by Louthean Media. The conference incorporated presentations from producers, explorers, nickel analysts and other experts. Some 250 delegates from around Australia and overseas attended the event. The general view is that nickel prices will remain buoyant, with demand driven from China.

A number of companies attending the conference were targeted and invited to a small dinner. Over the course of that dinner invitees were given an overview of the Plan for Accelerating Exploration, a presentation on the nickel opportunities in the west of this state, a presentation on the wider prospects for nickel in the Gawler Craton, and the results of the PACE program to date. As a result of this dinner, and of the government's plan for accelerating exploration more generally, there have been a number of exciting developments. Inco has indicated that it is looking to expand its tenement holdings in South Australia in its own right—Inco, of course, is based in Canada and is one of the world's largest nickel producers.

Three major companies have committed to coming to South Australia to look at possibilities for investment and for detailed briefings about data sets, permits and investment opportunities. Iluka regard the Eucla Basin in the west of the state as highly prospective. They have recently expanded their number of tenements in South Australia considerably. Teck Cominco, a major base metal producer, negotiated a joint venture with Avoca to explore in South Australia, partly attracted by the drilling partnership support for Avoca from the South Australian government through the PACE initiative. It is hard to quantify, but the general agreement amongst the expert group was that South Australia had made its mark in Western Australia amongst most of the companies present at the Nickel Conference. The dinner and the targeted one-on-one briefings worked well and will be the model for the upcoming Brisbane meeting. The Brisbane dinner will occur tomorrow (Wednesday) night and will coincide with the Mining 2004 conference there. The expert group participants will be armed with the message that there is more to explore in South Australia.

The Mining 2004 conference is an important target for the expert group and senior PIRSA representatives to speak with opinion leaders in the Australian mining industry based on the eastern seaboard. It is a most important conference, and it is vital to the state's plan to accelerate mineral exploration that we are represented in this way. The specific aim of our presence in Brisbane will be to achieve a measurable increased uptake of exploration programs for both minerals and geothermal energy in South Australia. I wish the experts on the PIRSA staff well in their endeavours for the state and look forward to reporting on further favourable outcomes to the council in future.

ONESTEEL

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Environment and Conservation, a question concerning the use of River Murray water to transport magnetite from Iron Duke to Whyalla.

Leave granted.

The Hon. SANDRA KANCK: OneSteel is planning to build a pipeline to carry magnetite from its Iron Duke mine to its steelworks in Whyalla. The operation is called Project Magnet. The magnetite ore will be pulverised at Iron Duke and converted into a slurry with the use of water drawn from the River Murray and pumped to OneSteel's Whyalla works. The magnetite body adjoins a hematite ore body which is currently freighted to Whyalla by rail and which will continue to be so after the construction of the pipeline. It is my understanding that SA Water has given OneSteel permission to use River Murray water for the slurry and that OneSteel has already constructed two dams at Iron Duke as part of the operation. I am also informed that the planned pipeline will not follow the route of the existing rail link but will be constructed over a shorter distance. That will most likely take it through pristine native vegetation, including bullocky bush and sheoaks, some of which take 250 years to reach maturity. My questions are:

1. Will the minister declare the pipeline a major project to ensure a complete environmental impact statement is prepared before construction of the pipeline is allowed to proceed?

2. Will permission be sought for the clearance of native vegetation?

3. How much River Murray water will be used on an annual basis for Project Magnet?

4. Did OneSteel seek, and did the Environment Protection Authority give, permission to construct the two dams at Iron Duke?

5. How does Project Magnet sit with the objects of the River Murray Act, in particular, object 6(1)(c)? It provides:

> to provide mechanisms so that development and activities that are unacceptable in view of their adverse affects on the River Murray are prevented from proceeding, regulated or brought to an end.

6. What powers does the River Murray Act have to prevent such a project from proceeding as currently planned, and will they be invoked?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): This question is actually for the Minister for Urban Development and Planning. I think one of the honourable member's questions was whether it had been declared a major project, which would be a decision for the—

Members interjecting:

The Hon. P. HOLLOWAY: I will say something about it in a moment. It was addressed to the Minister for Environment and Conservation, but I am taking the answer, because the question about declaring it a major project is really a matter for my colleague the Minister for Urban Development and Planning, and I will refer that part of it to her. I am aware of this project. Project Magnet could have very significant environmental benefits for this state. One of the problems Whyalla has faced for many years is the dust from the existing pulveriser, which is located right on the edge of the Whyalla township. One of the great benefits of a slurry pipeline is that that problem will be eliminated.

In relation to the question of water, it is my understanding of that project that the water will be recycled. Of course there may be some net loss from the project, but it is my understanding that the project will recycle the water, so there will be very little net use for that particular purpose. In relation to

the drain on water, it is my understanding—and I will certainly obtain the exact figures for the honourable member—that it will be relatively small in terms of the demand that is now taken by Whyalla from the pipeline. I think we can alleviate the honourable member's concerns in relation to that.

As for the native vegetation question and the route of the pipeline, I will obtain more information on that. However, I would point out that, several years ago, the owners of OneSteel in Whyalla very generously donated to the state I think 2 000 hectares of pristine area that was formally part of its land adjacent to Whyalla. It has given that to the state and I think it has been included in the park system. I do not think that one should draw any question about OneSteel's bona fides in terms of its contribution to the environment, in particular its very generous donation, which, of course, would be taken—

The Hon. Sandra Kanck interjecting:

The Hon. P. HOLLOWAY: Why should I apologise for a company that has given 2 000 hectares of its land to the state for environmental preservation? You call me an apologist for the company: it is a fact. It is a fact that the company has done it. I would have thought that Project Magnet offers some very real environmental benefits for this state, and once and for all we can get rid of—

The Hon. Sandra Kanck interjecting:

The Hon. P. HOLLOWAY: I am sure that appropriate processes will be undertaken, and I will obtain that report from the minister responsible, as I indicated at the start of the answer. I just wanted to inform the council that this particular project will have very substantial benefits for the town of Whyalla, and the fact is that it will continue the life of the town. If Project Magnet does not go ahead, how will the steelworks in Whyalla continue into the future? There are only about eight to 10 years of resources of the haematite. Without being able to exploit the new resource, which will extend the life of Whyalla by some 15, 20, 30 years or more, it would be the end of Whyalla. That might save the environment but it would not do an awful lot for the 20 000 or 30 000 people whose jobs depend on that industry, and nor would it do much for the economy of the state.

I would have thought that Project Magnet was not only very good news from an economic development point of view but also from an environmental point of view because it will enable us, at long last, to get rid of the problem with the dust from the pulveriser at the edge of the Whyalla township. As for the specifics of the question in relation to major projects, I will obtain that detail from the responsible minister.

DISABILITY SERVICES

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Premier, a question about his position on disability funding.

Leave granted.

The Hon. A.L. EVANS: On 22 August at a public meeting on disability funding, the Hon. Jay Weatherill referred to critical waiting lists in South Australia for disabled services. The Minister for Disability mentioned that, in addition to the Moving On program, many other areas needed critical support. His summary was that it would depend on what cabinet thought and that he could guarantee nothing. Parents have sent multiple letters to my office pleading for me to represent them and, on their behalf, to seek further funding for disability assistance from the Minister for Disability. They have all outlined their story and expressed an acutely felt need for an urgent response. Each story ended with a request to find out why the government had not taken the funding of disability seriously. My questions are:

1. As the Premier and head of cabinet, what is the position of the government on the crisis in disability funding that has been highlighted by parents and media continually over the past six months?

2. Will the Premier recommend to his cabinet substantial further funding for disability assistance?

3. When will the Premier allow the minister to publicly report back to the South Australian parents who have written to the minister requesting the position of the Premier on disability funding?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): It is my understanding that there have been increases in funding in the disability area over the past few years—

The Hon. Carmel Zollo: Of 17 per cent.

The Hon. P. HOLLOWAY: Yes, 17 per cent. However, I will get that information for the honourable member.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I thought my colleague answered that question fairly well when it was about a personal matter and she referred him to the local member, which was appropriate. I am sure that, if a member of the government were to see someone who was one of the other member's constituents without those constituents knowing, the opposition would be the first to complain.

The Hon. A.J. Redford: He has a slightly different slant on it than she does.

The Hon. P. HOLLOWAY: It is my understanding that there has been. There are many areas of concern that this government has had to address, and we have been making some progress on those in the past 2½ years. Sadly, we cannot do it all, and I am sure that the Premier would be the first to concede that. I am certainly aware of the great need in this area, but sadly it is not unique. We have had to fill a huge vacuum in relation to the child protection area where the member who asked the question would know there was a huge backlog, and the government has had to pour tens of millions of dollars into that area. We are doing our best to meet this big backlog in demand. Every day there are calls for more money. We had questions yesterday about health and so on. It was the Leader of the Opposition, I remind the council, who was telling us that the debts being run up in health would have to be paid off in the future. If we had his policy we would still be paying off the debts of all those health units.

The Hon. J.S.L. Dawkins interjecting:

The Hon. P. HOLLOWAY: No, we are talking about the budget deficits. Let us be clear: we were talking about the 2001 budget. I can understand why you would not want to read your leader's speeches, but go back and look at all those speeches on the bill about getting a budget statement before the election and how the leader has been very jealous of his reputation and saying, 'Never mind the fact that there were these huge deficits in all the health units: if we had been in power we would have made them pay them back.' You cannot have it both ways. You cannot call for more expenditure in health and welfare and at the same say that if you had been in government you would have forced these units to pay back all the debt they had run up in the past. You cannot have it both ways. This government is very sympathetic to the

people involved. We will certainly be doing everything to address the unmet need.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Yes, there is unmet need in many areas. This government for 2½ years has been doing its best and will continue to do that, but I will refer the question to the Minister for Disability to obtain the answer and any further information for the honourable member.

CARERS POLICY

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation prior to asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Families and Communities, a question about the state carers policy.

Leave granted.

The Hon. J.S.L. DAWKINS: The carers' ministerial advisory committee, otherwise known as CMAC, was established in June 2003 and appointed by the then social justice minister, the Hon. Steph Key. It consists of 16 family carers and a secretariat from within the Department of Families and Communities. It was established to prepare a state carers policy, which would have a whole of government approach and impact. It is important to note that most other states have already developed their policies or are in the process of so doing.

Following the ministerial reshuffle in March 2004, the committee now reports to the Minister for Families and Communities, the Hon. Jay Weatherill. Originally, the committee was appointed for 12 months. However, it recommended that following the completion of the policy it also be involved in the preparation of an implementation plan. The appointments were then extended until December 2004. The draft policy has now been with the minister since the beginning of June. It is imperative that family carers in South Australia are recognised formally and given appropriate status, and that the committee's work over the past 18 months is followed through to an appropriate ending. The committee and the proposed policy are well known amongst other government departments and the wider community, as extensive consultation was undertaken prior to writing the document. My questions are:

1. Having had the draft policy for almost five months, when will the minister make a decision about its release and subsequent implementation?

2. Will the minister provide a further extension to the term of CMAC to ensure that the committee can be involved in the preparation of the implementation plan?

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

AUDITOR-GENERAL

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Trade and Industry, representing the Attorney-General, a question about the Auditor-General's statement to the Economic and Finance Committee.

Leave granted.

The Hon. A.J. REDFORD: Section 140 of the Criminal Law Consolidation Act provides a 10 year gaol term for a person convicted of an offence of dishonest dealings with documents. The section provides that if a person creates a document that is false—such as a trust account entry—in a dishonest fashion intending to deceive another, or people generally, to the benefit of another—such as the Attorney-General's Department—then that is an offence. Last week, in evidence before the Economic and Finance Committee, the Auditor-General said:

> The transfer was done knowingly.

Further:

> There were misrepresentations and false words created to basically maintain the illusion.

The question was asked:

> What you are saying is that liabilities and expenses were created in the books that in fact did not exist?

The answer was, 'Yes'. Further:

> They were knowingly misstated. . . If you want to use the word 'falsify', they were and knowingly so.

Clearly, it is a series of very serious statements made under parliamentary privilege by the Auditor-General who effectively accused the Attorney-General's Department of either engaging in serious criminal conduct or aiding and abetting serious criminal conduct. Despite these statements, the Attorney-General has not sought either to defend his department against the allegations or to announce any inquiry by the police or others with similar authority to determine one way or the other the true set of circumstances. Indeed, by his inaction he has allowed a serious cloud to overhang the many hard workers and honest people in the department, which oversees the administration of justice in this state. This is the first time in my memory that I can recall such a cloud over the Attorney-General's Department. My questions are:

1. Why has the Attorney-General not sought to defend his department against allegations of serious criminal conduct?

2. Why has the Attorney-General not referred the Auditor-General's allegations to the police for investigation, if he agrees with the Auditor-General's statements? Can we imply that the Attorney-General does not accept the Auditor-General's allegations from the fact that he has not referred the matter to the police?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer those questions to the Attorney-General and bring back a response. I do think it is rather extraordinary that the honourable member is suggesting, on the one hand, that, having made the sorts of allegations members have made in this place, they have interpreted the Auditor-General's Report in a way which goes beyond the words of the Auditor-General himself. They themselves have made these allegations and now they are saying that the Attorney-General needs to defend his department. I suggest that the Attorney-General is paying appropriate concern to the Auditor-General's Report. I will get an answer from the Attorney-General and bring it back for the honourable member.

The Hon. A.J. REDFORD: Sir, I have a supplementary question arising out of the answer. Is it not the case that the Attorney-General has either of two choices: first, to defend his department or, secondly, to refer the matter to the police? Either course of action is open to him. No action is not available to the Attorney.

The PRESIDENT: No explanation is required. The question is clear. The minister does not need to respond.

The Hon. P. HOLLOWAY: I think that a number of statements in relation to this matter were made by the Deputy Premier at the time in relation to action, and I think we know

what happened. The chief executive officer of the department at that time subsequently resigned. I think that is common knowledge.

The Hon. A.J. REDFORD: Sir, I have a further supplementary question. Is the government saying that, despite the statements that might lead one to the conclusion that there has been criminal conduct, this government proposes to take no action?

The PRESIDENT: The minister is referring the question to the Attorney-General.

The Hon. P. HOLLOWAY: As I said, the officer concerned subsequently resigned. However, as I said before, I will refer the question to the Attorney. That is obviously a matter for the Attorney, and I will refer it to him.

NGARRINDJERI COMMUNITY

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about the Ngarrindjeri community and the Alexandrina council.

Leave granted.

The Hon. J. GAZZOLA: Members would be aware that the minister has reported to this council about the sorrow document that was signed by the Ngarrindjeri community and the Alexandrina council in 2002. The signing of this document was a historic agreement and a tangible act of reconciliation. Will the minister report to the council on developments resulting from this agreement?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the member for his question and, at the same time, I pay my respects to the Alexandrina council for the way in which it is developing a reconciliation program within its own boundaries, which is starting to impact on how other councils see their Aboriginal communities in relation to forging partnerships and relationships within local government. I thank the Alexandrina council for being a progressive council in that way.

As I reported at the time, when there was ongoing interest in those discussions, a partnership was formed between the Ngarrindjeri people and the Alexandrina council, and some of the benefits are starting to flow from this formalised partnership. In one instance, in relation to a heritage and cultural issue, skeletal remains were unearthed in September 2002 at the wharf redevelopment site, which showed that the burial place contained a young Ngarrindjeri woman and an infant. The Alexandrina council met with representatives of the Ngarrindjeri community and put in place protocols to deal with this sensitive issue. They spoke to the known representatives of the Ngarrindjeri people in the area, such as Tom and George Trevorrow, and Matt Rigney, who has shown leadership in very important ways within the Aboriginal community at a senior ATSIC level and within his own community. Together they prepared a document, and that was signed off under the Kungun Ngarrindjeri Yunnan Agreement.

I can also report to the council that the goodwill between the council and the Ngarrindjeri people in the area continues, and enterprise building is starting to happen within the Ngarrindjeri communities based within the Alexandrina council. They are blessed in being in a wonderful part of the state, in the northern part of the Coorong area around the lakes. The council at this month's meeting determined to amend its PAR title to Hindmarsh Island/Kumurangk PAR, thereby giving the island a dual name and showing recognition for the people in that area. This is only a small act, but it is a demonstration of goodwill between the Ngarrindjeri people and the Alexandrina council. I just hope that the reconciliation process continues to support acts such as this.

It might be seen to be a hallmark for some, while for others it is a starting point for continued progression for partnership. If members want to visit the Alexandrina Council, and I recommend that they do, they would be able to talk to some of the councillors who have been able to spread goodwill between the communities. This is a good example of reconciliation at work through the recognition of traditional ownership of the island by the Ngarrindjeri people, and I congratulate all those involved.

I also commend the good work in the area of the reconciliation process carried out by the Victor Harbor, Onkaparinga, Marion and Salisbury councils that are also doing good work in this area. Other councils, at this point in time, are starting to get results of engagement on Yorke Peninsula, areas of the West Coast and in the north of our state, and in forging relationships with elected and non-elected leaders within communities to bring about benefits to all communities. We now have to continue that good work, build on it and, certainly, try to get enterprise building within those communities for Aboriginal people to change some of the aspects of their lives to give them the opportunities that all other non-Aboriginal people expect.

LAND TAX

The Hon. IAN GILFILLAN: I seek leave to make an explanation before asking the Minister for Industry and Trade, representing the Treasurer, questions about land tax.

Leave granted.

The Hon. IAN GILFILLAN: In the past two years, revenue from the state's land tax on private property has risen by 60 per cent. An article entitled 'Land tax up 60 per cent in two years' by Leanne Craig appeared in *The Advertiser* of Wednesday 20 October this year. Amongst other facts, the article stated:

> Land tax paid by private property owners has increased 60 per cent in two years to $121.7 million. . . In 2001-02, private land taxpayers paid $76 million, rising to $90.7 million in [2002-03] and $121.7 million in 2003-04.

Land tax is based on land ownership. It is charged on all land that is not the owner's principal place of residence, used for primary production, used for religious or educational purposes, used for non-profit associations for the purpose of recreation for the local community, the preservation of buildings, and the holding of agricultural shows. The tax is calculated on an annual basis and the rate in the dollar for this tax is set out by the minister in regulations.

Increases in property values in recent years has meant that the amount of revenue collected through land tax has risen substantially. The state government sets the percentage rate of these taxes and then, instead of adjusting the tax percentage down as property values rise, it lets it ride from year to year. The information in *The Advertiser* article was triggered in part by a question from my colleague the Hon. Julian Stefani. This state government refusal to adjust the percentage has given rise to the windfall gains that have expanded the state government coffers in recent years.

Local government employs an alternative method in the calculation of its property based tax, that is, rates. It first sets the amount of revenue that is needed to be raised through

rates; then, it sets the rate in the dollar to be charged to residents and ratepayers based on the target revenue to be raised. By doing this, local government has been able to consistently reduce the rate in the dollar paid as property values rise. This has controlled the tax in a way that the state government has not controlled land tax, stamp duty or the emergency services levy. My questions are:

1. Does the Treasurer agree that, by not acting to reduce the percentage in cases of high rises in property values, it is gaining for the government a dishonest windfall income?

2. Does the Treasurer agree that, to be honest to the taxpayers in South Australia, it is a far better procedure to follow the local government example by setting the amount of money the government seeks to raise from these property taxes, and adjusting the rate in the dollar accordingly?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): Those questions are obviously for the Treasurer, and I will bring back his response. However, I would like to make the comment that the state budget is now in the order of $9 billion—that is the total expenditure for the state—so, while the honourable member used words like windfall, I think the figure he quoted was $127 million in tax, and that is a very small part of the overall expenditure. Obviously, while some taxes do rise rapidly there are other taxes and other sources of revenue for the government that might fall from year to year, for various reasons.

The other point that needs to be made—and I am sure that the Treasurer can add to this if he wishes—is that, whereas many taxes such as land tax or land valuations can rise rapidly for short periods over two or three years, they can also remain static for long periods. That is the nature of property prices in this state—they tend to remain static for a number of years and then jump. So, if one were to take the converse argument to that being used in this debate then, if it is good enough to reduce taxes in years when property values do rise, the government should increase tax in years when property prices do not rise.

I think there are other considerations in this matter. As I have indicated on a previous occasion when the Hon. Julian Stefani asked the question and was given the information that was the source of that story in the newspaper, the government will look at these matters next year in relation to the preparation of the budget.

The Hon. IAN GILFILLAN: I have a supplementary question arising from the answer. Is the minister telling the council that the Treasurer anticipated the 60 per cent rise in land tax in two years; if so, where did the Treasurer announce that that was going to occur? If he did not, does the minister agree that that is not a windfall, in terms of what most understand windfalls to be in relation to government revenue?

The Hon. P. HOLLOWAY: I was talking about overall government revenue.

Members interjecting:

The Hon. P. HOLLOWAY: You can talk about land tax, but there are other areas. For example, there was the reverse of a windfall, if you like, if one looks at mining royalties. There was an issue last year because of the problems at Olympic Dam and also with Santos, because of the fire they had. So, the royalties on that revenue increased. That is the nature of government revenue—some sources will rise by greater than CPI but others will decrease. There are pluses and minuses in relation to the government's budget overall.

The Hon. NICK XENOPHON: I have a supplementary question. What was the extent and outcome of the review and consideration of land tax issues promised by the Hon. Patrick Conlon, representing the Treasurer, at a public meeting organised by the Land Tax Reform Association held at Payneham in February this year?

The Hon. P. HOLLOWAY: I will refer that question to the Treasurer in another place and bring back a reply.

ASBESTOS

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Premier, questions in relation to James Hardie Industries and compensation for victims of asbestos-related disease.

Leave granted.

The Hon. NICK XENOPHON: Asbestos victims groups have estimated that there will be up to 53 000 Australians who will be diagnosed with asbestos-related disease between now and 2020, with up to 2 500 South Australians expected to die from asbestos-related diseases such as mesothelioma in the next 20 years.

Extensive media reports yesterday indicated that directors of the Medical Research and Compensation Fund, set up by James Hardie to compensate asbestos victims before James Hardie stripped associated companies of assets, are threatening to have it wound up within weeks following the shock revelation that it will run out of money to pay claims by April next year. The Premier, as a co-patron of the Asbestos Victims Association of South Australia, has publicly expressed his concern for the 'contempt and disdain' asbestos victims have been treated with by James Hardie Industries. My questions are:

1. What implications are there for South Australian asbestos victims, now and in the future, if the Medical Research and Compensation Fund is wound up? How many South Australians are likely to be affected in the next 20 years?

2. What is the likely impact of the compensation fund's collapsing on the state's statutory reserve fund for worker compensation claims, given that the average asbestos claim pay-out is in excess of $250 000 and that some claims can run into the millions?

3. When and on what basis will the Premier make a decision on a boycott of James Hardie products?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I would hope that all members of this council would be disgusted with the pay-out that was recently given to the former chief executive officer of James Hardie—something like a $9 million golden handshake—at a time when this company had transferred itself out of the country, asset stripped and got rid of its obligations in relation to the victims of asbestos. It is one of the more disgusting examples of corporate abuse we have seen for many years. I think the questions asked by honourable members are reasonable. Whether or not we have the answers in relation to the impact of the fund I am not sure, but I will refer the question on and we will provide what information we can in relation to those matters. Obviously, one would hope that public pressure would lead to this company's accepting its obligations for all the misery it has caused to so many people.

