LEGISLATIVE COUNCIL

Thursday 22 July 2004

The PRESIDENT (Hon. R.R. Roberts) took the chair at 11 a.m. and read prayers.

STANDING ORDERS SUSPENSION

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

That standing orders be so far suspended as to enable petitions, the tabling of papers and question time to be taken into consideration at 2.15 p.m.

Motion carried.

CHICKEN MEAT INDUSTRY (ARBITRATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 July. Page 2116.)

The Hon. IAN GILFILLAN: I rise to indicate Democrat support for this government bill. I am strongly compelled to report our disappointment at the impact the National Competition Council is having on the affairs of this state. I am very relieved to see that the South Australian Farmers Federation has now girded its loins and come out as positive advocates that we should stand against this tide which is eroding our capacity to make decisions on behalf of South Australian residents instead of being dictated to by foolish ideological zealots.

However, we have a remarkable situation—a situation that should never be repeated. By way of introduction in describing my present dismay, I will quote directly from minister McEwen's second reading explanation in the other place, as follows:

The act was proclaimed to come into operation (the previous bill that became an act) on 21 August 2003 with suspension of nearly all but the transitional provision initially pending a decision by the NCC on the compliance of the act and later on the outcome of the state's appeal to the federal treasurer on the penalty imposed.

This is an outrageous turn of events. The bill was passed and then proclaimed virtually in name only while we wait cap in hand for permission from interstate for approval to go ahead. Now 12 months later we are being asked to rush through an amendment to appease what appear to be the real masters of this government and, through them, the people of this state.

For $2.93 million, this government is willing to hand over control of South Australia's legislation to a quasi political entity elsewhere. Thus, we find ourselves considering a bill to remove compulsory arbitration from the Chicken Meat Industry Act and, once again, being asked to deal with it in indecent haste. My sympathy for the chicken growers prevents my taking more than rhetorical measures with this bill, but this government is walking a dangerous path. As a demonstration of the power of the National Competition Council over this government, I will quote the Hon. Paul Holloway when speaking against an amendment from the Hon. Caroline Schaefer to remove arbitration provisions from the earlier bill, an amendment that was almost identical to the one before us now.

In other words, the amendment of the Hon. Caroline Schaefer (which was strongly opposed by the government) has now become a bill that the government is promoting in this place. With respect to that, the Hon. Paul Holloway said:

The government strongly opposes this amendment, believing that this clause, along with clause 28, is really fundamental to this bill. This amendment, if it was carried, would have the effect of taking away a fundamental element of the scheme in the bill, that is, the protection of growers from action or threats by processors to unreasonably—and I stress the word 'unreasonably'—refuse them a further contract and thus negate any chance of genuine negotiations. If the amendment is accepted, the balance of bargaining power will remain firmly with the processors, with growers and grower representatives able to be cowered by threats by processors not to offer them a further contract. There is a long and unfortunate history within this state of coercive conduct. In effect, the government believes that the deletion of this provision would essentially neuter the entire scheme of the bill, leaving contract negotiations as one-sided as they would be in a deregulated environment. The government believes that this clause is essential for the key bill, and that is why it will strongly oppose the amendment.

What a magnificent speech—very moving, very persuasive and very clear. Now what do we have? The very same government that felt so strongly against this 12 months ago is introducing it and urging this parliament to support the actual removal of the smaller entities—the operators, the growers—having some form of justice in their negotiations with the major heavyweights, the processors. Philosophically, ideologically and economically this is a volte-face of monumental proportions; and, in respect of this particular effort, for a party that likes to go around accusing the Prime Minister of backflips it has put him to shame.

For $2.93 million we sold our soul. That is what it is. It is cheap politics, as a result, I assume, of bullying by the Treasurer, because I do not believe that my friend (and I regard the Hon. Paul Holloway as a friend) could be so hypocritical as to make a statement as strongly as this 12 months ago and now turn around and say, 'I was wrong. This is actually for the benefit of chicken growers, and all I said then is nonsense; you can discount it.' It is with great reluctance that we support this bill, and the reason we do that is because, without it, the growers virtually have nothing as a result of all their lobbying and the debate that we have been exercising in this place, in the conviction that we were doing something to help these people, many of whom were pushed to the point of bankruptcy and many of whom could see no future, because if they do not have contracts they have no economic basis to maintain.

The operation of assets, in many cases worth hundreds of thousands of dollars, then become virtually worthless. Unless the members of the chamber have missed my message, I think that this is another example of the disaster of a government that is falling down without even a squawk in front of the bullying of the National Competition Policy as it is imposed in South Australia. It is time we took a stand. We will have to take a stand behind John Lush and the South Australian Farmers Federation and the Democrats because, let us face it, we have been constant and strident about what the National Competition Policy has done against the sovereignty of this state in making proper decisions on behalf of our residents. I feel most embarrassed to be a part of a parliament that is buckling to this pressure but, as I indicate, because there are morsels of an advantage to the growers, we are prepared to let the bill through, but not without the most loudly expressed and deeply-held protests.

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

TRANS-TASMAN MUTUAL RECOGNITION (SOUTH AUSTRALIA) (REMOVAL OF SUNSET CLAUSE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 July. Page 2035.)

The Hon. IAN GILFILLAN: Five years ago we passed the Trans-Tasman Mutual Recognition (South Australia) Bill which was enabling legislation that adopted the commonwealth Trans-Tasman Mutual Recognition Act 1997 as state law. This established a mutual recognition agreement (the TTMRA) between Australia and New Zealand. In the wisdom of this place we decided, unlike other states, to include provisions for a sunset clause. The intention was to allow us to consider the results of a review of the scheme that took place last year. The review was conducted by the Productivity Commission and, as such, came out with a sterling assessment of the TTMRA. It found that the agreement, together with the State Mutual Recognition Agreement, increased trade and work force mobility across borders, contributed to the integration of participating economies, enhanced internal and external competitiveness, increased uniformity of standards, increased choice and lower prices for consumers, decreased costs to industry, and increased access to economies of scale.

When this act was first passed, the Democrats expressed a number of grave concerns, both in this place and in the commonwealth parliament. The agreement is a restrictive document. It sets specific exemptions in the same format as the recent Australia-United States Free Trade Agreement. By spelling out what is not included in the agreement rather than detailing those areas in which the agreement should apply, we are left with an inflexible document that cannot adequately deal with future events. Given that to change the agreement there needs to be agreement across the jurisdictions, amendments are unlikely. However, I am grateful that this means that the existing exemptions are secure. These include our ability to regulate trades and professions and the manner in which goods are sold. We also retain control over quarantine, firearms and chemicals. The quarantine exemptions are particularly important. I was pleased to read that the Productivity Commission report finding 7.7 states:

> The TTMRA permanent exemption for quarantine is warranted. Different risks justify different regulation.

Further to this, the report clearly notes that genetically modified organisms are exempt from the Trans-Tasman Mutual Recognition Agreement. At page 155 the report states:

> In relation to the treatment of genetically modified organisms (GMOs), Australia passed the Gene Technology Act 2000 to establish a national scheme for the regulation of these organisms in Australia. The operation of this scheme would appear to be exempt by virtue of the quarantine exemption in the TTMRA.
>
> Consideration of the risks posed to the environment by GMOs need to be assessed in the context of Australia's unique environment, including flora and fauna. Consequently, a regulatory approval granted in New Zealand on the basis that the GMO would not harm the New Zealand environment may be of little relevance to the assessment of the consequences of the release of the GMO in Australia. An example relates to the research being done in New Zealand to genetically modify a parasitic worm as a means to control feral brushtail possums, an Australian native marsupial introduced into New Zealand that has become a major animal pest. Release of such an agent in Australia may have potentially devastating consequences for this country's possum populations.

I am sure our possum population breathed a collective sigh of relief when it read that section. Members of the public who have possums in their roofs might not share that view quite so emphatically.

It is essential that we retain the right to decide whether genetically modified crops are grown in our country and our state. The report also noted in regard to the state agreement:

> In view of the strong support for the scheme by both the South Australian government and the South Australian community, it is unlikely that the permanent exemption of the container deposit legislation in the MRA can be removed.

The fact that container deposit legislation has been restricted by the agreement from spreading to other states highlights one of the key flaws with this kind of agreement. It encourages a lowest common denominator approach to standards. The power and value of a federation is not that each state falls to a lowest common denominator but that each state has the freedom to try different things and the opportunity to learn from not only their own mistakes and successes but also from their neighbours'.

Federation is about states challenging and helping each other to improve and to excel. Agreements such as this prevent this from occurring. Few would dispute the importance of our container deposit legislation. However, such a move could not be made under the mutual recognition agreement. So, the Democrats have grave concerns about the scheme but respect the will of the council and will not hold up the passage of the bill.

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I thank the Hon. Ian Gilfillan and the Hon. Robert Lawson for their contributions to this debate and for their indications of support.

Bill read a second time and taken through its remaining stages.

CHICKEN MEAT INDUSTRY (ARBITRATION) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from Page 2129.)

The Hon. CAROLINE SCHAEFER: This bill has been introduced—and I am tempted to say 'reintroduced'—in an attempt by the government to recoup the $2.9 million National Competition Council penalty, which has been imposed on the state for its non-compliance with regard to the Chicken Meat Act. This penalty has been imposed without the government ever proclaiming the act that was passed last year. At the time of the original debate, I expressed the view that it was not possible to have compulsory arbitration at three different stages in the act.

I moved an amendment to that effect with the concurrence of the Liberal Party. I received absolutely no support for that amendment, so we did not proceed with it in another place. However, this bill seeks now to move along the lines of my original amendments, and it is interesting to look back at the debate which was held and the comments made by the then minister, the Hon. Paul Holloway. At that time the minister lambasted me fairly thoroughly, stating:

> The government strongly opposes this amendment, believing that this clause, along with clause 28, is really fundamental to this bill. The amendment, if it was carried, would have the effect of taking away a fundamental element of the scheme in the bill, that is, the protection of growers from actions or threats by processors to unreasonably—and I stress the word 'unreasonably'—refuse them

a further contract, and thus negate any chance of genuine negotiations.

If the amendment is accepted, the balance of bargaining power will remain firmly with the processors, with growers and grower representatives able to be cowered by threats by processors not to offer them a further contract. There is a long and unfortunate history within this state of coercive conduct. In effect, the government believes that deletion of this provision would essentially [deregulate the] environment. The government believes that this clause is essential for the key bill, and that is why it will strongly oppose the amendment.

Eighteen months later, without ever proclaiming the act, the government has done a double backflip with pike that would easily get it into an Olympic team.

I moved that amendment when we last debated this measure because it was my belief at the time that there were two parts prior to that in the bill where compulsory arbitration was still possible, and that at this third point in the negotiation phase, that is the renewal of contract, compulsory mediation between the processor and the chicken meat grower should be able to be applied for. The example that I used some 18 months ago is that of a share farmer who is under contract and who has every right to seek arbitration at various stages but not at renewal of contract. Surely the right of the processor then cuts in and allows them to decide who they will or not contract with.

While I will not be opposing this bill given that it complies with what I said 18 months ago would make better legislation, and was laughed at, I would like to express my disappointment that the government has sat on its hands without proclaiming the act for 18 months, thereby allowing further breakdown in negotiations and further animosity to develop between processors and chicken growers. It has left chicken growers in that time with absolutely no protection and no regulation, and my understanding is that the few chicken growers who are now left are anxious to proceed with the legislation as it is, given that it will give them some degree of certainty that they have not had.

To put it as kindly as I can, I believe it has been particularly weak of this government not to proclaim the legislation. Given that it has incurred $2.9 million in penalties anyway, it could have given the chicken meat growers some degree of certainty for that time and simply amended the act. I am disappointed that in that time they have been left with no umbrella of support and no degree of regulation at all.

The bill further seeks to exclude growers who enter the industry after the proclamation of the act, that is, after 2004, and in my view this is the contentious clause. Again, we will see, because the history of this legislation is that the act does not get proclaimed. Let us hope that version 2 actually becomes law. It will exclude new entries into the industry from the right to mediate and arbitrate, if they are excluded from group negotiations, on the premise that they should be fully aware of conditions when they enter the industry. My concern is that it may well drive down the purchase price of a chicken property, given that no new entrant will have the same security as is offered to the current owners, and I hope and seek by way of a question that there will be something within regulations that will compel the vendor to declare that the new purchaser will have fewer rights than they had. Further than that, I support the second reading.

The Hon. J.F. STEFANI: I wish to make a short contribution to this bill. It is with some disgust—I use a very strong word purposely—that the Labor government has sat on its hands for such a long time when the growers in this state have been placed in a perilous position, and some of them no longer exist as a result of the government's inaction.

Comments have been made about the NCC penalising the government, and therefore the taxpayers, for the anti-competitive measures that this parliament initiated some time ago. I have had the opportunity to speak to the head of the NCC in Canberra, and I have made him aware that it is my view, which I hold very strongly, that when there are two major players, two companies, that are involved in setting about a duopoly, setting about screwing the growers to a base price, we have a very unhealthy system in which the weak will perish and the strong will prevail. I come to that position because I understand how market forces work and how business in a monopoly situation works. It is the most unhealthy system possible. Competition in business is good but, when there is no competition and there are two major players setting about organising the marketplace, then we have a disastrous result for the little people—the growers.

I have made the point to the NCC that I know of no grower in South Australia who has a team of racehorses running around the track or who are running around Australia with a bizjet. The people who came into this place to listen to the debate some 12 months or more ago are all from families who work seven days a week for a very, very small return. I feel very strongly about protecting people such as them. They were hoping that this place could give them some protection from the unscrupulous processors, who were demanding conditions that hark back to the dark ages—that go back to the era when kids were working in mines for nothing—which is how I feel about this set of circumstances.

I have made the NCC aware that, if it does not have a feeling for what happens in the marketplace, I was prepared to fly to Canberra and to give them chapter and verse about what happens in the real world. I must say that the senior officer to whom I spoke was probably taken aback by my comments.

The Hon. Ian Gilfillan interjecting:

The Hon. J.F. STEFANI: He definitely said that he was rather enlightened by the facts I put to him. I also said to him, 'How on earth can the Western Australian model be accepted by the NCC, without any penalty, when the Western Australian model "has a committee that determines the standard price, and the committee may, from time to time and at such times as it considers necessary, determine the standard price to be paid by the processors to growers for boiler chickens?"' This committee is virtually an arbitration model. It sets a fair standard price, which is based on the information provided by the growers, so that the growers can exist, make a living and a make profit. Obviously, as costs impact on the price of growing chickens, the standard price for the growers will increase. I find the concept quite normal, because we have the fixed costs—we know that their water rates, electricity costs and the price of fuel go up—which are reflected in the process of establishing the price. The Western Australian model is the perfect model to ensure that the growers are at least able to recover the CPI increases on the costs they incur in growing chickens.

I also refer to the Western Australian model and the Chicken Meat Industry Act 1977, in which there is a dispute resolution process which requires the parties to reach an agreement to submit their grievances to the committee, and the committee has to reach a determination in relation to their disagreements. That determination can be made, as we tried to replicate with an arbitrator here in South Australia. If the

parties are not happy about the determination, they can take the matter to a court and appeal that determination.

I am extremely disappointed that the government did not act in a timely manner to introduce the measure and proclaim the act. I am also very disappointed that the government did not take up my offer of my going to Canberra with the minister to argue the case for this act with the NCC, because it is a justifiable position that we should be taking on behalf of the industry and the growers. If the processors are concerned about paying a reasonable price to the growers, I have no sympathy at all for them. I suggest that they do not fly around in their bizjets, which will save them some money. I also suggest that, if the racehorses are not doing so well on the track, they may wish to put them out on a paddock. Having said that, I want to say that the growers are now in a no-win situation. Their backs are to the wall, and they are absolutely destroyed because, although the parliament attempted to protect them, the government failed to ensure that they had that protection.

We are now in a really unsatisfactory position in that, if we do not attend to this measure, there will be no growers left in South Australia, and that is not what was intended by the measure in the first instance. It is with great reluctance that I support the measure. As one of the growers said to me, 'If this measure isn't passed we won't be in business.' So, we have virtually backed them into a corner, and the government has a lot to answer for through its tardy actions and inaction in relation to the whole sorry saga. I support the measure, but with some reluctance.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank honourable members for their contributions. I point out that, in terms of the NCC penalties, the federal government can be influenced by delegations as well. The federal Treasurer decided only in December 2003 that South Australia's appeal against the penalty was rejected. Ministers Holloway and McEwen have negotiated, from that time, to minimise the changes wanted by the NCC. Originally, many of the changes proposed by the NCC were negotiated down to only two, and these have now been agreed to by the growers' representatives. All other provisions remain intact and they are very important, for example, the arbitration for disputed contracts. Arbitration if a grower is excluded from a negotiating group for a future contract is also there. A registrar is to be appointed to provide analysis and information for negotiating future fair contracts.

The impact of these amendments is minimal and will enable the full operation of many other aspects of the act that will provide many benefits in negotiating contracts with processors. It is now important to look to the future and to the role of the negotiating groups and the ability to take full effect for the benefit of the growers in the industry generally, and for everyone to get in and support the proposals that are being put forward. So, I hope that there is cooperation, as honourable members have indicated, to support the amendments before us.

Bill read a second time.

In committee.

Clause 1.

The Hon. CAROLINE SCHAEFER: I sought in my second reading speech, such as it was, an assurance in respect of what information would be provided to new entrants into the chicken meat growing industry with regard to their reduced status of security. I would also like some detail as to whether they are automatically excluded from any arbitration or, as I understand it, they are excluded only if they are excluded from the group in the first place. I sought to have detailed what information they would be given as potential purchasers of such a business.

The Hon. T.G. ROBERTS: I am informed that growers coming into the industry can nominate to be part of a group. The registrar will provide the information that potentially would be required for people to familiarise themselves with the way in which they would conduct their negotiations.

The Hon. J.F. STEFANI: In terms of the proposal, what feedback has the government received from the growers?

The Hon. T.G. ROBERTS: I am informed that Laura Fell, the SAFF representative, has been fully informed and briefed and supports the amendments.

The Hon. IAN GILFILLAN: Our information at first hand is that Laura Fell reluctantly accepts this as a damaged product, but it is better than nothing. I do not think it ought to be sitting on the record that the most prominent representative of the industry actually endorses this measure in its totality. While I am making that observation, I indicate that in my second reading contribution I did not spare the government in relation to what I regard as a monumental backflip. I also neglected to highlight the fact that my criticism of this measure goes to the opposition members who in fact were promoters of it when we dealt with it 12 or 18 months ago. So, opposition members should not see themselves as white knights for the chicken industry. In fact, they have been promoters of the very measure that the chicken growers industry now feels is the one measure that militates against it.

The industry does not have this impartial determination which was its safety valve if it could not come to a mutual agreement. I think it is fair to put on the record that the opposition ought to hang its head in shame if it really is pretending to be the unspoilt champion of the chicken growers, because it is not.

Clause passed.

Remaining clauses (2 to 8) and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

PROFESSIONAL STANDARDS BILL

In committee.

(Continued from 21 July. Page 2120.)

Clause 15.

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

Page 7—
Line 28—
After 'commences' insert:
as follows
Lines 29—31—
Delete paragraphs (a) and (b) and substitute:
(a) if no notice of motion to disallow the scheme is given in either house of parliament within 14 sitting days after the scheme was laid before the house, the scheme will commence at the expiration of that period (or if the period is different for each house, on the expiration of the later of those periods);
(b) if notice of a motion to disallow the scheme is given in either or both houses during that period, the scheme will commence when the motion is negatived (or if notice is given in both houses, when the motion is last negatived),
(unless the scheme itself fixes a later day for its commencement).

The purpose of this amendment is to ensure that parliamentary scrutiny of schemes under this bill can be effective. As presented by the government, clause 14 of the bill ensures that a scheme under this legislation must be submitted to the minister for approval, and the clause provides that the scheme is a disallowable instrument by providing that it is subject to provisions of the Subordinate Legislation Act as if it were a regulation.

This is an important protection, because these schemes do affect the rights of individuals in the community, and it is only right that parliament should have a role in scrutinising them. However, these schemes not only affect the community's interests but they obviously also affect the trade and professional organisations that might seek to participate in the scheme, and certainty of the scheme is important. If the bill as presented by the government is passed, whilst parliament might have a technical capacity to disallow the scheme after it has been approved by the minister, in point of fact that role of scrutiny is illusory.

Once a scheme of this kind is up and running (people have entered into insurance arrangements and commercial arrangements on the faith of the scheme), it will be virtually impossible for parliament to subsequently disallow the scheme because the consequences of doing so would be too great and the confusion that would be caused would be too great. Accordingly, the appropriate thing to do is to ensure that the scheme does not come into operation until parliament has had an opportunity to examine it and determine whether or not there will be a motion for disallowance.

In his second reading summing up, the minister indicated that the government was not supporting this proposal because, to use the minister's words, 'it makes the parliament and not the minister the final arbiter'.

The Hon. P. Holloway: That was not what I said. That is misreading it.

The Hon. R.D. LAWSON: The minister said:

> I will briefly explain the government's position. The bill now proposes a scheme should be disallowable in the same way as a regulation. It thus makes parliament, not the minister, the final arbiter.

I accept the correction of the minister. I have misunderstood the effect of what he is saying. However, that leaves unaffected the point I make. That is, if one of these schemes commences, the power of disallowance will be illusory unless my amendment is accepted, namely, that the scheme does not come into operation until after parliament has had an opportunity to disallow.

The government also suggests that the professional standards people are opposed to this amendment, but I remind the house that a similar amendment was introduced in relation to the recreational services bill where, members will recall, schemes can be approved by the government to enable the providers of recreational services to limit their liability. This was one of the insurance crisis bills. This place amended that bill by ensuring that those schemes would not come into force until the time for expiration of disallowance had expired. It might have had some novelty, but it was accepted, it is effective and it is correct in principle. So, I urge members to support this amendment.

The Hon. NICK XENOPHON: I indicate my support for this amendment. There is a precedent for it in the recreational services legislation. Honourable members know my position in relation to this bill: I am concerned that it is an erosion of consumers' rights. We have insurers making record profits, but they want to limit their liability as well. I will not unnecessarily restate what I put on the record last night when referring to a column by Richard Ackland in *The Sydney Morning Herald* a number of months ago. He was concerned that this sort of professional standards legislation is effectively eroding consumers' rights by cartels, in a sense—by professional organisations getting together and saying, 'These will be the rules and our duty of care to consumers will be modified as a result.'

For those reasons, I support the Hon. Mr Lawson's amendment. It will mean a degree of transparency and scrutiny in relation to any of these proposed agreements. For instance, if the Law Society (and I disagree with the Law Society's position on this) or any other professional body says, 'We will not be liable for certain acts' when it would go against the grain in terms of standards of fairness and allowing consumers to have basic rights, then I think it is important that the parliament of this state should have an opportunity to look at it, scrutinise it and, if necessary, debate it. We have a precedent with respect to the recreational services legislation, and that is a model that this government has accepted. I think it is important for the rights of consumers that we support this amendment.

The Hon. P. HOLLOWAY: I thought it would be useful if I put the government's view on this, although I did address the matter last night in the second reading response but not all members were here, so I would like the opportunity to do that. The government opposes this amendment. This clause as printed provides that a scheme will commence either on a date specified in the *Gazette* when the scheme is published or, if no date is specified, two months after publication. The preceding clause (clause 14) provides that, once the scheme is gazetted, it can be disallowed in the same way that a regulation can be disallowed under the Subordinate Legislation Act—that is, under the bill a scheme could come into force but later be disallowed. This amendment proposes that this should not be possible: rather, a scheme should not commence until after the time for disallowance has passed or, if there is a motion to disallow, that has been negatived.

As we all know, the time for disallowance, if it extends over a session break, can be three or four months. If a motion is moved it can be debated at any time thereafter. The effect of the amendment would be to introduce a potentially long delay between ministerial approval of the scheme and the commencement of the scheme. It is true that once the scheme commenced it would face no risk of disallowance. However, that advantage is outweighed by disadvantages. First, although delay in the commencement of a new scheme might not matter as much, delay in the replacement of an expired scheme by a new scheme could be quite a problem. In other words, if you have a new scheme and it is delayed, that is probably not so important. But, if you have a situation where you want to replace an expired scheme with a new scheme—and they expire every five years—that could be a problem. As soon as the old scheme expires, if there is a gap, practitioners must purchase cover based on unlimited liability, which defeats the purpose of having a new scheme

Secondly, in such gaps, whether before the commencement of a proposed new scheme or between schemes or replacement schemes, some practitioners may well decide either not to sell their more risky services or to trade without insurance. Neither of those situations is good for consumers. Thirdly, ministers hope that one day soon there will be a national professional standards council that would approve schemes for all jurisdictions. It may be that the same scheme is approved for all states and territories for the regulation of

a particular occupation or group. For example, today we passed the Trans-Tasman Mutual Recognition (South Australia) Bill, which first passed the parliament 10 years ago; and we amended it to change the sunset clause in it.

The point is that parliament then considered, quite rightly in my view, that we should start looking at national standards. It may be that the same scheme is approved for all states and territories for the regulation of a particular occupation or group. If so, it might be desirable to have it start on the same day in all states and territories. Under the bill as printed that would be achieved by *Gazette* notice. Under the proposed amendment of the honourable member this would be impossible because one could not predict whether or when a disallowance motion on the bill might be debated.

Fourthly, although the bill intends to give the parliament power to disallow a scheme, it is to be hoped that few schemes, in practice, will be disallowed because there is a thorough process of public consultation and examination of a proposed scheme before it can get ministerial approval. A scheme must be advertised. Anyone can make a submission about its adequacy. The council must consider submissions and must examine the scheme against the criteria in the act. It can conduct public hearings. Even if the council approves the scheme, it is up to the minister to decide whether it should take effect. There is also a power to challenge the validity of the scheme if it does not fully comply with the act.

These safeguards should mean that, by the time a scheme is laid before parliament, any public concerns about the scheme have been thoroughly aired and fully addressed. Further, in contrast to a regulation there are other avenues for members who are dissatisfied with the scheme, apart from disallowance. For instance, they could lobby the council to review the scheme or ask the minister to undertake to do so. They could approach the occupational association concerned and put a case for amendment to the scheme. Disallowance is, therefore, likely to be rare. It seems unreasonable then to hold up the commencement of the scheme, with which neither the profession nor public has any problem, because of the possibility—just the possibility—that it might be disallowed. Business people want to get on with things and not wait around for red tape to be completed. Professionals have been making submissions to governments about the need for these measures in the context of an insurance crisis for the past two or three years.

Fifthly, there is no clear reason why a scheme should be treated differently from a regulation. A regulation operates unless and until disallowed, even though there is no requirement for any public consultation in framing a regulation. It makes no sense that schemes, having been aired and tested as they will be, should be treated with greater caution than regulations. Sixthly, with these measures insurance ministers are trying to bring about a nationally uniform scheme of professional standards legislation. Deviations from the national model should be kept to a minimum and should be made only for good reason. I would argue that no sufficient reason appears for this one.

