



**Mrs PENFOLD (Flinders):** This bill contains a provision that would eliminate the right of many small companies—that is, the bodies that employ most of the people in this state and take the risks and responsibilities associated with doing so—to sue for defamation. A recent foreshadowed amendment by the Attorney-General states that it will now exclude a corporation if 'it employs fewer than 10 persons and is not related to another corporation and the corporation is not a public body'. However, from small businesses big businesses grow, and this will be yet another disincentive for them to employ people. No-one will want to employ more than 10 people, or full-time equivalents, for fear of being open to malicious defamation that they cannot defend. It will be a very similar disincentive to that which currently exists with respect to payroll tax, where businesses conscientiously ensure that they do not employ so many people that they reach the payroll tax threshold because of the hassle and risk of inadvertently not complying and attracting fines and aggravation from the relevant department.

There is also the concern of the small company with under 10 employees being not related to another corporation and the corporation's not being a public body. Recently, I understand that some companies were considered to be related to another company if they gave a donation to that company. The cost and difficulty of trying to ascertain whether or not some such relationship exists should help to employ a small army of government employees and lawyers at great cost to the taxpayer and to the small company trying to prove that it does not have such an association or, conversely, the government's working out if it does. It sounds like the makings of a good small business nightmare. So, potential big businesses stay small and do not fulfil their potential to employ more people and pay more federal taxes. Now that the state receives the GST, there is absolutely no reason to have such stupid state disincentives working against small business expansion.

Not for profit companies will still have the right to sue, as will councils. However, it will come as no surprise to anyone that public bodies, such as government or public authorities, will not have their right to sue taken away (of course, the government is looking after itself), but companies with more than 10 employees will be on their own. Although some small businesses in the state are sole traders, partnerships or small companies without 10 employees or equivalent, thousands of our small businesses that are the backbone of South Australia's economy are companies with more than 10 employees. The smaller the business, the more vulnerable it could be to the damage that can be inflicted by an attack on its reputation and the goodwill that is associated with it.

To quote the government's own statistics, South Australia has more than 85 000 small businesses, which represent 96 per cent of all businesses and which employ well over 220 000 South Australians. If an extreme activist or a union, or maybe an ex-employee who is harbouring a grudge or a competing company, wants to make an outrageous claim about a certain company in the media, as I understand it, they will be free to do so without fear of being sued by the company if this bill goes ahead. It does not appear that the Attorney-General has thought through the ramifications of this bill. As I see it, it puts the viability of businesses and the livelihoods of their owners and employees at risk. In business your reputation is everything. If that is destroyed it can be very hard to go on. Many small business people who have worked long hours, often for less pay and time off than their employees enjoy, in anticipation of being able to sell their business for a profit, could see what is their superannuation disappear. The capital gain on a business often forms the only superannuation that a small business person is likely to receive when they are ready to retire.

To use a small business example, someone with a grudge or acting on behalf of a competitor could claim that the food from

a particular restaurant has given customers food poisoning. If there is no threat of being sued for defamation by the company the person could repeat those claims in the local media. One does not have to be a genius to work out what effect that would have on the business's trade. In other spheres, if someone, such as an animal activist, had it in for the chicken industry they could make untrue claims that chicken meat from a particular company contained unsafe levels of steroids. Rival accounting firms could put the word out that their competitors are defrauding their customers. Rival electrical appliance stores could claim that others are selling stolen goods. There are hundreds of possible such scenarios under this bill where the company may be prevented from suing when under any kind of natural justice they should be able to do so.

This section, which would remove the right of companies to sue for defamation, is a perfect example in my view of this Labor government's complete lack of understanding of what life is like out in the real world of business. That is no surprise given that most of them only know the protected world of working for the unions, the Labor Party or the government. Not only is this government unwilling to provide an environment that is conducive to private enterprise, they will go so far as to make things even harder by removing the right of businesses to defend their hard won reputations.

So far I have not seen any explanation or justification from the Attorney-General about why he wants that right taken away, and I call on him to reconsider this section of the bill with a view to at least increase the number of employees so it will only affect those businesses that I would consider to be very large. This provision will certainly affect many of the companies based on Eyre Peninsula, particularly in the fishing and aquaculture industries.