LAND MANAGEMENT CORPORATION

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Infrastructure, a question about the Land Management Corporation.

Leave granted.

The Hon. J.F. STEFANI: I refer to the financial statements of the Land Management Corporation for the years 2001-02 and 2002-03. Item 9 of the period 2001-02 deals with dividends, and I note that a total dividend of $5.161 million was paid for this reporting period. I now refer to the Land Management Corporation financial statements for the year 2002-03 and, in particular, item 9 dealing with dividends. Under this heading, the Land Management Corporation reported:

> Pursuant to regulation under the Public Corporations Act 1993, the corporation may be required to pay dividends to the Treasurer. Current government policy on distributions from government businesses provides for an indicative dividend benchmark of 60 per cent of after tax profit. Following a recommendation by the board, and after consultation with the minister, the Treasurer determined that an interim dividend of $4 million. . . be paid in respect of the reporting period. No final dividend will be declared as the amount of the interim payment exceeds the government benchmark. Consequently there is no provision for final dividend at year end.

The Treasury budget for the year 2003-04 provides for a special dividend from the Land Management Corporation of $50 million as part of the repatriation of retained earnings to the government. On 25 August 2003, the Corporations Board approved the payment of this dividend by the end of September 2003.

Section 30 of the Public Corporations Act 1993 specifically deals with dividends. Section 22 of the South Australian Consolidated Regulations deals with dividends payable by the Land Management Corporation. Subsection 22(3) provides:

> The subsidiary must, if so required by the Treasurer by notice in writing to the subsidiary at any time during a financial year, after consultation with the minister, recommend by writing to the Treasurer that a specified interim dividend or specified interim dividends be paid by the subsidiary for the financial year, or that no such dividend or dividends be paid by the subsidiary as the subsidiary considers appropriate.

I now refer to the financial statements for the year 2003-04 and note that a total dividend was paid by the Land Management Corporation amounting to $51.479 million. In view of the substantial dividend paid by the Land Management Corporation to the Treasurer, my questions are:

1. Will the minister table the written notice issued by the Treasurer to the Land Management Corporation requiring the payment of the $50 million dividend, as stipulated by the act?

2. Will the minister advise parliament of the exact date when the board of the Land Management Corporation consulted him about the payment of this special dividend?

3. Will the minister table the written recommendation of the board of the Land Management Corporation forwarded to the Treasurer in relation to the payment of the specified interim dividend of $50 million?

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

SCHOOL RETENTION RATES, WHYALLA

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 Education and Children's Services, a question regarding school retention rates in Whyalla.

Leave granted.

The Hon. T.J. STEPHENS: The minister recently made comments in the media regarding alleged improved rates of high school completion across South Australia. The minister stated that this government had been much more serious about saying you need to stay at school, and she also described year 12 exams as a filtering device for TAFE and apprenticeships. Members would also be aware that in Whyalla the high school retention rate is approximately 27 per cent, compared to approximately 66 per cent for the rest of South Australia. This is a point I made as recently as last month and, to date, I have had no response to the questions I asked. My questions are:

1. Will the minister provide details of funding or actions which have been employed to lift the retention rate in Whyalla?

2. Will the minister update the council on the latest statistics for Whyalla regarding retention rates?

3. Why can the minister provide details to the media upon request but cannot provide an answer to parliament within 30 days on this extremely important issue?

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

NORTH TERRACE

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 Urban Development and Planning, a question about the shortfall of funding for work on North Terrace.

Leave granted.

The Hon. J.M.A. LENSINK: I refer to an article published in today's *Advertiser* which refers to this issue and which states:

> Council chief executive officer [of the Adelaide City Council] Mal Hemmerling yesterday confirmed a further $6.5 million was needed to complete the work. Dr Hemmerling said the council could not find the money by itself, which meant the state government would have to be involved.
>
> 'At this stage there is no commitment to finish right through stage one to stage four,' he said. 'In view of where we are in the work, it makes logical sense to extend the excellent job. But future stages have to be approved (by the government).' Dr Hemmerling said the council would soon make a submission to the government seeking extra funding.

My questions are:

1. When did the government first become aware of funding difficulties?

2. How much of the funds allocated have not yet been spent?

3. Has the government sought a meeting with the Adelaide City Council?

4. To what extent does the government attribute the shortfall?

5. Will the government commit the additional funds required to complete the works?

6. When will we have some sort of announcement from the government on this issue?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for her questions. I think we have all seen the benefits of the

money that has been spent thus far. The North Terrace precinct is looking decidedly more like a boulevard of which the city can be proud with its connections to the university and its close proximity to the Torrens River. The money that has been spent has been well spent. The project has carried past and through various governments. The Hon. Diana Laidlaw would be proud of it. The only thing she did not do was transfer enough funds to complete the project. That will be a decision made by the current government and I will forward the question to the minister in another place and bring back a reply.

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

That standing orders be so far suspended as to enable question time to be extended by one hour to enable questions to be asked and replies given relating to the report of the Auditor-General for the year 2003-04.

Motion carried.

AUDITOR-GENERAL'S REPORT

The Hon. CAROLINE SCHAEFER: My question is to the Minister for Mineral Resources Development with regard to his Department of Primary Industries. Until recently he was also responsible for the agricultural portfolio. Because I have listened to this minister over time blaming previous governments for all sorts of things, I have been back through the 2000, 2001, 2002 and 2003 Auditor-General's reports and each time the Auditor-General has said that the financial reports were, in general, satisfactory. However, for the first time, the Auditor-General has said of the Primary Industries Department:

I am unable to and do not express an opinion as to whether the financial report presents fairly in accordance with the Treasurer's Instructions.

He goes on from there. He has given therefore a qualified report on a number of issues. In particular, he states that the cash at bank as reported in the financial statements, both controlled, administered and moneys held in trust, totals $100.912 million, compared with a cash at bank as reported on the Westpac bank statement after considering unpresented cheques, which totals $95.718 million—a difference of $5.19 million. In addition, the department's general ledger cash at bank reflects $98.012 million. Will the minister describe the discrepancies outlined there, given that those three cash balances should be the same?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): This is in relation to cash reconciliation. What is the page reference?

The Hon. Caroline Schaefer: Page 10.56.

The Hon. P. HOLLOWAY: The advice given to me is that in June 2004 PIRSA's bank account balances were established for the first time. Consequently it has been only in the past four months that PIRSA has been able to prepare a year to date reconciliation between the bank account and the general ledger containing the financial information of the agency. In performing these new reconciliations there are a number of outstanding reconciliation differences dating from 1999, which are material in total and which will require substantial work to rectify.

Since July 2004 every effort has been made by existing PIRSA staff to rectify the reconciliation issues, but this was unable to be finalised in time for the completion of the 2003-04 financial statements. In order to resolve these matters a project team has been formed, consisting of four PIRSA staff and an additional two specialist contract staff, with a target completion date of 28 February 2005. This task involves reconstructing bank reconciliations and financial statements in order to identify and resolve all outstanding differences.

Given the nature of the audit issues, PIRSA has commissioned an independent review of all PIRSA finance functions. An external accounting firm has commenced the review and will report to the Deputy Chief Executive by the end of October 2004. I think I answered this question shortly after the Auditor-General's Report was released, but matters in relation to the outstanding differences go back to 1999. The matter of bringing this up to date has resulted in this particular difficulty.

The Hon. Caroline Schaefer interjecting:

The Hon. P. HOLLOWAY: No, it is, according to the Auditor-General on that particular page. That is the page on which there is the qualification. Later in the report is the performance of key reconciliation. Payment of royalties also date back some time, to February 1999. That has been the problem. These bank account balances were established for the first time, and that is why it has created this difficulty in relation to going back over the previous years to try to gain that reconciliation.

The Hon. CAROLINE SCHAEFER: Who signed off on the financial statements for PIRSA? Was it the Chief Executive of PIRSA or the minister? When was the minister informed of the discrepancies which have led the Auditor-General to bring down a qualified report for the first time?

The Hon. P. HOLLOWAY: I will have to refer that question to the Minister for Agriculture, Food and Fisheries and bring back an answer.

The Hon. Caroline Schaefer: It is your department, isn't it?

The Hon. P. HOLLOWAY: The principal minister in relation to PIRSA is the Minister for Agriculture, Food and Fisheries. Given that I was not the minister at the end of the financial year, I will have to refer the question to the minister. The question was whether the minister or the Chief Executive signed off. Obviously, it would have been one of those two people, or both, but I will have to get that answer from the minister. I was not there at the time.

The Hon. CAROLINE SCHAEFER: Does that mean that the Minister for Mineral Resources Development has no lead role and no responsibility for financial statements in respect of PIRSA?

The Hon. P. HOLLOWAY: I am responsible for mineral resources development. Three ministers are under the Primary Industries department. I have responsibility for acts such as the Mining Act and the Petroleum Act. I have responsibility in relation to those matters. At budget bilaterals, I will present those in relation to the mineral resources development part of the portfolio. But, clearly, the corporate section of the department, which has overall responsibility for the department, reports through the principal minister for that department, namely, the Minister for Agriculture, Food and Fisheries.

The Hon. CAROLINE SCHAEFER: At any time did PIRSA, when under the control of this minister, use the Crown Solicitor's Trust Account to deposit any moneys?

The Hon. P. HOLLOWAY: I think there was a case where it was used through my area of mineral resources development.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: I have not missed anything.

Members interjecting:

The Hon. P. HOLLOWAY: What have I missed? What is your point? What I am explaining is that—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: Let me explain this. Under the Department of Primary Industries and Resources, in minerals, we fund some work that is undertaken by the Crown Solicitor's Office in relation to native title work. Not surprisingly, some funds from the department will be paid to the Native Title Unit and to the crown solicitors who undertake that work. If that money does, in fact, find its way into the trust account, it does not particularly mean that there is anything wrong with that. In fact, it would be entirely appropriate for that money to go into a Crown Solicitor's trust fund to pay for the work that is done by the Crown Solicitor. The issue that the Auditor-General commented on was in relation to money being put into that account and transferred out for purposes that were not really directly related to the work of the Crown Solicitor's Office. That is my understanding of the matter.

Certainly, from the information that I have been provided with, I think that a small amount of money had been placed in that trust account specifically in relation to that native title work. But it was a relatively small amount of money and there was certainly no issue, I am assured, of anything improper in relation to that.

The Hon. R.I. LUCAS (Leader of the Opposition): Is the minister arguing that any minister or agency that employs crown law has been depositing money in the Crown Solicitor's Trust Account? Indeed, I would say that most ministers—possibly all ministers—make use of crown law in terms of paying for services. Is this minister seeking to excuse his confession this afternoon in relation to, evidently, the use of the Crown Solicitor's Trust Account on the basis that it was a payment for services rendered by crown law?

The Hon. P. HOLLOWAY: There is absolutely nothing to it. Let me read a note that I have from the Deputy Chief Executive of the department. He states:

> The use of the Crown Solicitor's Trust Account has been discussed widely in parliament following the tabling of the Auditor-General's 2003-04 report to parliament. I thought it prudent to advise you that PIRSA has paid an amount of $25 000 to the Crown Solicitor's Office that was receipted by them on 15 June 2004. . . the payment was made by PIRSA in response to their invoice. . . dated 8 June 2004.

So, it has charged for services and the department has paid it. There is nothing amazing about that. It goes on:

> Based on the details provided in the receipt from the Crown Solicitor's Office, it would appear that these funds were deposited in the Crown Solicitor's Office trust account.

That is hardly surprising—

The Hon. A.J. Redford: Why?

The Hon. P. HOLLOWAY: Because it was paid to the Crown Solicitor for services performed by the Crown Solicitor. It continues:

> The amount relates to a government obligation pursuant to section 31 of the Native Title Act 1993. The payment is in regard to a native title agreement brokered through the Crown Solicitor's Office in respect to Petroleum Exploration Licence No. 139 in the Officer Basin.

Here is the explanation:

> I have been advised that this matter has not yet been settled by the Crown Solicitor's Office—

so, it is payment in relation to a particular petroleum exploration licence number with respect to a title agreement that was brokered—

> pending finalisation of licence arrangements which has required further negotiations than anticipated at the time of the payment. Accordingly, it is assumed that this amount remains in the Crown Solicitor's Office trust account for legitimate purposes, however we are in the process of confirming this with the Crown Solicitor's Office.

There is nothing amazing about that.

The Hon. R.I. Lucas: What is the date of the memo?

The Hon. P. HOLLOWAY: It is dated today.

The Hon. R.I. LUCAS: Given that the minister has quoted from that document, I ask him to table it.

The Hon. P. HOLLOWAY: I will provide a copy of the document as the Leader of the Opposition has suggested.

The Hon. R.I. LUCAS: Can I clarify that, in relation to that issue, the minister is indicating that he has had that advice, as of today, from his deputy chief executive and, as it is dated today, that he is not yet in a position to know whether that issue has been clarified by the Crown Solicitor or the people who operate the Crown Solicitor's Trust Account within the Department of Justice?

The Hon. P. HOLLOWAY: I have obviously made inquiries in relation to this matter in my department. That was the response that I received today. I expected questions on this matter, so I asked my department to provide me with advice before question time today. That is the advice that I was given by the department a week or so ago when this matter arose and I asked for it to be checked. As I say, Primary Industries and Resources pays for the activities of the Crown Solicitor's Office. When money is put in pending finalisation, I would have thought that the Crown Solicitor's Trust Account would be an entirely appropriate vehicle for that money to be paid into. Essentially, that money will be paid out of it by the Native Title Unit, which does all that work on behalf of Primary Industries and Resources.

The Hon. R.I. LUCAS: In relation to this particular amount, if the issue is still pending resolution, why was an invoice issued from Crown Law to the minister and his department on 8 June, if he is now indicating that this issue has not been resolved and, therefore, this particular $25 000 has not yet been expended?

The Hon. P. HOLLOWAY: The matter has not been finalised but, presumably, the services were given. The Crown Solicitor's Office is presumably invoicing PIRSA for services provided by the Crown Solicitor's Office, and PIRSA has paid that money. But the payments are pursuant to section 31 of the Native Title Act, so the payment is in regard to a native title agreement brokered through the Crown Solicitor's Office. The matter may not have been finalised but, presumably, the service was performed and that is why the matter has been invoiced. It is obviously not yet appropriate to forward that money on. As I said, the matter is now being checked.

The Hon. R.I. LUCAS: Given that the minister has now confessed to the use of the Crown Solicitor's Trust Account in relation to this issue, I assume that he asked all his other chief executives in other departments and agencies reporting

to him whether he and they have been making use of the Crown Solicitor's Trust Account in other examples. What has been the nature of the advice from the other departments and agencies that have reported to him, as minister, over the past 12 months—the period covered by this Auditor-General's Report?

The Hon. P. HOLLOWAY: In relation to DTED, my advice is that there was some money paid in relation to the AP lands but that it was spent directly to the agency concerned. My advice is that that money has not gone through the Crown Solicitor's Trust Account. The only money is this $25 000 for which the department was invoiced for services.

The Hon. R.I. LUCAS: Could the minister indicate why he referred to the AP lands money in response to the question I put to him about the Crown Solicitor's Trust Account? Has money been paid to DTED or to one of the agencies reporting to him in relation to AP lands initiatives?

The Hon. P. HOLLOWAY: It is my understanding that, on some of those initiatives on the AP lands, my colleague the Minister for Aboriginal Affairs and Reconciliation is probably in a better position to know the background to this than me. Agencies such as PIRSA and DTED—in fact, a number of agencies—have been involved through the senior management council in relation to initiatives on the AP lands.

The Hon. R.I. Lucas: How much money did DTED get? How much did you give it?

The Hon. P. HOLLOWAY: I will have to get that information because it was some time ago—probably before I came into the department. I will see whether I can find the information. My advice is that it was the old business, manufacturing and trade department, and the OED paid $53 000 in December 2003.

The Hon. R.I. Lucas: Paid to whom?

The Hon. P. HOLLOWAY: That was paid to PIRSA, who invoiced DAIS and DTUP. That was the arrangement through the senior management council back in November last year, and that money went directly to the Tjukurpa Anangu Pitjantjatjara Yankunytjatjara law and culture group. That is the only money that has gone there. The only reason I have referred to the AP lands is that I noticed the questioning of the opposition and, again, I anticipated that members opposite might try to bring that in. So, being ever helpful, I am explaining that—

The Hon. Caroline Schaefer: You knew there was a hole and you thought you had better plug it!

The Hon. P. HOLLOWAY: There are no holes—that is the whole point. I assumed that that was what the fishing question asked by the Leader of the Opposition yesterday was about, in relation to money paid in that region, so I have provided that information and am happy to do so.

The Hon. R.I. LUCAS: The minister is, therefore, confirming that that money, whatever sum it was in relation to AP lands initiatives, has been properly expended for the purposes it was meant for, and that it has not been held in any way in the Crown Solicitor's Trust Account.

The Hon. P. HOLLOWAY: That is the advice I have regarding that money—I am advised that it came from DTED last year and was given directly to that group. One can assume that it has been properly accounted for and audited. The other money that I referred to in the previous question was in relation to the money that had gone to the trust account, which was specifically related to a native title negotiation—obviously, they are handled by the Crown Solicitor. It really goes back to the answer I gave last week, that just because money goes into the Crown Solicitor's Trust Account does not mean that there is anything wrong. The only thing that would be wrong is, as the Auditor-General has pointed out, if money was parked there to try to get around the carryover policy of the government.

The Hon. R.I. LUCAS: As the minister knows, the Auditor-General has reported significant concerns about issues relating to cash management, underspending, and carryovers. Can the minister indicate the extent of the underspending in his Department of Trade and Economic Development at the end of 2003-04?

The Hon. P. HOLLOWAY: Obviously, I will have to get the exact figure, but the honourable member would be well aware of the changed policy in this department and, in particular, the decision taken by the government to downsize the department—a lot of that happened during the course of the 2003-04 financial year. The BMT review was also finalised towards the end of 2003 and, as a result, there was significant downsizing and decisions were taken in relation to the industry IIAF fund.

The Hon. R.I. Lucas: What was the underspend?

The Hon. P. HOLLOWAY: It depends on how you define underspend. If one goes from the budget allocation to the final budget, it is there in the budget—and significantly less money was spent than was allocated. I guess we can get it from the papers if the honourable member wants me to look it up but, obviously, it was a significant amount given the policy changes during the year. For example, if one looks at page 1206 one can see the figures there.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: No, because there were changes in relation to the industry attraction fund and other matters which meant there was significant underspending in relation to that year because of changed policies through the year. I would have thought that would be pretty obvious from the financial statements. As for the total outflows, the Auditor-General's Report gives actuals versus actuals; it does not give the budgeted figure, but I would expect the outflows to have been significantly less than the budgeted figures as a consequence of those decisions.

The Hon. R.I. Lucas: More than $20 million?

The Hon. P. HOLLOWAY: It certainly would be significant.

The Hon. IAN GILFILLAN: I will make an explanation before asking the Leader of the Government a question about software transfer fees as outlined in the Auditor-General's Report. I draw the Leader of the Government's attention to Part B, Agency Audit Reports, Volume I, page 53, paragraph 26.3. It reads:

> As part of the disengagement process as contained within provisions of the 'Information Technology Services and State Economic Development Agreement' with EDS (Australia) Pty Ltd (refer [paragraph] 2.20), are costs pertaining to the withdrawing from exi[s]ting services.

So, this is clearly detail in relation to the potential changing contract of technology services and in particular with some dealings with EDS. Two items on this page have caught my attention. The first reads:

> Software licensing transfer fee.
>
> As part of maintaining existing services may be the requirement to purchase relevant software licences as pertaining to software, database and mainframe applications. An amount of $2 million is estimated. . .

The second reads:

Software maintenance transfer fees.

As part of maintaining existing services may be the requirement to acquire software maintenance licences as pertaining to software, database and mainframe applications. An amount of $200 000 is estimated.

The minister and members will be aware that we have been very enthusiastic in urging the government and other members of parliament to look at open source as an option in software and, in particular, government applications. So, the questions I put to the government are:

1. Is this not an ideal opportunity to escape the shackles of existing proprietary software licensing schemes and roll out competitive open source products?

2. How much could the government of South Australia save in software licensing costs if all generic office application suites were replaced with zero cost open source alternatives? I do not expect the leader to answer those questions in detail, but I believe this is an appropriate time to raise them, because, although it is only a small part of the Auditor-General's Report, it is quite a clear signal regarding the trend that I believe has been taken in other state governments to look at the introduction of open source instead of proprietary products where, in general, 'proprietary products' is a pseudonym for Microsoft. I would urge the government at least to look at these issues in detail, even if the leader cannot answer them in the chamber now.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his questions and note his continuing interest in the matter. It is a matter for the minister for DAIS in another place. I will take it on notice and bring back a reply.

The Hon. A.J. REDFORD: My question to the Minister for Correctional Services comes from page 753. The minister will note that at item 33 in last year's annual report some $73 000 was received in revenues from criminal injuries compensation levies, which I assume are amounts paid to the department by prisoners for criminal injuries compensation. Under payments (and one assumes the $73 000 goes to the Criminal Injuries Compensation Fund) this year the department collected $80 000 and it paid out $100 000. Is the department giving prisoners credit in relation to payment of criminal injuries compensation levies to the department?

The Hon. T.G. ROBERTS: I am unaware of how that matter is calculated or what—

The Hon. A.J. Redford: It can only be described as giving prisoners credit; there could not be any other explanation.

The Hon. T.G. ROBERTS: —administrative activity is involved in paying out more than has been collected. The honourable member indicates that it could be conveying credit. It may also be carryover perhaps from the—

The Hon. A.J. Redford: Last year 73 in and 73 out—perfect; love it. What about this year?

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! The minister has the call.

The Hon. T.G. ROBERTS: Thank you, Mr Acting President. I will refer the question to the departments and bring back a more accurate reply than I have already given.

The Hon. A.J. REDFORD: I refer to page 4, Part A of the Audit Overview. All my questions are to the Minister for Correctional Services. The Auditor-General reports there was non-compliance with relevant Treasurer's Instructions in relation to the transfer of funds to the Crown Solicitor's Trust Account. There were a series of transactions, according to his report at page 687, Volume 3. A leaked letter from the former CEO Kate Lennon to the Premier reveals that the transfers related to funding for APY lands, expensive criminal cases and so on to ensure service deliveries. Can the minister assure us that no moneys in relation to programs under his supervision or responsibility as Minister for Correctional Services have been transferred to the Crown Solicitor's Trust Account?

The Hon. T.G. ROBERTS: I have no knowledge of any moneys that may have been transferred in that way. Yesterday I gave an undertaking to the honourable member, or it may have been his colleague, to bring back a reply. The question was: was I aware of the way in which the funding had been allocated, whether it had been spent appropriately and allocated to the correct funding? I have indicated that I will bring back a reply to the questions asked yesterday. In relation to the question just posed, I am unaware of how the moneys were transferred. I am also unaware of the way in which the various departments made aggregated contributions to the APY fund, and I thank them for their generosity because Aboriginal affairs certainly did not have any of the funds required to make the changes which were forced upon us to correct the circumstances up there. As I have said and indicated yesterday, I will follow up on those questions in relation to whether the money was adequately dealt with in relation to targeting the issues and I will bring back a reply and provide that to the honourable member.