Earlier I quoted comment from the Secretary of the Professional Standards Council about the proposed amendment. I urge members to heed the advice of the council on this point because of its experience with schemes over several years. I will read those comments by the Secretary, given that not all members were here last night at the late hour we were debating the bill. The background is that the government asked the Professional Standards Council to comment on the foreshadowed amendment. The letter of the Secretary Mr Bernie Marden states:

> The [South Australian] bill is part of a national system of legislation. The national approach is necessary because professional services and insurance are national markets. Therefore, there needs to be a high degree of consistency across the legislation of the states and territories so that 'national' schemes can be approved, commenced and managed under a universal approach. The proposed amendment to the [South Australian] bill is inconsistent with the approach that has operated successfully in [New South Wales] and which has been adopted by the other states and territories. It will, in my view—

and this is the view of the Secretary of the Professional Standards Council—

> cause unnecessary difficulties and uncertainty to the managed implementation of schemes, and particularly in respect of national professional associations, national professional service firms and local firms trading interstate who will have to contend with multiple [state and territory approved] schemes that apply to a profession that may start at different times and, as a consequence, have different management and reporting cycles and different 'renewal' dates.
>
> Further, it is critical that gaps not occur between the cessation of schemes and the commencement of 'renewed' schemes because that leaves the participants exposed to 'unlimited' liability for any gap period for which they should insure. Experience shows there already exists considerable difficulties in negotiating the complex, detailed and lengthy approval process (a process that equally applies to the renewal of schemes) for schemes to be renewed and commenced on time. The proposed amendment will increase the risk. That risk could be fatal to schemes and, consequently, the effectiveness of professional standards legislation.
>
> The parliament has prescribed a robust and public process that must be satisfied before any scheme can be approved by the council. It is expected that parliamentary intervention would occur only in the most extraordinary circumstances where an approved scheme was inconsistent with the act (for example, the prescribed approval process was not followed, the scheme purported to apply to ineligible occupations and associations, the council determined and specified in schemes caps that are below the threshold ($500 000), and so on).

That is the end of the quote from Mr Bernie Marden, the secretary of the Professional Standards Council. I urge that members of the council heed Mr Marden's advice. I think it would be a tragedy if the state were to be isolated in relation to this scheme for what is really essentially a technical amendment that might only be used in the most extraordinary situations, but the effect could very well be to jeopardise the effectiveness of any national scheme in the future, particularly when schemes under what we hope will be the new act are being renewed. I urge the council to reject the amendment for that reason.

The Hon. T.G. CAMERON: It is my intention to support the amendment standing in the name of the Hon. Mr Lawson. I accept the logic of his argument, but I think it was the contribution made by the Hon. Nick Xenophon that finally convinced me with his arguments about consumers' rights and how they are being constantly whittled away. Apologies to the Leader of the Government. This is not another terrorist act on my part: I have just been convinced by the argument.

The Hon. IAN GILFILLAN: The only justification that I have heard for holding to the government's position is that there is a substantial advantage in simultaneous introduction of a scheme Australia-wide. Accepting that that is an advantage, I am not persuaded that the disadvantage is of such importance that we should deny parliament the opportunity to scrutinise this measure. I strongly hold the rights and responsibilities of this parliament to scrutinise regulations through the process of the Legislative Review Committee. Most of those come under the head power of an act, whereas these schemes would not have had the head power of an act so that people could have a clear anticipation of what that

may be. I am not persuaded that the lack of synchronisation Australia-wide is going to seriously be to the detriment of the cover of the professionals. I will not go into the detail of that. I am analysing what I would see as the reality on the ground. I think that it is true to say that this circumstance is unlikely to occur frequently, because if the scheme has been well thought out before its introduction, firstly, it would be very unlikely that anyone will move for a disallowance so that there is time for it to be digested and anticipated. Secondly, if it has been reasonably well-prepared before its introduction, it is even less likely that there will be a replacement scheme introduced in the time that the scheme was operating.

So, I see the opportunity for this place to look at the scheme before it actually comes into effect as being more advantageous than the government's position. Although I recognise that the regulations do come into effect, I say that they are bound by head powers. I can recollect an issue where I felt serious concern, and that was the gazetting of the exemption for the planting of genetically modified canola without any reference to this place as to the detail of it. It was just a fait accompli. That is not what I accept as the principle. On that basis, the Democrats will support the amendment.

The Hon. P. HOLLOWAY: I understand that the Hon. Mr Gilfillan will not support it, but I think that I need to correct some of the logic that he has used there. Parliament will scrutinise these schemes; that is inherent in the act. What we are talking about here is whether they can be disallowed before or after the operation. As I indicated, if it is a new scheme, it may well not matter whether or not the scheme does not come into effect until the time for disallowance has occurred. That would not matter so much; but, under this bill, every scheme expires in five years. Every scheme has to go through the process every five years. If you have a period that a new scheme has to be put up, if this amendment is carried, until the process of disallowance—and it could turn into months or even years in some scenarios—the replacement scheme could not come into effect—

The Hon. Ian Gilfillan: But the existing scheme carries on.

The Hon. P. HOLLOWAY: No; it does not. That is the very point we are making. After five years—

The Hon. Ian Gilfillan: The preparation for it would be coincided. How silly can you be if you leave it to the last moment to decide the replacement?

The Hon. P. HOLLOWAY: I suggest that the honourable member looks at clause 34, which provides that a scheme remains in force for such a period (not exceeding five years) from its commencement as is determined by the council unless, before the end of the period so determined, it is revoked. That means we have to renew them in five years.

If you have this disallowance, you will get this disruption. We will be the only state in Australia and that will effectively put us outside the national scheme and put our companies at a disadvantage for something that virtually has no benefit. If they are so bad and they deserve to be chopped, they will eventually be chopped through the process anyway. At least the scheme would continue until such time as they were disallowed.

The Hon. Ian Gilfillan interjecting:

The Hon. P. HOLLOWAY: Once you provide that loophole, and that is what it is, if you are a professional, are you going to take the risk? If the scheme is not in place, your cap is removed, so you have to take extra insurance, otherwise you are exposed.

The Hon. Ian Gilfillan: Unless it is a new scheme there will be a scheme in place?

The Hon. P. HOLLOWAY: Not necessarily, because the replacement has to go through the whole process again. If someone, for whatever reason, and it might be quite capricious, has a disallowance motion before parliament, and if this amendment is carried, there is no protection. The scheme will not apply, and therefore the professional does not have the benefit of the scheme to keep a cap in place for their liability. It means our professionals will be at a disadvantage relative to everyone else. I just think it is absolutely crazy that we should put the whole scheme in jeopardy over something that is really, I would argue, not a significant point, given that parliament can ultimately scrutinise and disallow these schemes anyway, and there is a much more comprehensive process of assessment and consultation in relation to the development of schemes than is the case of regulations. If that is the wish of the committee, so be it.

The Hon. R.D. LAWSON: I thank members for their expressions of support. There are three brief points that should be made. First, the Hon. Ian Gilfillan, in his interjections, has hit upon the point that one would not expect the process of establishing a new scheme to come up four years and 11 months into the process. One would expect that the renewal process would have been effected a long time before the last moment.

Secondly, the uncertainty will always exist whilst there is the possibility of disallowance, because the very point that the minister refers to can still arise if, let us say, three months into the second five-year term, this parliament disallows the scheme. Where are the professionals then? There is no scheme in place. If there is to be an effective regime where parliament does have a true scrutiny, not just some window-dressing suggesting we have scrutiny, we cannot have these schemes in place until parliament has had an opportunity.

Next, the minister has not mentioned the fact that these schemes can also be disallowed by the courts. Anybody who is interested can, once one has started, apply to the court, and the court could strike it down. That would create uncertainty because, if the scheme is struck down, people would not have the benefit of it as a result of an order of the court. That might be unlikely, that might not be something that the Professional Standards Council wants, but it is worth reminding members that the Professional Standards Council does not place any credence on the South Australian parliament's right to disallow a scheme.

It would say, as it did in the letter that the minister read, that parliamentary intervention would only occur in the most extraordinary circumstances. That is its expectation. The act does not say parliament can only disallow in extraordinary circumstances. No doubt it would be very rare when there would be disallowance. However, if this parliament is to have effective scrutiny, the scheme should not start to operate until this parliament has had an opportunity to examine the issue. The minister said that business people want to get on with things. We all understand that, but this parliament has an obligation not only to the business people who want to get on to things but also to their clients and customers who are having rights reduced by virtue of these schemes.

The Hon. P. HOLLOWAY: The Hon. Robert Lawson claimed in support of his amendment that a court can void these anyway, but I point out that under clause 16 a court can only disallow one of these schemes or make them void for want of compliance with the act. There are very narrow terms under which the court could do it. I imagine the same would

apply for regulations. If a government introduces a regulation and it is not compliant with the act then the court could likewise knock that out. I do not think that would be regarded by the professions as any serious risk to the schemes. One would expect that, after all the consultation process that it has to go through before these schemes are adopted, it would be highly unlikely that any of those schemes would fail for want of compliance with the act.

The Hon. IAN GILFILLAN: Having listened to the debate in light of my own deliberations, I really believe that the amendment adds more security to the professions if this is passed. The minister recognises that the bill as it currently stands would allow a disallowance motion on a scheme that is already operating. I would consider that to be much more disruptive to a profession that is relying on it rather than if they were confident that time had transpired and the scheme could commence without the risk of a disallowance motion.

The Hon. P. HOLLOWAY: Again I point out to the Hon. Ian Gilfillan that the disallowance of an existing scheme can only take place under similar circumstances to the Subordinate Legislation Act, so there is a time limit. Once the scheme comes in, it can be disallowed, but there is a finite time. The amendment is not such a threat for a new scheme, because you are only talking about a set period of time. The real problem that we have (and perhaps this could be negotiated during the break if this amendment gets up) is what happens with the continuity of schemes, and that is really where I think the problems will arise.

The committee divided on the amendments:

AYES (14)

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

NOES (7)

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

Majority of 7 for the ayes.

Amendments thus carried; clause as amended passed.

Remaining clauses (16 to 58), schedules and title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

COMMISSION OF INQUIRY (CHILDREN IN STATE CARE) BILL

In committee.

Clauses 1 and 2 passed.

Clause 3.

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

Page 2, after line 16

Insert:

parliamentary selection committee means a committee consisting of—

(a) the President of the Legislative Council; and

(b) the Speaker of the House of Assembly; and

(c) the Premier; and

(d) the Leader of the Opposition; and

(e) a member for the Legislative Council chosen by the Legislative Council who is neither a member of the Government nor a member of the Opposition;

This amendment is the first of four clauses in all which deal with the establishment of a parliamentary selection committee for the sole purpose of selecting the commissioner and other persons who are associated with this commission. We believe it is an important principle that this commission of inquiry is seen to be a parliamentary inquiry, rather than simply an inquiry ordered by the executive. We believe it is important that the process of selecting the commissioner is not seen to be the sole prerogative of the government. After all, it is, in this particular inquiry, the processes of government and the treatment of persons who are in the care of the government, and we think it is appropriate that the process of selecting the commissioner be one that has parliamentary oversight.

In the bill that I moved in this council last week, I had proposed that the committee comprise the Premier, the Leader of the Opposition and the Speaker. However, as a result of discussions with members and, I think, based upon principle, bearing in mind the co-equal powers of this chamber, you, Mr President, should be represented on the parliamentary selection committee. Indeed, we are proposing, Mr President, that you preside, and that a member of the Legislative Council, chosen by the council, who is neither a member of the government nor the opposition be chosen to sit on the parliamentary selection committee. The functions of this committee, as I say, will be for the purpose of appointing the commissioner; and, also, in relation to clause 8, for approving the appointment of persons who will support the commissioner.

Not only will this important committee play a role in relation to the selection of the commissioner but also it will have a role to play in the appointment of persons with the appropriate qualifications and experience in social work or social administration, and also the senior investigations officer. These are very important appointments because the victims—many of whom have already provided statements to a number of members of parliament—will come forward only if they are confident in the impartiality and integrity of the occupants of those important positions.

The Hon. P. HOLLOWAY: The government opposes the amendment moved by the opposition. Really, this is a test clause for, perhaps, the main issue that we will discuss this afternoon. I suggest that this notion that we must have a judge from interstate to perform this task is an absolute nonsense. The fact is—

The Hon. R.D. Lawson interjecting:

The Hon. P. HOLLOWAY: The honourable member is saying that the profession to which he belongs and of which he is an eminent member is not capable of being impartial. Believe me, it is not all that easy to get judges to serve on an inquiry such as this. In respect of any of the judiciary around the country, I would not have thought that there is a surplus of supply over demand in terms of the workload of judges. Judges are not necessarily knocking on our door wanting to conduct this sort of inquiry in South Australia. The most important point is that it is a vote of no confidence in the judiciary of this state.

Judges in South Australia are good enough to determine people's life and liberty, and they sentence people to life imprisonment. Apparently they are impartial enough to do that, but we are told that they cannot conduct an inquiry of this nature, and that is really a nonsense. It is for that reason that this amendment should be rejected. This is an executive

inquiry. After all, the executive will be held responsible for the outcome of this inquiry, and it is important that the executive should be able to get the best possible people.

Members should remember that we are talking not only about a judge or, if the opposition's proposal gets up, a retired judge that might head the inquiry but also that assistance will be required to deal with the nature of this inquiry. I think that we all understand that this inquiry is rather different than some of the other commissions of inquiry we have had, and that is not in dispute. But it is absolute nonsense to suggest that members of the judiciary in this state, particularly such an eminent and well-qualified judge as Justice Mullighan, are not up to it, and that is why I believe this amendment should be rejected.

Progress reported; committee to sit again.

[Sitting suspended from 12.59 to 2.15 p.m.]

VOLUNTARY EUTHANASIA

A petition signed by 19 residents of South Australia, concerning voluntary euthanasia and praying that the council will reject the so-called Dignity in Dying (Voluntary Euthanasia) Bill, move to ensure that all medical staff in all hospitals receive proper training in palliative care and move to ensure adequate funding for palliative care for terminally ill patients, was presented by the Hon. Carmel Zollo.

Petition received.

QUESTION ON NOTICE

The PRESIDENT: I direct that the written answer to question on notice No. 267, as detailed in the schedule that I now table, be distributed and printed in *Hansard*.

PRISONS, REGULATIONS

267. **The Hon. A.J. REDFORD:** How many notices ave been issued in respect of minor breaches of prison regulations in each correctional institution under the control of the Minister for Correctional Services in each year since 1995, pursuant to section 42A of the Correctinal Services Act relating to minor breaches of prison regulations?

The Hon. T.G. ROBERTS: In regard to the honourable member's question, the statistics he has requested are not available.

Individual breach notices are not collected at a central point. Given that over 3 000 prisoners move through the prison system each year, it would be impracticable to require each file to be manually checked to collect the information requested by the honourable member.

It should be noted that the Correctional Services Act 1982, does not require the Department to maintain a separate record of minor breaches.

PAPERS TABLED

The following papers were laid on the table:

By the President—

Reports, 2002-03—
District Councils—
Coorong
Orroroo Carrieton

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

National Wine Centre of Australia—Report for the period ended 21 August 2003
Environment, Resources and Development Committee Report—The Development of Wind Farms in SA—The South Australian Government Response

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

Reports, 2002-03-
South East Catchment Water Management Board
University of South Australia
University of South Australia—Financial Statements.

SMALL BUSINESS ADVOCATE

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I seek leave to make a ministerial statement.

Leave granted.

The Hon. P. HOLLOWAY: Yesterday the Leader of the Opposition raised a number of questions regarding the Small Business Advocate. I provide the following information. I am advised that the Small Business Advocate was established as an independent office from within the resources of the former department of industry and trade, now the Department of Trade and Economic Development, in June 1997. To ensure independence and confidentiality when dealing with government departments on behalf of small business, the Small Business Advocate reports directly to the minister.

The Small Business Advocate was appointed as a public servant pursuant to the Public Sector Management Act and was not a statutory appointment. Ms Fij Miller was the first appointment to this role, I believe. I am advised that Mr Malcolm Post was appointed as the Small Business Advocate on a temporary basis from 28 April 2003 until 31 October 2003. He was subsequently permanently appointed to the position on 3 November 2003. In Mr Post's original letter of appointment he was advised that the Minister for Small Business had requested that the previous incumbent (Ms Fij Miller) would brief him on 29 April 2003.

The selection process for the position of Director of the Office of Small Business commenced with an advertisement in *The Advertiser* on 28 February 2004. The selection process included an evaluation of 35 applicants for this role. On 7 April 2004 the Small Business Development Council considered the Office of the Small Business Advocate. The relevant minutes of that meeting state:

A discussion regarding the Office of the Small Business Advocate paper was held and council members were invited to comment. A summary of the comments provided by members is outlined below. It was felt critical that a small business advocacy service remained. However, how that service was managed was not viewed as essential. The paper suggested that the Office of Small Business would have an advocacy role which would cause a duplication of services and an inefficient use of resources if the Small Business Advocate also remained. Council members agreed that as long as the Office of Small Business takes on an advocacy role, then there appears to be no requirement for the Office of the Small Business Advocate to remain. It was suggested that the Director of the Office of Small Business take on the role of Small Business Advocate. It was also commented that the small business charter aims to create small business friendly agencies which could have a positive impact on reducing the amount of advocacy cases. The paper highlighted the dramatic fall in usage of the Small Business Advocate and, in response, it was suggested that it was because it was poorly marketed. A number of council members did not know the Office of Small Business Advocate existed. A concern was expressed that the advocacy role would be lost if it was absorbed into the Office of Small Business. As a result it was believed essential that the services of the Office of Small Business were marketed effectively to the small business community.

I am advised that Mr Allan Joy was contacted and offered the position of Director of the Office of Small Business on 4 May 2004. Approval for the appointment of Mr Joy to this position was received from the Office for the Commissioner for Public

Employment on 11 May 2004. I am advised that, prior to Mr Joy's commencement in this role during May 2004, the former chief executive of the Department of Trade and Economic Development Mr Stephen Hains verbally informed Mr Joy of the change to his role. Part 6 of section 31(1) of the Public Sector Management Act provides:

> The chief executive of an administrative unit may fix or vary the duties, titles and remuneration levels of positions in the unit.

Mr Joy commenced employment on 31 May 2004 in the position of Director of the Office of Small Business. I am advised that the job and person specification that Mr Joy signed on 11 June 2004 reflected the original duties of the Director of the Office of Small Business, as advertised. The job and person specification for the director is in the process of revision to reflect the role of the Small Business Advocate.

The sign-off on the specification will be under the Public Sector Management Act, 'Responsibilities of the chief executive'. On 31 May 2004 Mr Post was advised that his role was no longer required within the new structure, as the Director of the Office of Small Business would now undertake that role. The office was closed on 30 June 2004 and all inquiries are now being directed to DTED Office of Small Business. An extract of the letter on 31 May from the Chief Executive Officer to Mr Post states:

> Following consideration of the services delivered to small business by the department, the government decided that the functions performed by the Office of the Small Business Advocate could be more effectively provided through the new Office of Small Business. The position of Small Business Advocate is not required in the new structure. Mr Allan Joy has taken up the position of Director of the Office of Small Business and I have asked him to discuss with you the transfer of functions from one office to the other, and any arrangements necessary to ensure continued delivery of the advocacy function during the transition.

On 10 June 2004 Mr Joy met with Mr Post to discuss transfer arrangements. The Office of the Small Business Advocate was closed on 30 June 2004, and the functions are now being undertaken by the Office of Small Business.

The Hon. R.I. Lucas: Are you going to apologise for misleading the council, as well?

The Hon. P. HOLLOWAY: I have sought to clarify the position.

LOCAL GOVERNMENT ELECTIONS

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to local government elections review made in another place by my colleague the Hon. Rory McEwen.

QUESTION TIME

SEXUAL ASSAULT INVESTIGATIONS

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Leader of the Government, representing the Attorney-General, a question on the subject of sexual assault investigations.

Leave granted.

The Hon. R.D. LAWSON: The announcement by the police of the establishment of a specialised branch of officers and detectives to handle sexual assault cases was widely supported in the community. However, since January this year, police have begun conducting the interviews of sexual assault victims by videotaping. Two reasons are stated for this: firstly, to save trauma of 10 hours of interviewing; and, secondly, to reduce the cost of taking statements by reducing time from 10 hours to two. However, concerns have been expressed that videotapes will be able to be accessed by defence counsel fishing for aspects of delivery or content of such statements which can be used to offer a defence and which can be shown to the offender or which find their way on to the internet or into private video libraries.

These are not far-fetched claims because members will recall that counselling notes of sexual assault victims (which have now been protected by legislation introduced by the previous government to prevent this practice) and victim impact statements were known to be copied and displayed as trophies in prison cells. We know that these dangers exist where victims of crime compensation cases are argued in court, and often it is the offender who presents the case and can cross-examine the victim using this material. Representations have been made to the police that the practice of videotaping be stopped immediately.

I add that the opposition is also informed that these new practices were introduced without consultation with stakeholders such as the Victim Support Service, Yarrow Place rape and sexual assault service and the Office of the DPP. We are further advised that the DPP's senior solicitor expressed serious concerns about the practice before it was implemented but, notwithstanding those concerns, the practice has been continuing. My questions to the Attorney-General are:

1. Is he aware of the fact that this new police practice was introduced without consultation?

2. Does he approve of the practice? If not, what actions does the government propose taking in relation to this matter?

3. Will he give an appropriate direction that the videotaping of sexual assault victims cease until appropriate protections can be put in place?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I will raise those important questions with the Attorney-General and bring back a response.

PRISONERS, ESCAPES

The Hon. A.J. REDFORD: I seek leave to make an explanation before asking the Minister for Correctional Services a question on the topic of prison escapes.

Leave granted.

The Hon. A.J. REDFORD: On 7 July a report appeared on the front page of *The Advertiser* entitled 'Over and Out, Just like *Hogan's Heroes*, prisoners can leave and return to jail at will'. In the exclusive article by well respected journalist, Nigel Hunt, he said:

> Prisoners at the Port Augusta prison have been secretly scaling a perimeter fence to visit friends and buy drugs, before returning to the prison undetected.

It is apparent from the article that this was the first time the minister knew about the escapades of these enterprising prisoners. In response, the Correctional Services' Chief Executive Officer, Mr Peter Severin, conceded that he did not know whether other prisoners had been involved in the activity. The article goes on to state:

> He said a full investigation was underway within the prison to determine the extent of the activity and if necessary, investigators from Adelaide would join the inquiry.

Some two days later, an article appeared in *The Advertiser* entitled 'Prison's security fault to be fixed'. In the article, Nigel Hunt reported as follows:

The state government had ordered the immediate installation of a new electronic security system around the low-security of the Port Augusta Prison.

The article went on to refer to the fact that the minister had given an order a day earlier, after receiving an interim report into a significant security breach at the facility. The article goes on to state that the minister had ordered a report into the security breach, after being alerted by *The Advertiser* article some two days earlier. The article also reports that the minister indicated that investigations into other possible unlawful absences were continuing and that the minister had ordered a review of all prisoners housed in the cottages to establish their continued suitability. I understand that a Mr Smedley was engaged to carry out the report, and one would assume that the report would be all encompassing in relation to this matter. In light of that, my questions are:

1. Has the minister received a report into the circumstances surrounding the *Hogan's Heroes* escapades of these prisoners?

2. If so, can the minister give an assurance that the report will be released in full and tabled in parliament?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I can report that I have since had a verbal report and arrangements have been made for a proper investigation into a range of issues associated with the unauthorised exiting of that prisoner and to see whether some of the other points being made in the media were accurate, namely, that other prisoners had been taking leave without notice. Recent reports alerted correctional services authorities to the fact that a prisoner had escaped over the fence of the low security cottages at Port Augusta, attended a party and then returned to prison unnoticed. The prisoner concerned has been removed and placed in high security accommodation. Action has now been taken to increase security around these cottages. In addition, the need for appropriate reporting of incidents in the prison system has been reinforced with staff, which was a point well made by the opposition in relation to their questioning.

I am awaiting further reports on this matter, and I have made clear to the department that effective security and supervision of prisoners remains paramount. Even if the prisoners are designated low security and about to exit the system, there have to be some controls and some security placed over those prisoners. As far as the reporting process is concerned, the department is looking at that aspect, and it will be part of the report delivered to me. As soon as I have that report, I will inform the honourable member. If there are no security issues involved in the report and it can be made public without jeopardising security within the prison system, I will make the report available, or I will brief the honourable member in relation to the operational details that I would not like to make public if that comprised security.

The Hon. A.J. REDFORD: I have a supplementary question. Am I to understand that, subject to security issues, which are quite properly reserved, the minister will release as much of the report as he can without compromising security issues to the public?

The Hon. T.G. ROBERTS: That is the general understanding. In fact, I will make a ministerial statement which will cover all of those issues the honourable member has raised.

DOMESTIC VIOLENCE

The Hon. CAROLINE SCHAEFER: I seek leave to make an explanation before asking the minister representing the Minister for Families and Communities a question about domestic violence services in the Lower North.

Leave granted.

The Hon. CAROLINE SCHAEFER: Mr President, as you well know, the saga of a safe house for emergency accommodation for those fleeing from domestic violence in the Lower North area has gone on since well before Labor took government. The story becomes so involved and so comprehensive that I will endeavour to give only a brief outline of the events that have taken place in the last three year period. I first became involved when I attended a meeting of the Lower North Domestic Violence Action Group in Clare in the middle of 2001. A few months after that I was given a verbal assurance that funding and support would be supplied for the growing number of women suffering from, and needing to escape from, domestic violence in the Lower North. It appeared at the time that the remaining point of contention to be decided was whether the housing would be provided in Clare or in Riverton.

Since that time, and in spite of the constant efforts of those involved in trying to get this assistance, nothing much has happened. I have sought to find out why this is the case and have found, as I have said, that you, sir, have also been involved in attempting to get either a response or action from the current government. It appears that between July 2002 and February 2003 the then minister responsible, Stephanie Key, asked for an updated research project to be done. This was done, and in February 2003 the Lower North Safe House Working Party received a letter from minister Key stating that $140 000 of recurrent funding had been allocated for domestic violence services. However, that amount of funding was to be shared between the Lower North and the Barossa regions. You would be well aware, sir, that $140 000 per annum between two regions equates to very little assistance at all.

The working party was concerned that it had no budget or detail as to how much funding would be available and for what services. In May last year they wrote to minister Key expressing serious concerns. They received a letter from the minister on 9 July stating that two departmental officers would be in touch with the group. To date the working party has not been contacted by either of those departmental officers, whom at this stage I will not name.

In February 2004, this year, committee members of the working party met with minister Key to discuss the lack of services within the region. In April 2004 there was a reshuffle, and the ministry went to the Hon. Jay Weatherill. The Lower North committee again came to Adelaide and met with minister Weatherill's officers, on 5 April this year, and outlined the process so far to those officers. Since then the committee has been informed that the $140 000 funding is still available and the administration process will be managed by Uniting Care Wesley at Port Pirie. This has been done without any consultation with the working committee, and without tenders being called.

They have still not been informed as to how much of the $140 000 will be allocated to the Lower North, as opposed to the Barossa Valley. They have been told that there will be Level 4 funding for the equivalent of one full-time equivalent support worker but have had no contact from the Housing Trust as to when, where or if any accommodation will be

supplied. In fact, a member of the committee has been told, 'Stop asking questions, and stop agitating or you will be worse off.' I have since been informed that there is no guarantee that the $140 000 is, in fact, recurrent funding. My questions to the minister are:

1. Why have the efforts of this devoted band of volunteers been treated with so much contempt—and even threatened—over such a long period of time?

2. Is the minister aware that the incidence of reported domestic violence within the region is increasing?

3. Does the minister agree that the equivalent of $70 000 per year in funding will be inadequate to properly fund this scheme?