The Hon. A.J. REDFORD: Did the minister or his agency receive any audit letters prior to the completion of the Auditor-General's Report and, if so, will the minister table all correspondence between the Auditor-General's office and the department and/or the minister and, if not, why not?

The Hon. T.G. ROBERTS: I will inquire within my department to find out whether there was correspondence between the Auditor-General's Department and DAARE, and table the relevant documents.

The Hon. A.J. REDFORD: At page 733 of the report it states that some prison institutions had not performed bank reconciliations in respect of their bank accounts for six months, in some cases. What were the specific institutions that failed to perform bank reconciliations? Have those reconciliations now taken place?

The Hon. T.G. ROBERTS: I do have some details on the questions the honourable member has raised. The audit revealed that some prison institutions had not performed bank reconciliations in respect of their general and imprest accounts. In some cases reconciliation had not been prepared for a period of six months. The majority of the general accounts in the prison institutions were closed at the commencement of the 2004-05 financial year, avoiding a requirement for future reconciliations. The remaining imprest accounts in prison institutions have relatively low value average balances. Procedures and training are being developed to assist prison staff to perform these bank account reconciliations. The auditor has advised that he was satisfied with the departmental response.

The Hon. A.J. REDFORD: Again at page 733 the Auditor-General, under the topic of payroll, refers to a number of specific issues that were raised in relation to the payroll function and says that they related to issues that were

the sole responsibility of individual sites. He then says, 'The main issues raised concerned the following areas' and one of those was the control of bona fides and leave return forms to ensure that payroll is completely and accurately processed.

It is of some interest to me that in last year's Auditor-General's Report the Auditor-General said exactly the same thing. Last year the department responded to the Auditor-General and said a satisfactory response was received for each of the matters raised, yet this year the Auditor-General raises precisely the same issue and again the Auditor-General, who on this occasion must be easily satisfied, says, 'A satisfactory response was received for each of the matters raised.' Given that they have raised the same issues two years in a row, does the minister accept that these issues have been dealt with satisfactorily in a timely fashion?

The Hon. T.G. ROBERTS: There are a number of issues associated with payroll deductions or functions in relation to attendance and leave return forms, and there have been attempts to correct any imperfections that have appeared in some of the prisons, but there is now more of a centralised approach being adopted by the department in relation to a whole range of matters when it comes to the management of prisons. I would hope that the issues raised were different issues.

The Hon. A.J. Redford: You don't know?

The Hon. T.G. ROBERTS: I am reasonably certain, but I will refer the questions for attention by the departmental personnel who can accurately describe the variations that may have occurred in the system that needed to be cleaned up this financial year. I am sure the Auditor-General's response is based upon a report given to him by the department, but I am not sure whether they were the same problems that appeared in this financial year as appeared in the previous financial year, but I suspect they may have been different.

In all departments there are ways in which controls are sometimes relaxed by some individuals who are supposed to be performing duties in evaluating those programs and in some cases there are individuals who will take personal advantage at the expense of the department and everyone else.

The Hon. KATE REYNOLDS: My question is to the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Families and Communities, about the former FAYS department. I refer to Volume 2, pages 551, 554 and 556 of the Auditor-General's Report. The Auditor-General's Report mentions that internal audit coverage of FAYS in 2003-04 included a review of alleged misappropriations from advance accounts operated in FAYS district offices. The review highlighted concerns regarding the adequacy of processes, procedures and internal controls over those accounts. The audit also reviewed a number of aspects of FAYS business operations, including a number of cases of suspected fraud, highlighting breakdowns in internal controls and financial management practices.

The audit investigated three cases of alleged fraud in FAYS district centres and at the time the review was finalised four staff had either been suspended or had resigned and were subject to ongoing investigation by the police Anti-corruption Branch. My questions are:

1. What measures have been taken to improve the adequacy of processes, procedures and internal controls over advance accounts?

2. Were all cases of suspected fraud within FAYS reported to the police?

3. What is the current status of each of these investigations and when is it expected that the investigations will be finalised?

4. Have the breakdowns in internal controls and financial management practices been addressed and rectified to prevent a further recurrence of this problem?

The Hon. T.G. ROBERTS: I will refer those questions to the minister in another place and bring back a reply.

The Hon. A.J. REDFORD: In the statement of accounts at page 752 it says that the department has a number of common law claims made against it by various claimants and exposure facing the department is $322 000. It also goes on and says that 'the department has a potential financial exposure in respect of a pay claim made by the Public Service Association' and goes on to say 'but the total value of potential claims cannot be reliably quantified'. It then says, 'Contingent liabilities are not actual liabilities and therefore have not been included.'

As I understand the current dispute between the government and the PSA, the government has made an offer to the Public Service. I understand that the period of negotiation under the act has expired and I am also informed that the amount payable by the government will be at least what has been offered by the government to the Public Service. First, has this been factored into contingent liabilities and, secondly, is the government now taking steps to pay the hardworking workers in the Department of Correctional Services a pay rise at least to the value of the government's trivial offer that has been made to date?

The Hon. T.G. ROBERTS: I thank the honourable member for his interest in all things Corrections. The second part of his question I will refer to the Minister for Industrial Relations in another place. In relation to the provision for the contingent liabilities, because the difference of opinion between the two parties has not been settled, the only way in which the department can react is to use the accounting methods it has used. I will endeavour to get a progress report for the honourable member in relation to the negotiations and discussions and bring back a reply.

The Hon. A.J. REDFORD: I have a supplementary question. What are the details of the $322 000 worth of common law claims? In particular, what is the nature of the claims that have been made against the minister's department?

The Hon. T.G. ROBERTS: I will endeavour to get a breakdown of the major groups that are seeking common law redress—not the details of the claim but at least the direction from which the claims are being made.

The Hon. A.J. REDFORD: In relation to page 753, 'Trust funds', will the minister give an assurance that the only moneys that go in and out of the prisoners' trust fund are in relation to prisoners; and that no other amounts of money are paid into those trust funds?

The Hon. T.G. ROBERTS: I will take that question on notice and bring back a reply.

The Hon. R.D. LAWSON: I direct my question to the Minister for Aboriginal Affairs and Reconciliation, and I draw his attention to Part B, Volume I of the Auditor-General's Report; in particular, page 6 where it refers to the fact that the Department for Aboriginal Affairs and Reconciliation was transferred to the Department for Families and

Communities on 11 March 2004. For financial accounting and reporting purposes the transfer of employees was proclaimed to occur on 1 July 2004.

The Premier announced during the last sitting week, indeed after question time on the last sitting day before this week, that the Department for Aboriginal Affairs and Reconciliation has now been transferred to the Department of the Premier and Cabinet. So the Department for Aboriginal Affairs and Reconciliation has been transferred successively from the Department of Administrative and Information Services to the Department for Families and Communities, and now to the Department of the Premier and Cabinet. My questions are:

1. What was the purpose of transferring the administration of this department from one department to another during the course of the period covered by the Auditor-General's Report?

2. What has been the cost to the department of these transfers?

3. Was the cost of the transfers paid out of funds which were allocated to the Department for Aboriginal Affairs and Reconciliation?

The Hon. T.G. ROBERTS: The discussions that flowed around the positioning of the Department for Aboriginal Affairs and Reconciliation in its first move was for administrative purposes; that is, grouping Aboriginal affairs with families and communities because so many of the problems being experienced by Aboriginal people, in terms of health, education and housing, were human service issues that fitted well with the Department for Families and Communities. I thank DAIS for the support it gave me as Minister for Aboriginal Affairs and Reconciliation and the interest that it showed in trying to come to grips with some of the problems we encountered early in our governance, but DAIS was a large department with its core business being administrative in form, rather than Aboriginal affairs.

The department of human services was administering some of the human services management within and across departments—and DAIS was part of its responsibilities—but it was felt that such a large department may lose sight of a small department such as DAIS. As a result of restructuring, we were interested in moving into a department that had a minister who was well versed in dealing with the human service issues which face many Aboriginal people and which were being dealt with by the Department for Aboriginal Affairs and Reconciliation. That move made good sound common sense in aggregating issues across agencies. The task force had been set up, and it was felt that there would be a lot in common between the two agencies.

The move from the Department for Families and Communities to the Department of the Premier and Cabinet was based on a view held by the Premier and me that access to Treasury, and our ability to combine our arguments in terms of educating, if you like, other agencies in relation to some problems we were experiencing with slow responses from agencies, would be speeded up if the authority of the Department of the Premier and Cabinet was to be used to ensure that other agencies did take note of the recommendations from the task force, which was set up as a cross-agency management body; and dealing with the commonwealth in unknown circumstances—it was before the election. In relation to dealing with the collapse of ATSIC and ATSIS, it would be better, and it would have more authority, if you like, when dealing with commonwealth issues, if it was coming out of the Department of the Premier and Cabinet.

It is not unknown in other states for the Department of the Premier and Cabinet to be used within the Department for Aboriginal Affairs and Reconciliation, either at a policy level or at an implementation level, as an authoritative agency for getting cross-agency support. Queensland has a system that has some of those aspects to it. Each state lines up Aboriginal affairs differently, but it was felt that that authority would be important in getting the changes that we required cross agency because of the urgency issues that we were dealing with.

In relation to the funding costs and who paid for the cost of the transfers, I do not think that the cost of the transfers would have been horrific. I am not too sure what they cost, but I will refer that matter and bring back a reply. Certainly, from my understanding, there were no major changes or wastage as a result of the movement of the department. We have made savings in the way in which Aboriginal affairs has been structured. The number of people on the payroll has changed. The nature of business in the department has changed from being actively involved in designing and creating infrastructure support back to the basic core work of administering, if you like, policy, infrastructure and human service support for Aboriginal people throughout the state. So, its nature has changed.

There were cost savings as a result of that, and that would be, I guess, in some way played against the costs of transferral—although, as I have said, those costs were minimal. There were no letterhead changes; and there were none of the changes that are required in putting together agency shifts and all the fanfare that goes with it. I will take that question on notice and bring back a reply with respect to the cost of the transfers and also the cost of the transfers to the Department for Aboriginal Affairs and Reconciliation. But I suspect that that would not be the case.

The Hon. R.D. LAWSON: I direct the minister to Part B, Volume 2, page 615, dealing with the South Australian Aboriginal Housing Authority, where reference is made at the bottom of the page to the fact that an omission by the authority in this year had contributed to a capital upgrade of the budget for the current year, this authority being overspent by $3.6 million. The error that led to that is explained in the preceding language. My questions to the minister are:

1. Was he aware of this overspend by the Aboriginal Housing Authority?

2. Is he aware of any adverse effect that it might have on Aboriginal communities?

3. What steps are being taken to ensure that budgets are adhered to by the authority?

The Hon. T.G. ROBERTS: Although Aboriginal housing is an important aspect of Aboriginal management of infrastructure, it does come under another minister. The matters around housing are critical issues in relation to dealing with remote, regional and metropolitan Aboriginal people, and I will refer that question to the Minister for Housing in another place and bring back a reply.

The Hon. R.D. LAWSON: Page 51, Volume 1, Part B of the Auditor-General's Report contains an abridged statement of the financial position for the Department of Administrative and Information Services. Under the Department for Aboriginal Affairs and Reconciliation it is stated that the net assets of the department as at 30 June 2004 were $9.241 million, compared with only $2.378 million in the preceding year. Is the minister able to provide any explan-

ation for the substantial rise in the net asset position of his department over the past year?

The Hon. T.G. ROBERTS: No, I am unable to give an explanation, other than a transfer of assets that may have occurred while the office of the Department for Aboriginal Affairs and Reconciliation was being transferred through departments. I will endeavour to obtain information from the department and bring back a reply.

The Hon. R.D. LAWSON: I refer the minister to the statement of abridged financial performance on page 49 of the Auditor-General's Report where, under the heading 'Department for Aboriginal Affairs and Reconciliation', it is stated that the total expenses of the department from ordinary activities was some $11.2 million, which comprised employee expenses at $3.2 million, supplies and services at $4.1 million and others at $3.7 million, using very round figures. However, the comparable figure in the Auditor-General's Report for 30 June 2003 (Volume 1, page 43) shows total expenses from ordinary activities of some $12.7 million, a figure that is some $1.5 million above that for this year. Can the minister provide the council with an explanation for the reduced expense this year, especially in light of the fact that the demands on his department have increased significantly?

The Hon. T.G. ROBERTS: I have found the $6 million differential between the net assets of the department for 2002-03 and 2003-04. The $6 million refers to the cash that was held in account for the power station on the APY lands. I suspect that the differential just referred to by the honourable member could also be related to infrastructure spending, rather than spending on human services. I will endeavour to bring back a more accurate reply.

CRIMINAL LAW CONSOLIDATION (ABOLITION OF THE DRUNK'S DEFENCE) AMENDMENT BILL

In committee.

Clause 1.

The Hon. R.D. LAWSON: I have a preliminary point and question before I move my amendment. In the minister's response on 14 October, he read into *Hansard* the policy of the government, which states:

> Being drunk or high on drugs shouldn't be an excuse for committing crime. Too many offenders get off because they claim they were drunk or high on drugs when they committed the crime.

The latest report of the Police Commissioner indicates that there were some 150 000 offences reported last year, and a comparable number has been reported in each of the preceding years. Can the minister indicate how many South Australian offenders have got off because they claimed they were drunk or high on drugs?

The Hon. P. HOLLOWAY: The answer to that question is that I cannot provide the number, but it would certainly be a very small number. Occasionally, there is one or two of these cases. One that we do have information on is the case of Coates v McCormick, No. 2145 of 1991 of the South Australian Supreme Court.

The Hon. R.D. Lawson: That is one.

The Hon. P. HOLLOWAY: It is one but, as I said, we are not quite sure how we would get that information. It would not be a large number.

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

Page 2, lines 3 and 4—
Delete '*Abolition of the Drunk's Defence'* and substitute: *Intoxication*

The purpose of this amendment is to ensure that this act of parliament has a correct and appropriate title, and that the title is not a piece of political hyperbole. To suggest that this bill has abolished the drunk's defence in its entirety is, in fact, to create a wrong impression and to give the bill a misleading title. The fact that it might be part of a political jingle does not mean that we should allow our statute book to be demeaned in the way in which this title purports to demean an important measure which we support as some element of law reform. However, it is clear from the minister's last answer that the claims of the government that too many people are being acquitted on this ground is entirely specious.

The Hon. IAN GILFILLAN: I indicate Democrats' support for this amendment. As I indicated in my second reading contribution, I have found it difficult to actually use the term in the title of the bill because it seemed to us to demean the integrity and prestige that the law should enjoy in this state. To have an emotive, loaded comment included in the title of the bill underlines several of the points that we were making in totally opposing the bill per se. Although I think that the shadow attorney, the Hon. Robert Lawson, is kind in his praise saying that it performs some form of modest law reform, it is very hard to find. It is even harder to find the mischief at which it is targeted. We will support the amendment as, at least in some small degree, it restores some dignity to the title of the bill. However, that should in no way be taken as the Democrats condoning the legislation, which we intend to oppose at the third reading.

The Hon. P. HOLLOWAY: First, I would like to make the comment that, although there may not have been many cases, we believe that even one is too many. The government opposes this amendment, which seeks to change the short title of the bill by replacing 'Abolition of the Drunk's Defence' with 'Intoxication'. The reason we oppose the amendment is that the short title was chosen by parliamentary counsel—not by the government. That is right and proper, not only as a matter of form but also as a matter of substance.

The Hon. Ian Gilfillan interjecting:

The Hon. P. HOLLOWAY: I hope the Hon. Ian Gilfillan at least listens to the argument. The election policy that the bill proposes to implement is called 'Abolition of the Drunk's Defence' and it was so called because that is the popular understanding of the policy being pursued—it is what ordinary people in the street call it. However, it is also what the decision in O'Connor was called at the time. The effect of the bill was, therefore, accurately described by the short title 'Abolition of the Drunk's Defence.' It is the government's view that the existing title is right as a matter of form and as a matter of substance and that it should, therefore, be retained. The government opposes the amendment.

The Hon. IAN GILFILLAN: The rather sanctimonious attitude that the government takes in relation to this, in trying to pin the tail on the donkey of parliamentary counsel and say that they concocted the title, is ludicrous because the Attorney-General, prior to being in government, has been on the airwaves for years, fulminating against so-called horrific injustices done in South Australia. Yet the best efforts of the government have revealed only one case, upon which we as a community have been incited to be horrified in respect of the travesty of justice done almost on a daily basis whereby people in some way or another can perform all sorts of

horrific crimes and yet, by waving the drunk's defence flag, get off. It is an absolute nonsense.

While I am here, it is important that the Leader of the Government actually hears what I am saying—but he is in deep conversation. I will keep talking until I get his attention, because I want him to hear what I am saying. I think it is unfortunate if, at the committee stage, the Leader of the Government cannot hear comments being made. I think I do have his attention now.

The Hon. P. Holloway: I was listening.

The Hon. IAN GILFILLAN: If I have the minister's attention I would like to compliment the author of the report to the bill. It is rare in general legislation to have such a well researched and informative report presented to the parliament and, if for no other purpose, I would like to put on the record that I found it informative and valuable to read the report. I would like the minister to pass on to the appropriate source my hearty congratulations and those of the Democrats for an excellent report—although it was, unfortunately, applied to a legal nonsense.

The Hon. P. HOLLOWAY: I am sure that Mr Matthew Goode, who is sitting next to me, has heard those comments.

The Hon. R.D. LAWSON: In support of my amendment, I should also indicate that when the now Attorney-General introduced earlier bills to achieve this purpose they did not have the hyperbolic title which is now given to this measure. The previous bills were appropriately described consistent with the nomenclature used in amendments to our criminal law. I also add my thanks to the minister's advisers for the professional way in which they have briefed the opposition and prepared at least part of the second reading explanation, which has been helpful.

The committee divided on the amendment:

AYES (15)

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

NOES (6)

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

Majority of 9 for the ayes.

Amendment thus carried; clause as amended passed.

Remaining clauses (2 to 6) and title passed.

Bill reported with amendments; committee's report adopted.

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

That this bill be now read a third time.

The council divided on the third reading:

AYES (18)

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

AYES (cont.)

Stefani, J. F.	Stephens, T. J.
Xenophon, N.	Zollo, C.

NOES (3)

Gilfillan, I.	Kanck, S. M.
Reynolds, K.	

Majority of 15 for the ayes.

Bill thus read a third time and passed.

TOBACCO PRODUCTS REGULATION (FURTHER RESTRICTIONS) AMENDMENT BILL

In committee.

Clause 1.

The Hon. P. HOLLOWAY: I wish to make a few comments. I made a very brief second reading response yesterday but I wish to comment on a few matters, which, hopefully, will assist the passage of debate through the committee stage. Many points were raised during the second reading debate but several misunderstandings arose as a result of that debate, and perhaps it might help if I clarify them at the start. Certainly there is the issue in relation to the way in which the one-metre rule operates. Perhaps I will go through that at the appropriate time during committee. I would like to confirm that the advertising of tobacco products is banned with this bill. It is only the display provisions that are delayed. I think that point needs to be made, that is, the advertising of tobacco products is banned. It is only the display provisions that are being delayed.

The other day I omitted to thank the member for Reynell, Gay Thompson, who chaired the hospitality smoke-free task force. I also thank the members of the task force, John Lewis and Brett Matthews from the AHA, Mark Butler from the LHMWU, Ms Sally Neville, the Business Development Manager, Restaurant and Catering, Mr Michael Keenan, who was the executive director of the Licensed Clubs Association, Ms Trudy McGowan, General Manager of the Skycity Adelaide Casino, Ms Louisa Bowes, the Policy Officer of Passive Smoking at the WorkCover Corporation, Ms Caroline Miller, the Manager of Tobacco Control Research and Evaluation, Mr Jim Dadds, the representative on the National Expert Advisory Committee on Tobacco (NEACT) and Ms Della Rowley, Manager of the Tobacco Control Unit in the Department of Health.

I also take the opportunity to acknowledge the many organisations and individuals who provided comment on the task force recommendation and other aspects of the legislation, including those who contributed to the more recent point of sale discussions. In relation to this bill, it is important to say that I believe we now have a bill that takes a balanced and well-considered approach to achieving significant health benefits for the people of South Australia while, at the same time, ensuring that jobs and business are protected. This is an ongoing issue and we will continue to look at opportunities for legislative reform to address this critical health issue, but I believe it is important not to hold up this important raft of reforms, which have been compiled as a result of a significant amount of consultation over a long period for the sake of issues that can be addressed in the future.

I know there are some amendments in relation to other matters that really do need further discussion, but the reforms contained in the bill are important. They have been the result of significant negotiations with the community, and that is why the government will be strongly supporting the reforms

in the form they are because they do represent a compromise that has been reached over a long period.

Perhaps now I could also provide some answers to questions that were asked by the Hon. Nick Xenophon during his contribution. The Hon. Nick Xenophon asked, 'What do 75 000 bed days cost?' The average cost of a hospital bed day in 2002-03 was $946.30, hence 75 000 bed days cost $70.9 million. He asked about consultation with health bodies: 'Can the government confirm that those groups dealing directly with the impact of smoking; that is, Quit SA, the Asthma Foundation, the Cancer Council and the Heart Foundation were involved directly with the negotiations?' I am advised that the chief executives of the Heart Foundation and Cancer SA provided a briefing directly to caucus on 25 November 2003.

The smoke-free hospitality task force received submissions from a large number of health bodies during the consultation process conducted from 15 April to 30 May 2003 and these included: the Australian Council on Smoking and Health; Asthma SA; the Cancer Council of Australia; the Australian Medical Association (SA); the National Heart Foundation (WA and NT); Cancer Foundation (WA); Non smokers Movement of Australia; National Heart Foundation (Tasmania, Victoria and Queensland); Non smokers Movement of Australia; the Queensland Cancer Fund; the Cancer Council of South Australia and the National Heart Foundation (SA) (a joint submission); the Australian Health Promotion Association; the Coalition of Health and Medical Professionals Against Smoking (CHAMPS); Action on Smoking and Health; Smoke-Free '03; and Tobacco Control Research and Evaluation. Ms Caroline Miller of the Tobacco Control, Research and Evaluation Unit, auspiced by the Cancer Council of South Australia, was also a member of the hospitality smoke-free task force, and I mentioned those members earlier.

As to smoking rates over time among young people in South Australia, the Hon. Nick Xenophon asked whether the government will provide more details in relation to that issue, that is, action to discourage young people from taking up smoking, particularly with respect to young people who are vulnerable to taking up the habit and who have been unconscionably targeted by tobacco companies in years gone by. The health omnibus survey is the main tool for monitoring smoking prevalence in South Australia among the community as a whole and among young adults. Overall, smoking among South Australians, including young South Australians, has decreased over the past decade. In 1994, 40 per cent of 15 to 29 year olds were smokers. In 2003, 32 per cent were smokers. This figure has fluctuated somewhat during this period and the 2002 figure of 27 per cent was slightly lower. Smoking rates among young adults warrant close monitoring.

Another large survey used to monitor smoking in South Australia's young people is the triennial Australian Secondary School Alcohol and Drug Survey. Data from this survey showed that smoking rates have continued to trend downwards among both 12 to 15 year olds and 16 to 17 year olds since 1984. The 2001 data did not show any stalling of decline in smoking rates among South Australian schoolchildren.

The Hon. Nick Xenophon asked what is happening in terms of targeting young people in a positive way to ensure they do not take up smoking or, if they have, to give it up. I am advised that prevention of smoking by young people is one of several strategies to reduce the burden of tobacco-related disease in South Australia. It is important to see this as one part of a comprehensive approach that also promotes quitting by adult smokers and protects non-smokers from tobacco smoke. The most immediate and biggest health gains are to be made by encouraging and supporting regular adult smokers to quit, especially before they reach middle age. That it is properly where the main priority is and should remain.

One of the main influences on uptake of smoking by young people is their perception that smoking is an adult activity and a maker of adult status. It follows that, if adult rates of smoking decline, that also has a prevention effect with young people as they see less smoking by adults and are less likely to commence themselves. This is especially true if their own parents stop smoking, as the children of smoking parents are twice as likely to become smokers themselves.

Several agencies are funded to reduce the uptake of smoking by young people, including Quit SA, Life Education, indigenous anti-tobacco project of the Second Storey Youth Health Service, the Port Adelaide Football Club, the Basketball Association of SA (Adelaide Quit Lightning), the Riverland Youth anti-tobacco project, Migrant Health Service and so on. Quit SA conducts the following activities: develops and distributes resources for schools and teachers to use in classrooms, the main one being 'Tobacco: the truth is out there'—a tobacco curriculum for middle school years provided free on request; 'Guidelines for smoke free education and child care', a resource to help schools and early childhood centres comprehensively deal with tobacco use by students and visitors and provide a graduated curriculum for tobacco from kindergarten to year 12; and, provide smoke free environments and link with community agencies.

Further, there is Critics Choice—a classroom activity where students view a set of anti-tobacco advertisements and vote on which is most effective. Many schools extend this activity by having students write or make their own ads. Keep Left is a training resource for school personnel on how to deal with smoking by students, not as a disciplinary issue but as a health issue and effectively encouraging quitting.

As to peer support, in conjunction with the Peer Support Foundation it assists senior students to promote non-smoking among young students in their school. OxyGen is a national website for young people and teachers with information and resources about tobacco. It operates in conjunction with Western Australia and Victoria. The National Youth Tobacco Free Day is an annual day of activities, competitions and advocacy for and by young people on tobacco. There is provision of training and support for teachers throughout South Australia in the use of these resources and activities by regular workshops. The budget for these activities is approximately $120 000 per year. In the forthcoming school holiday period, Quit SA will conduct a cinema advertising campaign aimed at young people, with the intention of counteracting the widespread depictions of smoking in films. Quit SA is required to provide quarterly reports on the achievement of performance indicators in relation to all these activities.

The Hon. Nick Xenophon then asked about WorkCover claims from passive smoking. I am advised that the last known review of WorkCover figures relating to passive smoking occurred in February 2003. Between July 1995 and February 2003 there were 13 workers' compensation claims for medical conditions related to passive smoking. At the time of the review the claims amounted to $144 443. I refer to South Australian claims for passive smoking-related conditions, as follows:

- In 1995, a mechanic suffered poisoning and the effects of toxic substances as a result of exposure to tobacco, smoke,

dust and chemicals. The total cost of the claim was $38 023.

- In 1995, a waiter suffered aggravation of asthma as a result of serving at tables where smoking occurred. The total cost of the claim was $1 615.
- In 1995, a clerk suffered hyperventilation syndrome as a result of passive smoking. The total cost of the claim was $744.
- In 1996, a painter suffered chronic bronchitis, emphysema or an allied condition as a result of exposure to paint, dust and smoke. The total cost of the claim was $2 950.
- In 1997, a worker suffered a respiratory condition as a result of passive smoking by clients in the workplace. The total cost of the claim was $25 321.
- In 1997, a home aid worker suffered asthma, triggered by pets, dust and cigarette smoke in the client's house. The total cost of the claim was $6 935.
- In 1997, a worker suffered asthma as a result of the effects of passive smoking from clients in the workplace. The total cost of the claim was $1 057.
- In 1998, a factory hand suffered asthma caused by chemicals and smoking. The total cost of the claim was $58 516.
- In 2001, a waiter suffered a disease of the respiratory system as a result of serving over the front bar over a long period of time and exposure to extreme amounts of smoke. The claim is undetermined, meaning that further inquiries and medical reports are being obtained. The interim payments to date amount to $601.
- In 2001, a nurse suffered asthma as a result of the effects of passive smoking from patients. The total cost of the claim was $369.
- In 2001, a waiter suffered carcinoma of the mouth as a result of passive smoking. The claim is undetermined, meaning that further inquiries and medical reports are being obtained. The interim payments to date amount to $602.
- In 2002, a hospitality worker suffered lung cancer as a result of passive smoking. The claim is undetermined, meaning that further inquiries and medical reports are being obtained. The interim payments to date amount to $423.
- In 2002, an office worker suffered respiratory disease as a result of passive smoking in the workplace. The total cost of the claim was $7 287.

I am advised that WorkCover was not able to update the list with 2003 and 2004 figures in the short time between the Hon. Nick Xenophon's queries of 25 October and today.

In relation to the extent that studies have been carried out in South Australia to assess the number of deaths attributable to passive smoking in this state, I am advised that the government is not aware of any published studies on the number of passive smoking deaths in South Australia. It is not considered critical to conduct such a study in South Australia, as there is a large amount of mortality and morbidity data in Australia and overseas to confirm the risks of passive smoking exposure.

The Hon. Nick Xenophon asked to what extent the New South Wales study takes into account hospitality workers in poker machine areas and the casino. The study to which the Hon. Nick Xenophon refers is Repace J.L., Repace Associates Incorporated, second-hand smoke consultants, 7 April 2004, 'Estimated mortality from second-hand smoke among club, pub, tavern and bar workers in New South Wales, Australia.' This study refers to all employees in the New South Wales club, pub, tavern and bar industries, including casinos. This also includes workers in the gaming areas of these venues. The study estimated that 73 to 97 deaths attributable to passive smoking per year occur among the 40 000 New South Wales club, pub, tavern, bar and casino workers.

In relation to the New South Wales study of the ETS (environmental tobacco smoke) impact on hospitality industry workers, the report, commissioned by the New South Wales Cancer Council from James Repace, estimated the probable mortality as a result of exposure to tobacco smoke in work settings. Repace estimated that approximately 40 000 people work in the industry in New South Wales, which number includes all workers in cafes and restaurants, Star City Casino, clubs, pubs, taverns and bars. Levels of tobacco smoke exposure were adjusted according to the hours typically worked in such settings, and also in terms of the level of exposure ranging from none for cafe and restaurant workers to high levels for pub and club workers based on samples of pubs and clubs where measurement had been undertaken recently. Hence, the estimate would not need to be adjusted to include those exposed in poker machine rooms in the casino. On the basis of population extrapolations, the number of premature deaths expected in South Australia would be in the range of 18 to 22 per year. This range would be reduced by 18 per cent for non-smokers only, that is, 15 to 18.

The Hon. Nick Xenophon asked whether the government has considered what its potential exposure to liability is if it fails to act decisively, comprehensively and promptly. I am advised that there have been a number of out of court settlements and damages awarded through workers compensation and common law action to date. The government is taking decisive action to eliminate the risk of exposure to environmental tobacco smoke through the legislation it is introducing.

As to controlled purchase operations, the Hon. Nick Xenophon asked what resources are put into dealing with under-age smoking in terms of its program; and further details as to how the program works in relation to under-age people going forward and asking for cigarettes. How is that program put into place? What revenue is received? What is the cost of the program? Will an expansion of that program mean a greater degree of compliance? What are the consequences in terms of preventing young people from smoking?

I am advised that a controlled purchase operation involves supervised, trained young people, usually aged from 14 to 16 years, attempting to purchase tobacco products from retailers. The young people are carefully trained and instructed not to lie about their age if asked. They dress in age-appropriate clothing and are selected on the basis that they do not look older than their age. At no time during a controlled purchase operation do the volunteer young people engage in any coercive behaviour. Approximately $20 000 is budgeted annually to run controlled purchase operations in South Australia. The Department of Health has a target of visiting 10 per cent of licensed tobacco retailers each year. The department began bringing prosecutions from controlled purchase operations in 2002. There have been five prosecutions relating to sales to minors offences between 2002 and 2004. Fines of between $150 and $250 have been imposed. In 2003, $1 700 in fines were imposed. The Department of Health received $26 in revenue from these fines.

Controlled purchase operations are nationally recognised as the most effective, least costly and practical means of

monitoring the illegal sale of tobacco to children (that is from the National Expert Advisory Committee on Tobacco). In an Australian study conducted on the central coast of New South Wales, it was reported that maintaining the rate of retail compliance with sales to minors legislation at 90 per cent or better over five years reduced adolescent smoking rates for all age groups in that community. It was found that, in the short term, high retail compliance rates impacted mainly on the smoking rates of young age groups—12 to 13-year olds. The study concluded that substantial effects on the smoking rates of older age groups would be achieved only if retailer compliance rates were sustained at a high level over a period of years (that is from the Commonwealth Department of Health and Ageing 2001 and also from Tutt in 2000).

Most recent testing (in 2003-04) found that one-fifth of retailers throughout the state are still selling cigarettes to minors. This was an increase in the selling rate since the previous round of controlled purchase operations in 2002. The 2003-04 round was conducted without any publicity, unlike in 2002, when there was a prominent article in *The Advertiser* newspaper part way through the activity. This publicity resulted in a drop in prevalence of sales from 20 per cent prior to the article's appearing to 10 per cent afterwards. In 2003-04, a large number of visits were conducted on premises in areas that had never been visited before or had not been visited for over two years. High rates of sales were recorded in these areas, particularly in country regions, with one country area recording 50 per cent sales.

In relation to licences, the Hon. Nick Xenophon asked:

> How much extra revenue will be generated by requiring each outlet to have their own licence?

The current level of licence fee revenue has been approximated at $25 600. Approximately $8 000 of additional regulatory fees will be obtained from each tobacco outlet having its own tobacco merchant's licence.

With respect to the delay in bans, the Hon. Nick Xenophon asked:

> With respect to industry lobbying, could the government provide more information on why the bans should be delayed until October 2007?

The time line set out in this bill has been developed carefully, after broad consultation with the general public and key industry stakeholders. This included the meetings of the Hospitality Smoke-free Taskforce, which met in 2002 and 2003. The phase-out process in this bill is the best way of balancing the competing forces of protecting workers and patrons from unwanted and unreasonable exposure to tobacco smoke while acknowledging the economic concerns of pubs and clubs. The Australian Hotels Association requested a complete ban date of 2010, with some provision for a smoking room. It requested time for businesses to adapt their operations so that the smoking bans could be accommodated. For instance, some hoteliers may want to renovate their beer gardens so there is sufficient shelter for smokers but adequate openings to meet the definition of 'unenclosed' and ensure the removal of tobacco smoke. This process may require an architect designing changes to the area and building companies then being hired to make the structural modifications. This process will take a considerable amount of time, especially if hundreds of licensed premises require building work at the same time.

Time is also required so that patrons can start getting used to these changes. The one metre back from the bar rule and the provision of a non-smoking bar will assist this process. This will occur in conjunction with a comprehensive media campaign. If the government rushes these changes, there is a risk of completely undermining the intent of the legislation. With the bill in its current form, the government believes that these changes will be introduced smoothly and successfully.

In respect of South Australia not being the first in this area, the Hon. Nick Xenophon stated:

> Government shouldn't boast it has the toughest legislation in the nation. It has been overtaken by other jurisdictions, in particular, Queensland.

South Australia was the first state to introduce a bill to introduce complete smoking bans in enclosed workplaces and public places on 31 May 2004. This was despite the hesitancy voiced in other states about smoking bans. In late 2002 the Premier of Victoria, Steve Bracks, told the *Herald Sun* that the push to ban smoking in hotels would be defeated while he was in charge. Some states have recently announced bans to be introduced slightly sooner than ours, but these recent announcements in Victoria, New South Wales and Queensland have not yet been passed through their parliaments. Overall, the South Australian bill has strong evidence as its foundation and has been refined through consultation to ensure that it reduces the harm caused by smoking and also that it is workable for business.

The Hon. Nick Xenophon made the following comment:

> Details of studies carried out in California show that even bringing forward smoking bans in public places has had an impact on cardiovascular disease in a relatively short period of time.

I am advised that there was a study in Helena, Montana, that showed a 60 per cent drop in heart attacks in a six-month period. The study was presented at the American College of Cardiology's 52nd Annual Scientific Session, as follows:

> 'This is a small study, so we have to be cautious in how we interpret these results,' says Richard Pasternak MD, associate professor of medicine at Harvard Medical School. 'However, the direction of the impact is correct. We know that the smoke from one cigarette can rupture a plaque in blood vessels.' That rupture can cause a heart attack or stroke. Pasternak says that second-hand smoke is also known to have a similar impact on people with heart disease. 'So when we have less people exposed to smoke, as was the case in Helena, it makes sense that the hospital admission rate will be decreased,' Pasternak says.
>
> Robert Shepard, MD, of St Peter's Community Hospital, another co-author, says the smoking ban was overturned by a court ruling. 'We are seeing an increase in heart attacks again since December,' Shepard says. In December, there were six heart attacks; eight occurred in January; five in February; and nine in March. He says that in a couple of more months he will be able to confirm that the suspension of the smoking ban can be blamed on causing 14 to 16 heart attacks in the city.

In relation to smoking in Parliament House, the Hon. Caroline Schaefer, I think, made the comment that the Tobacco Products Regulation (Further Restrictions) Amendment Bill would not affect 'Botany Bay' in Parliament House, as section 29A of the Parliament (Joint Services) Committee Act 1985 provides:

> Smoking prohibited in certain areas. A person must not smoke in any part of Parliament House under the control and management of the committee except in a part of the house set aside by the committee for that purpose.

The library, bar, dining room, refreshment areas, cafe, kitchen and security areas are under the control of the committee, not the chambers or rooms occupied by MPs. My advice is that the Tobacco Products Regulation (Further Restrictions) Amendment Bill would not override this law.

The Hon. Rob Lucas made some comments on the impact of possible restrictions in Victoria regarding cigarette

consumption. He said that, when the point of sale advertising was restricted in Victoria in 2001, the consumption of cigarettes in 2002 increased by 2.8 per cent. By comparison, in South Australia, it was half that figure at 1.46 per cent. Nationally, there was a 1.05 per cent increase in cigarette consumption over previous years. In the year after Victoria instituted point of sale restrictions, the consumption of cigarettes increased at twice the rate of South Australia and almost 2½ to three times the national rate.

I am informed that, from July 2001, tobacco retail outlets were required to display health warning signs or signs advertising smoking cessation programs. The point of sale reforms in Victoria, abolishing point of sale advertising and regulating the display of tobacco products at retail outlets, actually commenced in January 2002. A population survey conducted in Victoria in November 2002 revealed that there was no significant change in smoking prevalence between the years 2000, 2001 and 2002. In addition, smoking consumption did not change significantly over the period 2000 to 2002. No national data on prevalence or consumption has been released since the 2001 National Drug Strategy Household Survey or the 2001 National Health Survey by the Australian Bureau of Statistics. I trust that that lengthy amount of information will shorten the committee stage.

The Hon. NICK XENOPHON: I am grateful to the government for providing such a comprehensive response to the matters that other members and I have raised. I note that 75 000 bed days in terms of the cost back in to the community translates to close to $71 million. However, the point must be made that, in relation to the hospitality and smoke-free task force, my understanding is that it did not have any key health groups, for instance, Quit SA, the Cancer Council, the Asthma Foundation or the Heart Foundation; so, I believe that that process was flawed from the start. A point also must be made about the balance that the government talks about with respect to the needs of members and the like.

A representative of the LHMU in New South Wales made a point to the media and, unfortunately, I do not have the precise quote, but it was to the effect that dead bodies are more important than job losses. The point was made by that union official—and it is a pity that the union officials in this state have not been so courageous in tackling this issue head on—that, in terms of any competing interests, there is no contest when it comes to the health and safety of workers.

I also note that the union news for the LHMU some months ago stated that a survey in March 2003 indicated that 61 per cent supported a total smoking ban in hotels, with 47 per cent strongly agreeing and supporting that. These are LHMU members. In addition, 81 per cent supported it in clubs with 61 per cent strongly supporting that; 92 per cent supported it in the casino with 86 per cent strongly supporting it. I think that indicates significant support for these reforms amongst the rank and file of the union membership—those who have to be subjected to environmental tobacco smoke day in, day out in hospitality venues. That is why I think that many in the community would be disappointed with the stand of the LHMU in this state in protecting the occupational health and safety of its workers on this very important issue.

I raise an issue that came to my attention only last night. I understand that the Minister for Health established a ministerial reference group on tobacco. This reference group was established some time in 2002, as I understand it, and it was established in order to provide a blueprint to deal with the impact of tobacco on the South Australian community. I further understand that, in May this year, the State Tobacco Action Plan by this group of experts provided a report to the Minister for Health but that report has not been released publicly. In an interview on the Leon Byner program on 5AA earlier today, the Minister for Health said that that report would be released.

I ask the minister whether that report is available for release, given that we are now debating this legislation, and that the Minister for Health has been accusing me, and others in this place, of delays in dealing with this legislation. Given that this report of experts has been prepared as a comprehensive blueprint to deal with the impact of tobacco and smoking-related diseases in this state, when can we expect to see that report, given my understanding that the health minister has said publicly today on 5AA that that report will be released? When can we expect to see that report, given that we are voting on this issue now?

The Hon. P. HOLLOWAY: I am advised that the report the honourable member is talking about is a draft strategy prepared by the ministerial reference group on tobacco. Its aim is to recommend and guide tobacco control initiatives over the next five years. Its proposals relate to the next step—that is, the steps after this bill in reducing tobacco consumption in this state. Some of the provisions of the strategy have already been incorporated into the legislation before the council, for example, provisions which relate to the banning of smoking in enclosed workplaces and enclosed public spaces.

Largely, the strategy relates to the future. It is currently with the minister for consideration and its recommendations are—as I heard the minister pointing out on radio this morning—being aligned with the South Australian Strategic Plan, which was launched by the government after the ministerial reference group completed the draft strategy—and it is appropriate that it should do so. I remind the committee that the South Australian Strategic Plan also reaffirms the government's commitment to reducing the incidence of smoking in our community. Once this legislation is passed, the minister will bring this draft strategy forward for cabinet endorsement. So, the best way for members of the committee to help the government advance tobacco reform now and into the future is to pass this bill. We can then move on to the next levels of reform.

As I indicated earlier, an enormous amount of consultation has been involved in coming up with this particular piece of legislation—as there ought to be, because this legislation affects hundreds of business establishments and thousands of employees, as well as consumers, customers and so forth. It is important that there be very wide-spread consultation in relation to such measures, and that is why the government is keen to see the bill pass in its present form, as it reflects those lengthy discussions. We can then look at other issues for the future.

The Hon. NICK XENOPHON: Does that mean that we will not see this report tonight or any time in the near future and that it is still a number of months before it will be released to the public for consultation?

The Hon. P. HOLLOWAY: It will certainly not be ready for tonight. The Minister for Health has put in an enormous amount of effort in relation to bringing this legislation forward, and there has been an enormous amount of work involved in the negotiations and the consultations. I am sure that once this issue is through the minister will be able to turn her attention to that, and it will be released some time in the future. Again, I make the point that these are really measures

for the future—but, as I understand it, where practical, measures have been incorporated into this bill.

Clause passed.

Clause 2.

The Hon. NICK XENOPHON: I move:

Page 2—
Line 6—Delete 'This' and substitute:
Subject to subsection (2), this
After line 6—Insert:
(2) If a proclamation has not been made bringing this Act into operation on an earlier day, this Act will come into operation on 31 December 2004.

This amendment is related to the issue of the delayed bans with respect to smoking in public places. Honourable members are aware that there is a regime in place for smoking bans to take effect at certain times and that there are exceptions to that relating, particularly, to bars, poker machine rooms and the casino.

This amendment requires that, in the event that I am successful with further amendments that I will be moving to bring the smoking ban forward (and I understand that the Hon. Sandra Kanck has a similar amendment), it will come into operation on 31 December 2004. Essentially, I would not say it is a consequential amendment; it is a presequential amendment in terms of how the—

The Hon. A.J. Redford interjecting:

The Hon. NICK XENOPHON: The Hon. Angus Redford says it is a test clause. I think it would be fair to say it is a test clause in so far as if everything is brought in immediately it must operate by 31 December 2004, but there are other amendments that the Hon. Sandra Kanck and I are moving that give alternative dates—for instance, 31 October 2006 or 31 October 2005 with respect to the bringing forward of the bans on smoking in gaming machine rooms and in the casino.

The Hon. R.I. LUCAS: Can the Hon. Mr Xenophon clarify whether there are any more amendments to come out of the Xenophon sausage machine? And how many amendments should we have, in terms of bits of paper sitting in our bill file?

The Hon. NICK XENOPHON: There is a group of amendments numbered 1 to 6, with the most recent one dated 26 October at 4.55 p.m. Amendment No. 2 was the same as No. 3 so it was subsumed into that—I apologise to honourable members for any confusion there. Basically, it is amendments Nos 1, 3, 4, 5 and 6—five sets of amendments.

The Hon. R.I. LUCAS: I would also check with the Hon. Mr Xenophon in the interests of how this is processed. The Hon. Mr Redford indicates that this was a test clause for whether or not 2007 is the date that this applies. Should the honourable member be comprehensively defeated in relation to this test clause, would that mean that a lot of these amendments that he is moving are consequential and he would not have to move them?

The Hon. NICK XENOPHON: It would mean that, in so far as this amendment relates to having the whole bill come into force by the end of this year, that would save time down the track by the amendment's seeking an immediate starting date, but there are other amendments in terms of the starting date with respect to 31 October 2005 and 31 October 2006, so there are those amendments in addition. This does not negate those amendments: it is about the immediate start of that clause.

The Hon. P. HOLLOWAY: I indicate that the government will oppose the amendment and stick with the original position that has been agreed amongst all the stake holders in those lengthy negotiations, for the reason I indicated earlier. In considering the implementation of smoking bans in hospitality areas, we have been mindful of the Victorian experience where smoking bans were implemented in a short space of time. We know that in Victoria there was a significant impact on hospitality venues which only now seems to be plateauing. Businesses need time and support to adapt to complete bans. A sudden introduction of complete smoking bans in licensed premises could have a significant negative impact on these businesses, and this could undermine the success of the entire legislation. This bill will phase in the smoking bans. This will occur in conjunction with a comprehensive awareness campaign for the public and proprietors. There will also be a business consultancy service to provide further specialised support for businesses during this adaptation period.

This entire package will help to ensure that the legislation is implemented smoothly and successfully. It really is a key part of this whole package that there be some phase-in of these measures. This legislation came about as a result of discussions with those groups that would wish to remove smoking immediately and those businesses that would prefer no change at all or a much longer delay. It is a compromise that has been reached over significant negotiation, and the government believes that, given all the effort that has been put into reaching that agreement, we should abide by that arrangement.