4. Is there further funding from the Housing Trust to provide emergency housing and, if not, how does the minister propose that this scheme will work?

5. Does the minister agree that, if sufficient recurrent funding is not forthcoming, this renders the small amount of money offered nothing more than a farce?

6. What does the minister now see as the role for the Lower North Domestic Violence Action Committee, and when does he intend to contact the committee with any details of the new scheme?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for her questions and, certainly, her interest in relation to this very important issue. I am sure that minister Weatherill would like further details in relation to some of the replies that those people have received. I am sure that the minister would be interested in reading the replies received by people taking up those issues. I will refer the questions to the minister in another place and bring back a reply.

PORT BROUGHTON BOAT RAMP

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development a question about the Port Broughton boat ramp.

Leave granted.

Members interjecting:

The Hon. J. GAZZOLA: I am pleased to have all this support. All boats launched and retrieved at Port Broughton use the same boat ramp, which was built in 1975.

An honourable member interjecting:

The Hon. J. GAZZOLA: I cannot launch there. The boat ramp is proving inadequate to cater for the emerging oyster industry and the increased numbers of both recreational and commercial users. I ask the minister: what is the government doing to overcome this problem?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I thank the honourable member for his question and for his long and continued interest in regional areas of South Australia. The Hon. John Gazzola has been very diligent in his representation of people in regional areas, particularly those on Yorke Peninsula. Again, I acknowledge the honourable member's continuing interest in this matter, and I am pleased to be able to inform him that regional development industry funds (RDIF) have been approved—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: —so that the existing boat ramp can be extended.

Members interjecting:

The PRESIDENT: Order! There is too much interjection; I cannot hear the minister. It is not often that members get good news, so they should listen in silence.

The Hon. P. HOLLOWAY: I am pleased to be able to tell the council that regional development industry funds have been approved so that the existing boat ramp can be extended, a rock groyne constructed, the breakwater modified and the parking area enlarged to provide a safer and more accessible launching and retrieval area. It will also provide commercial operators with greatly improved loading and unloading facilities which, obviously, is essential for the growth of the aquaculture industry. There are 14 commercial fishing licences operating out of Port Broughton, bringing in a catch value of $4.1 million and employing 36 people.

The commercial fishing and aquaculture sector comprises scale, crab and prawn fishermen, charter boat operators and oyster growers, and Port Broughton has an export crab processor. The oyster industry is still at an early stage of development, but the approved areas are comparable with some of the larger oyster-growing areas on Eyre Peninsula. Currently, the industry in this area employs 57 people, with current production estimated at $1.7 million annually. Tourism has increased substantially, attracted by the safe fishing waters, and now an estimated 35 per cent of the work force is employed in the industry.

The town has a large award-winning caravan park, with increasing patronage, and over 600 holiday homes. The proposal supports all of these industry sectors, and it will have a broad and strategic regional impact. The total capital cost is $1.748 million, of which the RDIF contribution will be $444 000. Other money will come from Tourism SA, $110 000; the South Australian Boating Facilities Advisory Committee, $825 000; the federal government, $170 000; and the local council, $200 000. I am very pleased that those government agencies have been able to make a contribution to this very important facility in the Port Broughton area, which will assist not only the commercial industry but also the many private operators.

The Hon. A.J. REDFORD: I have a supplementary question. Can the minister advise which will cost more—is it the upgrade of the Port Broughton boat ramp or a new white car, superannuation and staff in a new ministerial office?

The PRESIDENT: The leader of the Australian Democrats has the call.

GREEN PLUMBERS

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Environment and Conservation, a question about green plumbers.

Leave granted.

The Hon. SANDRA KANCK: The Green Plumbers International Bulletin recently announced that green plumbers accreditation has reached Tasmania. Mr Ray Herbert, Executive Director of the Master Plumbers and Mechanical Services Association of Australia, welcomed the move, saying:

The inevitable price rises in water—

Members interjecting:

The PRESIDENT: Order! I am having difficulty hearing the Hon. Mrs Kanck.

The Hon. SANDRA KANCK: I am not sure whether the minister has been able to hear so far. Mr Ray Herbert has welcomed the move for green plumbers' accreditation in Tasmania, saying:

> The inevitable price rises in water will be another catalyst for people to use environmentally trained plumbers who can provide them with money-saving environmental advice.

He went on to say:

> These training courses place plumbers in a better position to understand and advise consumers on topics such as: the benefits of energy efficiency, water conservation or the most appropriate and cost-effective appliances to suit individual needs.

About 1 700 plumbers have been specially trained across five states, representing more than 750 plumbing businesses in more than 120 programs, covering water, solar hot water and climate care. However, when I checked their web site I was not able to find any South Australians listed.

Environmental plumbing is a fast-growing industry with an increasing number of innovative products to save water and energy by increased efficiency. In the driest state on the driest continent, green plumbing ought to be a priority. My questions to the minister are:

1. How many green plumbers have been accredited in South Australia, and what assistance has the state government provided to encourage the accreditation of green plumbers in South Australia?

2. If there are no green plumbers, what will the government do about it?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I know from personal experience, when I tried to incorporate some energy-saving plumbing into an addition that I made just recently, that few people were interested in taking on the work because it was unfamiliar to them. It was not work that they were normally used to doing. It is difficult enough now to get a trained plumber on site at the time when you require them. So, I would say that South Australia certainly needs something like the program that the member has outlined. I will refer that important question to the minister in another place and bring back a reply.

TRANSPORT, PLAN

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development, representing the Minister for Transport, questions about the South Australian draft transport plan.

Leave granted.

The Hon. T.G. CAMERON: In May last year the state government released its draft transport plan for South Australia, but more than a year later we are still waiting to see the final plan. At that time, I raised concerns that the draft plan was a policy document long on rhetoric and thin on vision and commitment. One has only to travel to any other mainland capital city to see how dilapidated our transport system, particularly our public transport system, has become. Most other states are currently, or have recently, spent hundreds of millions of dollars on new highways, rail lines, and new trains and trams.

Mr Graham Walters, President of the RAA, recently stated his concern over the length of time it is taking for the government to release its final transport plan. He was quoted in the latest editorial of *SA Motor*—and, remember, it is not a member of the Liberal opposition speaking here, but, rather, the President of the RAA. He states:

> Fourteen months ago the state government released its draft transport plan. As a key stakeholder the RAA spent significant time and effort providing input to those responsible for drafting this document. More than a year and two state budgets later there is still no final SA transport plan.

Mr Walters went on to say:

> As motorists, you and I have a legal obligation to act responsibly every time we get behind the wheel. Governments, too, have an obligation to act responsibly by providing safe roads and safe road infrastructure.

My questions are:

1. Considering the economic, social and safety significance of a reliable and efficient transport system, why is it taking so long for the final transport plan to be released?

2. When will the final transport plan be made public; what are its key recommendations; what will its budget be; and over what time period will it be implemented?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I will refer the question asked by the honourable member to the Minister for Transport and bring back a reply. I could not let the opportunity pass without, again, making a comment about the appallingly inadequate deal South Australia gets from the commonwealth government under federal transport funding.

Members interjecting:

The Hon. P. HOLLOWAY: Let it be recorded in *Hansard* that Liberal members immediately try to defend their federal colleagues who have been short-changing South Australia for many years. This state has around 7 per cent of the population of Australia and a much greater proportion of the road kilometres in this state. We will be getting something in the order of 3 per cent—

An honourable member interjecting:

The Hon. P. HOLLOWAY: The honourable member is saying, 'Extra GST'. In other words, our taxes should go to give better roads and a greater proportion to the eastern states, where all the marginal Liberal seats are. So, what the Liberal members are saying is that their federal colleagues should take South Australia's share in order to provide better roads in the marginal seats in the eastern states—and they are happy with it. I think that is disgraceful. Let it be recorded that the Liberal members of this state are prepared to do just what they did in relation to the nuclear waste dump. They backed their federal colleagues against South Australia's interests—and they are doing it again.

The Hon. Terry Cameron is correct. In other parts of this country freeways are being built. In Melbourne in some of the marginal seats freeways worth up to $1 billion or more are being funded by federal government funds. Next year we get the lowest level of cash that this state has ever had from the federal government in relation to roads. I think it is something like $20 million. Our share is absolutely inadequate and appalling. The Hon. Terry Cameron is quite correct: our roads will start to go backwards if we continue to be short-changed compared with the eastern states of Australia. Something in excess of 85 per cent of all road money went to the eastern states in the recent AusLink program; 85 per cent went to the eastern states; and most of the rest went to Western Australia. I am pleased to have the opportunity to raise this issue.

Members interjecting:

The PRESIDENT: Order! There is too much disruption in the council today. Members for one reason or another have become very exuberant. The minister has been asked a

question and he is entitled to answer the question in his own way in silence. I think we will have a little more of that, otherwise some people will be studying the highways much closer than they may well desire.

The Hon. P. HOLLOWAY: I will complete the answer. Obviously, if this state is to have a viable transport plan, we need to have at the very least our fair share of commonwealth funding. While the commonwealth is providing literally billions of dollars for transport infrastructure in other states, and we are getting absolute crumbs by comparison, it will obviously be very difficult for us to provide the sort of facilities—

The Hon. T.G. Cameron: Argue our case harder in Canberra.

The Hon. P. HOLLOWAY: That is exactly what we will be doing. What is important is that the voters of South Australia, when they come to a federal election later this year, take into account the appalling record of the commonwealth government in mistreating South Australia. Where are the four federal cabinet ministers? What good are they to this state when we get such a poor deal?

PAROLE BOARD

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I lay on the table a copy of a ministerial statement relating to parole refused for Watson and Ellis made earlier today in another place by my colleague the Premier.

SMALL BUSINESS ADVOCATE

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the Leader of the Government questions about his honesty and integrity.

Leave granted.

The Hon. R.I. LUCAS: Members will be aware that the position of the Director of the Office of Small Business was advertised, as I have highlighted to the council in the past week, with a job and person specification that made it clear that the director would not be the Small Business Advocate. Members will also be aware that, since 2 June, my colleague the Hon. Caroline Schaefer and I have asked a series of questions about the shafting of the office of the Small Business Advocate. Those questions started on 2 June and have continued right through until yesterday. Members will also be aware that the minister has clearly said on a number of occasions since 2 June that the Director of the Office of Small Business is the Small Business Advocate. For example, only yesterday the minister indicated that his duties have now changed to include the role of the Small Business Advocate. When asked whether or not he could provide the copy and the date of the change of the job and person specification, he stated:

> . . . the advice I had at the time was that it was done by some instrument.

Later, he said:

> The Director of the Office of Small Business simply has taken—

note his use of the past tense—

> on the additional duties. . .

Further on, he stated:

> The Director of the Office of Small Business is the small business advocate.

Mr President, I am sure that you and other members will acknowledge that the minister has made a number of those statements since 2 June. Today in his ministerial statement, as a result of the challenge to the minister yesterday as to whether or not he had misled the council, the minister advised this chamber of the following:

> I am advised that the job and person specification that Mr Joy signed on 11 June 2004—

I interpose here to highlight that that was nine days after questions were asked in this council of the leader about this particular issue—

> reflected the original duties of the Director of the Office of Small Business as advertised.

I repeat that the original duties made it clear that he was not the Small Business Advocate. In his ministerial statement, the minister further stated:

> The job and person specification for the Director is in the process of revision to reflect the Small Business Advocate's role.

My question to the Leader of the Government is: if minister Holloway's statements on this issue were correct, how does the minister explain that the Director of the Office of Small Business on 11 June—nine days after questions were first asked in this council—signed a contract with the job and person specification which made it clear that he was not the Small Business Advocate?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I just made a statement to that effect setting out in detail the decisions that I had taken. I had taken the decision following consultation with the Small Business Development Council. Let me repeat what I said in the statement.

An honourable member: That does not answer the question.

The Hon. P. HOLLOWAY: I will come to that in a moment. On 7 April, the Small Business Development Council considered a discussion paper on the role of the Small Business Advocate. I pointed out yesterday the reason why it considered that, which was because of a review of the DBMT which had made certain suggestions in relation to the role. Let me read the relevant part of the minutes:

> It was suggested that the Director of the Office of Small Business take on the role of Small Business Advocate.

That is part of what I read out. That was the advice that I received when I discussed this matter with the Small Business Development Council, which I chair, on 7 April 2004.

As a result of that, I made the decision in consultation with the then chief executive of the department. As I said in my statement today, the then chief executive of the department, Mr Hains, verbally informed Mr Joy of the change to his role. That was during May 2004. Mr Joy, before he took up his appointment—it was after 11 May but prior to his appointment—was aware of the decision that I had made that he would take on the Office of Small Business Advocate.

The Hon. R.I. Lucas: What did he sign?

The Hon. P. HOLLOWAY: As I said, he signed the original duty statement, and that statement was in the process—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I don't know that it specifically says that, but it is quite clear that Mr Joy was aware that that was the decision that had been taken by the government. He took on the position in relation to that.

The Hon. R.I. Lucas: Why did he sign that contract?

The Hon. P. HOLLOWAY: As I say, there has been a major review of the Department of Trade and Economic Development. Every single position in that organisation has had its job and person specification redone—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: And that will be done.

The Hon. R.I. Lucas: Allegedly you took the decision.

The Hon. P. HOLLOWAY: Yes, I made the decision. As I said in my statement, and as was confirmed by the Director of the Office of Small Business, he had been advised. I have said it in parliament often enough, so everyone is aware of the decision that I have made, and it is confirmed in the minutes of the Small Business Council that that was the suggestion so that was the decision. I am embarrassed that the decision that I have made has not been translated into action. It certainly will be. It had been implemented to the extent that the chief executive had communicated that decision to the new—

The Hon. Caroline Schaefer: Sort of, almost, perhaps.

The Hon. P. HOLLOWAY: What's more, the Director of the Office of Small Business has been acting as the Small Business Advocate. On speaking to him a week or two ago—and remember that the Small Business Advocate reports directly to me, I have a number of meetings with the Director of the Office of Small Business—

Members interjecting:

The PRESIDENT: Order! There is too much interjection. I have drawn it to the attention of honourable members.

The Hon. R.I. LUCAS: On a point of order, sir. You should ask the minister to sit down.

Members interjecting:

The PRESIDENT: Order! There is too much audible interjection from members on both sides of the council. I point out to honourable members on my left, in particular, that offensive and injurious remarks, even when made by interjection, which makes them doubly offensive, are still subject to the standing orders. Reflections and accusations have been made. At the moment the minister is not responding to them but all members are obligated to abide by standing order 193.

The Hon. P. HOLLOWAY: I am embarrassed and annoyed that the instruction that I gave was not translated into the fine print. Nevertheless, as I said, it was verbally communicated with the Director of the Office of Small Business and in my many discussions I know that he has taken on at least one case as Small Business Advocate. So, he is performing that function, as expected and as he was verbally instructed. That now needs to be translated formally. The fine prints needs to be done to translate that in writing, and that will certainly be done. The Director of the Office of Small Business, following the decision that I have communicated to parliament on a number of occasions, has been fulfilling that role.

As I indicated in my statement earlier today, that was communicated to the former small business advocate who had discussions with the new Director of the Office of Small Business to discuss the transfer arrangements of those functions, and he has been performing that role. It merely needs that to be translated into the fine print of the job and person specification, and that will be done.

The Hon. R.I. LUCAS: I have a supplementary question. Given that the minister has now conceded that he is embarrassed, will he also apologise to this council for misleading members in a series of answers to questions since 2 June?

The Hon. P. HOLLOWAY: In the answer I gave yesterday to a supplementary question from the leader, the only area in which I could be accused of misleading was where I said:

> However, the advice I had at the time was that it was done by some instrument. All that was required was some note from the minister to recognise the fact.

That is the only statement for which I see any need to apologise, and I have certainly corrected that today. In fact, that is why I have made this statement to this parliament today that the position is provided under the Public Sector Management Act, and the Chief Executive can fix or vary the title and therefore it is a matter for the Chief Executive of the department. In relation to the answer I gave yesterday, that is the only part I believe could be construed as inaccurate and for which I see any need to correct or apologise.

The Hon. A.J. REDFORD: I have a supplementary question. Can the minister advise whether there is any written evidence of the instruction and, if so, will the minister table it?

The Hon. P. HOLLOWAY: If the honourable member so desires, I am sure the Director of the Office of Small Business would be pleased to sign a statement in relation to that fact. I confirmed that with him this morning. As I have said, it was a verbal thing. We have obviously not had the opportunity to examine all the records, but I have certainly provided in my statement today an amount of evidence—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: There is significant indirect evidence. For example, the letter in which the Chief Executive of the Department of Trade and Economic Development said, 'Mr Joy has taken up the position and I have asked him to discuss with you the transfer of functions.' There is sufficient evidence there to show that that decision was made. I have told the parliament: I have made the decision. Whether that is translated into the fine print is a matter for my department. As I have said, I am embarrassed that that department has not got around to it yet, but it will do so.

OFFICE OF THE SOUTHERN SUBURBS

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 the Southern Suburbs, a question regarding the Office of the Southern Suburb's web site.

Leave granted.

The Hon. T.J. STEPHENS: Members may be aware that the role of the Office of the Southern Suburbs is allegedly to provide services and coordination to a range of government services and activities. Members may also be aware that this government has a record of using taxpayers' funds to highlight particular achievements. On that basis, I wonder why it costs so much in any area. It has been brought to my attention that the Office of the Southern Suburbs' web site last had an update in January to include information on 'clever communities' and that the online newsletter, which is supposedly to be published every three months, has not been updated since winter 2003. My questions are:

1. Does the minister agree that it is important that the people covered by the Office of the Southern Suburbs are kept regularly informed of its activities, as a way of keeping the office accountable?

2. Given that the newsletter of the office is not widely available in hard copy unless you go to the office itself, does the minister agree that it is important that the web site be maintained as a source of information for southern suburbs residents?

3. When can residents of the south expect a new and widely available newsletter with meaningful and helpful information?

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.

PRISONS, MOBILE TELEPHONES

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about mobile phones.

Leave granted.

Members interjecting:

The Hon. R.K. SNEATH: It would be nice if members opposite could listen to this question. On 27 May, the then shadow minister for correctional services raised the issue of mobile phones in prisons. I understand that at a recent meeting of correctional ministers this issue was discussed. Will the minister discuss what action is being proposed in relation to mobile phones and what action the commonwealth government is taking?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I thank the honourable member for his very important question and the research that he has done in relation to mobile phones. I can report that the question in relation to the problems associated with mobile phones in prisons asked by the then shadow minister for corrections was taken up at the meeting of commonwealth and state ministers. Certainly, the possession and use of mobile phones by inmates continues to be an important issue in the management and security of correctional centres. This issue is a worldwide problem, and each country has strategies to deal with the detection of these phones, which are getting smaller and harder to detect. Phones continue to be found in correctional jurisdictions worldwide, generally through targeted searches. The inmate population is adapt at concealment of contraband items, and the decreasing size of phones makes them easy to hide despite the use of searching routines.

The use of mobile phones by terrorists to detonate bombs remotely has been known for sometime. The recent train bombings in Spain have been reported as having mobile phones as trigger devices, and with terrorist activities apparently on the increase the potential for the use of mobile phones in these activities can be expected to increase as well. I am informed that in France a prisoner orchestrated the extraction of an inmate by means of a helicopter using a mobile phone, and a prisoner in Israel detonated a bomb using a mobile phone. As I have previously informed the council, in this state our detection and internal intelligence do a good job of detecting phones; however, there is technology that can render mobile phones inoperable within our prison system.

One would think that that was a far safer way to have a second line of support, not just for the detection and identification of phones but also to render them inoperable. That is one option being pursued at a national level with respect to the use of phone jamming technology for prisons. States and territories have been campaigning for the federal government to amend the Radio Communications Act to allow a trial of mobile phone jamming technology in prisons to render the phones useless, thereby removing the serious threat that they pose. Despite being passed by the correctional services ministers' conference last year, the federal government has shown a reluctance to participate in a trial of jamming equipment.

With the federal government talking tough on national security, it is almost inconceivable that it is refusing even to participate in a trial of this technology. I am informed that countries including India, France, Israel, Thailand, Jamaica, Sweden, Japan and Austria are using this technology in prisons, yet the commonwealth government is opposing even trialing this technology in Australia. This year the Correctional Services Ministers' Council passed the following resolutions:

- to request Senator Ellison raise with minister Williams the proposal (he will have to raise it now with the new minister) by the Correctional Services Ministers' Council to trial jamming devices at a facility in New South Wales;
- request that the commonwealth participate in a study with the states and territories to examine the range of solutions, including use of jamming devices, detectors, network detection and microcells that may be available.

I and other state and territory ministers will continue to press for the use of phone-jamming technology. I am sure that members of the opposition will be pressuring their federal counterparts to allow phone jamming trials and the introduction of technology. If the opposition is fair dinkum about prison safety and the nation's security, it will not allow its federal counterparts to stand by and do nothing when there is a technological solution (such as a jamming device) available that could be trialled in a suitable site. I call on the current opposition spokesperson to succeed where the commonwealth minister could not—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: I understand that the current shadow minister has been very busy and diligent in relation to his portfolio. He is certainly one of the more active members on the backbench in the way in which he goes about his duties, and I am sure a position will be made available very shortly on the front bench in recognition of his work and activity, and that his hard work will be bear fruit.

It would be helpful to the Correctional Services managers in this state if the commonwealth would look at a trialing system for the devices that have been incorporated into some of the plans in some other countries. As I have reported in this council before, the technology has the ability to provide a cut-off for phones into our system, but there is now a patience issue as far as the states are concerned in dealing with the commonwealth. It would be better if the commonwealth cooperated with the states and allowed for a trial. New South Wales has offered at least one or two sites for the trial to commence but cannot get the permission of the commonwealth, which controls communications in Australia, to get the trials off the ground. So, anything the honourable member can do would be appreciated, whether he takes a trip to Canberra or talks to his commonwealth counterpart, the correctional services minister. Correctional services generally in this state would hopefully be the beneficiaries of the influences he may be able to bring to bear on his commonwealth counterpart.

PAROLE BOARD

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the minister-for-the-time-being for industry, trade and regional development, in his role representing the Premier, a question about the Parole Board.

Leave granted.

The Hon. IAN GILFILLAN: Today, the minister tabled on behalf of the Premier a ministerial statement relating to parole refused for Watson and Ellis, and the first paragraph states:

> Parole Board recommendations for the conditional release of convicted murderers James David Watson and Allan Charles Ellis were this morning rejected by her Excellency the Governor in Executive Council on the advice of the government.

The recommendation for the conditional release of James David Watson has been before Executive Council since November last year, and the recommendation regarding Allan Charles Ellis has been before Executive Council since January this year. It is therefore fair to assume that those matters have been capable of assessment many times between those recommendations being given and this morning's decision and announcement.

Those in the community and this place who care about the proper operation of the Parole Board cannot help but be somewhat bewildered that the Premier, who seems to steer Executive Council in this area, has determined to hold in abeyance the announcement of this rejection until this date. The other factor in respect of this statement is that, as is his wont, he puts in a lot of prurient detail about the offence as if these particular instances are the only occasions upon which horrendous details are involved. We know that that is absolute rubbish. The choice of material for this ministerial statement was very selective.

Many people, including the current chair of the Parole Board, are saying that the system that we have in this state of exercising an independent entity to assess the appropriateness of conditional release is done by a directly selected and skilled panel to deliberate on these matters. My question in relation to this ministerial statement follows on from several others, so it is not unique. My question is: would the Premier nobly stand down as Premier and offer to serve the state as Chair of the Parole Board, as he appears to be determined to do?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): The Premier has made a ministerial statement today. It has been endorsed by the cabinet and, I think, it would be broadly supported by members of the Labor Party. The honourable member seems disturbed that we should be releasing the details of people and their offences when the government has made the decision to keep those people in prison. I do not believe the Premier would feel any need to apologise for his position. I do not feel any need to apologise for my part in the cabinet that took that decision. I do not think that the question asked by the honourable member deserves a serious response. The Premier has a role to play in this state, and he is doing it, obviously, to the satisfaction of a large proportion of the people who live within this state. I think he has a 90 per cent satisfaction rating at the moment, and it is because the Premier has the courage to take decisions on such matters. He will not back away or shy away from them. I personally do not see any reason whatsoever why he should do so.

The Hon. IAN GILFILLAN: I have a supplementary question. I assume from the answer, since the leader has decided to answer the question himself, that there is no explanation as to why this decision was held on ice until this morning. If there is, then I give the leader the opportunity to explain it. The other aspect of his answer, which does disturb me, is that he has virtually implied that he is refusing to pass on my question to the Premier.

The PRESIDENT: That was not a question but, rather, an explanation and therefore was out of order. You are not to debate the question when you ask a supplementary question. You must ask a question.

The Hon. A.J. REDFORD: If the Premier has so much courage, why did it take so long to make these decisions?

The Hon. P. HOLLOWAY: Our Premier is thorough, indeed, in coming to conclusions. Again, that is reflected in the very broad and widespread support that the Premier has within the South Australian community.

The Hon. A.J. REDFORD: I have a supplementary question. Are there any other applications in the pipeline that the government is holding up for a bad week in parliament?

The Hon. P. HOLLOWAY: That is an offensive question. It does not deserve an answer. It is against standing orders because it contains an implication. That alone makes it contrary to standing orders. The implication is also false.

The Hon. J.F. STEFANI: Does the Leader of the Government in this place believe that the constant interference by the Premier in the workings of the Parole Board and the judiciary—

The Hon. P. HOLLOWAY: I rise on a point of order, sir. I believe that the question is out of order. It is laced with opinion that is incorrect.

The PRESIDENT: It has some implications of opinion. Could the honourable member bear that in mind when framing his question and using words such as 'constant', and so on? If he feels he wants to put a question about a particular subject, and it is arising from an answer, he is entitled to ask the question, but he need not include implication or suggestion.

The Hon. J.F. STEFANI: Thank you for your direction. I will rephrase the supplementary question. Does the Leader of the Government in this place consider that the direction of the Premier in this matter undermines the authority of the Parole Board?

The Hon. P. HOLLOWAY: Again, the question is out of order. It is seeking an opinion.

The PRESIDENT: Questions seeking opinion from an individual are out of order.

DISABILITY FUNDING

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Disability, questions about disability funding.

Leave granted.

The Hon. A.L. EVANS: I received a letter from a constituent in regard to post-school options for those who are disabled. She has a 17 year-old son who has cerebral palsy and who is blind, autistic and intellectually disabled. He has left school and has been searching for post-school options for the past two years. Day activities are very important to

Michael so that he can maintain the skills he learnt at school. His parents say that he needs recreational activities to maintain a healthy outlook. They also need him to participate in post-school options to give the parents some respite, which is very important so that they can remain as healthy as possible. The parents of Michael have great concern that the funding for post-school options is drying up quickly. The minister has announced that the Moving On program would receive $1.2 million in additional funding which he claims is an 18 per cent increase. However, the program is currently underfunded by $3.2 million, and this shows a shortfall of $2 million. In addition to these funding shortfalls, funding has not grown at the rate of increased numbers of high support need or support costs. My questions to the minister are:

1. Will the government allocate further funding other than the increase of $1.2 million to post-school options?

2. Does the government have estimates on the number of those leaving school who are eligible to participate in post-school options for the next five years?

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.

REPLIES TO QUESTIONS

GAMING MACHINE

In reply to **Hon. NICK XENOPHON** (3 June).