The Hon. J.M.A. LENSINK: I have a couple of questions for the Hon. Mr Xenophon in relation to this clause. My reading of it suggested to me that, if the act was not proclaimed before the date stated in the amendment, by default it would come in on 31 March 2005. It has been suggested that this is a consequential amendment to others that relate to the date of implementation. Could the honourable member expand on that?

The Hon. NICK XENOPHON: This amendment essentially provides that, if there are no exemptions with respect to the smoking bans as there are in the current bill, it is all brought in by 31 December 2004 so that it must be proclaimed by that time.

The Hon. SANDRA KANCK: I understand that opposition members have a conscience vote on this issue, so I expect that we will have to tease out some of this as we go along. I can indicate that the Democrats always have conscience votes on issues, that we have extensively discussed this bill in our party room and that we are all of one conscience, which is great; it means you only have to have one speech each time. I indicate on behalf of my colleagues as well as myself support for the Hon. Mr Xenophon's amendment.

The Hon. NICK XENOPHON: I make the point that my understanding from discussions with groups that are concerned about the impact of smoking, including Action on Smoking and Health (ASH) and the Cancer Council, which has looked at this issue, is that a delay in the implementation of smoking bans puts more people at risk. Various studies have been carried out, and hopefully by the end of this evening I can refer to them briefly. A delay means more people suffering from ischaemic heart disease and being at greater risk of developing cancers, other health problems and premature death, so there is compelling reason to bring in these bans sooner rather than later, given that lives are at risk.

I know that one state—I do not want to refer to it—indicates that up to 125 lives will be lost over a three year

period as a result of the delay. For the benefit of honourable members I will refer to that study shortly after the dinner break. In any event, it means that the longer you delay it the more you put at risk the health of workers and patrons in the hospitality industry.

The Hon. P. HOLLOWAY: If you move too quickly you will certainly affect workers; you will make a lot more of them unemployed if you have an impact on the industry that is not well thought out. I think there would be plenty of studies that would show that unemployment is not good for your health either.

The Hon. J.M.A. LENSINK: I indicate that I will not be supporting these particular amendments. I do have some sympathy, in part, for the government's position that we do need some time to bring in these changes rather than cracking the whip and forcing everything to happen immediately.

Amendments negatived; clause passed.

Clause 3 passed.

Clause 4.

The Hon. P. HOLLOWAY: I move:

Page 4, lines 12 to 15—Delete paragraphs (b) and (c) and substitute:

(b) a place (other than a vehicle) where only a single self-employed person is working; or

(c) a vehicle that is used for work purposes by only one person; or

The effect of this amendment is to change the definition of 'workplace'. The current definition of 'workplace' in the bill allows a self-employed person to smoke in their workplace if they are alone, regardless of what type of workplace it is. This new definition still allows the self-employed to smoke in their workplace if they are by themselves, regardless of whether it will be used by another worker in the future, except if the workplace is a vehicle. In the case of a work vehicle, a self-employed person (or any other worker) cannot smoke if another person will use the vehicle after them for work purposes.

The rationale of this is that during the House of Assembly committee debate the opposition health spokesperson requested clarification on the effect of the new legislation on smoking in work cars, especially those used by only one employee. He queried whether a worker inside a car by himself or herself would need to refrain from smoking if there was a chance of another worker entering the car in the future. The Minister for Health stated that the government would examine this issue in the interim between the House of Assembly and the Legislative Council debate.

The definition that has been developed in the interim provides clearer wording by now avoiding double negatives, which was an issue raised in the House of Assembly. It explains that all work vehicles used by more than one worker must be non-smoking. The clause is in line with the view that a self-employed person in their own workplace by themselves is similar to a residential situation and therefore smoking by that person is permitted. However, in the case of a vehicle, the potential for harm caused by toxic residues in a very confined area requires a ban on smoking if the car is used by more than one person for work purposes, regardless of whether they use the car at different times.

The Hon. J.M.A. LENSINK: I raised a couple of issues in the briefing. Will the minister clarify for the record whether this affects farm vehicles? What is the effect on vehicles (as stated in this amendment) which are used for work purposes by only one person but which, in a non-work context, might be used by a family member or some other associate at some stage? Will that or will that not be covered by this particular clause?

The Hon. P. HOLLOWAY: I am advised that, at least in theory, it does affect farm vehicles. I am sure it would be a rather difficult measure to enforce, particularly in remote regions, but nonetheless, in theory, the legislation would affect farm vehicles for the reason I gave earlier; that is, if other people are going to be using it, then those toxic chemicals will be in the vehicle.

The Hon. R.I. LUCAS: Can the minister indicate what is this evidence of toxic chemicals or residue that causes concern? My understanding of what the minister is saying is that, for example, if someone is using a work vehicle for eight hours and if even 10 hours later (or something) someone else uses the work vehicle, then this particular requirement will come into play; that is, the provision relating to a vehicle that is used for work purposes by only one person. Therefore I assume that, if at any stage during a day, a week or a year it is used by anyone else, the minister's argument is that these toxic chemicals or residues are so concerning that therefore it is not to attract this particular exemption.

The Hon. P. HOLLOWAY: I will provide the following advice. First, this amendment ensures that we have a consistent non-smoking policy in workplaces, which of course includes vehicles, rather than bans which can vary, depending on the co-occupancy at different times. I advise that smoking releases toxins which can be absorbed by soft furnishings, including those of cars. These toxins are trapped in fabrics and may be released after smoking ceases.

The source I have for that is Tichenor et al 1991 in the National Institutes of Health Environmental Health Perspectives of 1999.

A study by Singer, Hodgsons and Nazaroff, supported by the US Department of Energy in January 2002, found that after smoking ceased in a room toxins were released from surfaces. This study found that concentrations during non-smoking periods rose from day-to-day over the first few weeks, presumably from increased re-emission associated with increased sorbed mass concentrations for sorbing compounds. More than half of daily potential exposures occurred during non-smoking periods. These toxins include benzene and toluene, and can cause respiratory effects such as throat irritation, chest constriction and irritation of the eyes, even at low concentrations.

There is, however, a lack of specific data about the concentration of toxins in vehicles, that is, how much is absorbed and released. There are hundreds of compounds that vary under differing circumstances, making research problematic. Therefore, it is difficult to make a specific evidence-based statement about the risks in vehicles.

The Hon. J.M.A. LENSINK: Following on from that, will the minister please explain the government's rationale, given the toxicity he has just outlined, for why this form of workplace should be banned straight away while hospitality venues that may have fabrics have to wait for another three years?

The Hon. P. HOLLOWAY: I thought I answered that in terms of the adjustment that was necessary in those regions. I indicated in my opening comments today how, on discussion with the industry when this was brought forward, it was pointed out that, if you needed to get proper planning done and building work advanced to meet the objectives, that could take some time, particularly if you had a number of these venues all having to undertake the work in a very short time. It would obviously put some pressure on the industry that

would do that work, so that is why we have the bill in the form it is.

The Hon. A.J. REDFORD: As a smoker I am extraordinarily grateful for the care and concern shown for my health by a range of people, including the Hon. Nick Xenophon—

The Hon. Nick Xenophon: We all love you, Angas.

The Hon. A.J. REDFORD: That is the sort of guy he is: he loves everybody—even me. My query is in relation to the term 'work purposes'. I think even the Hon. Sandra Kanck is concerned about my health, but I am not sure it is genuine. To give an example, most people drive their car to and from work and in many cases that is not tax deductible because the tax department says the journey is not tax deductible. I think the Hon. Nick Xenophon agrees with that proposition. In terms of tax, it is not a work purpose. I cannot deduct the costs for a car unless I am using my car incidental to work outside what is known as a journey situation. If I use my car in that context and smoke a cigarette in the car in that context, but I happen to drop off my next door neighbour at work on the way, and that person happens to be a non-smoker, am I committing an offence, which I assume would be created by proposed clause 46?

The Hon. P. HOLLOWAY: To clarify, it is new section 46.

The Hon. A.J. REDFORD: The term 'work purposes' is excluded from the definition of a vehicle used for work purposes by only one person. if I drive to work by myself, it is excluded from the definition of workplace. If I happen to pick up John Gazzola and we share a cigarette on the way to work, which might surprise a couple of people, we are high risk people. Would we be caught under the definition of workplace and then be subject to a fine? Who would be the proprietor and who would be the smoker?

The Hon. P. HOLLOWAY: My advice from parliamentary counsel is that the definition of workplace means 'any place including any aircraft, ship or vehicle where an employee or self-employed person works and includes any place where such a person goes while at work'. My advice is that it would not apply in that case.

The Hon. A.J. REDFORD: So as long as the Hon. John Gazzola and I did not talk about work—

The Hon. P. HOLLOWAY: That is the advice I have.

The Hon. R.I. LUCAS: The advice we have is that if you are claiming a work vehicle in terms of taxation it does not make it a work vehicle in relation to this aspect of the legislation.

The Hon. P. HOLLOWAY: That is the advice I have from parliamentary counsel.

[Sitting suspended from 6 to 7.45 p.m.]

The Hon. A.J. REDFORD: My understanding is that, when this bill is passed, the restrictions on smoking contained in part 4 will come into effect later this year. I assume that is correct. The clause provides that smoking 'is banned in an enclosed public place, workplace or shared area'. It also provides that if someone smokes in contravention there is an expiation fee penalty of $75. The occupier of that place is also subject to a fine, I assume on a strict liability basis, and an expiation fee of $160. In the context of a vehicle, who would be deemed to be the occupier?

The Hon. P. HOLLOWAY: The honourable member is really asking about clause 16. Should we wait? We are discussing an amendment to clause 4. Shall we wait until then or does the honourable member want to cover that now?

The Hon. A.J. REDFORD: The definition we are discussing currently is contained in there, so, in terms of the extent and impact, new section 46 refers to a workplace. Then we have a definition of a workplace.

The CHAIRMAN: Minister, I will allow the honourable member to pursue this line of discussion.

The Hon. P. HOLLOWAY: Can the member repeat his question?

The Hon. A.J. REDFORD: In the context of that clause, who would be the occupier for the purposes of smoking in a vehicle?

The Hon. P. HOLLOWAY: In clause 4, it is the employer who has responsibility. What is the question? Who is the employee—

The Hon. A.J. REDFORD: No. If I smoke in the vehicle, I am subject to a penalty—

The CHAIRMAN: Order! Gentlemen, only one person at a time should be on their feet and talking.

The Hon. A.J. REDFORD: If I smoke in a vehicle under this measure, and it falls within the definition of 'workplace', I am liable for an offence. In terms of the definition of 'workplace' and how it encompasses a vehicle, I can also be subject to penalties if I am the occupier. I just wonder what category of person would be an occupier for the purposes of this definition.

The Hon. P. HOLLOWAY: My advice is that, if a vehicle is a workplace—if that applies—it is the employer who has the responsibility. In clause 3, we are talking about an enclosed public place, which I am advised could be a vehicle—it could be a bus, for example, under that definition.

The Hon. T.G. Cameron: It could be a telephone box.

The Hon. P. HOLLOWAY: Indeed, it could be—and I do not think you would want to go into a telephone box where someone had been smoking. If a vehicle is a workplace, it is the employer, under clause 4.

The Hon. A.J. REDFORD: So, if I am the owner of a vehicle and someone smokes in it and they do not fall within the exemption that we are discussing here, my employer would be liable to a penalty?

The Hon. P. HOLLOWAY: If you own the vehicle, is it a workplace?

The Hon. A.J. REDFORD: No, I just want to clear that up. I have another set of questions, but I think the Hon. Julian Stefani has one.

The Hon. J.F. STEFANI: Is it feasible that the interpretation of what the Hon. Angus Redford is advancing is as follows? If an owner of a business has a truck and the driver of that truck is the normal agent, or employee, of the company and subsequently that vehicle is also occupied by a passenger or another employee of that company who happens to be a smoker, and they light up a cigarette and smoke, it would be possible (and I am not an expert in this) that the employer and the driver of the vehicle may collectively be liable.

The Hon. P. HOLLOWAY: You can concoct a number of scenarios. I think that what the honourable member says may well be correct. It is a fairly simple purpose: if a vehicle is likely to be used as a workplace, and if a number of people are likely to use that vehicle, people have a right that that vehicle has not been smoked in. Essentially, that is the principle involved in this particular clause.

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: I went through the logic before tea. According to evidence, smoke is trapped in the fabric and, perhaps, the plastics of the vehicle.

Members interjecting:

The Hon. P. HOLLOWAY: The other logic behind it, which I pointed out earlier, is that it essentially treats the vehicle in exactly the same way as any other workplace. That is simply the principle behind it. These amendments have come out of the matters raised by the Deputy Leader of the Opposition in the House of Assembly.

The Hon. J.F. STEFANI: To further clarify the position, what about the position of a sales representative who is supplied with a vehicle by a company and the vehicle is, in fact, a sales representative's workplace because most sales representatives are on the road? They carry their catalogues and other information, including pricing; they visit clients and give quotations or provide technical information on the product that the company manufactures. We have a situation where the sales representative is the employee of the company and the vehicle, in fact, is his or her workplace. Assuming that the sales representative is a non-smoker, what would the situation be if the vehicle were occupied by a passenger who is a smoker? It seems to me that this legislation puts the onus on the employer—the owner of the business—to ensure that there is a very clear sign displayed in the vehicle that says, 'This vehicle is a non-smoking vehicle. No one is permitted to smoke within it, otherwise penalties apply.'

The Hon. P. HOLLOWAY: I think that is a reasonable call. I am advised that that is what happens with a lot of hire cars now and with government vehicles and taxis. That is essentially what happens now.

The Hon. J.F. STEFANI: Just to get it very clear in my mind, does this mean that owners of the business who have a fleet of vehicles are required under this legislation now to display prominent signs within that vehicle because that is the property of the workplace? It becomes the workplace of the driver or the sales rep and, in those circumstances, I think that the obligation under this proposal flows that that vehicle must have, as a measure of conduct and responsibility, a sign that clearly says, 'This vehicle is a non-smoking space for anyone.'

The Hon. P. HOLLOWAY: My advice is that, under clause 19 of the bill, there is an amendment to section 87, regulations, and subclause (3) prescribes that, after paragraph (f), signs must be displayed in relation to places or areas where smoking is prohibited or permitted in the manner and form in which those signs must be displayed. That is where there are provisions in the regulation-making powers to address that issue.

The Hon. R.I. Lucas: So, you have to have them in all government cars, I take it.

The Hon. P. HOLLOWAY: I believe so. I am not sure if there are signs—

The Hon. T.G. Cameron: You believe or you know?

The Hon. P. HOLLOWAY: No; I don't know. I am advised that government cars—

The Hon. R.I. Lucas: Yes, but they don't have signs.

The Hon. P. HOLLOWAY: They may not have signs, but I believe it is the policy.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Whether or not you have signs is not really the—

The Hon. R.I. Lucas: You just said they have to.

The Hon. P. HOLLOWAY: No.

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

The Hon. P. HOLLOWAY: No; I didn't say that.

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: No; I said there are regulation-making powers, and that would be the intention.

The Hon. T.G. Cameron: You said that all government cars will have signs.

The Hon. P. HOLLOWAY: The intention would be—

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: No, the provision is there under the regulatory powers to do that. Obviously, that would not come into effect until that regulation was proclaimed, but there is a provision there to do it. It would probably make sense to do that but, until such a regulation is introduced, there is nothing in the bill that would require it. However, let us also understand that the bill does exempt an individual so that, if the individual is the only person who uses the car, they can smoke in it. The essential protection is that if other people are using a work vehicle others should not be smoking in it because it can affect other people—that is the logic behind the legislation.

The Hon. J.F. STEFANI: Do I understand, then, that this proposal says that all government vehicles (including chauffeur-driven cars), if they are not already fitted with a sign, will have to be fitted with one, because if they are not so properly designated the taxpayer becomes liable for possible workers' compensation claims from passive smoking?

The Hon. P. HOLLOWAY: I read some cases before, when the Hon. Nick Xenophon asked questions, where people had claimed compensation because of passive smoking. I guess if someone can prove that they suffered from an ailment as a consequence of—

Members interjecting:

The Hon. P. HOLLOWAY: Do you want an answer or not?

The CHAIRMAN: Order! Honourable members are too humorous after dinner.

The Hon. P. HOLLOWAY: The point is that whether or not you are eligible for workers' compensation is something that has to be established. If someone travels in a government car and they can establish that they have contracted lung cancer, or whatever, from passive smoking as a result of being in that car, then presumably they would have a claim—regardless of whether or not there were warning signs.

The whole point about some of this legislation is that the government is trying to reduce its capacity for liability. As my colleague the Hon. John Gazzola just pointed out to me, smoking is not permitted in this chamber, but we do not have to have signs up—everyone knows that it is not permitted. So, I do not know whether you can necessarily tie the existence of signs to this. Having signs may be a very prudent thing to do to reduce liability, and that is why hotels and other places do it—and we have had all these debates on IP and a whole lot of other areas. It may be prudent to have signs, but it is not necessarily essential to do so.

The Hon. J.F. STEFANI: At the risk of being considered petulant, I just want to advance this proposal: as I interpret this clause, we are now saying that there is an obligation for the workplace to be smoke-free—no ifs or buts. So, if this became law it would be incumbent on the government to ensure that every government vehicle—whether it is used by a number of people (some of whom may smoke) or a single person—which is a workplace in terms of the function of a public servant going from place to place, has to be properly designated with a sign that appropriately declares the vehicle to be a non-smoking workplace. Otherwise, there is a serious

and possible consequence of liability flowing from a possible asthma attack, runny nose, lung cancer or whatever.

The Hon. P. HOLLOWAY: Again, I make the point that if a vehicle is used by multiple users then, yes, that is the case. But the exemption is that, if a vehicle is used by only one particular person—and that could be the case in the government, because I think there are some vehicles that are assigned to an individual—and other workers are not using that vehicle, there is no such requirement. I guess that, essentially, that is the same as the situation in any other workplace.

The Hon. J.F. STEFANI: I would like to put one final proposal to the minister. Assuming that the vehicle is allocated by the government as part of a package and the government employee is permitted to use the vehicle for private purposes, in consequence of that government vehicle being classified as a workplace the liability then flows if users of that vehicle—whether family, relatives or people who are being given transport from point A to point B—incur an injury or are subjected to smoke in a workplace owned by the government. Can the minister please advise the chamber what liabilities, if any, flow in those situations?

The Hon. P. HOLLOWAY: My advice is that if there is another employee using the car that should not be the case, and it is understandable why that would be the case: you would not want other employees in the vehicle. My advice is what I think the Hon. Mr Stefani is saying: that, if other workers are not using the car but it is the family who are using the car, effectively it is exclusively your car.

The Hon. T.G. Cameron: You are introducing a law you cannot possibly implement and control.

The Hon. P. HOLLOWAY: I think in a sense you can certainly give effect to the spirit of it. If somebody has one vehicle for their exclusive use and they are a smoker, provided they do not take other workers in the car they can smoke, but if an employer has a number of vehicles that are used by multiple employees, the employer should prevent smoking there. The reason is that we are told that evidence shows that there can be a risk because of the retention of toxins in the fabrics or the material of the vehicle. It is fairly simple logic. I also point out that under clause 79 of the Tobacco Products Regulation Act there is this general defence:

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

I do not think anybody would seriously suggest there would be a whole lot of people before the courts because they have allowed smoking in the car, but there is an important principle there.

Whether or not we like it, we have seen other bills introduced in parliament because people suing others for things that happen has a significant impact on our law. That is why we made all the Ipp reform changes and others—to try to remove the liability that is pushing insurance premiums through the roof. Whatever one says or thinks about this legislation and its enforceability, nonetheless it sends a clear message that, if you have vehicles and a number of workers are using those vehicles, then you should not allow smoking in those vehicles, because you are liable for damage. The evidence is that other people in that vehicle may suffer damage. A prudent employer would take cognisance of that fact. Otherwise, as the Hon. Julian Stefani said earlier, you might end up being sued if there is sufficient evidence that somebody who was in that vehicle contracted some disease as a result of it. As I indicated earlier, there is some evidence that that is the case. What more do I say? Whether it is easily defended or prosecuted or whether there will be many people before a court is not really the issue.

The Hon. A.J. REDFORD: I appreciate that, putting aside the fact that I can get poison seeping into my body simply sitting in a chair—they say you learn something every day. As I understand the minister said in response to my questions, if I smoke in a vehicle, my employer is deemed to be the occupier and therefore is liable. My concern is what happens in the trucking and transport industry, which is a significant industry in this state. I know the Hon. Bob Sneath would agree with me that the members of the TWU—the drivers in these vehicles—are hard working people who work long hours, and some of them smoke. In fact, when I pull over and talk to these guys, I see that most of them smoke. I also know that they spend considerable periods of time in their truck. I also know from experience that they are a fairly independent minded group of people. I also know that an efficient transport operator such as Scott Industries does not simply assign one driver to one vehicle. From what I can understand in relation to this definition, effectively what the government is doing with this definition in the legislation is to totally ban smoking in all trucks in South Australia, commencing next month. I would be interested to know whether the minister agrees with my understanding of the effect of this legislation.

The Hon. P. HOLLOWAY: If the vehicle was not assigned to an individual person it is my understanding that that would be the case, yes, unless the vehicle has one driver.

The Hon. A.J. REDFORD: Can the minister tell me whether or not the transport industry, either through the workers and their representatives (that is, the TWU) and/or the major transport operators in this state, were consulted in any way about this legislation?

The Hon. P. HOLLOWAY: I have no knowledge of whether or not they have been consulted. Obviously there was significant consultation in relation to the bill originally. There was also significant discussion and consultation in relation to the parts of the bill relating to other workplaces. In relation to this particular part, I do not have any advice on that.

The Hon. SANDRA KANCK: I estimate that we have been on this amendment now for about 50 minutes. I am not sure why we have been on it for 50 minutes. We have a simple choice. We have the bill with a form of wording and we have an amendment from the government to change that form of wording. If the opposition does not like it, why is it not putting up an alternative or voting to remove that provision from the bill? If members of the opposition are not doing that, we are wasting our time.

The Hon. T.G. CAMERON: With due respect to the Hon. Sandra Kanck, this chamber has had to endure the Australian Democrats meandering through legislation ad nauseam at times. With respect again, some of the questions that are being asked, particularly those of the Hon. Julian Stefani, are right on the mark. I am concerned about the wording of this legislation. I am terribly sorry if the honourable member is upset about this, but I have a heap of questions I want to ask on this as well. So tough, all right?

The CHAIRMAN: Order! I think all members have a duty and a responsibility to consider this bill in respect of their constituents and members of the public. I think some members are mixing their responsibility to their constituents with their addictions, and members are starting to become

obnoxious. I draw members back to the discussion. The Hon. Mrs Kanck makes a very good point. An amendment has been moved. A lot of questions have been asked, and we have never restricted members from asking questions about the clause we are discussing. I point out to the Hon. Mrs Kanck that, whilst it may be tedious at times, it is perfectly legitimate. Provided the honourable member is asking a question on the matter that is before the committee, I am duty bound to allow them to ask that question. It is a bit tedious at times.