The Hon. P. HOLLOWAY: The Treasurer has provided the following information:

The estimated growth in gaming machine taxes is the combination of estimates of changes in gaming expenditure (net gaming revenue) and its interaction with the progressive tax structures that apply to gaming machine licensees. As indicated in the Budget papers gaming machine net gambling revenue growth is projected to be 6.0 per cent in 2004-05, 5.0 per cent in each of 2005-06 and 2006-07 and a fall of 3.75 per cent in 2007-08.

These estimates were prepared by Treasury and Finance based on analysis of recent trends and having regard to industry views. Treasury did not, however, rely on any specific advice, research or other documents.

The Budget papers note that the estimated long term growth rate in gaming machine expenditure has been revised down from 5.5 per cent per annum to 5.0 per cent per annum in recognition of recently introduced harm minimisation measures.

As the Member would be aware, this Government is adopting a significant number of responsible gambling measures including:

- Mandatory codes of practice introduced on 30 April 2004;
- Problem gambling family protection order scheme from 1 July 2004;
- Distribution of a Gaming Machine Information Booklet (forthcoming);
- Education in schools program; and
- Reductions in gaming machine numbers (subject to Parliamentary consideration).

The behavioural response of individuals to these changes is difficult to predict. Gaming machine expenditure estimates have historically been particularly problematic and there is not a high degree of certainty about the impacts of these measures. It remains true that if these measures do reduce problem gambling there will be an associated revenue impact.

The Honourable Member has also asked about the provision for the estimated impact of smoking bans in hospitality venues on gaming machine tax revenue.

As with the responsible gambling measures identified above, the behavioural response of individuals to a ban on smoking in gaming venues is difficult to predict. While there is a significant degree of uncertainty about the impact, an estimate of the effect of the smoking ban is factored into the revenue estimates.

The introduction of smoking bans in gaming venues is estimated to have a small impact on casino table game activity (and hence tax revenues) from 2004-05, but is not projected to impact on gaming machine activity in clubs, hotels and the Casino until 2007-08. Only when access to gaming machines is entirely restricted to "smoke-free" areas on 31 October 2007 is expenditure on gaming machines expected to decline.

Consequently, the smoking ban is not estimated to impact on gaming machine tax revenues until 2007-08 when there will be a part year revenue impact.

In a full year, the smoking ban is estimated to result in a fall in gaming machine expenditure of 15 per cent. The 15 per cent reduction in expenditure is consistent with experience in Victoria following a full ban on smoking in gaming rooms in that jurisdiction. Previous advice provided by Treasury and Finance in relation to the estimated impact of smoking bans on gaming machine tax revenue was for an initial reduction in gaming machine expenditure of between 10 per cent and 15 per cent. This advice was based on preliminary experience in Victoria. The subsequent evidence from Victoria has shown that the smoking ban in that jurisdiction has resulted in a permanent reduction in gaming machine expenditure of around 15 per cent.

The estimated impact of the smoking ban on tax estimates included in the Budget forward estimates is detailed as follows:

Estimated Loss of Tax Revenue	2003-04	2004-05	2005-06	2006-07	2007-08	Full Year
	$m	$m	$m	$m	$m	$m
Casino	-	-0.1	-0.1	-0.1	-2	-3
Gaming machines in hotels and clubs	-	-	-	-	-39	-67
Total estimated loss of taxation-revenue		-0.1	-0.1	-0.1	-41	-70

RESIDENTIAL TENANCIES

In reply to **Hon. R.D. LAWSON** (26 May).

The Hon. P. HOLLOWAY: The Minister for Consumer Affairs has received this advice:

1. The Office of Consumer and Business Affairs directs agents and landlords to its website when they need supplies of forms. This replaces the previous practice of posting bulk supplies of the same forms to landlords and their agents. A Model Landlord Kit of forms, which landlords and agents can photocopy, is provided by OCBA in hard copy on request. Agents have, in any event, quite extensively, and for some time, photocopied the forms for their own use. Two sets of landlord kits, which include the Information Brochure, will still be available from the Tenancies Branch on request.

2. This service allows immediate access to forms and brochures and ensures that the forms and brochures used are not out of date. OCBA has made the forms prescribed by the Residential Tenancies Act 1995 available for down-loading and printing direct from their website at www.ocba.sa.gov.au. Since its introduction, this service has received a favourable response because it is easy to use and there is ready availability of forms from the internet, and users have the assurance that the forms can be photocopied after they have been down loaded. There is also a reduction in the cost of printing to the Residential Tenancies Fund. The Fund comprises principally tenant's bond moneys held in trust.

3. The Government provides consumer information about tenancy matters, through information and education sessions for real estate agents and by the maintenance of an advice and enquiry service, which can be used by landlords, tenants and agents.

However, it is not responsible for the costs of providing all the forms required in operating the business of a landlord or a real estate agent.

4. The Government continues to provide information to landlords and tenants about their rights and obligations.

POLICE CHECKS

In reply to **Hon R.D. LAWSON** (23 September 2003).

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

South Australia Police (SAPOL) provides criminal history checks for pre-employment checks to government agencies and other organisations under a Memorandum of Understanding (MOU) established between the two organisations.

A number of government agencies have established MOU's with SAPOL for the purpose of offender history information release and they do avail themselves of this service. SAPOL is unable to advise on the recruitment process of specific agencies.

Criminal history information is released only in accordance with SAPOL policy and the terms of agreement as specified in the MOU.

The Deputy Commissioner for Public Employment has also advised that agencies have been advised by the Commissioner for Public Employment to obtain a formal record of an applicant's criminal history (if any) where the functions of the position are such that absolute certainty and accuracy is required in respect of any past criminal conduct by the applicant, (for example, where the duties involve supervision, care of or work with children).

Police History Offender Checks are not conducted as a matter of course for payroll staff in most agencies.

However a "Declaration on Application for Employment" must be completed by any person who is not already a public service employee before they can be appointed to a public service position. The Declaration covers any conviction for an offence and any current charges. An incorrect declaration makes the person liable for dismissal.

SOLAR THERMAL POWER

In reply to **Hon. T.G. CAMERON** (4 May).

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

In response to the Member's first question, the Government maintains an active interest in the developments of the renewable energy industry.

The Government is aware that solar thermal technology has been operating successfully in various parts of the world for decades. It is a relatively complicated system compared to photovoltaics. Solar thermal systems typically require the concentrated heat of the sun to provide energy to a working fluid, which in turn provides heat energy for a boiler that drives a turbine to produce electricity.

The complexity and multi-stage nature of solar thermal systems as well as their comparatively high maintenance requirements mean that they are not cost-competitive with photovoltaics for very small scale applications, e.g. domestic systems.

With regard to the Member's second question regarding the suitability of solar thermal power for South Australia, therefore, the viability of solar thermal power generation has so far been limited to medium-scale applications. The relatively low cost of photovoltaics and small wind turbine generators for domestic and small-scale applications has resulted in these technologies remaining the favoured renewable power generators for remote homesteads and small communities and, in the case of photovoltaics, domestic grid-interactive generators.

Currently in South Australia the main renewable technologies used or proposed for medium-scale electrical power generation are wind turbine generators, biomass generators, landfill gas-fired power generators and SA Water's mini-hydro generators. Significant research is also occurring for larger scale renewable thermal power generation using geothermal energy found in hot dry rocks in the Cooper Basin.

South Australia's largely favourable level of insolation indicates potential suitability for solar thermal technology. The most commercially favoured technologies for new medium-scale renewable power generation plants in South Australia, however, remain wind and to a lesser degree biomass.

The Government continues to work with renewable energy developers to encourage the development of all kinds of renewable energy. The Government's policies and targets reflect the Government's priorities in this area including those set out in the State Strategic Plan for significantly increasing the uptake of renewable energy over the next ten years. These include leading Australia in wind and solar power generation within ten years, increasing the use of renewable electricity so that it comprises 15% of total electricity consumption within ten years and extending the existing Solar Schools Program so that at least 250 schools have solar power within ten years.

In view of this Government's commitment to renewable energy and reducing greenhouse gas emissions generally, the absence of Federal Government leadership on reducing greenhouse gas emissions from the nation's biggest contributor to emissions – the energy sector - is deplorable.

The Federal Government's recently released Energy Policy fails to address the fundamental issues confronting Australia's energy sector. It is therefore important to note that, in the absence of Federal Government action, State Energy Ministers have agreed to accelerate the current work being done by all States on emissions trading, to look at ways to increase the Mandatory Renewable Energy Target, to expand the role of the Gas Taskforce to address long term national gas infrastructure planning and to look at incentives for energy efficiency and demand management.

UNSPENT FUNDS

In reply to **Hon. J.M.A. LENSINK** (previously the Hon. Diana Laidlaw) (1 April 2003)).

The Hon. P. HOLLOWAY: The Treasurer has provided the following information:

The Department of Treasury and Finance has advised that Arts SA, Planning SA, Transport SA, the Passenger Transport Board and TransAdelaide sought to transfer a total of $16.8 million of 2001-02 under expenditures to subsequent years as part of the 2002-03 budget process. The projects on which carryovers were sought were:

Arts SA – SA Museum Natural Sciences Building; Carclew Youth Arts Centre building upgrade; arts facilities maintenance and minor works; Arts Industry Adjustment Package; Australian Dance Theatre relocation; Carrick Hill building upgrade; Foundation Partnerships Program; State Library of South Australia entry façade; cultural facilities and equipment grants; Arts SA web site development; Electronic Financial Reporting System; Payroll System upgrade; Arts SA IT upgrade; an Occupational Health, Safety and Welfare Project; and a Whole of Government Arts Statement.

Planning SA — North Terrace Redevelopment; expenditure associated with additional receipts from the Planning and Development Fund; Electronic Development Application and Lodgement system; and other various project delays.

Transport SA — Relocation of Marion Customer Service Centre; refit of the Falie; system developments (Labour Distribution, Datamart, K-Net), consolidation of Oracle Database Services; and expenditure on a range of projects initiated by the former Minister from general underspends.

Passenger Transport Board — Major Unit Assembly; Public Transport Infrastructure Upgrade; and the Mawson Lakes Railway Station.

TransAdelaide — Goodwood Junction; Tram Refurbishment; and Belair Line/Blackwood.

As part of the process for assessing carryovers at that time, it was generally the case that where expenditure carryovers were requested to be applied to purposes other than the area on which the under expenditure occurred a carryover was not allowed. These requests were classed as cost pressures or new initiatives, which could be put forward for consideration as part of the budget process.

Carryovers were generally not approved for programs with ongoing funding. However, carryovers were generally approved where a program was funded through an agreement with the Commonwealth Government or an external organisation.

Consequently, agencies did not receive an automatic carryover of all underspent funds. This is why there was a difference between the total amount of underspending by Transport SA and the amount approved for carryover to 2002-03.

The PTB carryover requests for public transport infrastructure upgrades and expenditures on the Mawson Lakes Railway Station project were not approved at the time of the 2002-03 Budget as a result of other overspending against the approved 2001-02 investing budget. However, it should be noted that additional carryovers of $1.270 million were subsequently approved following further information from PTB to support the provision of carryover funding.

McEWEN, Mr R.

In reply to **Hon. A.L. EVANS** (20 November 2002).

The Hon. P. HOLLOWAY: The Treasurer has provided the following information:

The costs budgeted for an additional Minister for 2003-04 were:

Additional Ministerial salary	$72,600
Ministerial office resources (includes superannuation costs)	$1,005,000
Chauffeured vehicle costs	$100,000

These costs are funded by additional appropriation from the Budget.

TABCORP

In reply to **Hon. NICK XENOPHON** (1 July).

The Hon. T.G. ROBERTS: The Minister for Gambling provided the following information:

1. The Minister for Gambling has advised that as TABCORP is not licensed in South Australia we are unable to comment on these questions. The holder of the major betting operations licence in South Australia does not charge such a fee.

ASBESTOS

In reply to **Hon. NICK XENOPHON** (25 June).

The Hon. T.G. ROBERTS: The Minister for Administrative Services has provided the following information:

I am advised by the Department for Administrative and Information Services (DAIS) that the document was only brought to DAIS' attention in May 2004.

I understand that the document is an internal South Australian Housing Trust (SAHT) document and as such its public release was properly a matter for the Minister for Housing.

I am advised that DAIS has received no request from SAHT to consider the document or its recommendations. Should such a request be received DAIS will respond to any of the recommendations SAHT may wish to pursue.

DOGS

In reply to **Hon IAN GILFILLAN** (3 June).

The Hon. T.G. ROBERTS: The Minister for Environment and Conservation has been advised:

The seaside councils have been striving for some time to achieve a level of conformity in the manner in which dogs on beaches are controlled. The aim is not to prohibit dogs from every suburban beach or to allow them to run free on every beach, but to ensure that the public know where and when dogs are permitted.

The recent changes to the legislation provide that the places where dogs may and may not be permitted can be regulated. However, there is still considerable negotiation to be undertaken by the councils concerned on the detailed arrangements

Some seaside councils have chosen to set aside specified beach areas where dogs can be exercised off lead at any time. In managing these areas, councils have found that signage not fencing, is the best way to advise the public that dogs are, or are not, permitted in specific areas.

As an example, the City of Onkaparinga has of its own volition, established six beaches where dogs can always exercise off lead and the council has no intention of changing this provision.

There is no intention to totally prohibit dogs from beaches, nor to insist that all dogs on all beaches be leashed at all times.

MENTAL HEALTH

In reply to **Hon. A.L. EVANS** (3 June).

The Hon. T.G. ROBERTS: The Minister for Health has provided the following information:

1. The government is currently investigating options for possible mental health and substance misuse facilities on the Anangu Pitjantjatjara Yankunytjatjara Lands (APY Lands). As the evidence suggests that facilities are successful only where they are supported by community based prevention, rehabilitation and after care programs, the government is committed to developing an integrated program. $900,000 will be allocated for programs and services addressing petrol sniffing at the community level over the period April 2004 to June 2005 following consultation with APY Lands communities. The local communities themselves will devise the services and programs.

In addition, the governments of South Australia, Western Australia, the Northern Territory and the Commonwealth are cooperating to improve services and programs to address the needs of young people from the APY Lands generally, but particularly those who misuse substances.

This cooperation is occurring in the areas of substance misuse, mental health and justice issues. The discussions concern the development of tri-jurisdictional cooperation and program and service sharing arrangements in the region.

South Australia is represented on the Cross Border Justice Project, which reports to the Standing Committee of Attorneys-General and is due to make a report in 2005. South Australia is also represented on the Central Australian Cross Border Reference Group on Volatile Substance Misuse, which reports to the National Aboriginal and Torres Strait Islander Health Council, and the Australian Health Minister's Advisory Council's Standing Committee on Aboriginal and Torres Strait Islander Health. This group is also due to report in 2005.

Dr Jonathan Phillips, Director of Mental Health Services, Department of Health, recently reviewed the circumstances relating to a number of recent suicide and related mental health issues in the APY Lands. The need to develop cross-border arrangements with the Northern Territory Government to allow transfer of patients between the APY Lands in South Australia and the Northern Territory was identified as a high priority. The agreement will ensure that persons experiencing an acute episode of mental illness in the APY Lands are able to receive appropriate treatment and care at facilities in Alice Springs or Adelaide, depending on the type of treatment and care required and also ensure that their carers and family members within rural and remote communities within APY Lands are offered the support and protection that they require.

A proposal is currently being considered which will allow for regulations that will enable the development of an agreement with the Northern Territory Government as well as other States and Territories. The agreement will facilitate cross-border arrangements for transfer or treatment of mental health patients as a result of the establishment of two-way agreements between jurisdictions.

2. Drug and Alcohol Services Alice Springs held a workshop on petrol sniffing in Alice Springs from 3-4 March 2004. Participants at the workshop undertook a mapping exercise of local services available to address petrol sniffing. Through its involvement in the Cross Border Reference Group on Volatile Substance Misuse, the SA Department of Health has received a copy of the outcomes of the workshop. The government therefore has access to up-to-date information on substance misuse services in the Northern Territory, which can be accessed from the APY Lands.

Specialist mental health services operate from Alice Springs. The Remote Mental Health Team (3 FTE Psychiatrist, Mental Health Nurse and Social Worker) provide regular visits to the APY Lands communities, usually for a week at a time and on average every six weeks. The social worker from Alice Springs remote mental health team also provides support for visiting psychiatrists from Adelaide by accompanying them on their visits. This team has access to acute inpatient beds at Alice Springs and people from the APY Lands can be admitted if necessary.

HINDMARSH SOCCER STADIUM

In reply to **Hon. J.F. STEFANI** (3 June).

The Hon. T.G. ROBERTS: *The Minister for Recreation Sport and Racing* has provided the following information:

The government does hold a letter from Soccer Australia Limited dated 4 October 1996 committing the organisation to the use of Hindmarsh Stadium for a period of at least 20 years from the above date.

Soccer Australia Limited reaffirmed this commitment on 26 September 2002 in correspondence to the Adelaide City Soccer Club.

The Government has written to the new entity controlling soccer in this country, the Australian Soccer Association Limited seeking a continuation of the Soccer Australia commitment to 2016.

The Office for Recreation and Sport has not yet received a response from the Australian Soccer Association Limited.

SOUTHERN SUBURBS

In reply to **Hon. T.J. STEPHENS** (3 June).

The Hon. T.G. ROBERTS: The Minister for the Southern Suburbs has advised:

A number of information and communication technology projects have been established in the Southern Suburbs which provide benefits for businesses in the region. Some examples are:

The E-Business Awareness & Training Program

This program is being developed in conjunction with the Southern Success Business Enterprise Centre, Office for the Southern Suburbs, Onkaparinga Council and the Lonsdale Business Association.

The proposed program is aimed at helping small to medium sized businesses gain a better understanding of the value of the Internet in making their businesses more competitive in the global economy.

The Southern Region Information Technology &Telecommunications Task Force (IT&T Taskforce)

In December 2003, a Southern IT&T Task Force was established to gain a better understanding of the information technology and telecommunications (IT&T) needs of the southern suburbs' business community and how IT&T can be effectively applied to enable these businesses to compete more effectively in the global economy.

The IT&T Task Force is comprised of representatives from Flinders University; the City of Onkaparinga; the Fleurieu Regional Development Board and DFEEST.

The Task Force is currently developing three major activities:

- IT&T Strategy Development Project;
- SABRENet Extension to Noarlunga;
- E-Business Awareness & Training Program.

In relation to the first project, the Task Force recently obtained funding from an Australian Research Council (ARC) grant for $90,000 to support a PhD student to review and map the IT&T needs of the southern area. The research will be directed and reviewed by the IT&T Task Force and completed by the end of 2004.

The outcomes of the project will help produce a strategy that will enable the southern suburbs to develop sustainable competitive advantages in biotechnology; Medical science; nanotechnology; and ecotourism.

GREAT AUSTRALIAN OUTBACK CATTLE DRIVE

In reply to **Hon. A.J. REDFORD** (3 June).

The Hon. T.G. ROBERTS: The Minister for Tourism has provided the following information:

The Great Australian Outback Cattle Drive event planned for 2005 has a total budget of $2.5 million. This will be made up of both State and Federal Government contributions, corporate sponsorship and predicted sales.

With regard to the other supplementary question, requesting a list of all invitees to this event, all the packages have been allocated on an “On Sale” basis. At this stage there is no invitee list.

WORKCOVER

In reply to **Hon. A.J. REDFORD** (3 June).

The Hon. T.G. ROBERTS: 2The Minister for Industrial Relations has provided the following information:

1. How long should my constituent expect to wait before being told whether or not he will be prosecuted or what action WorkCover is likely to take?

I am advised that the allegations in this matter are serious and have necessitated a complex investigation. A detailed legal opinion has been received identifying further investigations that are required. I am advised that it is anticipated that investigations and further legal opinion will be completed within 3 months and charges laid if appropriate.

2. Does WorkCover believe that it is appropriate that it should investigate an employer based on the word of a person who has not been believed by the police, WorkCover or the Industrial Commission?

I am advised that all referrals of alleged dishonesty to WorkCover's Compliance and Investigation Unit are assessed on the merit of the information they contain. If warranted, further investigations are undertaken.

I understand that WorkCover's Investigation Unit is aware that the former employee's WorkCover claim was rejected, as it did not arise from employment. I am advised that the former employee provided the information that resulted in the rejection of his claim.

3. How many other inquiries regarding payment of levies has (sic) been instigated on the basis of sacked employees?

The information contained in all allegations received by WorkCover's Investigation Unit, is assessed on merit and if justified, investigations are undertaken.

I am advised that since 1991 a total of 45 employers have been charged with offences, 18 of which have been for offences regarding the payment of levies. Information is received from a range of sources. I am advised that in these cases, most charges resulted from information received from current and former employees.

4. Does the minister see this as yet another attack on small business by the government?

There is no substance to the allegations contained in the question. It is appropriate that all businesses abide by their legal obligations and that is the case whether the business is big or small.

In relation to the supplementary question asked by Hon Nick Xenophon MLC I provide the following information:

Is it usual practice for WorkCover to question customers of small business? What are the criteria and protocols before customers of a small business are questioned by WorkCover?

I am advised that rarely is it necessary to interview business customers. But, if customers do have evidence in relation to a relevant offence WorkCover will seek to have them interviewed.

I am advised that WorkCover has a prosecutorial duty to ensure that investigations are complete; this includes interviewing relevant witnesses.

SCHOOLS, BUSES

In reply to **Hon. KATE REYNOLDS** (2 June).

The Hon. T.G. ROBERTS: The Minister for Education and Children's Services has provided the following information:

In providing transport assistance, both the Department and schools have critical roles in the provision and administration of the scheme.

DECS officers are responsible for the planning and approval of school bus routes, the provision of vehicles to operate on these routes (contracted and DECS owned and operated) and all of the ancillary matters pertaining to the coordination of the Department's fleet of buses.

Principals of schools with buses have a responsibility, as a part of their administrative duties, for a range of functions relating to the local administration of the day-to-day operations of these vehicles.

These duties are encapsulated in the Administrative Instructions and Guidelines and do not differ from the range of other administrative functions that form the general administrative duties required to operate a school.

Funding is provided to cover this range of administrative functions as part of the annual funding provisions for schools.

NATIONAL LITERACY

In reply to **Hon. A.L. EVANS** (2 June).

The Hon. T.G. ROBERTS: The Minister for Education and Children's Services has provided the following information:

1. What assistance or guidance will be given to parents to assist them to make good use of their vouchers in terms of targeting professional services appropriate to the needs of the child?

The Commonwealth Government is responsible for the voucher scheme and is still developing administrative details of its pilot Tutorial Credit Scheme program.

The Department of Education and Children's Services will provide assistance to parents where this is possible, once the program is clearly defined.

2. Would the minister advise how the system of identification of tutors or trainers will be undertaken to ensure that there will be sufficient personnel in place to commence private lessons for the anticipated 2235 children in terms 3 and 4 this year?

The Commonwealth Government, which is responsible for the scheme, has a duty to ensure that qualified tutors and trainers are identified and screened to provide a service to parents and students.

3. How will the minister ensure that parents are meeting their obligations to provide private lessons if not unreasonably burdened financially?

The Federal Minister for Education, Science and Training, Hon. Dr Brendan Nelson, MP, is the Minister responsible for this program. It is unclear what role he will play.

MUNDULLA YELLOWS

In reply to **Hon.J.S.L. DAWKINS** (26 May).

The Hon. T.G. ROBERTS: The Minister for Environment and Conservation has advised:

1. The Department is willing to provide in-kind support comprised of data and results of previous research information held by the government. This has not, to date, been requested.

2. The Department for Environment and Heritage (DEH) is involved in a major research project in conjunction with the Federal Government. DEH undertook a national tender in 2001, in partnership with the Australian Government, to fund a comprehensive study of the cause(s) and subsequent solutions for this disease. The researchers you referred to agreed that their work would not be able to provide the requisite research outcomes and thus have not been supported.

3. DEH has committed approximately $225,000 in resources over the next three years to support a national research project. The total package including the Federal Government's commitment is valued at nearly $1 million dollars over three years. This is a significant research effort with a high probability of finding solutions.

4. The amount of funding required will depend upon the results of the current research programs. Mundulla Yellows dieback has been identified as an issue of national significance by a National Task Force under the Natural Resource Management Policy and Programs Committee. The South Australian funding requirements will be determined following analysis of the research prognosis at the national level.

GAMBLING

In reply to **Hon. NICK XENOPHON** (26 May).

The Hon. T.G. ROBERTS: The Minister for Gambling has provided the following information:

1. What research is being undertaken or proposed through the Independent Gambling Authority to measure current levels of problem gambling in South Australia; what criteria, methodology and benchmarks are being, or will be, used to measure problem gambling levels; and how does this compare with previous prevalence studies undertaken in South Australia, including the surveys commissioned by the Department of Human Services under the previous government.

The Independent Gambling Authority has given consideration as to whether another prevalence study should be undertaken in this current year and, after seeking research advice, determined not to proceed because of the limited value of such activities when closely spaced.

The Independent Gambling Authority has commissioned research activities to measure the impact of new harm minimisation measures (including codes of practice and the problem gambling family protection orders scheme), and the outcomes of this research might allow conclusions to be drawn about prevalence.

2. What research is taking place, or will take place, in respect of the qualitative benefits of harm minimisation measures, either in place or proposed? I draw the minister's attention to the Victorian independent gambling research panel's report of today's date in respect of such measures.

The Independent Gambling Authority has commissioned Flinders University (through its National Institute of Labour Studies) to conduct research into the impact of new harm minimisation measures in the form of the implementation of new uniform advertising and responsible gambling codes of practice and the problem gambling family protection orders scheme, as mentioned in its 2002-03 annual report. This exercise will also include an assessment of the impact of any changes arising out of its inquiry report into the management of gaming machine numbers.

The Independent Gambling Authority has not yet seen, or been briefed on, the Gambling Research Panel reports mentioned by the Hon. Nick Xenophon.

3. How does the government propose to monitor the impact of new gambling codes of practice and proposed gambling codes of practice and other legislative measures to gambling laws and the level of problem gambling in the state?

With respect to monitoring the impact of these various actions, the Independent Gambling Authority through the National Institute of Labour Studies from Flinders University will undertake research, which is expected to include a combination of telephone and written surveys, face to face interviews and focus groups with various stakeholders. This will be important in helping to determine future considerations on responsible gambling initiatives.

4. What resources are available to ensure such monitoring on a comprehensive basis?

The Independent Gambling Authority funding includes a research component of $300,000 per annum.

FARMBIS

In reply to **Hon. CAROLINE SCHAEFER** (26 May).

The Hon. T.G. ROBERTS: The Minister for Agriculture Food and Fisheries has provided the following information:

1. The FarmBis budget announcement is for $7million of State Government funding over four years (2004-2008) with a matching $7million from the Federal Government.

2. The FarmBis framework document has not yet been finalised by the Commonwealth Minister for Agriculture Fisheries and Forestry. This document will provide the basis for bi-lateral agreements between the States and the Commonwealth. The normal procedure is for the document to be endorsed by the Primary Industries Standing Committee after negotiations with the key stakeholders in each state. The Commonwealth/State funding agreement is then negotiated on a state by state basis. This process may take until October to complete. Once that funding agreement has been signed the details of the program can be provided.

The Commonwealth government has cutback its funding for FarmBis from $167.5m over 3 years (2001-2004) to $66.7 million over 4 years (2004-2008). South Australia has just over 10% of the nation's target participants (primary producers, wild-catch fishers and land managers) and the SA government's $7m FarmBis budget will allow this state to attract its pro-rata share of Commonwealth funds.

3. The $7m of FarmBis state funding is committed by this government in Treasury forward estimates 2004-2008. This commitment is irrespective of the result of the federal election.

SCHOOL, BUSES

In reply to **Hon. A.L. Evans** (25 May).

The Hon. T.G. ROBERTS: The Minister for Education and Children's Services has provided the following information:

Questions 1. and 2.

In 2000, after significant consultation and agreement with the SA Bus and Coach Association (BCA), the former Government initiated Fixed Term Contracts (5 years with a 5 year right of renewal) for school bus operators. A new contract was established (in conjunction with Crown Law) and agreed to by the BCA that included specific details of the Index by which the contract remuneration would be adjusted.

This contract was signed and agreed to by all existing school bus operators when their contracts were renewed between 2000 and 2003.

A significant part of the contract was that contractors were permitted to negotiate higher rates of remuneration to enable them to purchase newer buses.

The re-negotiation of contracts and subsequent Index adjustments has resulted in an increase to contractors payments of $4.5m per annum since 2000 bringing the total level of funding provided to school bus operators for the provision of transport services to $15m per annum.

Since June 2000, school bus operators' remuneration has increased by a cumulative total of 14.6%. However, quarterly adjustments have had a compounding effect yielding a net increase of 15.42%.

Question 3.

In September 2003, DECS sought advice from the BCA to inform an examination of the Index. A proposal was received from the BCA on 24 May 2004. The proposal is being assessed and further information has been sought from the BCA.

Pending approval of any update of the Index,
school bus operators' remuneration continues to be adjusted in accordance with the current Index.

Supplementary Question

It is not intended to reconsider the section of the Act that relates to the provision of transport to students. The provision of funding to schools for the coordination of school buses is not being considered. Principals of schools with buses have a responsibility as part of their administrative duties, for a range of functions related to the local administration of the day-to-day operations of these vehicles.

FIRE BLIGHT

In reply to **Hon. IAN GILFILLAN** (24 May).

The Hon. T.G. ROBERTS: The Minister for Agriculture, Food and Fisheries has provided the following information:

New Zealand initially applied to the Australian government to allow imports of apples in 1999. A science-based process of Import Risk Analysis has been undertaken by Biosecurity Australia and is in its final stages.

A revised draft Import Risk Analysis Report was released by Biosecurity Australia on 23 February 2004. This document was open for public comment until 23 June 2004. The draft IRA identifies 8 pests and diseases that pose a potential risk to Australia's apple industry via uncontrolled imports (the "unrestricted risk"), including the bacterial disease Fire Blight. The draft IRA document proposes that apples from New Zealand should be allowed entry into Australia provided that specified measures can be met. These measures include sourcing of fruit from orchards free of disease, chlorine dip treatment, prescribed periods of cool storage and on-arrival inspection procedures.

This process of establishing protocols and imposing the controls on import of produce into Australia is handled at a national level by Biosecurity Australia and the Australian Quarantine Inspection Service.

The Federal Government also needs to take account of Australia's obligations to WTO agreements in considering NZ's application to import apples into Australia.

As part of the public consultation process, officers from within Primary Industries and Resources SA reviewed the 700+ pages of the draft IRA and have produced a Comments Paper that the Minister for Agriculture, Food and Fisheries has forwarded to Biosecurity Australia. This Comments Paper raised a series of significant technical concerns relating to the import protocols for NZ apples being proposed by Biosecurity Australia, including processes being used to define orchard area freedom for pests and diseases, maintaining chlorine dip concentrations, processes to ensure fruit is trash free, maintaining packing shed cleanliness, monitoring cool storage conditions, alternate entry pathways for fire blight, integrity of fruit shipments, and inspection processes.

Should Fire Blight be detected in Australia, a national response strategy (the Fire Blight contingency plan) has been developed. This strategy was invoked when Fire Blight was discovered at the Melbourne Botanic Gardens, and involves national and state agencies in conjunction with the apple industry putting predetermined strategies and processes in place. Industry has had a key role in the development of this strategy.

As with the earlier Melbourne Botanic Gardens situation, South Australia would employ the provisions of the Fruit and Plant Protection Act 1992 to prevent movement of fruit and other host material from an interstate outbreak area into the state.

On the issue of compensation, currently there are no compensation measures in place for growers in the event of an outbreak of an emergency plant pest or disease. However these are being developed nationally. Currently Plant Health Australia is developing, with its members, (i.e. the Commonwealth Government, State and Territory Governments and key national plant industries) a system to provide agreed owner reimbursement costs as part of a proposed cost sharing deed in respect of emergency plant pest responses. South Australia's share of any agreed response to an emergency plant pest or disease will be determined under the provisions of the proposed Cost Sharing Deed.

In summary, Fire Blight is a significant concern to Australia's apple growers, and the South Australian Government will continue to work with federal agencies as they deal with NZ's application to import apples into Australia.

HERITAGE MATTERS

In reply to **Hon. J.M.A. LENSINK** (24 May).

The Hon. T.G. ROBERTS: The Minister for Environment and Conservation has been advised:

1. For 2004-005, the funding of $450,000 allows for allocations of $130,000 to the National Trust of SA, $100,000 towards expansion of the local government Heritage Advisory Service and $220,000 in additional resourcing for the Department for Environment and Heritage to implement the first year's programs.

The National Trust component will assist in the management of the 42 State heritage listed properties in their care, and in undertaking a review of long-term options for property management and ownership.

The expansion of the Heritage Advisory Service will entail the training and engagement of additional heritage consultancy services for local government, to supplement the highly successful system operating currently in 25 local government areas across the State.

These expenditures will contribute significantly to the maintenance of the heritage fabric of South Australia.

2. In terms of heritage restoration and maintenance, financial assistance to owners of State heritage places is made available from the State Heritage Fund through the annual grants program, which operates independently of the Heritage Directions funding allocated in this year's State Budget. The State Heritage Fund grants program will continue to operate on current funding.

3. Applications to the State Heritage Fund grants program for 2004-05 closed on 30 June 2004. These applications are now being considered.

GAMING MACHINES

In reply to **Hon. NICK XENOPHON** (24 May).

The Hon. T.G. ROBERTS: The Minister for Gambling has provided the following information:

As all Honourable members would be aware, the Independent Gambling Authority (IGA) is responsible for developing mandatory Advertising and Responsible Gambling Codes of Practice for all commercial gambling providers. The most recent review of the codes resulted in new codes being in place for all gambling providers effective 30 April 2004.

In finalising the new codes of practice the IGA indicated a range of additional measures to be considered in a "stage two" consultation process. The Authority has recently written to all stakeholders indicating that public consultation on these identified measures will occur on 21 July 2004 and that it has included additional issues for review including, to explore the practicalities and possibilities of smartcard technology. The Independent Gambling Authority will conduct extensive consultation on this issue which will provide an opportunity for gambling licensees and the welfare sector to provide their views.

This will be the first substantial review in South Australia of smartcard technology and its potential application.

I am advised that a number of companies have developed smartcard schemes that they consider could be applied to the gambling sector. This indicates that the technology already exists to introduce this type of scheme. I expect that the consultations undertaken by the IGA will consider, amongst other things, the impact that smartcards could have on reducing levels of problem gambling and other issues associated with smartcard technology.

I also note for the benefit of Members that the National Gambling Research Program established through the Ministerial Council on Gambling is in the final stages of initiating research to examine the different kinds of pre-commitment strategies (of which smartcards is one form) and to identify what kinds of strategies work best in given circumstances.

As noted in response to the previous question, the public hearings for the second stage of the codes of practice will provide gambling industry representatives, and other stakeholders, with an opportunity to make submissions to the Independent Gambling Authority on smartcard technology. The Government has not received any recent representations from the AHA or the Casino on smartcard technology. I am advised that some time ago the Government received a copy of a general policy paper issued by the Australian Hotels Association on smartcard technology issues.

I am advised that no information has been provided on the potential revenue impact of smartcards on net gambling revenue.

SCHOOLS, ACADEMIC PERFORMANCE

In reply to **Hon. T.G. CAMERON** (6 May).

The Hon. T.G. ROBERTS: The Minister for Education and Children's has advised:

1. South Australia (SA) is not the only mainland State that does not produce specific details regarding the academic performance of our high schools and students to the public.

New South Wales, Tasmania and the Northern Territory do not publish performance criteria and/or individual results to the public.

South Australian Government schools are required to publish summary data about student's year 12 achievements in the South Australian Certificate of Education (SACE) in their annual school reports to communities. This data is public and relates to information

about retention rates, attendance, parent satisfaction and the post-schooling destination of their students.

2. The Senior Secondary Assessment Board of South Australia (SSABSA) has conducted market research regarding the perception of parents, student teachers and the wider community regarding SACE, but not specifically any market research regarding the schools' particular performance in regard to SACE and/or year 12 and subsequent TER scores.

3. The current review of the SACE being undertaken has, as its basis, wide consultation processes with students, staff, parents and the wider community and it is likely that many of the issues raised by the honourable member will be able to be brought forward through this consultation process.

GAMING MACHINES

In reply to **Hon. NICK XENOPHON** (4 May).

The Hon. T.G. ROBERTS: The Minister for Gambling has provided the following information:

As Minister for Gambling I regularly consult with a wide range of stakeholders, on various matters relevant to reducing the level of problem gambling.

As the Honourable Member would be aware, this Government has introduced several pieces of legislation to assist problem gamblers; this legislation is discussed with other Ministers and the Treasurer.

As stated in question 1, I regularly meet with stakeholders associated with the gambling industry. It would take considerable resources to list all of the dates of such meetings.

VALUER GENERAL

In reply to **Hon. J.F. STEFANI** (4 May).

The Hon. T.G. ROBERTS: The Minister for Administrative Services has provided the following information:

1. Can the Minister explain why he has directed the office of the Valuer-General to direct queries on valuations to his office for a response?

It has been a longstanding practice for many years that when a Member of Parliament asks a question of the Valuer-General, or of other statutory officers in the Department, the Minister provides a response based on the advice from the relevant statutory officer. In this instance, the matter was initially considered by the Valuer-General and, as additional information was presented, a review of the original decision was undertaken. The reply was then prepared and forwarded to the Minister's office for signature.

2. When was this directive issued to the Valuer-General's office?

This is a longstanding practice that has been confirmed.

3. How many letters of response has the Minister issued on behalf of the Valuer-General when questions were raised on property valuations?

There have been three letters responded to in this way.

HOME DETENTION

In reply to **Hon. A.J. REDFORD** (3 and 4 May 2004).

The Hon. T.G. ROBERTS: I advise:

Home Detention and Intensive Bail Supervision are, arguably, the most successful of the residential detention programs operated by the Department for Correctional Services and I am pleased to acknowledge that South Australia is widely recognised as an Australian leader in these areas.

On any one day in South Australia there are about 300 offenders or bailees participating in these programs and, over a period of twelve months, in excess of 600 offenders or bailees will be involved.

As I pointed out in my initial explanation to the House regarding this matter, whilst Home Detention numbers have remained static over the past three years at about 270 per year, Intensive Bail Supervision numbers, which Hon Members would know are ordered by the courts, have increased significantly. In 1998-99 they were 199 and in 2002-03, these had increased to 477.

The Government has already provided funding for additional staff to accommodate the increased numbers.

As the Hon Ian Gilfillan has rightfully recognised, the Home Detention and Intensive Bail Supervision Bail programs are very cost effective. The cost of supervising a person on these programs is between $7,000 and $8,000 per year. The comparative cost of an alternative prison sentence would be in excess of $40,000 per year, depending on the level of security that each individual offender required.

In relation to the overnight supervison of detainees, there are two officers on night duty to monitor Home Detention equipment that automatically raises an alarm if an offender, fitted with electronic monitoring, leaves a designated area. These officers also make irregular phone calls to other offenders on the program, to ensure that they are complying with the conditions of the program. In the event that these officers become concerned about the activities of an offender, contact is immediately made with other staff who immediately follow up the matter.

In addition to these officers, there are two more who are on call and are immediately available if required and, in the most unlikely event that multiple breaches were detected, any one of the 18 Home Detention Officers that supervise the program can be called to follow up a complaint.

It is important to note that the 18 Home Detention staff are rostered over a 24 hour day. On any given night, there may be up to 10 officers who are working. They visit or contact offenders to ensure that the offenders are where they should be and that the conditions of their Home Detention are not being breached.

GAMING MACHINES

In reply to **Hon. NICK XENOPHON** (1 April).

The Hon. T.G. ROBERTS: The Minister for Gambling has provided the following information:

1. What processes and procedures does the Office of the Liquor and Gaming Commissioner have to vet the introduction of new poker machine games on the South Australian market pursuant to section 40 of the Gaming Machines Act and, in particular, subsection (3) of that Act, as well as the equivalent provisions of section 37(a) of the Casino Act?

I am advised that the processes for application and approval of new games for gaming machines are as follows:

(Note: the holder of the casino licence is required to follow the same process however there is no application fee)

A licensed gaming machine dealer must submit an application form and fee for the approval of a game to the Liquor and Gambling Commissioner. Dealers are required to provide summary information with every application for approval of a new game. Where the game provides a new feature, characteristic or quality, dealers have been instructed to provide specific information as to why the new feature will not exacerbate problem gambling.

The Commissioner examines the details provided with the application to determine how the application will proceed:

(a) If the game provides a feature which is new or materially different from those already approved, the dealer is required to submit a responsible gambling impact analysis in line with the guidelines set out by the Independent Gambling Authority (IGA);

(b) If the game provides a feature deemed by the IGA guidelines as 'tending to an exacerbation' of problem gambling (e.g. more than 25 free games, game speed of less that 3.5 seconds etc.) the dealer, should it wish to proceed, is required to submit evidence which demonstrates that the game will not exacerbate problem gambling;

(c) If the game provides only features that are the same or similar to those already approved, no further information is required.

The Commissioner instructs the dealer to submit the game to an Accredited Testing Facility (ATF) for assessment against the prevailing technical standards - the National Standard for Gaming Machines and the South Australian Appendix. The ATF tests the game to ensure that it meets the demands of fairness, security and auditability as required by the standards. Once testing has been successfully completed, a certification from the ATF is provided to the Commissioner.

At this point the Commissioner examines the game and certification in more detail, with particular emphasis on any feature that may be considered new or different. If the certification documentation highlights any features which are listed in the IGA guidelines, the dealer is instructed to submit evidence which demonstrates that the game will not exacerbate problem gambling.

The Commissioner then forwards the game and relevant details to the Independent Gaming Corporation (IGC) for testing to ensure that it meets the communication requirements of the central monitoring system. Once testing has been successfully completed, a certification from the IGC is provided to the Commissioner.

Subject to successful testing by the ATF and IGC and any submissions provided by the dealer in respect of the impact on problem gambling, the Commissioner will consider the approval of the game.

It should be noted that at any time and for any reason, the Commissioner may exercise his discretion, pursuant to section 29(1)(d) of the Gaming Machines Act 1992, to require advertising of an application. Advertising provides any person with an opportunity to object on the grounds that grant of the application would be contrary to the Act. (The Casino Act 1997 does not provide for the advertising of applications.)

An objector to the application is invited to make submissions at a hearing. Submissions from objectors are taken into account by the Commissioner when considering the approval of the new game.

2. What factors does the Liquor and Gaming Commissioner use to determine whether a new game is likely to lead to an exacerbation of problem gambling pursuant to section 40 of the Gaming Machines Act and section 37(a) of the Casino Act?

I understand that the IGA guidelines set out a number of features which it considers "will be likely to lead to an exacerbation of problem gambling unless there is evidence to the contrary." The Commissioner is guided by the IGA's guidelines in assessing the impact on problem gambling of a game providing any of these features.

The Commissioner also applies a detailed assessment of a new game and addresses attributes such as:

(a) game name;

(b) game themes and concepts;

(c) credit value and cost of entry;

(d) prize value, frequency, structure and promotion;

(e) special features, progressive jackpots etc.;

(f) images and animation;

(g) sound effects and music.

3. What factors are used by the Commissioner to determine whether a game should be advertised for public comment as part of a public hearing to determine whether it is likely to lead to the exacerbation of problem gambling?

I am advised that each application for approval of a new game is dealt with on its merits. I understand that the Liquor and Gambling Commissioner applies a reasonable, but subjective, assessment of the features provided by the game. The Commissioner has discretion to require that any application is advertised pursuant to section 29 of the Gaming Machines Act 1992.

Where a new game provides a feature, characteristic or quality which is new or different to that already approved, the Commissioner may require that the application be advertised. Advertising of the application provides an opportunity for any person to object to the application and make submissions at a hearing. In such cases, a responsible gambling impact analysis will also be required from the licensed dealer.

While there is no precise formula for determining whether a new game provides a feature which is new or different to that already approved, I understand that the Commissioner must apply a reasonable assessment and exercise his discretion to require advertising where it is likely to be in the public interest.

ADELAIDE CASINO

In reply to **Hon. NICK XENOPHON** (29 March).

The Hon. T.G. ROBERTS: The Minister for Gambling has provided the following information:

1. Does the Minister consider that SkyCity Adelaide Casino's promotion offering a $10 000 Westfield shopping voucher to be in breach of the Adelaide casino's advertising code of practice, in particular clause 4(f), which, in part, purports to prevent promotions relating to paying household staples?

I am advised that the advertisement of the promotion in question has been investigated by the Liquor and Gambling Commissioner who has determined that the advertisement breaches clauses 3(d), 4(f) and 5 of the Advertising Code of Practice. The Commissioner has provided a report to the Independent Gambling Authority on the matter. The *Casino Act 1997* provides for several mechanisms for the Independent Gambling Authority to deal with this matter.

2. If the Minister does not consider that it is in breach of the current code or the proposed code of conduct (which will be in operation next month), does he consider such promotion to be irresponsible in the context of tackling problem gambling?

The Liquor and Gambling Commissioner has determined that the advertisement breaches the Advertising Code of Practice that was in operation at the time of the breach.

HINDMARSH SOCCER STADIUM

In reply to **Hon. J.F. STEFANI** (25 March).

The Hon. T.G. ROBERTS: The Minister Recreation Sport and Racing has provided the following information:

The Government is satisfied with the Office for Recreation and Sport's management of the stadium and has not elected to terminate the Deed at this time. The South Australian Soccer Federation has not sought to resume management of the stadium under the terms and conditions of the Deed.

The Government sees no reason at this point in time to change its management arrangements.

The Government will continue to manage the stadium to ensure it fulfils its original purpose of being a multi use stadium.

The Government, through the Office for Recreation and Sport, the South Australian Soccer Federation and the newly formed Australian Soccer Association are in discussions to determine the future arrangements relating to the stadium.

I envisage that the outcome of these discussions will resolve the management arrangements pertaining to future use of the stadium.

FOSTER CARE

In reply to **Hon. KATE REYNOLDS** (25 March).

The Hon. T.G. ROBERTS: The Minister for Families and Communities has advised:

1. The Foster Carers' Charter is currently in use within the Department for Families and Communities (DFC), including Children, Youth and Family Services (CYFS). The Charter:

- informs, and is referred to in, CYFS operational policy and the DFC funding policy for alternative care; and
- is considered by CYFS social workers, foster carers and staff of funded alternative care service providers during training.

The foster care charter is currently being updated and I have asked the Department for Families and Communities to ensure that all current foster carers receive a copy of the updated Charter.

2. The Charter has been introduced and implemented in DFC and CYFS policy and practice.

3. The Government has recently undertaken a range of initiatives to provide improved support and resources for foster carers.

On 25 March 2004, I approved the recommendations of the Tender Evaluation Panel for the provision of $7.2m of Statewide Alternative Care Services by the non-government sector. Therefore, as from 1 July 2004, there is a more diverse range of services to meet the needs of children and young people and to afford more choice to carers in the type of care they provide.

New service agreements and guidelines are under development by the Government in consultation with the non-government sector and will provide clarity in mutual roles and responsibilities in the support of foster carers.

Additional funding has been allocated to:

- the Statewide Foster Carer Advocacy Service to provide professional advice and advocacy on behalf of South Australian foster carers;
- the establishment of a peer support body for foster carers; and
- the Statewide Foster Carer Recruitment Service to improve and re-energise recruitment strategies and increase the number of foster carers in South Australia.

In addition, the position of a Foster Care Relations Director has been created in the new Department for Families and Communities and will provide me with direct advice on how a new relationship with all our foster carers can be forged and ensure that their needs are met.

I have also undertaken to speed up the reimbursement of agreed incidental expenses for foster carers.

4. The Foster Carers' Charter is to be reviewed, and will be informed by the Alternative Care Program Standards. These Standards are currently being developed by DFC in consultation with the non-government sector.

YOUTH GAMBLING

In reply to **Hon. NICK XENOPHON** (25 March).

The Hon. T.G. ROBERTS: The Minister for Gambling has provided the following information:

1. What surveys has the Government undertaken on the prevalence of youth and underage gambling, particularly on poker machines in the Adelaide casino in this state? Does the Government acknowledge that there is a paucity of up-to-date information in relation to this, and when will it rectify that?

The Government is not aware of any survey being undertaken on the prevalence of youth and underage gambling on poker machines in Adelaide's Sky-City Casino but is aware of the widely published research by Dr Paul Delfabbro, lecturer in the Department of Psychology at the University of Adelaide on the prevalence of youth gambling. The Independent Gambling Authority has a research budget and assesses on a needs basis those areas of research in prioritising that budget.

2. What is the level of resources available to monitor and police levels of underage gambling, particularly in poker machine venues and the casino?

In respect of the Adelaide Casino, I am advised that Uniformed Security Officers (USO) are stationed at the entrance to the casino at all times the casino is open to the public. USOs monitor all persons entering the casino and check for juveniles, barred persons and intoxicated persons. The number of USOs rostered to undertake this function varies depending on the day/time of day.

I also understand that surveillance staff within the casino also monitor patrons, looking for juveniles and barred patrons. Government Inspectors are also on duty at the casino at all times. The number of Inspectors on duty varies from one to five, again depending on the day/time of day.

In respect to hotels and clubs, licensees are required to ensure that minors do not enter or remain in a gaming area or play gaming machines. The Office of the Liquor and Gambling Commissioner employs 8 inspectors to inspect all licensed premises in the State. I am informed inspectors will observe patrons in gaming areas when present at an inspection but it is simply not feasible to monitor venues on a regular basis for this type of activity. I am advised that instances of minors in gaming areas are dealt with predominantly by complaint. Police also play a role as part of their community policing operations in ensuring that minors do not enter or remain in gaming areas.

3. How many prosecutions have there been in the past three years for underage gambling in the state, including in poker machine venues and the casino?

I am advised that there have been no prosecutions in relation to underage gambling in the casino or hotels and clubs in the past 3 years.

I understand that there is one case of an underage person placing a bet at a TAB outlet. The matter has not yet been determined.

4. What protocols, procedures and resources does the Office of the Liquor and Gambling Commissioner employ to enforce age limits in poker machine venues and the casino, and how are such protocols, procedures and resources assessed for their effectiveness?

In relation to the casino - Under section 38(1)(b) of the Casino Act 1997, the Liquor and Gambling Commissioner approves the Skycity Adelaide Accounting and Internal Controls, Policies and Procedures Manual and the Security Procedures Manual which include sections prescribing the casino's procedures in dealing with juveniles. I am advised that at least one Government Inspector is on duty in the casino at all times the casino is open to the public and part of their duties is to ensure the casino's compliance with all relevant Acts, regulations and procedures. This includes observing Uniformed Security Officers on duty at the main entrance to see that procedures in dealing with suspected juveniles are complied with.

Approved procedures are reviewed by a Government Inspector following every incident involving juveniles gaining entry to the casino. The procedures are currently under review to ensure compliance with the new Codes of Practice recently released by the Independent Gambling Authority.

The Commissioner is currently investigating the possibility of empowering Government Inspectors to detain and question suspected juveniles detected on casino premises.

Persons suspected by Government Inspectors of being juveniles are brought to the attention of Security staff.

It is difficult to assess how effective the procedures are in preventing juveniles in gaining entry to the casino, however I am informed that approximately 370 juveniles per month were refused entry to the casino for the 2003 calendar year. This tends to indicate that procedures are being applied diligently and effectively.

I am advised that the Casino Inspectorate is currently comprised of 1 Manager, 4 Senior Inspectors and 5.3 FTE Inspectors. Staff are rostered to be on duty at all times the casino is open to the public and have an independent office located in the casino. They are supported by the Office of Liquor and Gambling Commission staff and resources.

In respect of hotels and clubs, I refer to my response under question 2. I understand that the Commissioner when approving the layout of gaming areas, has regard to whether or not the proposed area is so designed or situated that it would be likely to be a special attraction to minors. He also has regard to the level of supervision and surveillance employed by the licensee and determines whether it is adequate to ensure the detection of minors in gaming areas.

The Commissioner advises that he believes that because of the combined policing efforts of licensees, liquor and gaming inspectors and police, the incidence of minors in gaming areas of hotels and clubs is very low. This is evidenced by the very small number of incidences reported to the Commissioner. All reported incidences are investigated.

HERITAGE MATTERS

In reply to **Hon. J.M.A. LENSINK** (23 March).

The Hon. T.G. ROBERTS: The Minister for Environment and Conservation has advised:

1. The portfolio responsibilities under Environment and Conservation relate to State Heritage Places under the Heritage Act 1993. Places of local heritage are the responsibility of local Councils and the Minister for Urban Development and Planning under the provisions of the Development Act 1993.

Councils are able to protect local heritage places under the Development Act 1993, but as yet are not compelled to do so. The Sustainable Development Bill, shortly to be introduced to Parliament, envisages that Councils will be required to review their Development Plan every 5 years, including the identification of local heritage places.

2. The Minister for Environment and Conservation and the Member for Adelaide share a strong interest in the State's built heritage and as such have had numerous pleasant discussions about heritage matters.

3. The Government report Heritage Directions: A Future for Built Heritage in South Australia sparked considerable community interest in heritage, including 80 public submissions. The report and submissions will inform Government's approach to heritage matters.

On 21 May 2004 the Government announced an additional $2.9 million over the next four years to implement the Heritage Directions strategy. This commitment is a recognition of the significance of heritage issues to the South Australian community and of the need to ensure that heritage is managed in a consistent manner. (Refer also to response to Question 4).

4. The Government has recently released the draft Sustainable Development Bill for public comment. A number of matters covered in the Bill relate to heritage management, including the desire of the Government to establish mandatory listing of Local Heritage Places that meet relevant criteria. This is a significant strengthening of protection for local heritage sites.

5. Members should be aware that discussions in Cabinet are confidential.

6.. Heritage management is a joint responsibility of both the State Government, (for State Heritage Places) and local Government (for Local Heritage Places). The Department for Environment and Heritage and Planning SA are working closely with local Councils to improve the policies in Council Development Plans to protect both State and local heritage places, particularly through Planning SA's Better Development Plan project. (Refer also to response to Question 4.)

ALTERNATIVE CARE

In reply to **Hon. KATE REYNOLDS** (26 February).

In reply to **Hon. J.M.A. LENSINK** (26 February).

The Hon. T.G. ROBERTS: The Minister for Families and Communities has advised:

1. Will the minister confirm that prior to the middle of last year, that is after the Layton report was released, the government failed to consult with any non-government agencies, including those that have been at the front line in providing care for families and children in South Australia (for the past seven years), as to the type of service arrangements that would best meet the needs of children and families?