Some members find the matter jocular, but I do not think it is. I think we should all concentrate on considering the bill on its merits and in the interests of the public of South Australia. From time to time things change: it is either time for change or it is not. I ask all members to maintain the decorum of the council and to be civil to one another during the course of the debate.

The Hon. A.J. REDFORD: With respect, Mr Chairman, I think I am the only cigarette smoker who has contributed. You made the comment that, because I am the only person, I have confused my addiction with my points. If I have, I apologise, but I think I have asked some legitimate questions about the broadness and the extent of the impact of this legislation.

The CHAIRMAN: We agree on that point, the Hon. Mr Redford.

The Hon. A.J. REDFORD: That is all I have sought to do, and I have tried to do so in good humour. What I dislike intensely is that, the minute someone stands up in this place and advances something that might contravene some thought that the Hon. Sandra Kanck has, we are accused of wasting time. No-one is asking the Hon. Sandra Kanck to sit in this place, if she does not want to sit here and explore the extent and the breadth of this bill. I reject what she says. She is persistent in saying that everyone else ought to shut up unless they agree with her, but that is not the way in which this Legislative Council should operate. I have got that off my chest because I am tired of the attitude that she brings into this place.

The CHAIRMAN: Let us return to the matter before the committee.

The Hon. A.J. REDFORD: All the Hon. Julian Stefani has done is raise some issues about liability, and we have now discovered that signs will have to be put in every single government car—and that is fine. My concern is that inside a month we will bring in a ban in every long-haul truck in South Australia, and what I have also established is that, for a start, there has been little or no consultation with the members of the TWU (who will be most affected by this) and/or the proprietors of some pretty significant businesses in this state and the impact that that might have. That is not to say that they might not support this legislation. That is also not to say that I can possibly predict their attitude. All I can say is that there are certain elements within the anti-smoking lobby group who would do their cause a lot more good if they ran a broader public consultation process in terms of the effect of this legislation.

One other issue I raise concerns the phrase 'that is used for work purposes by only one person'. The minister may well have touched on this earlier in response to a question from the Hon. Julian Stefani, but I am not sure what is meant by the term 'only one person'. I can understand if the use of the term 'one person' relates to employment, but that does not appear to be the case. What it can mean is that the person can be hit with an expiation notice if it is used by their spouse who might also be a smoker (the example I gave before dinner) or by co-workers such as the Hon. John Gazzola picking me up on the way to work. For example, we are both consenting adults, we both smoke and we are smoking in a vehicle that is provided to him generally for his exclusive use. Again I think that that is just petty, but I would be interested to know whether the minister and his advisers are of the view-and I would not take the Hon. Gail Gago's advice, because she generally gets it wrong—that my understanding of the effect of the legislation is correct. The reference to the one person has no reference to whether or not they are employees. It is simply a reference to the number of people who generally are in the vehicle for work purposes.

The Hon. P. HOLLOWAY: The exemption states 'a vehicle that is used for work purposes by only one person'. Presumably, if the spouse is in the car, it is not being used for work purposes, so this paragraph would not apply. That is my understanding. It is also my understanding that truck drivers are required to have regular breaks every several hours or so.

The Hon. T.G. Cameron: They go to sleep at the wheel.

The Hon. P. HOLLOWAY: So that they do not do that, they are required by law to have—

The Hon. T.G. Cameron: The law requires them to have breaks.

The Hon. P. HOLLOWAY: Exactly, and that is when one would assume that most of them would smoke.

The Hon. T.G. Cameron: You live in cloud-cuckoo-land.

The CHAIRMAN: Order!

The Hon. P. HOLLOWAY: All I can say is that, whenever I pull into a garage to get petrol, I see truckies, although perhaps a petrol station is not a good place to smoke, but that is another issue. However, that is where a lot of truckies will have their smoke.

The Hon. T.G. CAMERON: My question is to the Leader of the Government. What response did he get from the United Trades and Labor Council when he discussed these amendments to ban smoking in any workplace? What was its reaction, and does it support these amendments? You have not even discussed them with the UTLC. It does not even know about them. They will get a shock when they read the press tomorrow, too.

The Hon. P. HOLLOWAY: I indicated earlier the background for the amendment, namely, that it came out of the debate in the lower house in relation to workplaces generally. It came out of a very lengthy discussion paper from the committee to which I referred earlier, which had representatives from the AHLMWU. We can talk about vehicles, but far and away the major impact of this bill is on licensed premises, such as restaurants. I am advised that only 6 per cent of workplaces, other than licensed premises, have smoking at the workplace, and that reinforces the point that the major thrust of this bill relates to licensed premises. That is why groups such as the AHA and the AHLMWU were involved in the discussions, because that was the major impact. This amendment in relation to vehicles being the workplace is one that came later.

The Hon. T.G. CAMERON: So, the short answer is that the UTLC does not even know about it. There has been no discussion at all—yes or no will do.

The Hon. P. HOLLOWAY: As I said, it was involved in the workplace.

The Hon. T.G. CAMERON: I said the United Trades and Labor Council. A simple 'no' will suffice.

The CHAIRMAN: The Hon. Mr Cameron is being tedious.

The Hon. P. HOLLOWAY: One would presume that the AHLMWU representative on that working party would have been there because, had you asked for a UTLC employee, it would have obviously nominated the AHLMWU, because it is the most significant union involved.

The Hon. T.G. Cameron: This is nonsense you are talking.

The Hon. P. HOLLOWAY: Scarcely.

The Hon. A.J. REDFORD: I fully understand and accept that the government went through a process to consult with workers in the liquor trade industry through the Miscellaneous Workers Union and the SDA.

The Hon. P. Holloway: Which is a member of the UTLC, too.

The Hon. A.J. REDFORD: I accept that. The outcome of that consultation was a staggered introduction of measures—again, which I understand has been broadly accepted in this parliament. I am concerned that a substantial number of workers in the transport industry were not subject to this consultation and, as a consequence, the effect of this legislation is not staggered in terms of its introduction. It hits them with full force in only a few short weeks, and they are not aware that this is coming. That is the concern I raise specifically. It may well be that, if they were involved in the consultation process, they might have said, 'Bring it on. We're all happy to have it next month.' I suspect they might not be. That is the point I make, and that will be the point I make when I run into Transport Workers Union members and talk to drivers on all sorts of issues, particularly those who live in marginal seats.

The Hon. T.G. CAMERON: The amendment provides: 'Delete paragraphs (b) and (c) and substitute: (b) a place (other than a vehicle)' and paragraph (c) also uses the word 'vehicle'. That word has been used on a couple of occasions. Will the Leader of the Government outline just what that word covers? Does 'a vehicle' cover a front-end loader, a tractor, a weed sprayer unit operator, or a motorbike? Would it also include an open-air ute?

The Hon. P. HOLLOWAY: There is a definition in the legislation that simply says 'vehicle includes any kind of aircraft or vessel'. Apart from that, it is really just common usage within the legislation. There is a definition in the principal act.

The Hon. T.G. CAMERON: What is the definition that will apply in this legislation? Under the general definition, a motorbike can be included.

The Hon. P. HOLLOWAY: The definition in the principal act is that 'vehicle includes any kind of aircraft or vessel'.

The Hon. T.G. CAMERON: It is anything. Does it include a bike or a boat?

The Hon. P. HOLLOWAY: Yes. I do not think that needs to be too much of a problem, because, if it is a bike and you were smoking, you would be using only one hand, which is probably dangerous and probably against some other law anyway; so I do not think we need worry too much about that one.

The Hon. A.J. REDFORD: I do not have any problem with paragraph (b) as it is defined within the clause. However, I would like to see paragraph (c) deleted altogether. The minister can then go back and look at the vehicle issue over the next few weeks and use the regulation-making power to go through a consultation process with workers of the TWU. We can think more clearly about what is actually meant by 'vehicle' and perhaps come up with a more sensible practical package about smoking in vehicles; and then do it by way of regulation. I do not want to delay the legislation. I want to get this bill passed. We have been misrepresented in another place about what has happened with this legislation.

I know the Hon. Paul Holloway might feel better if we delete paragraph (c) and, on that basis, some sensible people on the Legislative Review Committee, led by the Hon. John Gazzola—and there is a balance on the committee, I have to say, because we also have the strong anti-smoking campaigner, Chris Hanna—can think through more carefully the whole process of defining what can or cannot be done in a vehicle. I invite the minister to consider that suggestion.

The Hon. P. HOLLOWAY: It is not up to me. There has been a debate on some of these issues. I suggest that we go on with the debate. The government will keep to its position of supporting these things. It is highly unlikely that we will finish the debate tonight, but we can come back to it at another time. I will ask the minister to look at it to determine whether or not she believes it needs any alteration. As far as the government is concerned, I think it is best if we proceed. The point that needs to be made is that the vast majority of Australian workers now accept that workplaces should be smoke free.

Members interjecting:

The Hon. P. HOLLOWAY: Exactly; and for very good reason—because there are health effects. The definitions in this bill are the same as in other jurisdictions. I am not conceding that there is necessarily a problem with this. I do not know what level of consultation was undertaken in relation to this clause. I suggest we go on. If the honourable member does not like the clause, he can vote against it. All I can do is undertake to ask the minister to look at the matter to determine whether issues have been raised in the debate that need further consideration. I am sure she will do that. If she believes that it is not necessary, we will proceed. We have the capacity to a come back to it if we wish.

The Hon. R.D. LAWSON: I am most surprised at the interpretation the minister has placed on the clause in his own amendment, where he says that a vehicle will be treated as a workplace if it is a vehicle that is assigned to more than one person. Clearly, that is not what the provision says under his own amendment. I would think that this provision means what it says, namely, a vehicle will not be a workplace if it is used—not assigned but, rather, used—for work purposes by only one person. That use clearly has to be identified at a particular point in time. The fact that a vehicle was used by one driver in 1999, assigned to another one in 2000 and then to another one in 2003 does not make it a vehicle that is used by more than one person. It is a vehicle that is being used by one person.

The Hon. P. HOLLOWAY: I will consult with the parliamentary counsel on that matter. I am not quite sure what point the deputy leader is trying to make. The new amendment states 'a vehicle that is used for work purposes by only one person'. It does say 'used'.

The Hon. R.D. Lawson interjecting:

The Hon. P. HOLLOWAY: Yes, but it means if the vehicle is assigned to more than one person: it uses the word 'assign'.

The Hon. R.D. Lawson interjecting:

The Hon. P. HOLLOWAY: Yes, but if it is assigned to more than one person, obviously, that vehicle can be used by more than one person. What is the difference whether the word is 'use' or 'assign'? Essentially, it is—

The Hon. T.G. Cameron: There is a difference—at law there is a difference.

The Hon. P. HOLLOWAY: Yes, but it has the same effect. If a vehicle is used for work purposes by more than one person, it should be smoke-free. That is all the law is saying.

The Hon. T.G. CAMERON: With respect to the amendment that the minister has moved, can he tell the committee what the penalty is under clause 4, page 4, paragraph (c)? If someone breaches that, what is the financial penalty?

The Hon. P. HOLLOWAY: They are included on page 8 of the bill.

The Hon. T.G. CAMERON: I know. What is it?

The Hon. P. HOLLOWAY: The expiation fee is $75 and the maximum penalty is $200.

The Hon. T.G. CAMERON: If you own the vehicle is there another level of fines, to which the Hon. Angus Redford is referring?

The Hon. P. HOLLOWAY: New section 46(4) provides:

If smoking occurs in an enclosed workplace in contravention of subsection (1), the employer with responsibility for the workplace under the Occupational Health, Safety and Welfare Act 1986 is guilty of an offence. Maximum penalty: $1 250. Expiation fee: $160.

The Hon. T.G. CAMERON: This refers strictly to tobacco. With respect to the offender, or the offending vehicle, what if people were smoking marijuana?

The Hon. P. HOLLOWAY: That is, presumably, a prohibited substance and—

The Hon. T.G. CAMERON: No, just a minute. You cannot be fined for smoking marijuana in South Australia.

The Hon. A.J. Redford: Yes, you can.

The Hon. T.G. CAMERON: In a public place.

The Hon. A.J. REDFORD: Mr Chairman, can I make a request to you, so I put my position? I would like to see this whole vehicle matter thought through more carefully. I am quite happy with paragraph (b) in terms of the minister's amendment, but I would like to have paragraph (c) deleted, either as in the bill as it currently stands or as amended by the minister, consistent with what I have said earlier. I would like government members then to go away and think their way through about how vehicles are to be treated. I would be grateful if it could be put in such a fashion that my voting would reflect that intention.

The Hon. P. HOLLOWAY: I can only repeat what I said earlier. As far as the government is concerned, we wish to proceed with it. As I indicated earlier, I will see whether the minister believes there is any reason to re-examine it. Let us see what happens with the vote, and we will deal with it from there.

The CHAIRMAN: It is possible to do two things. The amendment is to delete paragraph (b) and replace it with a new paragraph (b), and it states that it wants to delete paragraph (c). We can put two questions. We can do paragraph (b) first, minister, and insert a new (b), which would be your amendment. We would then put the question that the amendment be that existing paragraph (c) be deleted and insert a new paragraph (c). Are you happy to proceed along those lines, minister?

The Hon. P. HOLLOWAY: I am quite ready to proceed. I indicate that the government will be backing its original amendment, but if other members want to vote—anything that will progress it I am happy to do at this stage.

The Hon. R.I. LUCAS: I indicate that I am inclined at this stage to support the proposition my colleague the Hon. Mr Redford has indicated. Put simply and succinctly, I accept the arguments about the dangers of smoking; I accept the arguments about the dangers of passive smoking in a vehicle. I am not yet a subscriber to the seeping toxin theory to which we are being asked to subscribe. I am, therefore, not convinced by the evidence that has been provided by the government in relation to that aspect of it.

The Hon. G.E. Gago interjecting:

The Hon. R.I. LUCAS: We would be interested to look at the science if the Hon. Gail Gago is prepared to show it to us. We have not seen it. At this stage, I would be inclined to support the proposition that the Hon. Mr Redford has indicated.

The Hon. J.F. STEFANI: I have some additional observations that I will draw to the minister's attention. The defendant can have as a defence against an offence under this provision if he or she did not provide an ashtray, matches or lighter. Does this mean that the government will ensure that all cigarette lighters normally provided in the vehicles will be removed?

The Hon. P. HOLLOWAY: As I understand it, vehicles do not have ashtrays any more; some have cigarette lighters. I actually use mine for a cassette player. It is a very convenient 12-volt contact to use. I have never used it to light a cigarette.

An honourable member: You're not a smoker.

The Hon. P. HOLLOWAY: No; that is true. The reality is that, if a vehicle is used by just one person, under this bill that person would be entitled to smoke in it if they so wished and, therefore, if they wanted the convenience of a cigarette lighter, presumably, they should have one. This bill does not change the Australian design rules for motor vehicles and does not intend to.

The committee divided on the amendment:

AYES (12)

Evans, A. L.	Gago, G. E.
Gazzola, J.	Gilfillan, I.
Holloway, P. (teller)	Kanck, S. M.
Lawson, R. D.	Lensink, J. M. A.
Reynolds, K.	Roberts, T. G.
Sneath, R. K.	Xenophon, N.

NOES (7)

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

PAIR

Zollo, C.	Dawkins, J.S.L.

Majority of 5 for the ayes.

Amendment thus carried.

The Hon. NICK XENOPHON: I move:

Page 4, line 20—Delete '70' and substitute:
50

This relates to the definition of enclosed space. Under the current legislation, the definition states:

A place or area is enclosed if it is fully enclosed or is at least partially covered by a ceiling and has walls such that the total area of the ceiling and wall surfaces exceeds 70 per cent of the total notional ceiling and wall area.

This amendment seeks to reduce that to 50 per cent for a number of reasons. I think it is important that the precautionary principle is applied in relation to this whole concept of enclosed space. Seventy per cent is not adequate. I have discussed this with Action on Smoking and Health CEO

Anne Jones, and there is research from the *International Journal of Environmental Health Research* of February 2004 headed 'A study of environmental tobacco smoke in South Australian pubs, clubs and cafes.' Reference is made there to work carried out by Professor Repace—the international expert based in Washington DC, and referred to by the government in its second reading contribution—that nicotine levels and other toxins in non-smoking areas were lower than in the smoking-permitted areas; however, even these lower values are still similar to those reported by Repace as posing a significant working lifetime risk of heart disease and lung cancer.

My understanding is that the more open space the less chance of workers being exposed. There are some significant risks with 70 per cent, and if we are going to adopt a precautionary principle in terms of workers being exposed to second-hand tobacco smoke then this would be a desirable outcome. One of the conclusions in the article I referred to says:

> The total ban of smoking in hospitality venues will lead to the greatest reduction of risk from ETS [environmental tobacco smoke] exposure. However if smoking is permitted, then it should be isolated to separately enclosed areas with exhaust units which maintain a negative pressure relative to the rest of the premises, a high volume of outside air should be supplied to non-smoking areas and separate air-conditioning systems should be used for smoking and non-smoking areas.

It goes on to talk about some recommendations made by the US National Institute for Occupational Safety and Health. If we are talking about 70 per cent as the yardstick, my concern is that that is not satisfactory. Fifty per cent would be a preferred outcome to ensure that there is at least a greater chance of there being a reduction in environmental tobacco smoke.

The Hon. P. HOLLOWAY: The definition of an enclosed place was developed following consideration and consultation by the government. A number of venues had been reviewed and considered and the implications for these venues have been determined under different definitions. The government aimed to develop a definition which was clear and flexible to balance the health needs with the needs of hospitality venues at different times of the year.

The government was seeking to make places available for people to smoke which were comfortable and had sufficient ventilation to minimise risks. The definition of 30 per cent of the four walls and ceiling unenclosed was subsequently determined by the government, and it was the basis for consultation with the industry. The government has consulted with people about banning smoking in enclosed areas where at least 70 per cent of walls and ceilings are enclosed.

It is important to ensure that we have workable, practical legislation that is not ambiguous. An area that is 30 per cent unenclosed has a very large opening, allowing a very significant amount of ventilation. Most balconies and alfresco areas will only just be considered unenclosed. These areas are likely to have two ends completely open, allowing the flow of air through the area. Furthermore, our definition of enclosed is consistent with the definition in Ireland and recent guidelines in the Australian Capital Territory. Consequently, the government wishes to keep the current definition of 'enclosed' because it has been carefully considered, is unambiguous and is consistent with legislation in other jurisdictions.

The Hon. J.M.A. LENSINK: In a practical sense, can the minister advise what percentage a standard, average beer garden might fit into?

The Hon. P. HOLLOWAY: I am not sure that there is a standard, average beer garden, but we will try. If it has no roof, it is considered unenclosed so smoking is allowed. I am advised that if you take the four walls and the ceiling, if one third of those is not there then it is unenclosed and you can smoke.

The Hon. D.W. RIDGWAY: Can the minister advise how a beer garden that has, perhaps, a lattice or a structure that allows air movement is viewed?

The Hon. P. HOLLOWAY: Clause 4(1) provides this definition:

> ceiling includes any structure or device (whether fixed or movable) that prevents or impedes upward airflow, but does not include anything prescribed by regulation

So, there are two things there. First, regulation allows you to deal with some issues, but the essential definition is 'that prevents or impedes upward air flow'. For a wall, it is 'that prevents or impedes lateral air flow'. So, if it is fly wire, presumably that would not prevent or impede the lateral air flow.

The Hon. D.W. RIDGWAY: So, in effect you could have an insectproof beer garden with fly wire that would not be enclosed?

The Hon. P. HOLLOWAY: Essentially, yes; if the material making it insect proof does not impede the air flow, it is as if it is open.

The Hon. SANDRA KANCK: The Democrats have long advocated the precautionary principle in relation to the environment, so it is something we are very familiar with. I have not heard that phrase used in relation to physical health, but it makes a lot of sense and I indicate the Democrats' support for this amendment.

The Hon. NICK XENOPHON: Could the minister elaborate? I know that other jurisdictions such as the ACT are doing something similar, but what studies are there to indicate the difference if it is using a 70 per cent rule? How does that work? If you are at the back of the room and it complies with 70 per cent, clearly there will not be as much ventilation there for the workers in the industry. I would be grateful if you could indicate on what basis 70 per cent will work better than, say, 50 per cent in terms of looking after the health of workers in the industry.

The Hon. P. HOLLOWAY: I thought I had already indicated that with my earlier answer. The definition that we have provides that about one-third has to be open, and that should allow sufficient air flow. I suppose that inevitably one could comment that this legislation is after all an approximation. It is not rocket science, but what we are trying to do—and I come back to the basic point of the legislation—is to get some genuine improvements in relation to the health aspects while at the same time still allowing some places for those people who feel the overwhelming, possibly addictive, need to smoke to be able to do so.

The Hon. R.I. LUCAS: I ask the minister to clarify this for the sake of members of parliament. As I understand it, 'Botany Bay' has four walls and a slat type roof which can either be open or closed. Does the definition envisage that a particular space can be enclosed or not enclosed, depending on whether the ceiling slats are open or closed?

The Hon. P. HOLLOWAY: The definition of ceiling includes any structure or device (whether fixed or moveable) that prevents or impedes upward air flow but does not include

anything prescribed by legislation. They are vertical, so they would not impede air flow. That is the ceiling. My advice is that probably anywhere else than Parliament House it would not be but, because of the large height of the walls, then presumably 30 per cent would not be open. Apparently, there are exemptions. I make another point: apparently, in Parliament House there are special provisions related to the Joint Parliamentary Services Committee under the Joint Parliamentary Services Committee legislation, but a similar place elsewhere would be one which was fully enclosed or at least partially covered by a ceiling and which had walls such that the total area of the ceiling and the wall surfaces exceeded 70 per cent of the total notional ceiling and wall area. So, the slats presumably partially cover, but I guess if they are fully vertical and do not impede the air flow one would have to allow it.

The Hon. R.I. LUCAS: There seems to be conflicting views as to what the minister has just said. There is one particular reason that in Botany Bay special provisions apply so that you can continue to smoke there even with this legislation but, if the same circumstances existed in another building, as long as the slats were vertical and air was escaping through the ceiling, that could be a smoking area. Can we get on record whether that is the case?

The Hon. P. HOLLOWAY: My advice is that without the ceiling it is unenclosed. However, if it had a sail or something such as that over it which might impede it, that could be a different matter.

The Hon. R.I. LUCAS: A number of sidewalk cafes obviously have moveable sides, either a heavy-weight clear plastic which is used on occasions and on other occasions just a heavy-weight material. I am assuming that when those walls are lowered or used, then it is treated in the same way as the minister has been referring to in terms of whether it be a fixed wall or a moveable one in those cases. Therefore, I am also assuming that the one space such as a sidewalk cafe, in some circumstances, can either be enclosed and therefore non-smoking; and in other circumstances can be unenclosed and therefore a smoking environment, depending on how many of the plastic walls they happen to drop down at any particular time.

The Hon. P. HOLLOWAY: My advice is that it is the case that, if all the plastic walls are down so that more than 70 per cent of airflow is restricted, then, yes, they are enclosed, but if they are up, then it is unenclosed and you can smoke.

The Hon. D.W. RIDGWAY: What process does the government intend to use to monitor which buildings have a 70 per cent enclosed room? I did some calculations. For instance, if you had a room that was 10 metres square and the walls three metres high and it had a ceiling, you would have to have 2½ walls missing to conform with the 70 per cent rule.