The government has held regular forums with alternative care service providers with a view to collaborative improvement and

review of alternative care systems and services since 2001. Between May 2001 and July 2002, as part of the Review of Alternative Care in South Australia (March 2002), the government engaged in 14 months targeted consultation including extensive consultation with alternative care providers.

Since the release of the Review of Alternative Care, key stakeholders, including alternative care service providers, have met as the Pre-Implementation Steering Group. In September 2002 the steering group endorsed the review findings and made recommendations to the Minister.

The findings of the forums and review informed the development of service specifications in the July 2003 Request for Tender (RFT) document.

No consultation occurred during this phase of developing the RFT to ensure probity for the tender process.

For the same reason, there has been no further consultation on service requirements, as they pertain to the RFT, since the release of the public tender in July 2003.

It is acknowledged that future tender processes would benefit from broad consultation with service providers. Future tenders will therefore permit increased consultation without compromising probity imperatives.

2. Will the minister confirm that her own Advisory Committee on Alternative Care was not even consulted in the development of the tender material and explain why?

It would have been a breach of probity to consult with the Ministerial Advisory Committee on Alternative Care (MACAC) during the development of the tender materials as MACAC represents some, but not all, potential bidders in the open public call for Alternative Care tenders. Therefore, this could have put some members in a position of conflict of interest or given them an unfair advantage. Approximately 50% of MACAC members are associated with current service providers and potential bidders.

I am advised that there are no probity concerns regarding the recently completed tender. Future tenders will seek to maintain this standard whilst ensuring increased input by MACAC.

3. Will the minister confirm that the expert who reviewed the early tender documents believed it would have been better to scrap the process, undertake proper consultation and establish a fairer and better model?

Mr Des Semple conducted an Examination of the Request for Tender between September and November 2003. This was in response to concerns raised by some alternative care service providers regarding confusion over funding models rather than service types. This examination resulted in very minor adjustments to the RFT providing additional detail of funding factors.

4. Will the government commit to lifting funding to alternative care services in South Australia to at least bring them up to the national per capita funding level; and, if so, when?

In 2003-04 the Government committed an additional $4 million per annum over four years to alternative care in South Australia. In 2004-05 a further $20.8m over four years was allocated to Children, Youth and Family Services (CYFS) for improved diversity of core options for children requiring alternative care services and included the provision of an emergency management placement response to provide initial assessment and safe care of children and young people.

5.Will the government commit funds to intensive placement prevention programs which I understand were withdrawn as part of the alternative care tender?

Alternative care funds have been committed to intensive placement prevention programs for children and young people who have entered alternative care placements. Additionally, the 2004-05 budget committed $9.1m over four years to family support programs including services to build parenting skills and capacity.

6. When will the government commit to a real increase in foster care subsidies to bring them into line with the recommendations of the national Cost of Caring Report released more than 12 months ago?

The government is considering this matter as a component of its ongoing response to the Layton Report.

7. Will the government provide information regarding any conflict of interest that may have existed within the contract process?

As per Government procurement guidelines, all members of the Tender evaluation panel signed a confidentiality agreement and a declaration outlining any actual, possible or perceived conflicts of interest. An independent probity adviser was engaged to chair the evaluation panel. His responsibilities included ensuring that any real or potential conflicts of interest were appropriately managed.

The State Supply Board endorsed the recommendations of the Tender Evaluation Report.

STATE PROCUREMENT LEGISLATION

In reply to **Hon. J.M.A. LENSINK** (24 February).

The Hon. T.G. ROBERTS: The Minister for Administrative Services has provided the following information:

The Department for Administrative and Information Services consulted with representatives from every portfolio across government including key agencies outside of these portfolios. Chief Executives were asked to nominate appropriate people from their agencies for this consultation process. A total of 22 agencies were consulted.

The Department for Administrative and Information Services consulted with the Department of Human Services, which at the time had, and for an interim period will continue to have, jurisdiction for the procurement operations of those entities that now comprise the new Department of Social Justice. The Department of Human Services provided comment that was supportive of the new legislation.

Government consulted with key groups such as Business SA, the IT Council, the Local Government Association, the United Trades and Labor Council (UTLC) and the Public Service Association. None of these organisations expressed concerns or reservations about the Bill and were generally supportive of the new legislation.

Business SA and the UTLC suggested that section 7 of the bill be changed to recognise Business SA as the peak employer's body and that a UTLC nominee be specifically included. The preferred position is for board membership to be based on the knowledge and expertise of members, not on their association to an industry group or a union body.

PUBLIC SERVICE ASSOCIATION STRIKE

In reply to **Hon. T.J. STEPHENS** (24 February).

The Hon. T.G. ROBERTS: The Minister for Industrial Relations has provided the following information:

1. When will the minister settle this dispute so that valuable government services can be delivered with some sense of normality?

Every effort has been made to resolve these matters in a manner that is in the interests of all South Australians. The South Australian Industrial Relations Commission is presently assisting with this matter. Generally speaking, the vast bulk of government services have continued to be delivered.

2. Why is the minister allowing his union buddies to run rampant with disruptions to important public services?

There is no substance to the allegation contained in the question. I refer to my answer to the previous question.

3. Given that the minister is also the Minister for Racing, what odds does he give himself of surviving the ministerial reshuffle?

My Ministerial responsibilities following the re-shuffle now extend to Administrative Services, Industrial Relations. Recreation Sport and Racing and Gambling.

In reply to **Hon. T.G. CAMERON** (24 February).

I provide the following information:

Will the minister for labor seek some advice from three former trade union secretaries that he has sitting here in the Legislative Council?

I would always welcome constructive advice from such experienced and well respected individuals.

TRANSPORT PLAN

In reply to **Hon. D.W. RIDGWAY** (23 February).

The Hon. T.G. ROBERTS: The Minister for Transport has provided the following information:

Since the Draft Transport Plan was released for consultation, the Government has taken even more steps to strengthen the economic base for this State. This includes the appointment of a Minister for Infrastructure who is currently leading the preparation of a State Infrastructure Plan in line with the Government's goals to implement the State Strategic Plan. The recent re-shuffle of the Ministry placed planning and transport under the same Minister and as such also affords some new opportunities. The consultations on the Draft Transport Plan provided significant and constructive feedback from a number of individuals and key organisations, all of which are being utilised in the planning and decision-making for our state's transport, planning and infrastructure needs. A comprehensive integrated land use and transport plan will be considered later in the year.

GAMBLING, HOTELS

In reply to **Hon. NICK XENOPHON** (3 December 2003).

The Hon. T.G. ROBERTS: The Minister for Gambling has provided the following information:

I am advised that the type of situation described would not have been a breach of the current responsible gambling codes of practice. Neither I in capacity as the Minister responsible for Gambling nor the Commissioner for Liquor and Gambling are signatories to the Memorandum referred to. The Honourable Member should direct any question on the Memorandum to one of the signatory parties.

Should the Honourable Member provide specific details concerning the incident to the Commissioner he may then be a position to investigate whether a breach has occurred.

Any practice that encourages or forces patrons to drink alcohol before being permitted to gamble is clearly not a desirable practice.

I am advised that effective from 18 June 2004 a new licence condition has been imposed on all gaming machine licences that provided that any person (other that a minor) can purchase and consume a beverage in a designated playing area without being required to play a gaming machine.

The Liquor and Gambling Commissioner and the Independent Gambling Authority advise that complaints of this nature have not been received.

ADELAIDE CASINO

In reply to **Hon. NICK XENOPHON** (27 November 2003).

The Hon. T.G. ROBERTS: The Minister for Gambling has provided the following information:

I am advised that the Office of the Liquor and Gambling Commissioner has not been notified of this allegation. If the Honourable Member is able to provide the details to the Commissioner or through my office I will ask the Commissioner to conduct an investigation as to whether there has been any breach of the advertising code of practice or any other relevant legislation.

Any practice or advertisement that misleads a person is clearly unacceptable.

The issue of inducement loyalty schemes has been identified by the Independent Gambling Authority as a matter for consideration as part of the consultation for the 2nd stage of the codes of practice. This will enable all interested parties to put submissions and for the Authority to provide its independent view on these issues and potentially include them in the codes of practice. It is appropriate that the Authority consider these issues.

CHILDREN AT RISK

In reply to **Hon. A.L. EVANS** (13 November 2003).

The Hon. T.G. ROBERTS: The Minister for Families and Communities has advised that:

1. The issues raised in the submission to the Layton review by the Family and Youth Services (FAYS) Noarlunga District Centre, centred on historical concerns of a general nature. The matter was raised to illustrate an issue of note in regard to risks for children and young people. An internal examination was made by Senior Department of Human Services (DHS) staff, but no specific identifying details could be ascertained for a more detailed investigation. The Manager of Children, Youth and Family Services (CYFS) - Community Residential Care, advises that there are no current specific concerns. The general issue remains in mind and ongoing liaison occurs with the SA Police regarding persons of interest.

2. No report is to be issued, as the matters were general in nature and historical in context.

3. Ongoing liaison between CYFS and the SA Police occurs as a matter of course, and all pertinent matters are referred formally to them as relevant. There were no individual matters concerning individual young people that required formal referral to the SA Police in this instance.

4. There was no time delay as the initial examination determined there were no specific details to be investigated.

DRY ZONE

In reply to **Hon. J.M.A. LENSINK** (12 November 2003).

The Hon. T.G. ROBERTS: The Minister for Urban Development & Planning has provided the following information:

An independent evaluation of the dry area has recently been completed by Plexus Strategic Solutions. The evaluation did not specifically examine the effects of the dry area on tourism, however it found generally that the declaration had reduced the incidence of public drinking and anti-social behaviour in the city and had increased people's feelings of safety. These findings were most evident in relation to Victoria Square.

Sporting, tourism and cultural events in the City of Adelaide have not been adversely affected by the dry area declaration because provisions exist within the Liquor Licensing Act for the granting of temporary exemptions. To obtain an exemption the organisation wanting to put on the event must first apply in writing to the Adelaide City Council for approval to use the proposed site. Once Council approval has been obtained the organisation then applies to the Liquor and Gambling Commissioner for a limited license, which permits the sale and consumption of alcohol within a prescribed area for the duration of the event. A license costs $30 a day.

Provided below is a summary of initiatives that have either been implemented or are in train to address issues that have arisen as a direct result of the dry area trial or that have been highlighted by it.

Completed Initiatives

Stabilisation facility

The 22-bed stabilisation facility began operation in September 2003.

Aboriginal Community Constable

In February 2003 SAPOL appointed an Aboriginal Community Constable to the Adelaide Local Service Area's (LSA) Drug Action Team.

City Homeless Assessment Support Team (CHAST)

CHAST, which provides outreach services to homeless and vulnerable people in the inner city, received additional Government funding that has enabled it to increase its full time staff from seven to nine.

Mobile Assistance Patrol

The Aboriginal Sobriety Group's Mobile Assistance Patrol (MAP) transports people under the influence of alcohol or other drugs to places of safety and support.

Since the introduction of the dry area trial MAP has received additional funding and now provides a 24-hour a day, seven days a week service in the city.

DHS and Adelaide City Council agreement

To help achieve better coordination and integration of human services in the inner city the Department of Human Services and the Adelaide City Council entered into an in principle agreement to work collaboratively to build a more strategic alignment of government-council priorities in relation to human service planning.

Multi Agency Community Housing Authority (MACHA)

MACHA has received additional funding from DHS to employ a community liaison officer to implement strategies that encourage greater community, government, business and media awareness and support for disadvantaged groups in the inner city.

Youth Initiatives

Operation Shut Eye

SAPOL has reinstated Operation Shut Eye, which is a program targeting at risk young people who are in the city late at night. Under Operation Shut Eye police take at risk young people to the City Youth Service Office and then arrange their safe transportation home.

Initiatives Under Development

Aboriginal detoxification facility and family centre

A committee chaired by the Department of Aboriginal Affairs and Reconciliation (DAARE) is overseeing the development of a 24-hour medical detoxification and family care facility for Aboriginal people.

Transitional accommodation

The dry area declaration has highlighted the issue of people sleeping in the parklands, particularly the west parklands.

Cross-agency strategies are being investigated to tackle this issue. This includes providing transitional accommodation for homeless and itinerant people.

GAMBLING, SELF-EXCLUSION

In reply to **Hon NICK XENOPHON** (20 October 2003).

The Hon. T.G. ROBERTS: The Minister for Gambling has provided the following information:

1. Given the manifest lack of effectiveness of the current self-exclusion arrangements, what framework of consultation and timetable for change will the Minister commit himself to, in light of the reports that he is considering an ID-linked smart card for poker machines in order to deal with this problem?

A principal objective of the self-exclusion system is to provide assistance to problem gamblers. It is generally accepted that self-barring is helpful to problem gamblers (ie as a psychological support to resist temptation).

One of the proposals under the National Research Program established by the Ministerial Council on Gambling is to conduct research on loss-limiting technology (pre-commitment).

The above trial has been supported by the Ministerial Council on Gambling and by South Australia.

The timetable for research programs under the National Research Program is a matter for the Ministerial Council to determine.

2. Does the Minister consider the two-tiered level of penalties for venues for allowing banned gamblers on premises with a maximum penalty of $10 000 under one act and $35 000 under another, with differing thresholds for an offence, to be undesirable and in need of reform?

Whilst it is acknowledged that penalties are different they are both substantial.

3. Will the Minister review the proportionate nature of penalties for barred gamblers and venues?

I understand that the proportionate nature of penalties for barred gamblers and venues is sympathetic of the timing of the introduction of the various betting schemes (including the voluntary barring scheme) and has resulted in different penalty provisions being applied.

4. What resources exist to ensure enforcement of the current self-exclusion orders?

I am advised all gaming venues are inspected by Inspectors from the Office of the Liquor and Gambling Commissioner to ensure compliance with the self barring system. Inspectors, I am informed ensure that barring notices issued by the Independent Gambling Authority are displayed appropriately (that are accessible to staff but not visible to the public) and that staff have been instructed in relation to the barring procedure.

Complaints regarding self barred persons entering gaming venues are investigated and disciplinary action is taken where appropriate. Where offences have been committed police may also conduct an investigation.

5. Does the Minister concede that his recently announced policy of family protection orders would fail to be effective unless this aspect of the legislation were reformed in terms of its effectiveness?

The Family Protection and Problem Gambling Order provides for the potential use of a broad range of measures in a framework of consultation and mediation. This framework will provide a very important new tool to enable problem gamblers and family members to redress the adverse financial and social impact a problem gambler can cause.

The application of these orders and issues arising will be subject to on-going monitoring and review.

In reply to **Hon. J.F. STEFANI** (20 October 2003).

I provide the following information:

Does the Minister consider that, as part of the reform agenda to exclude problem gamblers, he may consider circulating to every gaming venue in South Australia the identities of people who have been banned from gambling?

The Independent Gambling Authority currently provides photographic identification to venues that a self-barred problem gambler has requested to be barred from. I am advised it would be counter productive if photographic identifications of all self barred people were provided to all venues. It would be difficult for hotel staff to remember and practically act upon and enforce a barring order with such a large number of photographic ID's, given that many of the people would not live in the vicinity of the hotel. In addition it would be a breach of privacy provisions if photographs of self-barred patrons were provided to hotels that patrons have not requested to be barred from.

GAMBLING, LOYALTY PROGRAMS

In reply to **Hon. NICK XENOPHON** (15 October 2003).

The Hon. T.G. ROBERTS: The Minister for Gambling has provided the following information:

I am not aware of the contents of the Tattersalls report to which the Honourable member refers.

I am advised that the Government does not collate information in relation to these schemes. The Government does not collect information relating to player expenditure.

I am advised that the Independent Gambling Authority will conduct investigations into these schemes as part of the second stage of development of the advertising and responsible gambling codes of practice.

I refer to my answers above.

The Independent Gambling Authority will as detailed in my answer to question 3 consider these issues in the second stage of the development of the codes of practice. If the Honourable Member has further information or concerns on this issue he may wish to provide such information to the Authority.

I am advised that the Government does not collate information in relation to these schemes. The Government does not collect information relating to player expenditure.

I refer you to my answer for question 3 in that I am advised that the Independent Gambling Authority will as part of the second stage of development of the advertising and responsible gambling codes of practice investigate card-based loyalty schemes.

I am advised that no similar schemes or strategies are used by SA Lotteries in South Australia.

SA Lotteries does not operate a loyalty club. SA Lotteries offers players free membership of the Easiplay Club, which offers the following services:

- Transactions are safeguarded in the event that a winning ticket is lost, stolen or damaged, providing members with "insurance type" benefits.
- Winnings can be credited directly into a nominated bank account. Members are also able to nominate how long after the draw they wish to receive their winnings.
- Members can store their "favourite" numbers.

COMMISSION OF INQUIRY (CHILDREN IN STATE CARE) BILL

Adjourned debate in committee (resumed on motion).

(Continued from Page 2137.)

Clause 3.

The Hon. A.L. EVANS: I am disappointed at the government's lack of willingness until now to accommodate the concerns of the victims and the contributions of honourable members in this place. This inquiry is long overdue and this state is suffering from a cancer of hurt and suspicion. Allegations of the most terrible betrayals of trust and suffering inflicted on some of the most vulnerable in our community over many decades are having a corrosive effect on our society. The government must face the fact that this cancer has to be dealt with effectively and the terrible hurts of the victims must be addressed. Trust is a precious commodity easily lost but hard to win. It would be a tragedy for our state if this inquiry goes ahead under a cloud and in a way that simply compounds the hurts and sense of betrayal of the victims and the suspicions of the wider community of ordinary South Australians.

The government should not make the mistake that this issue is only of importance to the victims. The most unhealthy suspicions and distrust in the institutions of government and justice have settled on the ordinary people of this state and seeped into the fabric of our society. This has profound ramifications in all sorts of areas of government services and administration of justice. I regret greatly that the government has proceeded to rush this inquiry and even sought quite inappropriately to pre-empt the significant contributions many honourable members in this place will seek to make to shape the constitution of the inquiry. The government knew in advance that these honourable members would take a

strong interest in the outcome of the debate that we are now having.

I feel that there has been a serious error of judgment in seeking to announce the appointment of the commissioner before the bill was dealt with. I have no concerns whatsoever about the integrity, character, skills and suitability of Justice Mullighan to be appointed as commissioner. I have no concerns about the justice system in our state, although I might add that the government has been a frequent critic. However, it does not really matter what my perceptions are in this matter. What matters are the perceptions of ordinary South Australians and especially the victims.

Attempting to sew up details behind closed doors will simply compound the damage done to the victims of our state. Attempting to pre-empt any basic minimum of a transparent and open process, such as the parliamentary process, can only undermine the public's confidence. Paying lip service to bipartisanship will not fool the victims. The government has sought to justify its approach by arguing that the public must learn to trust the government. The government will begin to regain the trust of the victims and the public only if is prepared to hand this matter over to a genuinely bipartisan process of appointment. I will be supporting the opposition's amendment that seeks to establish a parliamentary select committee to appoint the commissioner and any other persons appointed to assist the commissioner. Accordingly, I will support the opposition's consequential amendments that relate to this matter.

The inquiry will be a tragic waste of time and money if the government does not get the process of setting up the inquiry right, from the beginning. I will also seek to support amendments that will require the committee to seek widely for a suitable person for appointment as commissioner. Whilst I reiterate that I believe Justice Mullighan would be a very suitable candidate, I believe we should be looking for applicants at least as far afield as interstate. The mistrust and sense of betrayal relates to the alleged systemic failings of the administration of justice, the government of this state. I also wish to note that at this point I am further constrained in my decision in relation to this matter by the strong representations of the victims. They might have accepted the appointment of Justice Mullighan if the process had been left to the appropriate time and it had been done in a more open, transparent and parliamentary manner. As the situation now stands, the victims have indicated a strong lack of confidence in the government's proposed appointment, and I am not sure whether there is any real prospect of reassuring them on this matter.

The Hon. NICK XENOPHON: I indicate that, in general terms, I commend the government for taking the initiative and introducing this bill to establish an inquiry after much hard campaigning by victims and others in the community. The matter before us in committee is to determine whether the amendments moved by the Hon. Mr Lawson ought be supported. I find myself substantially in agreement with the remarks made by my colleague the Hon. Mr Evans. I reiterate that this is not in any way a criticism of Justice Mullighan whatsoever.

I am concerned that this debate is in any way a reflection on the integrity and high standing of Justice Mullighan either as a person or as a jurist. However, I share the concerns of the Hon. Andrew Evans with respect to the process by which we have reached this stage. With respect to the government and the minister (Hon. J. Weatherill), I believe that announcing an appointment in this manner was pre-emptory, and that concerns me.

Members interjecting:

The Hon. NICK XENOPHON: I am sorry that I am causing frustration for the government.

The Hon. P. Holloway interjecting:

The Hon. NICK XENOPHON: I just think that—

The Hon. T.G. Cameron: You are a great bloke when you vote with them. They sing your praises.

The Hon. NICK XENOPHON: Well, I am concerned about the process. I think that we all want this inquiry to be thorough, to be respectful of the concerns of the victims and to give a real sense of justice to victims, many of whom have been calling out in the wilderness for many years for a real sense of justice. It is a matter of how best we achieve that. I prefer the amendments of the opposition. It is finely balanced, but I believe that is the appropriate way to go.

The Hon. P. HOLLOWAY: I find it absolutely extraordinary that this government has been criticised for dragging its heels, quite apart from the fact that, within days of coming to office, this government set up the Layton inquiry into child abuse. Meanwhile, what did the former shadow minister do in relation to that issue? The record shows that he did nothing. This government has been serious about dealing with this issue from day one, and we have been dealing with it properly all the way through. We had this major inquiry that cost taxpayers a significant amount of money.

We have poured tens of millions of dollars of resources into improving the services provided, which the previous government did not. We have been very serious about it. After that process, we set up an inquiry. We are doing what people are telling us to do and establishing an inquiry. We are now told by the Hon. Andrew Evans that we are rushing into it. On the one hand we have been dragging our heels. We are accused of taking too long, and now we are told that we are rushing into it. This amendment is nothing to do with the processes and getting the best outcome for the victims.

It is very sad that it is all about the opposition and others feeling some need to try to gain some sense of ownership of this issue. As I say, the government has nothing to apologise for in relation to this. We have announced the establishment of this inquiry. We have gained the services of a suitable judge—and that is not easy to do. I agree with the Hon. Nick Xenophon that we want a thorough inquiry. Justice Mullighan has expertise, because of his background, in dealing with the sorts of sensitive issues that will come up during the inquiry. He is eminently suited for it. If this amendment were to get up, we may very well get someone from interstate whom we know nothing about.

But I come to the point that I made before the dinner break. It is absurd to suggest that this state is incapable of producing someone of the right calibre to conduct this inquiry. Where do we take this? Does that mean that every time something happens we have to get someone from outside the state because we are not capable of coming to some reasonable conclusion? Has the cultural cringe in this state got so low that we have to admit that South Australians are not capable of producing such people and we have to get people from outside? Where does it end? The logic that we in this state are not capable of dealing with these issues and we do not have people of integrity and character to deal with them is absurd. It is an absolutely appalling cultural cringe and, I suggest, one that has very little to do with trying to achieve the objectives.

We need to establish an inquiry that sensitively deals with these issues and provides some sense of closure for the people who have been the victims of these disgusting perverts within our community. We all want to see that happen but, for that to be achieved, we need a person of not just the highest integrity but a person who also has the skills necessary to deal with such a sensitive inquiry. The government has done its duty in finding such a person and it is absolutely extraordinary that we should be criticised for our processes. Does this mean that it is a new benchmark and every time the government wants an inquiry it has to get someone from interstate or have some totally exhaustive process? That is a nonsense.

The Hon. R.D. LAWSON: Before the adjournment the minister said that the amendment standing in my name represented a vote of no confidence in Justice Mullighan. It represents no such thing. If it is a vote of no confidence in anything, it is a vote of no confidence in the way in which this government has handled this issue. The issue is not Justice Mullighan: the issue is a point of principle.

I want to indicate that, as soon as the government attempted to pre-empt the appointment of a commissioner, the opposition wrote to Justice Mullighan, through the leader, on 19 July. I think I should put on the record the communication made to the judge. It states:

> Dear Justice Mullighan.
>
> Re Commission of Inquiry (Children in State Care) Bill.
>
> This afternoon the Minister for Families and Communities (Hon. Jay Weatherill) issued a news release announcing the proposal to appoint you to head the commission of inquiry proposed to be established by the above bill.

This appointment was announced before the bill and its framework had been established. The letter continues:

> I feel that I should inform you at the earliest opportunity of the position of the Liberal opposition on this issue.
>
> As Leader of the Opposition, I have, for some months, been calling for the establishment of an inquiry.
>
> On 30 June, the shadow attorney-general introduced a bill for the establishment of any inquiry. That bill provided for some parliamentary oversight of the appointment process and it stipulated that the commission should be presided over by a judge or former judge of a Supreme Court (other than this state).
>
> Our proposal for an interstate judge was based on our belief that those who have been complaining about this issue have claimed these matters have been 'covered up' by prominent people in South Australian governments, the police and judiciary.
>
> Any commission headed by a local person, however distinguished, will be viewed with suspicion by many victims.
>
> I enclose a copy of my letter of 12 July to the Premier which clearly states our position.
>
> This morning, I met with the Attorney-General and minister Weatherill. I was accompanied by the shadow attorney-general and the shadow minister.
>
> We were informed of the proposal to appoint you. We were also informed that you had indicated that you would not undertake the appointment unless it had opposition support.
>
> The ministers were advised that the question whether the opposition would abandon its proposal for an interstate judge and support your appointment could only be determined by a meeting of opposition members which had already been scheduled for this morning.
>
> The opposition meeting was duly held and the party resolved to adhere to its position regarding an interstate judge. Minister Weatherill was informed by telephone of that decision.
>
> I was surprised and amazed by the subsequent announcement of your foreshadowed appointment.
>
> In the circumstances, I regret to have to inform you that this appointment cannot be supported by the opposition in parliament for the reasons appearing above.
>
> It is regrettable that you have become embroiled in a political issue. I regret to say that it appears that the government may feel that it has the numbers to force the passage of the bill in its current form, or that it can gain the numbers by pre-announcing your appointment before the bill is debated in the Assembly.
>
> I believe that you should be aware of the circumstances. If the government persists in the course it is pursuing the opposition will have to maintain the position of principle which we have adopted all along, viz, that the appointment of a commissioner from outside the state is in the best interests of all.
>
> Yours faithfully
>
> Rob Kerin
>
> Liberal Leader.

The point is clearly made to Justice Mullighan. We have put the point on the record that this is not a matter of the particular judge.

The Hon. P. Holloway: Did you get a reply?

The Hon. R.D. LAWSON: Well, we did not actually expect a reply from the judge.

The Hon. P. Holloway interjecting:

The Hon. R.D. LAWSON: It was not a political exercise. It was in order to ensure that the judge knew the position that had been reported to us by ministers in this government; a position, the veracity of which, is seriously in doubt as a result of the subsequent statements of the minister. The Hon. Andrew Evans has hit the nail on the head. This is not a matter of any lack of confidence in Justice Mullighan. It is the belief that an appropriate procedure should be followed, and the way to do that is to have a parliamentary selection committee.

The Hon. P. Holloway interjecting:

The Hon. R.D. LAWSON: The minister asks whether this means that, every time we establish any inquiry in this state, we are going to run off and say, 'We cannot have anyone in this state do it,' because of some sort of cultural cringe. Of course, it does not. It does not mean that at all. This is a peculiar inquiry. This is about allegations of systemic abuse in this community. It is a matter that has been calling for an inquiry for quite some time, and it is only appropriate in the special circumstances of this particular inquiry that the commissioner come from interstate.