The Hon. P. Holloway interjecting:

The Hon. D.W. RIDGWAY: I can explain. If you have four walls that are 10 metres by 10 metres and three metres high, each wall is 30 square metres—10 metres by three metres. Four walls is 120 square metres. A ceiling that is 10 metres by 10 metres is 100 square metres. Therefore the total surface area of the room is 220 square metres and, from a rough calculation, 70 square metres would be 30 per cent of that surface area. If the walls are 30 square metres each, you would need to take away 2.3 walls. I guess that is why Botany Bay would be exempt because, if it was 10 metres square, 100 square metres of ceiling is not there—there is no ceiling, and in that situation you would have nearly 50 per cent of the surface area of the room missing.

The Hon. P. HOLLOWAY: The formula is there. For cases which might be covered by this act, it is just a matter of their simply using a tape measure to work it out.

The Hon. D.W. RIDGWAY: Is it a self-regulatory process?

The Hon. P. HOLLOWAY: One of the reasons why we have argued there should be a transitional period for everything is to ensure that industry has some opportunity to conform with it. We announced a publicity campaign earlier and I understand from our discussions with the AHA that it has agreed to employ an architect or business consultant to provide advice about these things. I imagine that, if commonsense prevails, you would not have inspectors going out on day one with tape measures and fining hotels because they are 0.2 per cent below the limit. Obviously I think we generally do manage to enforce the laws with commonsense.

I am also told that often it is the public, particularly non-smokers, who complain and this will be the source of any potential prosecution that is made because many people in the public do not like putting up with tobacco smoke and they will certainly make their views known. One would always hope that these new rules are interpreted with commonsense.

The Hon. NICK XENOPHON: I know the minister said that it is not rocket science and the 70 per cent rule has been brought in as a result of consultation. I worry about that because I do not think the precautionary principle has been used. Notwithstanding that, what undertakings can the minister give in respect of air quality studies of the effectiveness of this? You can measure levels of second-hand tobacco smoke in terms of concentrations in enclosed spaces or semi-enclosed spaces. Will there be some ongoing monitoring of that? I also know the Nicalerts (like Bandaids), which I know hospitality workers have worn in the past and which actually measure their level of exposure, have been a very useful testing measure. What level of monitoring will there be to ensure that this 70 per cent position is effective and that it is not needlessly exposing hospitality workers to second-hand smoke?

The Hon. P. HOLLOWAY: South Australia is not just acting alone with these things. These rules against smoking are changing not just throughout the country but throughout the world. In answer to some questions asked by the Hon. Nick Xenophon last week, I referred to results of a number of studies from all around the world which have looked at these things and I am sure that will be the case in the future, that is, people will look at this sort of information. The consequence of what we have in this bill represents the results of some very lengthy discussions with the industry and people who are looking at this issue from an anti-smoking perspective based on their studies and their information.

So, essentially what we have is the result of those discussions. All around the world new studies and information become available, and in the future that will be the basis of any further change. However, at this stage the government argues that this is the best result, based on the information now available to us and on the very lengthy discussions with the industry and other stakeholders with an interest in this matter.

Amendment negatived; clause as amended passed.

Clause 5.

The Hon. NICK XENOPHON: Will the minister explain what the interaction will be between the Independent Gambling Authority and this act? If the IGA makes certain

recommendations about tobacco, is it the case that it will be excluded by virtue of the operation of this act?

The Hon. P. HOLLOWAY: My advice is that this clause aims to ensure that the Independent Gambling Authority cannot introduce smoking restrictions under its term of reference. The hospitality smoke-free provisions in this bill are comprehensive, and the implications have been thoroughly considered. A public consultation occurred from 15 April to 30 May 2003 and, consequently, a careful phased-in approach is planned. If the Independent Gambling Authority were to introduce its own restrictions on smoking, it could undermine the effectiveness of this bill and create confusion among proprietors and the public. So, that is exactly why we are inserting this clause, so that it will effectively stop the Independent Gambling Authority from introducing any changes that will affect the timing of the proposals to abolish smoking in gaming rooms.

The Hon. R.I. LUCAS: What power does the IGA have at present to restrict smoking?

The Hon. P. HOLLOWAY: I do not know that it has any direct powers. The powers of the IGA are restricted to establishing responsible codes of gambling practice. I suppose it is possible that, through a code, it might be able to have indirect influence.

The Hon. R.I. LUCAS: But does it not have to be approved by parliament? That was the way it was originally drafted.

The Hon. P. HOLLOWAY: That may well be the case, but I guess that this puts it beyond doubt. I will check that with parliamentary counsel to see whether they can advise us on that matter.

The Hon. R.I. LUCAS: I think this is an important issue. If this clause is to be inserted, I will not stand in its way but, in an excess of caution, I am interested to know on what legal basis that is being done. In the original drafting of the IGA, which I understood broadly flowed over into the revisions over recent years, the intention was, to the extent possible, not to create a monster of the IGA. I think it is fair to say that some may have the view that, particularly through the actions of the chair and others, it may well have taken on that appearance anyway.

Nevertheless, the intention of some of us in this parliament was to say that it had a body of work to do within strict guidelines, but we did not want it over there by itself, becoming a law unto itself. The drafting intended was in relation to codes of practice, etc. It could do the work but, essentially, elected members of parliament would ultimately have the power to disallow or not in relation to that work. If that has changed in some way, I would be interested to know that from the minister's advisers. I understand that is being checked at the moment. I am grateful to the Hon. Mr Xenophon for raising this issue to see what exactly is intended in relation to the clause.

The Hon. P. HOLLOWAY: I have the relevant section of the Gaming Machines Act in front of me. Section 74B provides for codes of practice and alterations to codes disallowable by parliament. However, subsection (3) provides:

> Sections 10 and 10A of the Subordinate Legislation Act 1978 apply to a code, or an alteration to a code, laid before parliament under this section as if it were a regulation within the meaning of that act.

Mr Chairman, I know you were an expert on section 10A at one stage.

The CHAIRMAN: Section 10AA.

The Hon. P. HOLLOWAY: Subsection (4) provides:

> A code of practice or alteration to a code of practice may provide for the whole or any part of the instrument to come into operation on the day on which it is adopted by the licensee or on a later day, or days, specified in the instrument.

Certainly, the codes could be disallowed by parliament, depending on what section 10 of the Subordinate Legislation Act provides. I am not sure whether they would come into effect and then be disallowable.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Essentially, it could be disallowed.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Even though they could be disallowed, they might come into effect for that period until they were disallowed, like a regulation.

The CHAIRMAN: It is section 10AA(2).

The Hon. P. HOLLOWAY: Well, it says sections 10 and 10A apply. It may be it is just an abundance of caution.

The Hon. R.I. LUCAS: It would appear that this provision would then prevent the IGA in its code of practice from incorporating any clauses that relate to the sale or consumption of tobacco. While the parliament has the power to disallow a code of practice, this clause will be saying to the IGA, 'When you come up with your codes of practice you will not be putting into those codes of practice anything to do with the sale or consumption of tobacco products. The regulation of that will be covered by this legislation generically, rather than by your trying to do something specific in a gambling establishment.'

The Hon. P. HOLLOWAY: Certainly, it has that effect and I guess that is beneficial in itself.

The Hon. NICK XENOPHON: My recollection is that in discussion papers that have been put out on codes of practice by the Independent Gambling Authority, in relation to the issue of smoking they have specifically said, 'This is something that is being considered by the parliament.' I think they have deferred it. My principal concern is that if there are benefits—and I believe there are benefits in smoking bans with respect to problem gambling behaviour, as a result of the leaked Tattersalls report—then that is something that ought to be on the agenda. Given the nature of the codes in subordinate legislation, there always has been the option for parliament to have the final say. I do not have an issue with that. I wanted a clarification from the government.

I now know the IGA specifically exclude it, although it does concern me. If recommendations are made by the IGA to say, 'We think smoking bans would make a difference to problem gambling, based on the evidence,' I understand that this would exclude even a code being brought before the parliament. My understanding and that of the Hon. Mr Lucas is that, ultimately, parliament has the final say with respect to these codes.

The Hon. R.I. Lucas interjecting:

The Hon. NICK XENOPHON: I am grateful for the Hon. Mr Lucas's comments. That does concern me. If the IGA says, 'Based on the evidence, we think this should happen. It will make a difference to problem gambling.'—that is their statutory charter—then it is up to the parliament to determine whether or not it is appropriate the code be ratified.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I think the point is that what the authors of the bill are saying is that, if there is any legislation that deals with smoking in hotels, it should be this

legislation rather than another piece of legislation. This is essentially the principal piece of legislation that deals with smoking, and it is in this act that it should be considered.

Clause passed.

Clause 6 passed.

Suggested new clause 6A.

The Hon. NICK XENOPHON: I move:

That it be a suggestion to the House of Assembly that it amend the clause as follows:

Page 5, after line 18—

Insert:

6A—Amendment of section 10—Form of application and payment of licence fee and levy.

(1) Section 10(3)—after 'regulations' insert:

and the prescribed levy.

(2) Section 10—after subsection (3) insert:

(4) In this section—

prescribed levy means—

(a) if an amount in excess of $100 is prescribed by regulation—that amount; or

(b) if no such amount is prescribed by regulation—$100.

This is a test clause. I am not seeking to divide on it, but it relates to a levy arrangement to fund a tobacco control board. This is something that arose out of discussions I have had in the past with Neil Francey, a Sydney barrister who is best known for his work in taking on the Tobacco Institute of Australia in a 1991 Federal Court decision. He acted for the Federation of Consumer Organisations with respect to misleading and deceptive conduct on the part of the Tobacco Institute with respect to passive smoking.

The approach of Mr Francey is that, by having a tobacco control board, it would provide a cohesive approach to deal with smoking-related issues. It would provide for a range of individuals from the AMA, the Cancer Council, Quit SA, Asthma SA, the National Heart Foundation, the Drug and Alcohol Council, and so on, to deal with this issue. One honourable member in this place suggested to me that the Nurses Federation should be included. I do not have a problem with that; that is a legitimate suggestion.

That is a legitimate suggestion, but I do not know whether we will get that far. The point of this test clause is about whether we have a cohesive approach to deal with tobacco control, whether we have the feedback from the experts at the front line to deal with smoking-related disease in this state to give that advice to the minister, and that we have some teeth and some resources to deal with these issues. There is a broader issue about the federal government, which raises over $5 billion a year in tobacco excise. I know that the states get back some of that through the GST—in a sense, that the states benefit from that—and this is an attempt to say: let us have a cohesive approach to tobacco control.

I am concerned. I think that the rationale for this measure is strengthened by the fact that, over five months ago, the ministerial advisory group on tobacco handed down a report and recommendations to the minister on a tobacco action plan for the state, and it is yet to see the light of day. At the very least, I think it would have been very useful for members in this place and the other place to have read that report to see what was being recommended by the experts in tobacco control. I think that having a body with some independence, some teeth and some resources would be the way to go. But maybe its time has not yet come, given my understanding of the level of support—or lack of. But I think it is important that it be placed on the agenda.

The Hon. P. HOLLOWAY: The government opposes the Hon. Nick Xenophon's amendment. It essentially provides for a levy of at least $100 for holding a tobacco retail licence. While the government has the capacity to increase fees through regulation, this bill is focused on improving retail tobacco operations rather than increasing fees for retailers. I think that, when one considers that retailers will need to implement a raft of changes to improve their operations in terms of reducing sales to children, it would be unreasonable at this time to increase tobacco retailer fees. We are asking these retailers to do a whole lot of things—and I think reasonably so—but now is not really the time to whack them with an additional levy, even if one could do so. I have not considered this matter—and I am not sure that anyone has—in relation to its constitutionality. I think we all know what happened to tobacco excise fees. Whether the levy on a licence is—

The Hon. Nick Xenophon: If it's for a specific purpose, I think.

The Hon. P. HOLLOWAY: That may well be so. But I guess that, at the very least, it would have to be in erased type. It can only be a suggested amendment. I do not think this council would have the power to be able to introduce it—or pass it, anyway. It can only be suggested. In any case, the government is obviously opposed to it, because we think it is quite unreasonable at this time. When we are expecting the retailers to do all these things to reduce sales to minors, now is not the time to be whacking them with a big levy.

The Hon. SANDRA KANCK: I indicate that the Democrats will not be supporting this amendment. I have certainly had no indication from anyone of a need for such a body as this tobacco control board, which would follow from this levy's being set up. I have some sympathy with the view that the Hon. Mr Xenophon has put about the ministerial advisory committee and the information that has not been provided to the parliament that could be helpful in the context of this debate. Nevertheless, there are very august bodies such as the Cancer Council, the Heart Foundation and Asthma SA that provide that information and expertise quite freely to us when we need it about what sort of measures we should be putting in place. There really does not seem to be the need to have an amendment such as this. But maybe some time down the track it might be proven.

The Hon. J.M.A. LENSINK: I would like to make some comments, but I also seek clarification from the Hon. Mr Xenophon. He said that this is a test clause. If it is not successful, I would like to know whether he will proceed with his other amendments in relation to the board and the fund.

The Hon. NICK XENOPHON: I thought I would spare honourable members the agony down the track.

The Hon. R.I. Lucas: Hear, hear!

The Hon. NICK XENOPHON: I am glad that I have some agreement from the Hon. Mr Lucas on something tonight. It is a very pleasing development! I am saying that it is a test clause in the sense that I made the point about the tobacco control fund; that, in order for it to operate, there ought to be some funding for this fund. If the Hon. Ms Lensink is of the view that she thinks a tobacco control board is a desirable thing, but without the levy—she is shaking her head, I think it is fair to say. Essentially, I regard it as a test clause, unless I am overwhelmed by honourable members saying that they want a tobacco control board without this levy. However, that does not appear to be the case in terms of what is occurring. That is why I regard it as a test clause, because I see the two as interrelated.

The Hon. J.M.A. LENSINK: I thank the honourable member for that explanation. I would like to indicate that I

do not support either set of amendments. I do not support the levy, nor do I support the establishment of a control board and a fund. I think that, in reality, the control of tobacco products has advanced without the need for the establishment of such a fund. I always have fears when there are suggestions of additional boards and funds and burgeoning bureaucracies that might end up establishing themselves with a view to perpetuating their own existence in the end. As such, I think it is unnecessary.

Suggested new clause negatived.

Clauses 7 to 10 passed.

[Sitting suspended from 9.45 to 10.12 p.m.]

Clause 11.

The Hon. NICK XENOPHON: I move:

Page 5, after line 35—

Insert:

(2) A person must not sell by retail any product (other than a tobacco product) that is declared under subsection (3) to be a prohibited product.

Maximum penalty: $5 000.

(3) The Minister may, by notice published in the *Gazette*, declare a specified class of products to be prohibited products if the Minister is satisfied that the products may induce children to smoke.

The bill in its current form prohibits a person selling by retail any product other than a tobacco product that is designed to resemble a tobacco product. It would be fair to say that it is a toy cigarette clause. If it looks like a confectionery cigarette, it could encourage children to smoke and, therefore, it is prohibited. I do not think that there is too much argument about that. This particular amendment seeks to strengthen this clause to ensure that, if there are products on the market that would encourage children to smoke or even if it relates to, say, branding that is aimed at children to identify a particular tobacco brand with a children's product, the minister would have the discretion to declare, by *Gazette* notice, a specified class of products to be prohibited products if the minister is satisfied that the products may induce children to smoke. So, it gives discretion to the minister.

We know that, from documents as a result of extensive litigation in the United States, in particular, that tobacco companies have used some pretty sneaky techniques to target and survey children and, from my recollection, they have targeted children as young as six or seven in terms of what colours they liked in packaging and things like that. This simply gives the minister a broader discretion to deal with any attempt to circumvent the intent of the legislation.

The Hon. P. HOLLOWAY: The government opposes this amendment. The government has already accounted for this proposal under clause 15 of the bill. Clause 15 provides:

A person must not advertise tobacco products in the course of a business or for any direct or indirect pecuniary benefit.

Under the definitions in clause 4, 'advertise' means to take any action that is designed to publicise or promote tobacco products. This would include the sale of a product that induces children to smoke. The definition of advertise also includes 'any action of a kind prescribed by regulation'. The government can prohibit a specific action under regulation if it is deemed that this action induces children to smoke. For that reason, the government believes that this matter is already adequately covered in the bill.

The Hon. NICK XENOPHON: Could the minister elaborate on what would happen if a tobacco company or an associated company had T-shirts or soft toys in the shape of Joe Camel, for example?

The Hon. T.G. Roberts: Joe Camilleri?

The Hon. NICK XENOPHON: Not Joe Camilleri, as the Hon. Terry Roberts says. Does that cover things such as product placement or products such as discounted T-shirts or discounted fluffy toys that would be linked to a tobacco product or some clear branding?

The Hon. P. HOLLOWAY: My advice is that the new bill will ensure that the following occurs. I will give some examples. The following examples are not covered under the advertising restrictions:

- a person wearing a T-shirt which incidentally features a tobacco advertisement;
- a tobacco retailer assisting customers or potential customers when choosing a tobacco product;
- the display of a sign or signs outside a tobacco retail outlet, such as the name of a tobacco outlet, in accordance with the regulations;
- or any other action prescribed in regulations, such as the display of tobacco packets.

The issue is pecuniary benefit. Currently, inspectors have limited capacity to do anything about the type of advertising—for example, tobacco advertisements like posters and clocks—that is currently located in various stores because the shop owner can argue that he gets no pecuniary benefit from this display. Currently, pecuniary benefit needs to be proven to prevent this type of advertising; however, this is a clear form of tobacco marketing that should not occur. This bill provides that it is an offence to advertise tobacco products in the course of a business, regardless of any pecuniary benefit. That is under clause 15.

The Hon. NICK XENOPHON: I do not want to labour the point but I am trying to work out, if you had a Joe Camel fluffy toy that was being sold at a much lower price because it was being subsidised by the tobacco company, or a T-shirt being sold at a discounted price that was targeted at children and that was linked to the tobacco brand, whether the minister has the power to deal with that. If the minister does then all well and good and this amendment is not necessary, but my understanding is that there is a gap in relation to dealing with those sorts of situations.

The Hon. P. HOLLOWAY: Unfortunately, I have led such a sheltered life that I have no idea what Joe Camel is. I do know Joe Camilleri though; I have heard him—in fact, he was actually a guest on the inaugural Ghan, but that is another story. The bill, under clause 11, provides:

A person must not sell by retail any product (other than a tobacco product) that is designed to resemble a tobacco product.

This would, of course, include confectionery and toys. In enforcing this provision, our inspectors would need to assess whether the item was designed to look like a tobacco product. The department may obtain legal advice on the matter in determining whether prosecution is appropriate, and the Department of Health would need to be confident that a magistrate would also deem that the product was designed to look like a tobacco product.

It is the government's view that this clause ensures that products designed to resemble tobacco products are not sold, but it also ensures that the law does not capture retailers who sell a product that just vaguely looks like a tobacco product. Obviously, in this sort of area some degree of judgment is necessary.

The Hon. J.M.A. LENSINK: I am struggling a little to differentiate what the Hon. Mr Xenophon's amendments will do. In terms of branding, I presume that he is looking at products that may, in some oblique way, link a known brand—which is what I understand you mean by the camel part of Joe Camel—to some sort of offence. But I am trying to understand—

The Hon. J.F. Stefani interjecting:

The Hon. J.M.A. LENSINK: Or Alpine, that particular logo. I am just trying to clarify in my own mind what additional areas this amendment would cover.

The Hon. NICK XENOPHON: I will not labour the point. My concern is that the current provision is not as broad as it could be, because if there was an attempt by a tobacco company or retailer to market the Joe Camel fluffy toy (not to be confused with Joe Camilleri), being a well known corporate logo for Camel cigarettes, and if there was—

The Hon. R.I. Lucas: How many teenagers do you know who are still into fluffy toys?

The ACTING CHAIRMAN (Hon. J.S.L Dawkins): I think the member would be wise to ignore that interjection.

The Hon. NICK XENOPHON: The idea behind this amendment is to give the minister some broader powers so that, if something did arise that was an underhanded promotional technique that did not fall squarely within the current bill, it would be covered by that. I hope I have answered the Hon. Ms Lensink's question—it is about giving broader powers, because I am always trying to help the health minister advance the cause of tobacco control in this state. But if the minister does not want those broader powers—

Members interjecting:

The Hon. NICK XENOPHON: That is what this amendment is about. If my offer is being spurned by the government there is not much I can do about it—and by the opposition, it seems, but I know there is a conscience vote, so I appreciate that.

The Hon. P. HOLLOWAY: I add that clause 15(2)(c) provides:

> action of a kind prescribed by regulation; or

So, we would argue that the power there in clause 15(2)(c) would allow the government to deal with any such matters by regulation if it was deemed necessary to do so.

Amendment negatived; clause passed.

Clause 12.

The Hon. J.M.A. LENSINK: I move:

> Page 6—
> Line 9—After 'licence' insert:
> and no other such vending machine is situated in the gaming area or any other part of the premises in respect of which the licence is in force under the Liquor Licensing Act 1997
> Line 14—After 'holder of the licence' insert:
> and no other such vending machine is situated in the premises in respect of which the licence is in force
> Line 17—After '1997' insert:
> and no other such vending machine is situated in the casino

The origin of this set of three amendments is identical to one that was moved by the shadow health spokesperson, the Hon. Dean Brown, in another place. These amendments seek to bring into line the situation where in, say, supermarkets and other retail outlets, there is one point of sale per venue, and seek to provide that same situation in hotels and in the casino. While it might be a distant fear at this stage, I believe that there is the potential within the bill as it stands for those sites to have five, 10 or however many vending machines, and I believe that in the interests of fairness to other outlets that should be limited to just one.

The Hon. P. HOLLOWAY: The amendments moved by the honourable member effectively ensure that licence holders in gaming areas, bars and the casino can have only one vending machine. The government does not support that. The general intent of the legislation is to bring down the number of points of sale of tobacco products; that is the purpose of this part of the bill, but we do wish to enable some flexibility on practical grounds where a case can be made that it is reasonable that there be more than one vending machine in large complexes.

There are some large hotels around the place. One that springs to mind would be the West Lakes Resort, which is huge physically—a couple of hundred metres from one end to the next or maybe more. It is just an example that comes readily to mind. We wish to enable some flexibility on practical grounds where a case can be made that it is reasonable that there be more than one vending machine in such large complexes. Hence, the government does not support the restriction of vending machines to one in all licensed premises, even though it is the general intent of the legislation to bring down the number of points of sale.

The Hon. SANDRA KANCK: I am delighted to support these amendments. I think that, if these addicts need to walk 200 metres to get their fix, a little bit of exercise will not hurt them at all. If we can limit it to one machine per venue, there might be a queue, but that is as it should be and it makes it just that little bit more difficult for people to get their fix. I think that is the way we should be headed.

The Hon. NICK XENOPHON: I am delighted that the Hon. Sandra Kanck is delighted and I too support these good, sensible amendments. I commend the Hon. Michelle Lensink for moving them.

The committee divided on the amendments:

AYES (13)

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

NOES (7)

Gago, G. E.	Gazzola, J.
Holloway, P. (teller)	Redford, A. J.
Roberts, T. G.	Sneath, R. K.
Zollo, C.	

Majority of 6 for the ayes.

Amendments thus carried; clause as amended passed.

Clause 13.

The Hon. NICK XENOPHON: I move:

> Page 6, line 35—Delete '$315' and substitute:
> $630

This amendment relates to doubling the expiation notice for the sale or supply of tobacco products to children. I would like to think that most members would agree that we meed to have effective penalties in place to deter retailers selling tobacco products to children. Given the impact it can have in terms of kids getting hooked on tobacco products, it is important that we have effective enforcement and penalties in place. We know from the responses given by the minister about the work that has been done to check levels of compliance that, unfortunately, a significant level of non-compliance

was evident when under-aged people went to tobacco retailers to buy cigarettes. We know that in some areas it was up to 50 per cent, but generally about 20 per cent or so in terms of non-compliance.

They are significant levels of non-compliance. As I understand it, fairly strict rules were followed by the under-aged people who approached tobacco retailers. They were not given any false ID and nor did they try to cajole the retailer into selling them cigarettes. If they did not get them or if they were asked for ID, that was the end of the matter. I think it is important that we have an appropriate penalty for what I believe is an offence that can lead to kids taking up smoking. If retailers know that there is a more substantial penalty and that they need to take reasonable steps, then that would ensure higher levels of compliance. We know from the department's own efforts that levels of compliance are not as high as they ought to be.

The Hon. P. HOLLOWAY: The government opposes the amendment. The government is trying to correlate expiation fees with maximum penalties in legislation in order to reduce ad hoc expiation fees. A formulaic table of expiation fees is used in South Australia which relates directly to maximum penalties. In the bill the expiation fee for retailers who sell to minors is $315, with a maximum penalty of $5 000. This is the highest expiation fee in the formulaic table. Consequently, the government believes that this expiation fee is appropriate considering the range of expiation fees currently. If a stronger penalty is required, the government believes a prosecution should occur.

The Hon. D.W. RIDGWAY: Will the minister tell us (if he knows) how many expiation notices were issued last year?

The Hon. P. HOLLOWAY: I believe the answer is zero because no expiation fee is in existence at present. This actually introduces one.

The Hon. Caroline Schaefer: How can you double it? I am in favour of that—double nothing is nothing!

The Hon. P. HOLLOWAY: No, the Hon. Nick Xenophon wants to double it.

The Hon. J.M.A. LENSINK: I rise to indicate my support for this amendment because I think it is appropriate that we have reasonable penalties to provide a sufficient disincentive for such things. In reality, we are talking about the health of children and young people and we are trying to prevent the take-up, and that is the dangerous area. I do not think any measure is too much in the pursuit of that aim.

The Hon. P. HOLLOWAY: The point is that we are talking about expiation fees. The government's view is that, if you want more than the top of this table at $315, the appropriate way to do it is through a prosecution. So, if those concerned with enforcing the bill believe that a more serious penalty is required, the option is to go for a prosecution. I suggest that $630 is a significant amount for an expiation fee.

The Hon. SANDRA KANCK: I note the minister's comment that it is a significant amount, but it is also a significant offence. It is something that retailers have known for a long time, yet we know that they continue to do it. Sometimes we need to have sticks as well as carrots, and I think this is a stick that should get them to pay attention to their responsibilities.

The committee divided on the amendment:

AYES (9)

Evans, A. L.	Gilfillan, I.
Kanck, S. M.	Lensink, J.M.A.
Reynolds, K.	Ridgway, D.W.
Stefani, J.F.	Stephens, T.J.

AYES (cont.)

Xenophon, N. (teller)

NOES (11)

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

Majority of 2 for the noes.

Amendment thus negatived; clause passed.

Clauses 14 and 15 passed.

New clause 15A.

The Hon. NICK XENOPHON: I move:

Page 8, after line 12—Insert:

15A—Insertion of sections 40A and 40B

After section 40 insert:

40A—Public exhibition of certain films to be preceded by anti-tobacco advertisement

(1) In this section—

approved anti-tobacco advertisement means an advertisement approved by the Minister for the purposes of this section;

film has the same meaning as in the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth, as amended from time to time;

public place to which this section applies means a cinema, drive-in theatre or other public place at which persons are required to pay an admission fee to view a film.

(2) A person must not exhibit, at a public place to which this section applies, a film depicting persons consuming tobacco products unless the exhibition of the film has been immediately preceded by the exhibition of an approved anti-tobacco advertisement.

Maximum penalty: $5 000.

(3) The Minister must ensure that an approved anti-tobacco advertisement—

(a) does not exceed 1 minute in length; and

(b) warns of the dangers of tobacco consumption; and

(c) reflects the findings of any research of which the Minister is aware on the links between the depiction of smoking in films and the consumption of tobacco products by adolescents or other members of the community.

(4) The Minister must, on the application of a person who is planning to exhibit a film to which subsection (2) applies, supply the person, free of charge, with an approved anti-tobacco advertisement in a form that is able to be exhibited using equipment available to the person.

(5) An application by a person under subsection (4) must be made not less than 10 business days before the exhibition of the film and must be in a form approved by the Minister.

(6) It is a defence to a charge of an offence against subsection (2) for a person to prove that the person applied, in accordance with this section, to the Minister for the supply of an approved anti-tobacco advertisement but the Minister failed to supply the person with the advertisement in accordance with subsection (4) prior to the exhibition of the film.

(7) For the purposes of this section, a person is taken to exhibit a film in a public place if the person—

(a) arranges or conducts the exhibition of the film in the public place; or

(b) has the superintendence or management of the public place in which the film is exhibited.

(8) This section does not apply in relation to—

(a) a film exhibited by television; or

(b) a film that is an exempt film within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth, as amended from time to time.

40B—Recovery of costs from manufacturer

(1) If—

(a) a film depicts a person consuming a particular brand of tobacco product and that brand is able to be identified by viewing the film; and

(b) the Minister has, in accordance with section 40A, supplied a person who is planning to exhibit the film (the "film exhibitor") with an approved anti-tobacco advertisement (within the meaning of that section),

the Minister may recover, as a debt from the manufacturer of the tobacco product, an amount prescribed by regulation that reflects the cost of supplying the advertisement.

(2) Where the Minister recovers an amount under this section, the Minister must pay to the film exhibitor the prescribed percentage of that amount, as compensation for any losses or expenses incurred by the exhibitor in complying with section 40A.

This amendment provides for the public exhibition of certain films to be preceded by anti-tobacco advertisements. By way of background, research and investigative work has shown a known link between the tobacco and film industries. An article in *Tobacco Control* states:

A 1983 draft speech prepared for Hamish Maxwell, President of Phillip Morris International and soon to be Chairman of the Board of Phillip Morris, to be delivered at a Phillip Morris International marketing meeting, outlined the political difficulties that the industry was experiencing worldwide as countries were increasing taxes on cigarettes and restricting advertising. He saw smoking in the movies as one way that the industry could counter these trends.

Mr Maxwell, a senior executive at Phillip Morris International, stated:

Recently, anti-smoking groups have also had some early successes at eroding the social acceptability of smoking. Smoking is being positioned as an unfashionable, as well as unhealthy, custom. We must use every creative means at our disposal to reverse this destructive trend. I do feel heartened at the increasing number of occasions when I go to a movie and a see a pack of cigarettes in the hands of the leading lady. This is in sharp contrast to the state of affairs just a few years ago when cigarettes rarely showed up in cinema. We must continue to exploit new opportunities to get cigarettes on screen and into the hands of smokers.

The Hon. R.I. Lucas interjecting:

The Hon. NICK XENOPHON: In response to the Hon. Mr Lucas, I think Humphrey Bogart died of lung cancer due to smoking, so I do not know whether he is a good example.

The Hon. R.I. Lucas interjecting:

The Hon. NICK XENOPHON: The Hon. Mr Lucas has made a very valid comment. I am simply quoting Hamish Maxwell of Phillip Morris International. Some of the chronology set out in this article highlights that in 1988 Phillip Morris International paid $350 000 (presumably $US350 000) for the use of its brand in the James Bond movie *Licence to Kill*, and for rights to run a media promotion effort to coincide with the movie's opening in Japan. The article also refers to Phillip Morris International beginning its modern product placement efforts as early as 1978. It refers to some notable movies that featured Philip Morris cigarettes over the 10 years, including: *Grease*, *Rocky II*, *Airplane*, *Little Shop of Horrors*, *Crocodile Dundee*, *Die Hard*, *Who Framed Roger Rabbit*, and *Field of Dreams*.

An article published in the *British Medical Journal* of 15 December 2001 entitled 'The effect of seeing tobacco use in films on trying smoking amongst adolescents—a cross-sectional study' concluded:

In this sample of adolescents there was a strong, direct and independent association between seeing tobacco use in films and trying cigarettes, a finding that supports the hypothesis that smoking in films has a role in the initiation of smoking in adolescents.

This amendment is not about censorship; it is just about providing an opportunity for a Quit campaign, anti-smoking advertisement to be screened for no longer than a minute before a film—not in the middle of a film, as the Hon. Mr Lucas unkindly suggested.

The Hon. R.I. Lucas interjecting:

The Hon. NICK XENOPHON: That is absolutely mischievous, Mr Chairman. It is about giving discretion to the minister and, if necessary, where we know there has been a product placement or there is that symbiotic relationship between the film producers and the tobacco company, the bill for screening the advertisement is to be sent to the tobacco company—because, goodness knows, they can afford it.

The Hon. T.G. Roberts interjecting:

The Hon. NICK XENOPHON: I won't be distracted by the Hon. Terry Roberts, Mr Chairman. That is what this is about. If we are interested in discouraging young people from smoking—we know there are elements of the film industry that have worked hand-in-hand with the tobacco industry because of sponsorship arrangements—then I believe this is a practical step. It is not a draconian step; it is a practical step to at least claw back the influence that those commercial arrangements between tobacco companies and film companies have had on encouraging young people to take up smoking.

The Hon. J.F. STEFANI: I have the greatest respect for my colleague the Hon. Nick Xenophon, but the thought occurred to me as he was speaking about this measure: how does he propose that this will be dealt with by SBS which screens films in 10 different languages showing people smoking, and how will the minister stop SBS from showing these films?

The Hon. NICK XENOPHON: I am warmed by the respect that the Hon. Mr Stefani has for me. Constitutionally we cannot do it. That relates to broadcasting via television, which comes under commonwealth broadcasting legislation. This legislation does not affect that, but where we do have some power or jurisdiction is in cinemas within this state. This will not apply to SBS, only to cinemas, but it will potentially apply to foreign language films, I must concede.

The Hon. P. HOLLOWAY: The government supports a scheme such as this in principle, but let me hasten to say that we do not support the amendment. That is why the state government over the last 12 months has developed a proposal to run a counter advertising campaign in cinemas. I referred to that earlier at the start of the debate on this bill today. This is part of a range of initiatives that is being developed at a local level. Quit SA will be holding discussions with local producers to encourage them to eliminate smoking in their films. They will be conducting an awareness campaign at industry conferences and workshops and investigate sponsoring a competition for local film students to produce an anti-smoking advertisement that could be screened before films. However, the South Australian government does not intend to introduce this scheme as a legislative requirement.

The evidence about the effectiveness of this type of intervention is still in its infancy. A preliminary study in New South Wales has indicated that placing an anti-smoking advertisement before a movie containing smoking scenes may help to reduce the influence of smoking activity. This research is being continued over the next two years to confirm the findings.

There is stronger evidence about the efficacy of this intervention. The state government would support a national legislative scheme, similar to that proposed in this amendment. The federal government is responsible for legislation relating to tobacco advertising in films. Therefore, it would be inappropriate (the government believes) to introduce legislation such as this at a state level. However, in the interim the South Australian government will be implement-

ing the counter-advertising campaign before films in conjunction with Quit SA as a non-legislated campaign. A thorough evaluation will be conducted to measure the effectiveness of this type of program.

The Hon. R.I. LUCAS: I indicated in my second reading contribution that I was vehemently opposed to this proposition from the Hon. Mr Xenophon, both in principle and otherwise. I will respond briefly to the evidence that the Hon. Mr Xenophon put to the committee from an expert that in recent times there is a greater preponderance of smoking heroes and heroines in movies compared with previous times. By way of interjection I invited the Hon. Mr Xenophon to go back to the years of Humphrey Bogart, James Cagney and Bette Davis.

The Hon. Nick Xenophon interjecting:

The Hon. R.I. LUCAS: But that is not the issue we are talking about. The Hon. Mr Xenophon listed a number of movies to the committee and he said that the preponderance of stars smoking in the movies had increased significantly on previous times; that is, this was a deliberate conspiracy by the smoking industry to get more people smoking in movies in order to advertise their products. That is the point the Hon. Mr Xenophon was making.

My response is that I invite the Hon. Mr Xenophon to look at movies of another era, some of those to which I have referred or those in which those stars acted at the time, to look at the preponderance of smokers within those movies. I would argue strongly that, if we look at movies of that era, and after that era as well, the preponderance of smoking actors in those movies is as high or higher as we see in movies these days. That is the first point I make in relation to the evidence the Hon. Mr Xenophon is putting. It is not the issue of whether individual people or actors have died or not died from smoking-related illnesses.

The second point is that which I made in my second reading contribution. The minister has indicated that there is a research study in New South Wales which indicates this might have some impact. I am not convinced; I have not seen the evidence. I have the view, which I know is not shared by the health industry lobby and its supporters, that the warning signs on cigarette packets, no matter how big they are, do not stop smokers from smoking. They might make the health industry happy or sanguine about having made progress, but the fact that people continue to smoke and pay exorbitant prices, even with those signs getting increasingly bigger on the front, back or sides of cigarette packets, is an indication to me that it is not working. I think the cost of cigarettes is an issue which does impact in terms of purchase, particularly with younger people; the research may also show that for older people. As the cost of a packet of cigarettes goes up for a young person, then, increasingly, in my view, that is an issue that does impact on young people.

I also support the notion that the move to ban smoking in nightclubs and bars and in places like that where young people socialise will reduce cigarette smoking because they spend so much time in those locations. I think there is evidence in a number of areas to indicate (and this is a personal view, which is not accepted by everyone) that those things have some demonstrated capacity to impact. I am not one who is convinced that the ever increasing warnings on cigarette packs or the Hon. Mr Xenophon idea of having flashing advertisements before a two-hour feature movie at the local multiplex will influence in particular young people from either taking up or continuing smoking. If the government wants to spend some money (as the minister has indicated) in picture theatres, as part an overall advertising campaign, that is a judgment call for the government. However, given the extent that the Hon. Mr Xenophon is suggesting in relation to this—and I will not go through all the details, because I suspect that there is not the support in the chamber to have this set of amendments passed—I would strongly support a number of the provisions the Hon. Mr Xenophon is canvassing in his package of amendments.

The Hon. J.M.A. LENSINK: I, too, rise to speak against this amendment. I appreciate the impact that role models such as film stars and so forth can have on the habits of young people, but I do not think that this measure will necessarily have much impact on that. It is also quite a complex regime, I think, and it has crossed my mind that there are all sorts of other undesirable behaviours which could be depicted in films, such as violence and so forth. My thinking is: how long is a piece of string and where do we draw the line? The measures we are progressing through this bill will assist in the overall goal of limiting the number of places where people can smoke and also, as has occurred over several decades, it will make smoking a less socially acceptable behaviour. This will have the effect of peer group pressure encouraging people not to take up the habit or to give it up. I indicate that I am unable to support this amendment.

The Hon. SANDRA KANCK: My counterpart in the federal parliament, Senator Lyn Allison, has drawn a lot of attention to this issue of the burgeoning number of cigarette smokers we are seeing now in films, particularly young, attractive actors—Nicole Kidman being a good example. It is certainly not something we want to see, but I do not see that this is really a workable amendment and, like the Hon. Michelle Lensink, I am concerned about precedents. If we say that we are going to object to smoking (which I do) and put these sorts of provisions in place, we would have to extend it, for instance, to any film where someone is drinking alcohol. It sets some very unusual precedents, and I do not think it would necessarily be a good idea for that reason.

New clause negatived.

The Hon. P. HOLLOWAY: I move:

Page 8, after line 12—Insert:

15A—Amendment of section 41—Prohibition of certain sponsorships

Section 41(3)—delete subsection (3)

This amends section 41 of the original act to remove the tobacco sponsoring exception for cricket. Currently, tobacco sponsorship of Sheffield Shield (and that shows how dated the matter is; of course, it is now the Pura Cup, I understand) and international cricket matches in South Australia is permitted under section 41(3) of the Tobacco Products Regulation Act 1997. This amendment will prohibit tobacco sponsorship of Sheffield Shield and international cricket matches in South Australia.

Cricket Australia has confirmed with the Department of Health that the Australian Cricket Board's contract with the Benson and Hedges company concluded in April 1996. It has confirmed that this exception to allow tobacco sponsorship is no longer required, because tobacco sponsorship of Australian cricket does not occur any more. Consequently, in accordance with this act's aim of prohibiting tobacco sponsorship in South Australia, this exception for cricket matches has been removed. If anyone wishes to read it, I have a letter from Cricket Australia signed by the General Manager, Commercial Operations, addressed to the manager of the Tobacco Control Unit, which sets that out. I am happy

to read that letter out if necessary. I will table the letter and, if anyone wishes to check it, they can.

The Hon. J.S.L. DAWKINS: On a point of clarification, in regard to the title of competitions, my understanding is that the term 'Sheffield Shield' is no longer used and it is now the Pura Cup.

The Hon. P. HOLLOWAY: Yes. I referred to that matter in passing in my comments. The date of the bill was 1997, so it really referred to the issue at that time. As this letter indicates, in fact, that contract with Benson and Hedges, which the bill clearly was originally designed to exempt, concluded in April 1996. So, it is simply a redundant clause that we are removing.

New clause inserted.

New clause 15B.

The Hon. NICK XENOPHON: I move:

Page 8, after line 12—Insert:

15B—Amendment of section 42—Competitions.

Section 42(1)—delete "$5 000" and substitute:

(a) if the offender is a body corporate that manufactures tobacco products or distributes tobacco products to persons selling tobacco products by retail—$100 000; or

(b) in any other case—$5 000.

This relates to competitions. When the Hon. Dean Brown was minister for health a number of years ago, an issue was raised that the Hon. Mr Brown commented on—and I believe I discussed the issue with him—where a tobacco manufacturer was having a promotion whereby a CD case or a gift was offered with the sale of a packet of cigarettes. That is a clear inducement and therefore I believe it would fall within this amendment in terms of competitions and other inducements to purchase cigarettes.

My understanding is that the legislation provides for a penalty for the retailer, but I also believe that the manufacturer should be the subject of a penalty because sometimes it is the retailer and in other cases the retailer is pretty hapless about this. They are provided with the material, but it is the tobacco manufacturer that is behind the promotion and provides them with the inducements, the CD case or whatever it is. I think there ought to be a high level of responsibility for the manufacturer that in a sense profits more out of this. Given the nature and the size of tobacco manufacturers, there should be an adequate disincentive so that these sorts of promotions, competitions and incentives are not in the marketplace.

The Hon. P. HOLLOWAY: I simply indicate that the government does not support the amendment. We believe that this increase in penalty from $5 000 to $100 000 is disproportionate.

The Hon. J.M.A. LENSINK: I have a question which I think probably relies on the Hon. Mr Xenophon's legal knowledge in the sense that, if the retailer was found to have committed an offence, would they have recourse to take it back to the manufacturer?

The Hon. NICK XENOPHON: As I understand it, the manufacturer is not in the firing line. It is the tobacco retailer that is in the firing line, and this amendment seeks to bring the manufacturer into any scheme of penalties. In a sense, it is acknowledging that, if it is a retailer, a small business, who relies on material that is being sent to them by a tobacco manufacturer, there should be a high level of responsibility on the manufacturer.

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

The Hon. NICK XENOPHON: The Hon. Ms Lensink's question is whether there would be a remedy by the retailer against the tobacco manufacturer. I imagine that there might well be a contractual action on the basis that there was an illegal act by the manufacturer and there was a reliance on that. But that would be a pretty messy way of going about it. You would have a small retailer taking on a big tobacco company. That is what the amendment is about.

I have a question for the minister in an attempt to dispose of this expeditiously. My understanding is that, with respect to a tobacco manufacturer, it would breach the current provisions, but they are not in the firing line to the same extent and the penalties are not the same as for a retailer. There is also an argument that the manufacturer could be exempt from these provisions and it is the retailer who cops it.

The Hon. P. HOLLOWAY: Under clause 16 of the bill, new section 45, my advice is that it depends on the circumstances. If the retailer decides to add some promotion itself, it would have to take responsibility for that. There is also an amendment to section 81 of the original legislation to do with vicarious liability, which is also relevant to the question asked by the honourable member.

The Hon. Nick Xenophon: How do they apply to a tobacco manufacturer?

The Hon. P. HOLLOWAY: If one looks at the amendment to section 81—clause 18 of the bill—one sees that it provides:

If an employee or agent is convicted of an offence against this act, the employer or principal is, subject to the general defence under this part, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

Clause 18 (3) provides:

If an offence is committed against this act in relation to a sale, any person who has derived or would, if the sale were completed, expect to derive a direct or indirect pecuniary benefit from the transaction is, subject to the general defence under this part, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

The original act, which still stands and now becomes Part 1, provides that if a body corporate is guilty of an offence against this act each director of the body corporate is, subject to the general defence under this part, guilty of an offence and liable to the same penalty as may be imposed for the principal offence. I trust that answers the honourable member's question.

The Hon. NICK XENOPHON: Essentially, there are two parts to that. Firstly, in relation to the reference made to the amendment of section 81 in clause 18 of the bill, a tobacco manufacturer would be subject to the same penalty as the retailer; is that right?

The Hon. P. HOLLOWAY: Yes, if they derived direct or indirect pecuniary benefit from it.

The Hon. NICK XENOPHON: From a policy point of view, does the government have a problem with the mum and dad business such as a deli being subject to the same maximum penalty as Philip Morris or British American Tobacco, who might have been behind this big promotion and pushed it into shops? Does the government not see any need to differentiate in terms of penalties for the perpetrators of such a promotion? We know that they have occurred in the past, because it is something that was the subject of comment by the Hon. Mr Brown when he was minister responsible for this. I remember having a discussion with him about this several years ago.

The Hon. P. HOLLOWAY: In a sense, the law provides through new section 81 that it would be the same penalty but,

if there was some evidence of extreme behaviour by the company, I suppose the government would always have the option of examining that provision. The point is that, whether it is the local deli or whether it is the manufacturer, they should be aware of the law and not breach it. We are talking, after all, about promotions here. Each director of the company is also provided for. We are talking about business promotions; it is not quite in the league of James Hardie yet.

The Hon. J.M.A. LENSINK: On the basis of that explanation—although I am not satisfied with that explanation—this appears to be something that, perhaps, the government has overlooked and is not prepared to change its mind on. On that basis, I will be supporting this amendment.

The committee divided on the new clause:

AYES (7)

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

NOES (12)

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

Majority of 5 for the noes.

New clause thus negatived.

Progress reported; committee to sit again.

ADJOURNMENT

At 11.27 p.m. the council adjourned until Wednesday 27 October at 2.15 p.m.