The Hon. A.L. EVANS: I am quite amazed that there cannot be a slight shift to bring healing to hundreds of victims. When I first came into this parliament, I saw a one line sentence which stated that victims would march down Rundle Street about the lack of action and help for them. I was the only politician who marched. Hundreds of victims marched with banners. As I talked to them, they told me their sad story and I saw the distress. They are the people for whom I am fighting. If we appoint a local person, it will not take away the suspicion. I have great confidence in the local person, but hundreds of people's lives have actually been destroyed. I can take you to people. I can tell you about people who in 1960 were abused by prominent citizens in South Australia. Today they are like zombies.

If we cannot shift just slightly to broaden it, then we are fighting for something else of which I am not aware. I have been lobbied harder on this than any other issue since I have been in the place. I wonder why. We should shift a little bit to give these people an opportunity to feel that at least they have been listened to and there is no doubt in the situation; at least they have some semblance of justice and it is a closing of the door. It amazes me why people will not shift a little bit. There must be another reason. With that, I beseech members to reconsider their position and think about the hundreds of victims—not about all the policies and principles—whose lives have been destroyed.

The Hon. T.G. CAMERON: It is my intention to support the government's position. I want to respond to some of the

comments made by the Hon. Andrew Evans. I am afraid to say that the Hon. Andrew Evans' contribution offended me a little. I know that he did not mean to offend me and that he was probably not deliberately trying to offend me because, as we all know, he is an extremely inoffensive and gentle person. If you end up having a fight with the Hon. Andrew Evans, you would fight with anybody.

I hope that, in his contribution, the Hon. Andrew Evans was not implying that I am one of these people who is not prepared to budge or think about the victims. In fact, I put it to him that, in conversations that I have had with most members in this place, there is not one member who does not care deeply about what happened to the victims or does not want to do everything they possibly can to help their plight. I put that to the Hon. Andrew Evans, and I hope that he takes that in good faith. I could equally make the same plea to the honourable member: could he just bend a little for the sake of the victims? The issue is about who is going to head up this inquiry. Some of the questions that I would ask myself have already been covered in the debate.

I do not know Supreme Court Justice Mullighan. I rang a few lawyers that I know who have been practising for 20 to 30 years. Some of them knew him when he was practising as a QC, and I received glowing reports in relation to his impartiality, decency, honesty, etc. I will try to encapsulate the arguments put forward by the Hon. Andrew Evans. There is an argument being put forward here that, on behalf of the victims, they will never be able to put this issue to rest unless we go interstate and find someone else to come here to South Australia and conduct the inquiry. I think it is a nonsense. I do not know that we have really canvassed the original opposition to Justice Mullighan that has surfaced.

It is not my intention to discuss what is talked about in the corridors of this place. When one goes back and has a look at the transcript, what will be important is what is not being said. I do not accept the argument that the victims will not get any closure if Justice Mullighan handles the inquiry. I think it is a fallacious argument. I put it to members that those people who argue that, by Justice Mullighan being appointed to head up this inquiry, there will be no closure for the victims. I think that they are hiding behind the victims by adopting that position.

The Hon. A.L. Evans: Talk to the victims.

The Hon. T.G. CAMERON: I have talked to victims—with respect, long before you came into this place—who are making all sorts of accusations. Everybody supports the inquiry. What we independents now have to work out is just what is going on here. What is wrong with Mullighan? What is wrong with appointing a South Australian? Are the conspiracy theories just running amok? I put it to the Hon. Robert Lawson that, if he were sitting on the government side, he would be squealing and ranting about the opposition's plan to set up an appointment panel. This is an inquiry and I believe that governments have the right to appoint their person to the inquiry. It is a position that I have always supported, and I will continue to support it.

I am not persuaded by the argument that there will be no closure of this matter for the victims unless we find someone unimpeachable from interstate. That seems to me to be code from the opposition for saying, 'Unless you pick someone that we agree with, we will continue to oppose whoever you want to appoint, which will not give any closure to the victims.' Whatever we do, we should not be in a position where controversy continues to rage about whoever it is that we appoint to this position. If the numbers are there to appoint Justice Mullighan, so be it. We should get behind that decision. If the numbers are lost here today, and the government is silly enough to accept this proposition of setting up a panel and bringing in someone from interstate—at what expense we do not know—I will accept that decision.

If we end up with Fred Bloggs from Papua New Guinea, I believe that we all have a responsibility to accept whatever decision comes out of this for the sake of the victims. The worst thing that we could have is controversy raging after this bill has been passed. I put a question to the leader: in the event that we do set up a panel and go interstate, has the government any idea as to what the cost would be? There must have been some consideration in your rejection of the idea. What will it cost to bring someone from interstate?

The Hon. P. HOLLOWAY: We have not costed that. It would be very difficult to do that, I would suggest, and obviously the cost would be significant. It is not just on the matter of cost that the government has taken this action. Rather it is for the very point that the Hon. Terry Cameron has made, about having this weird beast, this parliamentary selection committee, appointing the commissioner. I think that is quite unprecedented. I would like to ask the deputy leader if there is any precedent he can name where a committee of inquiry has been established that there has also been a committee of the parliament.

If it were a parliamentary inquiry, I could understand why the parliament would become involved in the processes and selection, but we are not talking about a parliamentary inquiry. We can have parliamentary inquiries because we have lots of committees that can do that, but that is not what we are talking about. We are talking about an executive inquiry, a commission of inquiry.

I also want to make the point that really illustrates just what a dodgy piece of legislation this is, if I can use that colloquial term. If one looks at what happened in the House of Assembly when this matter was debated, we had a parliamentary selection committee that involved the Speaker, the Premier and the Leader of the Opposition. The upper house was completely forgotten. Now when it gets up here, the opposition is moving an amendment that it should include you, Mr President, as well as the Speaker, the Premier and the Leader of the Opposition, and also a member of the Legislative Council chosen by the Legislative Council who is neither a member of the government nor a member of the opposition. That sort of mismatch between the houses is not likely to generate a particularly good outcome, but that is another story. It is scarcely likely to be balanced in terms of the views of the other place.

Why is the opposition suggesting a different sort of committee here weighted towards the Legislative Council, whereas down there it was weighted towards the House of Assembly? Does that not suggest that this is all about trying to get votes for this idea rather than seriously looking at a process? In any case, I make the point again that it is a nonsense process to have a parliamentary selection committee appointing a commissioner. It is quite unprecedented, to my knowledge, and I would be very interested if the deputy leader could tell us if there is any precedent whatsoever where a similar process has been used. It certainly did not happen with the various inquiries that were instituted under the previous government, such as the Motorola inquiry, and the like.

The Hon. R.D. LAWSON: With respect to the last points made by the minister, the initial proposal for a parliamentary selection committee comprising three members was intro-

duced in this chamber by me on 30 June. We have modified that in an effort to ensure that the parliament is widely represented in the appointment process. We have sought to be entirely fair in that. It is unprecedented because this is an unprecedented inquiry. However, I would remind the house that it was only a few years ago that the idea that there would be any parliamentary oversight of the appointment of the Ombudsman or Auditor-General would have been thought preposterous. These are appointments that are within the gift of the government; nothing to do with the parliament. We now have the Statutory Officers Committee which—

The Hon. T.G. Cameron: They report to parliament.

The Hon. R.D. LAWSON: And so indeed should this commission report to parliament. Before the honourable member steps in with those interjections, think: this committee is required to report to this parliament. The real point is that, if it is unprecedented or not, this is an unprecedented circumstance. We should develop our structures to meet the exigencies of this situation.

The Hon. KATE REYNOLDS: I would like to place on the record that the Democrats acknowledge that there is broad—we think unanimous—support in this place and in the community for the inquiry, and we welcome that. We said publicly on Tuesday that the inquiry should be established as a matter of priority and that the argument that was just starting to catch flame at that point about who would be appointed as the commissioner was premature and distracting attention from the main issue. At the time, we believed—and still do—that it would be more appropriate for the bill to have been passed through both houses of parliament before those sort of discussions, negotiations or announcements occurred. We believe that the negotiations could have been dealt with later, given that the government had already told the opposition that it would not have veto powers.

What we have now is an unhelpful slanging match with various sides playing political games which we think will only stall or undermine the inquiry before it even gets started. A number of the comments made by members today show just how very real that threat is. We would have preferred that the appointment, as I said, was left until the bill passed both houses, but regardless of whether the government chose to make its choice and announcement with or without consulting the opposition parties or any Independent MPs of both houses of parliament, we could debate that at great length and there simply is not time to do that now.

We agree that the commissioner should be a judge and I note that the government's bill does not require this. It assumes, but it does not require this. The amendments put forward by the opposition do. By speaking to disallow any South Australian judges to be considered—and that is judges who deal with incredibly sensitive matters every day without being questioned and certainly without being questioned in the parliament as a matter of rule—we agree that this can be seen as a vote of no confidence in the South Australian bench, and we are not prepared to support that message being sent. We do not think that this is the appropriate place to be discussing or debating the merits or otherwise of any one candidate.

I do not know how the numbers on this will go but, if turns out that the opposition's amendment to establish the panel does succeed, we have indicated to the opposition that, if asked, the Democrats are willing to participate on that panel with the energy and integrity that this issue requires in order to source the best possible candidates for the position of commissioner.

Given that many of the matters associated with dealing with child sex abuse and other forms of abuse cannot possibly be resolved neatly and easily and with consensus across the entire parliament, but given that there is, we hope, unanimous support in the parliament and we believe very strong support in the community, we say 'bring on the inquiry' and let us not spend too much more time quibbling over who will be appointed. Let us get the terms of reference right and let us get on with the job.

The committee divided on the amendment:

AYES (11)

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

NOES (10)

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

Majority of 1 for the ayes.

Amendment thus carried.

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

Page 2, after line 18—insert:
'State' includes a territory.

This is really only a consequential amendment, but it is one of a series of amendments to ensure that the appointee to head the commission is an interstate judge.

In an amendment standing in my name, which I have also circulated (amendment No. 3), it is now proposed that the judge be not merely a judge of the Supreme Court of another state or territory but that it be a judge or former judge of a number of superior courts around Australia. It has been suggested to us that the pool of Supreme Court judges and former judges who might be available is too limited. We are anxious to accommodate all suggestions. In fact, the suggestion that the pool was too small came from the government. Accordingly, I foreshadow that the judge whom we will seek to have appointed to this position would be a judge or former judge of the Federal Court of Australia or of the Family Court (other than a person who is resident in this state), a judge or former judge of the Supreme Court of any state or territory or a judge or former judge of an interstate court that corresponds to the District Court of this state. It is interesting that the government's bill did not specify any particular qualifications for the appointee. Clearly, the government had in mind that there would be only one possible appointee, and that was the particular judge it had selected.

In effect, this is a test clause for the proposition that this commission will be headed by a judge with the qualifications that I have described. I commented in earlier contributions about the desirability of having an interstate judge to head this commission. There was a good deal of debate and discussion on the first amendment moved by me relating to the parliamentary selection committee, and, certainly, I do not intend to repeat any of the remarks I made in that connection.

The Hon. P. HOLLOWAY: Essentially, this amendment is consequential on the first amendment. Obviously, we oppose the whole package of measures, but there is no point in our dividing on these other measures and taking up the time of the council. Clearly, this matter will now have to be

resolved in some other way, so the sooner the bill passes in this place the better. I should point out the problems with the amendment moved by the Hon. Robert Lawson. The amendment provides:

The person appointed must be a judge or former judge of the Federal Court of Australia or the Family Court of Australia.

Advice to me is that the appointment of a judge of the Federal Court would be unconstitutional. I did say that the amendment was consequential. I should reverse that and say that, certainly, it does flow onto the other amendments, but it does contain new material, so the government will oppose it and, if necessary, it would be our intention to divide on this matter. One might ask the question, too: why are we saying that it must be someone other than a person who resides in this state? What if, at some point in the past, a judge has resided in this state?

One can see the absurdity of the logic behind the suggestion that the person must come from outside the state. When one starts to drill down into the argument, what does it mean? What if the person has relatives here? What if he was born and lived here? What if he went to the law school? Where does one draw the line? When one starts drilling down and exploring the logic, it just illustrates how dopey the whole process is. I will not take up any further time of the chamber.

The Hon. KATE REYNOLDS: I have already placed on the record that the Democrats believe that the commissioner should be a judge. We would like to be able to support those parts of this amendment but, taking into account the comments just made by the minister, we will oppose this amendment. We do not believe that it makes sense to look back through someone's entire residential or work relationship history or professional networks and determine whether or not they have had suitable or unsuitable associations in the state. The amendment provides for a person other than a person who resides in this state, and we believe that is nonsensical.

The Hon. R.D. LAWSON: The minister has made some comments about the possible ineligibility of federal judges to sit on this inquiry. That is a point of substance on which, no doubt, the parliamentary selection committee would take appropriate advice at the time. There are issues, but the important thing is that we are looking to expand the pool of judges to whom the parliamentary selection committee might have recourse in recommending this appointment.

The committee divided on the amendment:

AYES (11)

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

NOES (10)

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

Majority of 1 for the ayes.

Amendment thus carried.

The CHAIRMAN: I would like honourable members' attention for one moment, and I address this remark basically to the Independent members. In the committee stage it would be most helpful to me, as the chair, if you have not made a contribution to the debate, when I call for the ayes and the noes, that you make at least a movement. It may save a lot of time in divisions. I watch to see which way you are going to vote and if you sit there blankly I have no idea and I go on the voices. So, for the help of the whole of the committee, I ask you to pay particular attention to that.

Clause as amended passed.

New clause 3A.

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

Page 2, after line 18—
Insert:
3A—Proceedings of parliamentary selection committee
(1) The President of the Legislative Council will preside at meetings of the parliamentary selection committee.
(2) A decision carried by a majority of votes cast by members of the parliamentary selection committee at a meeting of the committee is a decision of the committee.
(3) Each member present at a meeting of the parliamentary selection committee has 1 vote on a question arising for decision.

This is an administrative amendment to accommodate the proceedings of the parliamentary selection committee, providing simply that the president will preside, a decision of the majority is the decision of the committee, and each member has one vote. There was originally a suggestion that the quorum should be four. I have removed that and not moved it in that form. This will require that all members of the committee are required to attend. It is an administrative and, I submit, consequential amendment on the amendment already carried.

The Hon. P. HOLLOWAY: The government accepts it is consequential so will not divide on it. However, we oppose it.

New clause inserted.

Clause 4.

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

Page 3, line 4—
After 'the Governor' insert:
on the recommendation of the parliamentary selection committee.

Once again, this is a consequential amendment which relates to the function of the parliamentary selection committee.

Amendment carried

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

Page 3, after line 4—
Insert:
(2a) The person appointed under subsection (2) must be a judge or former judge of the Supreme Court of a State (other than this State).

This amendment requires that the appointee to head the commission be a judge or a former judge of a superior court of a state other than South Australia; or, in the case of a Federal Court or Family Court judge, a person who does not reside in this state.

The Hon. P. HOLLOWAY: We have already divided on the test clause, so we will not call for a division again.

Amendment carried.

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

Page 3, line 7 to 18—Leave out subclauses (4) and (5)

This is a consequential amendment.

Amendment carried; clause as amended passed.

Clauses 5 to 7 passed.

Clause 8.

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

Page 4, line 35—

After 'with the commissioner' insert:
and with the approval of the parliamentary selection committee

The existing clause requires the minister after consultation with the commissioner to appoint or engage persons with appropriate qualifications and experience in social work or social administration and also a senior investigations officer. My amendment inserts into that process of appointment a requirement that the appointee be approved by the parliamentary selection committee. I submit that this amendment is consequential.

Amendment carried.

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

Page 5, after line 12—
Insert:
(2a) The minister must, after consultation with the commissioner, engage or appoint a suitably qualified person or persons to provide support or assistance to any person who may wish to place evidence before the inquiry.

The purpose of this amendment is to ensure that the minister, after consultation with the commissioner, engages or appoints a suitably qualified person or persons to provide support or assistance to any person who may wish to place evidence before the inquiry. The purpose of this amendment is to ensure that witnesses do have assistance and support, where required. If the powers of the Royal Commission Act had applied, they would have provided that any witness or person appearing before the commission would be entitled to legal assistance. We have not gone down that route. However, bearing in mind the particular situation of many of the victims in this inquiry, it is entirely appropriate that victim support services be made available to witnesses.

The Hon. P. HOLLOWAY: I point out that, if this amendment is carried, it could create a situation where lawyers could be insisted upon. We believe that would be most unfortunate, indeed, as well as being incredibly expensive. We do not believe it would assist in terms of what I understand to be the objectives of having such an inquiry. We strongly oppose the amendment.

The Hon. KATE REYNOLDS: I am hoping the mover of the amendment can clarify whether the intention is to make legal representation or other types of assistance available. I think it is important that we understand exactly what this means. If it means legal representation, then we share some of the government's concern. However, if it means providing assistance to people who might want to place evidence before the inquiry but not legal representation—other forms of assistance—then we may be able to support the amendment.

The Hon. R.D. LAWSON: The intention of this amendment is not to require the provision of legal assistance, legal advice or legal representation but, rather, to provide such other support or assistance to witnesses as the minister, in consultation with the commissioner, deems appropriate. Contrary to the assertions of the minister, this is not a way of getting legal representation into this commission. It is a way of providing other support and assistance to witnesses. Of course, the expense is entirely within the control of the minister, in consultation with the commissioner.

The Hon. P. Holloway interjecting:

The Hon. R.D. LAWSON: The minister must engage after consultation with the commissioner. No doubt a sensible resolution will be reached in relation to particular witnesses. Witness support is now regarded in our courts as entirely appropriate. Witnesses coming along to commissions of inquiry without some assistance or support are very vulnerable. This is a case where we wish to ensure that the witnesses who come to the inquiry are comfortable in so doing.

The Hon. P. HOLLOWAY: I do not want to delay the committee, but I make the point that, if the Deputy Leader of the Opposition really wanted that situation of people providing support but not representation by lawyers, he should have expressly said so in relation to this amendment. My advice is that, given the way it is worded, it will inevitably—whether or not it is the intention—create a situation where that is the case, and that would be most regrettable.

The Hon. NICK XENOPHON: I indicate my support for the amendment. However, I acknowledge the concerns of the government. If the government has another suggestion down the track in terms of recommitting this clause so that it can be absolutely clarified, I may well be amenable to that in the sense that I think there is a bit of ambiguity to it. I understand that if the intent is to provide victim support-type services for witnesses to the inquiry, that is fine. If it will mean open slather, that does concern me. Given the words 'after consultation with the Commissioner', could it not be interpreted that, if the commissioner wishes that there be legal representation, that might lock the minister into providing that? I would be interested to hear from the Hon. Mr Lawson on that.

The Hon. R.D. LAWSON: It certainly was not the intention to force the government to provide legal representation to every person who wishes to give evidence. There is obviously going to be a deadlock conference. It may be possible to accommodate the concerns of the government by changing the word 'must' to 'may' and, thereby, giving some flexibility. One would expect that the commissioner, in this particular case, would not make blanket rulings that would decide whether or not particular witnesses or classes of witnesses are entitled to particular support. I do not intend to extend the committee debate on this issue. I indicate that it may well accommodate what the government wishes, and I would be happy to accept it.

The Hon. P. HOLLOWAY: I make one final point. I am advised that, during the Hindmarsh Island royal commission, apparently it was the intention of the Hon. Trevor Griffin that there should be no legal assistance provided, but inevitably we had the situation where the commissioner said that, without that assistance being provided to the witnesses, it would not be possible to proceed. The outcome was that we ended up with exactly that—it became a lawyers' picnic.

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

That the word 'must' be deleted and replaced by the word 'may'.

The Hon. P. HOLLOWAY: My advice is that it does not necessarily resolve our concerns, but there is no point in delaying the committee at this stage given that we have such a fundamental problem with the earlier amendments.

Amendment carried; clause as amended passed.

Clauses 9 and 10 passed.

Clause 11.

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

Page 6, after line 21—
Insert:
(1a) If the Governor allows an extension of time for the completion of the Inquiry under subsection (1), the commissioner must nevertheless, within a period of 6 months referred to in that subsection, provide an interim report on the progress of the Inquiry.

This amendment will require the commissioner to deliver an interim report upon the expiration of six months if, in fact, the inquiry is continuing beyond that six months. It is undoubted-

ly true that this inquiry will extend beyond six months. The government's bill requires a reporting date of six months or further time as may be allowed. It has already been indicated on the view of its own inquiry that, if the government's proposed appointee undertakes the inquiry, he will not be available for three months to embark upon the inquiry. However, it is possible that another person might be appointed, in which case we think it is appropriate that a report comes back to the parliament in six months.

The Hon. P. HOLLOWAY: We will not divide on it; however, we do oppose it. There are three problems with it. First of all, it may not be possible to deal with all of the institutional children within six months. Secondly, we believe that it is practically impossible to separate the cases where children have been in both forms of care. Thirdly, the commissioner is in the best position to determine how to proceed. We believe that this amendment is an unnecessary fetter on the commissioner.

The Hon. KATE REYNOLDS: I reiterate that our position is very similar to the government's.

The Hon. R.D. LAWSON: In defence of the amendment I have moved, the government has said that this inquiry should report within six months. We have had assurances by the government that this will be a quick inquiry. Notwithstanding that, there are clear indications that this task, even if embarked upon by the government's preferred commissioner, cannot be concluded in six months. We believe it is appropriate that, at the six-month point, an interim report be delivered. It may well be that the commissioner is unable to have embarked upon much of this work, but at least he can report to parliament about where he is going, what the anticipated time lines are, what are any other issues that require the attention of parliament at that stage. It is merely a report in progress.

Amendment carried.

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

Page 6, after line 21—Insert

(1b) An interim report under subsection (1a) must at least report on allegations of sexual abuse of persons as children while in the various forms of State care other than foster care (insofar as this is reasonably practicable in the circumstances).

This amendment would require the initial report to report on allegations of sexual abuse of children while in the various forms of state care, not including foster care. The reason for this is our belief that the issues of foster care—significant and important issues and included within the government's terms of reference—are very wide, and it would be unreasonable to expect any commissioner to report fully on those matters within six months. However, because the issue of wards of the state in state institutions, orphanages, and the like, is a matter of such public interest, there ought be an interim report in relation to that aspect of the matter. So, this amendment will ensure that the interim report, which has been supported by a majority of the committee, will contain a report on allegations of this particular class of victims.

Amendment carried.

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

Page 6, lines 22 and 23—
Delete subclause (2) and substitute:

(2) A report of the Commissioner under this section must be delivered to the Governor.

This is merely an administrative and drafting amendment to accommodate the fact that, because interim reports are now required, it will be required to have both interim reports and a final report, so there will be a number of reports rather than one. It is entirely consequential.

Amendment carried.

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

Page 6, line 24—
Delete 'the report' and substitute:
a report from the Commissioner.

This is entirely consequential.

Amendment carried.

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

Page 6, line 25—
Delete 'within 5 sitting days' and substitute:
on the next sitting day.

The government proposes that any report by the commission be tabled within five sitting days. As is widely known, we sit for four days in any one particular week. The government originally had 12 sitting days in its initial bill, and that is a device to give it time in which to devise strategies in relation to the reports, and it will ensure that reports will remain in the hands of the government for at least weeks but maybe for months. The effect of my amendment is that the report will be required to be tabled on the next sitting day, which is entirely consistent with our proposition that this is a commission of inquiry appointed by the parliament and reporting to the parliament.

The Hon. P. HOLLOWAY: We oppose this. It shows the total hypocrisy of the Liberal Party in relation to this matter that it should propose something that they were never prepared to put up at any stage during their time in government. Apart from that, I think that there are very good reasons why there should be some time for any government to consider a report. The first thing that will happen when the report is released is that people will come to the government and ask: what are you going to do about it? It is only appropriate that the minister should be prepared to give a proper answer to that. Whether we like it or not, the media expect that we will have instant answers. How can you do that without a reasonable opportunity to look at it? We oppose it.

The Hon. R.D. LAWSON: On the subject of hypocrisy, I might say that, when the opposition was in government, this government insisted upon a similar clause in relation to the report of the Auditor-General on the Hindmarsh Soccer Stadium. The precedent, if precedent is needed, is the Labor Party's insistence upon that proposition for the previous inquiry.

The Hon. KATE REYNOLDS: I indicate that we will support this amendment. Not having had a great deal of experience with this sort of thing, I sought advice from my colleagues, and their view was that, because this is a general and wide-ranging report and it is not specific to one line of expenditure, one single act, one single portfolio or even one single minister, it is appropriate for a report of this magnitude to be tabled on the next sitting day.

Amendment carried; clause as amended passed.

Progress reported; committee to sit again.

PARLIAMENT HOUSE, HERITAGE LISTING

The House of Assembly passed the following resolution to which it desires the concurrence of the Legislative Council:

That this house notes the Speaker's statement of 19 July 2004 and supports those remarks that any listing of the Parliament House precinct and buildings by the Australian Heritage Council on the National Heritage Register is conditional upon the federal govern-

ment and its agencies acknowledging and accepting the sovereignty and privileges held for the people of this state by the members of the South Australian Parliament from time to time who exercise, on behalf of the people, the responsibilities arising from that sovereignty and those privileges from time to time.

The PRESIDENT: Honourable members would have received a copy of the Speaker's statement in the house. We have done that for clarity, and I am sorry that it is not in printed form. However, as we have had a situation here recently on this very matter, it seemed prudent that honourable members be provided with a copy of that statement.

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

That the resolution be agreed to.

This matter has been discussed in the House of Assembly over the last couple of days, and it is my understanding that the resolution in its final form was one that was acceptable to the House of Assembly. It concurs with the government's views that we need to have appropriate heritage protection, while at the same time recognising the rights and privileges of members of this parliament. We believe that the resolution, as expressed by the House of Assembly, is a good compromise. So, we are pleased to accept it and look forward to its speedy passage.

The Hon. R.I. LUCAS (Leader of the Opposition): I rise to speak on behalf of Liberal members, and indicate, on behalf of my colleagues, some little concern at the process by which we have arrived at this stage. I understand that the House of Assembly has deemed there to be some urgency in relation to the issue. However, neither I nor any of my colleagues were advised about this issue, I think, prior to this afternoon around question time. As best as I can understand it, by reading the brief contributions in the House of Assembly, there appears to have been some concern by the Speaker about an email from the Australian Heritage Council (and these are the words of the Speaker) wanting to inspect the building and to hold a catered reception in the Old Chamber on Thursday 22 July (which is today) or at least on Friday 23 July.

The Speaker indicates that he believes they have also written to the Clerk of the Legislative Council and that, for a variety of reasons, he as the Speaker had to handle this issue, I assume, late last Friday. The Speaker indicated that both clerks had expressed the view that it was inappropriate to do that at such short notice and that, in particular, it was against the rules of the JPSC for outside organisations to hold receptions, particularly catered receptions, within the building. The chair stated that view and let the council know.

There appears to be some further concern by some members. I note that in his speech my colleague the member for Stuart said:

. . . they should not have any authority which could in any way influence, interfere with or prevent members of parliament from going about their legitimate business. This is a very serious matter, because individual members of parliament must be free from threat, intimidation or outside influences in the discharge of their duties.

I obviously agree with that. However, I must admit that, on the basis of what I have read so far, I am not aware of the nature of either 'the threats, intimidation or outside influences' that may have been brought to bear in relation to this issue and, as I have said, I do not think anyone else in this chamber is aware, either, of what the nature of any those actions might have been.

As the leader has indicated, evidently this motion was unanimously approved by Labor and Liberal members and others in the House of Assembly, although I understand some members were unaware of its passage. It is probably best to say that no-one stood up and opposed the motion in the House of Assembly who was aware of the potential passage of the motion. As the leader has indicated, it is a genuine endeavour to indicate that, if there are any actions to be taken by the Australian Heritage Council, the privileges of the parliament and its members ought to at least be acknowledged and accepted. Certainly, that is a principle that I am sure all members would be prepared to support.

I express two notes of caution: first, I am not aware of the nature of any threats or intimidation from anyone. At this stage, I do not want to associate myself and my upper house colleagues with any inference in relation to that in terms of what might or might not have occurred. I do not disagree, but neither I nor my colleagues are in a position to make a judgment on the issue. If the Australian Heritage Council and its officers take some exception to statements made in another place, I place on the record that members in this chamber are not wishing to enter into that aspect of the debate. However, nevertheless, we are happy to indicate our support for the general principle which is inherent in the motion that has been put.

I acknowledge that this is the last day of the parliamentary session, and that, evidently, this evening a function is being held at 6.30 (just over an hour away), and that if there is to be any expression of opinion by the parliament, obviously, it will be more useful if this matter were to pass prior to 6.30. As I understand it, the Speaker intends to express the views of both chambers to the appropriate persons at the coming function or functions he might attend. As I said, I am not as well informed as I might like to be on this issue, but I indicate that we will not be opposing the resolution. On the basis that my colleagues have supported it in the other house, we will also add our support to it.

Motion carried.

STATUTES AMENDMENT (ELECTRICITY AND GAS) BILL

In committee.

Clause 1.

The Hon. R.I. LUCAS: I thank the minister for placing on the public record some responses from the Minister for Energy in relation to questions I asked during my second reading contribution. I will take a short time on the first clause to address a couple of those issues. I want to outline to the leader (as I have privately) that, other than the Hon. Mr Xenophon's amendments, and possibly one or two other clauses, I do not envisage a long committee stage, for which everyone will be eternally grateful. I particularly want to make some comment in relation to the gas tariff increases issue, some concerns I expressed during my second reading contribution some days ago and some concerns in relation to nailing down the detail of what has occurred in the most recent price increase of July this year.

What we have been able to ascertain is that the compound increase for residential gas customers under the Labor government is 20.1 per cent; for small businesses there has been a reduction of minus one per cent; and for large businesses, whilst we do not have the precise detail of the 2005 tariff gazettal, the press release did talk about a 5 per

cent cut issued by minister Conlon. So, if one looks at the impact in the past two and a bit years, there looks like being a reduction for large businesses of about 5 per cent.

We place on the public record for the first time that, under minister Conlon and this government, on average, residential gas customers are facing a 20.1 per cent increase in gas prices, whereas large businesses are facing a 5 per cent gas price reduction and small businesses a 1 per cent gas price reduction. I do that because the minister has often been critical of the removal of cross-subsidies in the electricity industry, in part instituted by the former Liberal government; but, as I indicated in my second reading contribution, the process was started in 1987 by the former Labor government under the then premier John Bannon.

This will now place starkly on the record the impact of minister Conlon's policies in this area. I thank the minister for his response to the second reading last night, or the night before, but I note that he did not answer the detailed question in relation to the specifics of the tariff increases for the metropolitan area for 2004. My officers spent today chasing up the Minister for Energy's office and, with the assistance of the Leader of the Government, ultimately, we are now in a position to put on the public record the increases for 2004. I am naturally a cynical person, having dealt on previous occasions with ministers Conlon and Foley and Premier Rann.

I wondered why we had not been provided with the answer to this specific question that I asked in my second reading contribution, whereas the 2004 and 2003 increases had been listed. It will not surprise members to know that what we have now established is that what minister Conlon has concealed, in a sneaky attempt to keep the information hidden for as long as possible, is that the supply charge for gas customers in the Adelaide area will increase by 34 per cent. The supply charge for the average pensioner in the metropolitan area in South Australia will increase by just over $30. The percentage increase in the supply charge will be 34 per cent.

The minister has advised that the domestic tariff for pensioners has been abolished and that a former subsidy that evidently had been payable by the gas company has been removed as part of the minister's handling of this privatisation and competition arrangement. The minister has said and done nothing about it. He has sought to hide it whilst this bill was going through the parliament, and I am not surprised. He clearly wanted it through the House of Assembly before the opposition was aware of it, and he clearly wanted it through the Legislative Council before this information could be put on the public record. Minister Conlon and members of the Labor caucus support the pensioners in South Australia being slammed or slugged with a 34 per cent increase in their supply charge under the gas tariff arrangements that minister Conlon has announced.

I am appalled that members such as the Hon. Mr Gazzola, the Hon. Gail Gago and the Hon. Mr Sneath can support a minister—admittedly, now a former member of their faction—instituting an increase that hits the most vulnerable people in our community in this way. I would have hoped that members of the caucus would at least endeavour to keep this minister honest in relation to these issues, and it is their task to ask these questions in the caucus and put pressure on their ministers in committees in relation to the most vulnerable in our community. I would hope that the Hon. Mr Gazzola, the Hon. Ms Gago and the Hon. Mr Sneath, now that this has been put on the public record—

The Hon. J. Gazzola interjecting:

The Hon. R.I. LUCAS: —will go and speak to minister Conlon—

The Acting CHAIRMAN (Hon. J.S.L. Dawkins): Order! The Hon. Mr Gazzola is out of order.

The Hon. R.I. LUCAS: —and demand from him an explanation as to why the pensioners are to be slugged in this way through this onerous increase. When one just looks at—

Members interjecting:

The Acting CHAIRMAN: Order! Members on both my left and right will cease interjecting.

The Hon. R.I. LUCAS: All that was revealed in the press release was a figure of 7.3 per cent. That was the figure that the minister talked about in terms of the average customer. He said, 'I am a good bloke and we are a good government. The gas company asked for 14 per cent or so and I was tough and slammed them down, on average, to 7.3 per cent.' As I said, that still adds up to over 20 per cent for a residential customer over the last two and a bit years, anyway, whilst businesses have had their prices reduced. But what he did not say was what the impact would be on pensioners; what he did not say was what the increase was for supply charges; and what he did not say was that the domestic tariff supply charge has actually increased by 25 per cent for all residences in South Australia.

So, again, even if you are not a pensioner but you are a low quantum gas user (someone who is unemployed or on a single income living in a small unit with very little usage of gas, where the supply charge is a big component of the final cost, because obviously the final cost incorporates the usage charge as well as the supply charge), there is a 25 per cent increase in the supply charge for the domestic tariff. We have done some calculations but, obviously, we have only just managed to get this out. As I said, we made it known to the minister's office that we were not prepared to proceed with this bill if he continued to hide this information from the parliament. I thank the Leader of the Government in this council who expedited the provision of some information from the minister in relation to this issue. It is only by putting that on the record and forcing this minister to come clean on the issue that this sort of information finally has been made available not only to the parliament but also to the people of South Australia.

Because of the late arrival of the information, we are currently still doing some calculations on average usage and what the impact will be on customers at various levels of usage in terms of megajoules. Certainly, there is a good number of average customers paying much more than 7.3 per cent; that is the simple answer to the question that I put. Certainly, in some examples that we have done already, rather than a 7 per cent increase, we are looking at double figure increases for some pensioners using relatively modest amounts of gas in their units.

They are the only general comments I want to make. I express my great concern that this information had been hidden by minister Conlon. Let me assure minister Conlon that we will not allow him to adopt this sort of process; and this chamber, as is its right, will insist on the provision of information on these issues before we can finally consider them, and I think it is only appropriate that the information is placed on the public record. As I understand it, all the government and the minister have been prepared to do so far is write a letter to Origin and the gas companies asking, 'Will you please provide a subsidy out of your own pockets to help the pensioners of South Australia?' That is all minister

Conlon is prepared to do—write a letter to the gas companies and say, 'Will you please help the pensioners out of the goodness of your heart?'

The Hon. J.F. Stefani: And he gave them $43 million.

The Hon. R.I. LUCAS: No, he gave them more than $43 million: he gave them $54 million! The Hon. Mr Stefani reminds me that he gave them $54 million to keep the gas prices down and, at the same time, through the back door, he let them crank up the supply charge for pensioners, the most vulnerable people in our community, by over 30 per cent.

The Hon. J. Gazzola: You sold out.

The Hon. R.I. LUCAS: The Hon. Mr Gazzola says we sold out. The Labor Party sold the South Australian Gas Company. The Labor Party privatised the gas industry.

The Hon. J. Gazzola interjecting:

The ACTING CHAIRMAN: Order! The Hon. Mr Gazzola will cease interjecting.

The Hon. R.I. LUCAS: The Hon. Mr Gazzola, with his out of order interjecting, is wrong. He is accusing the Liberal government of selling out the gas industry. I remind the Hon. Mr Gazzola—

The Hon. J. Gazzola interjecting:

The Hon. R.I. LUCAS: We are talking about gas. Who sold South Australian gas? It was the Bannon government.

The Hon. J. Gazzola interjecting:

The ACTING CHAIRMAN: Are you rising on a point of order?

The Hon. J. Gazzola: No.

The ACTING CHAIRMAN: Then the honourable member will cease interjecting. If you rise in your place, you are deemed to be taking a point of order. Are you taking a point of order?

The Hon. J. Gazzola: I am not.

The Hon. P. HOLLOWAY: Mr Acting Chairman, I will. I think it is out of order for the leader to be encouraging interjections by asking questions of members opposite. Mr Acting Chairman, if you rule interjections are out of order, then I believe that it is appropriate that the leader should not be inviting those interjections by asking questions of members.

The ACTING CHAIRMAN: There is no point of order. However, I remind members that I have made it clear that interjections are out of order. One member, in particular, was defying the chair.

The Hon. R.I. LUCAS: The point I make is that it was the Labor government that privatised the gas industry. The South Australian Gas Company was sold or privatised by the Bannon Labor government, supported by now Premier Mike Rann and endorsed and supported, also, by prominent members of the current government, such as the Deputy Premier.

The Hon. J. Gazzola interjecting:

The Hon. R.I. LUCAS: That was an irrelevant interjection from the Hon. Mr Gazzola. That is the concern. I leave on the public record the opposition's concern in relation to this issue. As I said, it is a feeble attempt by the minister to, first, conceal this from the people of South Australia and, secondly, say, 'Well, what I have done is written a letter to the gas companies and asked them to provide a subsidy.'

The Hon. J.F. Stefani interjecting:

The Hon. R.I. LUCAS: As the Hon. Mr Stefani indicated, already at least one a section of the gas industry—admittedly a different section—has had a massive taxpayer-funded gas subsidy of $54 million on the basis that the gas prices be kept down. What we have seen is an increase in gas prices of over 20 per cent in just over two years for residences; and in the last increase more than a 30 per cent increase in the supply charge for the most vulnerable in our community, namely, the pensioners. If members of the Labor Party backbench will not stick up for pensioners, the opposition will.

The Hon. P. HOLLOWAY: I do not wish to delay the committee, but I wish to make one point clear. The subsidy that was previously provided to gas consumers in this state was provided by Origin Energy. It was not a taxpayer-funded subsidy. It was a subsidy that was provided to pensioners by Origin Energy. It was Origin Energy's decision to withdraw that subsidy in the competitive market. It was not something for which the government was in any way responsible. As I understand it, the discount that it provided, which was equivalent to the 30 per cent increase the honourable member is talking about, was $6.60 per year. What this government has done—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Perhaps it is $6.60 per quarter.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: The reduction in the subsidy is $6.60, but what is more important is that this government, for the first time in 10 years, has increased the subsidy on energy to not only pensioners but also a number of self-funded retirees from $70 to $120. It is the first increase in 10 years on energy bills. This government has nothing for which to apologise in relation to its treatment of pensioners in respect of energy costs.

Also, through the competition energy markets, pensioners have access to the $50 subsidy in relation to electricity—that is over and above the other subsidies—to transfer to competitive contracts. Try as he might, I do not think the leader will get any traction if he tries to argue that this government has not looked after pensioners—unlike, I must say, his federal colleagues.

The Hon. R.I. LUCAS: In response to my concerns about increased prices to pensioners, the minister claimed there was a $50 increase in the concession. Will he clarify whether the $50 increase relates to gas bills?

The Hon. P. HOLLOWAY: My advice is that the $50 subsidy is normally paid on electricity bills but, if people do not have access to it, I understand it is payable on gas bills.

The Hon. J.F. STEFANI: Will the minister say whether the government has received, in the first instance, a recommendation from the Governor in relation to the allocation of the funds that it gave to the gas company; that is, the $54 million which is covered under section 59 of the Constitution Act?

The Hon. P. HOLLOWAY: I do not see how that question is relevant to the bill before us. The honourable member is asking things about the Constitution Act, and that is a little beyond our capacity to answer it here. All I could do is take the question on notice, because it is a bit outside the parameters of this bill. We will take it on notice and write to the honourable member.

The Hon. J.F. STEFANI: I appreciate the minister's commitment to take the matter on notice and provide me with an answer. It is an important issue that is relative to this bill in relation to the general charges of gas and so on. It is an important issue that involves the allocation and appropriation of public funds in relation to gas. The public interest is very much a question that is my concern.

Clause passed.

Clauses 2 to 4 passed.

Clause 5.

The Hon. NICK XENOPHON: I move:

Page 2, after line 14—

Insert:

(1) Section 24(2)—After paragraph (d) insert:

(da) requiring the electricity entity to include (in a print size and form prescribed by regulation) in each account for electricity charges sent to a small customer information prescribed by regulation, including information relating to—

(i) the customer's electricity consumption during the preceding 12 months; and

(ii) the entity's daily charges for electricity during the period to which the account relates; and

(iii) obtaining advice through the Commission about reducing electricity consumption and about electricity consumer choices; and

(iv) greenhouse gas emissions associated with the customer's electricity consumption; and

I will speak briefly to this amendment and also comment on the second amendment which is essentially identical but which relates to gas charges rather than electricity charges. The thrust of this amendment is to ensure that South Australian consumers of electricity, referred to in this amendment, and of gas referred to in the latter amendment, are given more information through the wording 'in a size and form prescribed by regulation'. This is to ensure that small customers—that is, residential consumers—get details of their electricity consumption during the preceding 12 months, daily charges for electricity, obtaining advice through the Essential Services Commission about reducing electricity consumption and about other consumer choices regarding electricity, as well as greenhouse gas emissions associated with the customer's electricity consumption.

I believe that it is important to give consumers more information about the way the market operates, their accounts in terms of their consumption and how to reduce that consumption which, in turn, will have a beneficial impact with respect to greenhouse gases. I am pleased to say that I have had discussions about this with the minister, who was amenable. There were further discussions with the minister's office as well as the opposition. The Hon. Mr Lucas made some constructive suggestions for which I am grateful. There were also discussions with the member for Bright, the Liberal spokesperson on these issues.

These amendments will be good for consumers. They will provide more information on accounts. They will give consumers increased knowledge and, with that increased knowledge, I believe that they will be able to make better choices, in the retailers they may choose, in energy conservation measures, and in alerting them to issues concerning the impact of their energy consumption on greenhouse gas emissions. I am very pleased that this has been the subject of constructive discussions with both the government and the opposition. I also acknowledge the Hon. Sandra Kanck's longstanding interest in the issue of greenhouse gas emissions and, from the discussions that I have had with her with respect to her concerns about this, I am looking forward to her support as well. She certainly has been a consistent campaigner for alerting consumers and the public about the impact of greenhouse gas emissions.

The Hon. P. HOLLOWAY: The government supports the amendments. I indicated my reasons for that during my second reading response. I will not go through it again.

The Hon. SANDRA KANCK: I instructed parliamentary counsel to draft me an amendment about having greenhouse gas emissions reported on bills but, when I saw this more comprehensive amendment, I told parliamentary counsel that I would not bother putting it on file. I indicate for members who have some interest in this issue that I have asked questions in the past, as did my former colleague the Hon. Mike Elliott, about having greenhouse gas emissions recorded on electricity bills. In fact, that is done as a matter of routine in the ACT; so, in a sense, there is nothing remarkable about it. It is a sensible thing and, when people make savings on their electricity in terms of the amounts consumed, they will be able to look at it and say, 'I have saved so many kilograms or even so many tonnes of greenhouse gas in this quarter.' I think that it is a very positive move.

The Hon. R.I. LUCAS: On behalf of the Liberal Party, I indicate support for the amendments. The shadow minister for energy has been involved in the discussions with the Hon. Mr Xenophon and has indicated Liberal Party support for the amendments.

The Hon. T.G. CAMERON: I support the amendments.

Amendment carried; clause as amended passed.

Clause 6 passed.

New clause 6A.

The Hon. NICK XENOPHON: I move:

Page 4, after line 9—Insert:

6A—Amendment of section 26A—Licences authorising retailing

Section 26A(2)—After paragraph (d) insert:

(da) requiring the gas entity to include (in a print size and form prescribed by regulation) in each account for gas charges sent to a small customer information prescribed by regulation, including information relating to—

(i) the customer's gas consumption during the preceding 12 months; and

(ii) the entity's daily charges for gas during the period for which the account relates; and

(iii) obtaining advice through the Commission about reducing gas consumption and about gas consumer choices; and

(iv) greenhouse gas emissions associated with the customer's gas consumption; and

This relates to gas consumption and gas accounts, but I do have a question for the government just so it is on the record and so that it can be made absolutely clear. This will be determined by regulation. I would be grateful if the government could indicate on the record what time frame we are looking at. I know it will not happen overnight because there need to be some transitional arrangements and discussions with the various energy companies, and I appreciate that, but it would be helpful if the government could indicate an approximate time frame that this would be implemented.

The Hon. P. HOLLOWAY: My advice is that we are looking to implement that over six to 12 months.

New clause inserted.

Clause 7.

The Hon. R.I. LUCAS: I want to make a brief general comment about this clause, and it relates to clause 6, as well. I thank the minister for answers to my questions about the three-year price path. The Liberal Party's position has been to support it. I place on the record my personal views of caution, which is perhaps an understated way of putting it, about the efficacy of the three-year proposition that we are about to embark on. As I said, this results from an IPART recommendation and, as I indicated during the second reading, the IPART inquiry was really to do over commissioner Owens. It did not do that. It came up with some recommendations and the minister and the government were

honour bound, I think they felt, to implement the recommendations of the independent review.

The proposal is, in essence, what occurs in New South Wales, and given that the commissioner was the regulator from New South Wales, it is therefore not surprising that he would recommend what he was doing in New South Wales as therefore being an appropriate way for South Australia to go. Even given my natural cynicism about anything to do with the New South Wales energy market, if I can distance myself from my in-built bias, I am nevertheless cautious about the efficacy of this proposal. In theory it sounds good. The minister responded to my questions about what on earth happens in the middle of a three-year price path if there are major changes. The minister's response by and large talked about cataclysmic changes or issues that might relate to force majeure, where major changes and costs might flow through to the industry and therefore to consumers, and how that might occur.

I acknowledge that they are possible circumstances but I am really talking about something of a quantum just less than that, and that is where the market changes significantly for a whole a variety of reasons, and contract prices either go up or down significantly without there being cataclysmic-type changes. I was really looking to see what was the process in practical terms of revisiting a three-year price path. It is hard enough to predict gas and electricity markets 12 months ahead.

With the greatest respect to the three new commissioners, I do not believe that they are going to be any better, if I can put it that way, than commissioner Owens in predicting the gas and electricity price movements over the next one year, two years or three years. That is not a criticism of the new commissioners, either. I do not believe that anybody is in a position to be able to accurately forecast directional movements in relation to this. A yearly event is difficult enough, and we have just seen in New South Wales where the three-year price path has been discussed, with percentage increases of 3 to 4 per cent a year, averaging about 10 to 12 per cent over the next three years—I am guessing the aggregate—being locked in as the expectations for the price path for the next three years.

The Liberal Party's position is to support it. I just place on the record my personal caution in relation to all of it. I certainly hope that it works to the benefit of South Australian consumers and the South Australian energy market, but, given the background of it and from where we have come, there has been a ready acceptance that this is the magic pudding that is going to resolve all the problems. I do not believe that New South Wales has demonstrated that it has done that, and I remain to be convinced that we will see a solution to our concerns from this over the next three years. Obviously we all hope that I am wrong and the majority view is correct.

Clause passed.

Clause 8 passed.

Title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

BEECHWOOD GARDEN

Adjourned debate on motion of Hon. T.G. Roberts:

That, for the purposes of section 14 of the Botanic Gardens and State Herbarium Act 1978, this council resolves that the board of the Botanic Gardens and State Herbarium may dispose of any interest in, and be divested of any control of, any of the following land: Certificate of Title Register Book Volume 5862, Folio 262 (formerly Volume 4175, Folio 187); Certificate of Title Register Book Volume 5133, Folio 747 (formerly Volume 4175, Folio 188).

(Continued from 21 July. Page 2128.)

The Hon. J.M.A. LENSINK: I will speak briefly to this motion, which the Liberal Party broadly supports. I did want the chamber to adjourn this motion because of the issue of consultation that has been raised by other members. I am pleased to be able to speak to this motion, because I am quite familiar with the Beechwood heritage garden. It is near the house where I grew up and my primary school, so I have been there and understand the value of the garden. I support the position of the member for Heysen (Hon. Isobel Redmond) whose ultimate aim in this has been the preservation of this unique historic garden. I think that a number of members in this place accept the reality that the major issue here is the expense involved in preserving the garden to ensure that as an asset it is preserved. I note the position of the board of the Botanic Gardens, which has stated that the garden is not its core business. However, I trust that, whilst the garden has been in its care, it has done the right thing by the garden and sought to maintain it. Also, under the current arrangement, apart from the designated days in spring and autumn when the garden is open to the public, the owner of the house effectively has a taxpayer-maintained garden. So, in many ways, this motion makes a lot of sense.

I will not go through all the details but, if honourable members wish to have a thorough understanding of the background and history of the garden, I refer them to the member for Heysen's speech of 20 July. I also note that, as the local member, she sought to have this issue raised within her electorate by publishing notice of it in her newsletter. The government stated that it had consulted with the local federal member, the Hon. Alexander Downer, obviously the local member (the shadow minister for the environment) and the Adelaide Hills Council, in which area this garden exists. I also note that at its meeting of 6 July the Adelaide Hills Council carried a motion, which stated:

> That a communication be sent to the Premier, Minister for Environment, Leader of the Opposition, Shadow Minister for Environment and Leader of the Democrats expressing Council's concern about the proposed sale or aspects of the sale of Beechwood Gardens and the removal of these Gardens from public ownership.
>
> In that communication, Council requests:
>
> - A guarantee in writing that the heritage values of the garden will be protected/ensured in perpetuity
> - That Parliament delay considering the proposal until proper community consultation has been undertaken
> - If the property is sold, and prior to final settlement, the three titles (one for the house and two for the gardens) be amalgamated into one title.

I read that motion into *Hansard* for the record, and repeat that that motion was carried on 6 July, which was not very many weeks ago. I note that the Hon. Sandra Kanck referred, I think in good faith, to the new campaign in her comments last night. To be fair to any of the residents in the Adelaide Hills, this ought to be delayed. Whilst the proposal was originally mooted in 1995, I think it is fair to say that it has not really been on the table for some years and many residents would see this as having been raised again, but they may not have not been aware that it was so close to coming to pass. Therefore, in the interests of full consultation, we ought to delay this motion.

I understand that the member for Heysen and our leader in this chamber have sought to speak to the owner of the house, Mr David Rice, but they have been unable to get hold of him in the last couple of days. The major elements of this agreement are set out in the agreement, and I understand that additional protection will be provided through the Heritage (Beechwood Garden) Amendment Bill 2004, which will ensure that the heritage agreement may not be altered without the permission of both houses of parliament.

The Hon. NICK XENOPHON: I indicate that I am substantially in agreement with the reasoning put forward by the Hon. Michelle Lensink. I have had a number of representations from residents in the area who are concerned about the process with respect to the sale of Beechwood Garden. I know that the minister (the Hon. Mr Hill) has been quite passionate in expressing his concerns about the maintenance costs and the like. I think it important that this matter be adjourned. For the reasons set out by the honourable member, I support the position of the Hon. Michelle Lensink with respect to the matter being adjourned.

The Hon. J.F. STEFANI: I also wish to add some comments and reflect a similar position as that of the Hon. Nick Xenophon. A number of constituents have contacted me, and they are very passionate about those gardens. People in the Stirling council area have endured some rather horrendous imposts, mainly as a result of the bushfires, and it has become a community that is very much aware of its own area. I do take on board the fact that there might be some opportunity for further consultation and, for that reason, I support the proposal as put forward by the Hon. Michelle Lensink.

The Hon. T.G. CAMERON: I will not be supporting any adjournment of this matter. The matter has been around for quite some time. I think that the parties have had ample opportunity to deal with it. What weighs on my mind a little in not being prepared to support an adjournment (which is quite a departure from what I normally do) is that it will be another two months before we deal with this matter. The Hon. Julian Stefani said that people had been ringing his office and lobbying him, and that people are lobbying the Hon. Nick Xenophon, but they must have forgotten about me. I did not get one call. I do not know whether they have been trying to get me. Perhaps they ought to get the Hon. Sandra Kanck to ring me, then they would be certain of getting through. I do recall receiving one piece of correspondence in the past few days, but, if people were jumping up and down about it, certainly, they did not let me know their views. I will not be supporting the adjournment.

The Hon. R.I. LUCAS (Leader of the Opposition): I indicate that I know that Mr Rice has been trying to contact me in the past 24 hours. We have been playing telephone hide and seek. I did ring Mr Rice at about 10 this morning, and I left a message on his answering machine. Subsequently, during the electricity debate at 5 o'clock when I was in the chamber, he returned my call. Also, he had been pursuing me last night while I was in the chamber. I place on the public record that no offence was meant to Mr Rice. I hope that the member for the area, Isobel Redmond, who does have carriage of this matter, has managed to get hold of him.

I place on the record that Mr Rice will probably be aware that a close business associate of his did speak to me on his behalf and managed to get me before parliament sat yesterday morning; so, I was aware of his views. I think that a member of my staff did speak to him last evening, albeit briefly, to get a fair indication of his views and concerns about the matter. I did want to indicate that, within the past 24 to 48 hours, the parliament is a busy time and no offence is meant in terms of my not being able to get back to him and speak to him. I indicate that, in the broad, as my colleague the Hon. Michelle Lensink has indicated, by and large, the Liberal Party's position has been guided in this matter by the local member in the area, Isobel Redmond.

As that honourable member has outlined to the House of Assembly, she and the Liberal Party are supportive of the agreement that has been negotiated and, as a sign of that good faith, they supported the motion in the House of Assembly, albeit that they did seek to adjourn it; but the honourable member advises me that when it went to a vote they did support it. We are adopting this position because the honourable member has given a commitment (she says) to her constituents to allow further opportunity for consultation over the coming seven weeks before we sit again.

Again, I understand that the position is that the local member has indicated to the government her commitment on our behalf—and, as the Leader of the Opposition in the upper house, I indicate my willingness to go along with her commitment—to process this matter in the first week when we return. Therefore, the lobbyists and constituents should not believe that this is a motion to delay forever this issue. I place on the record my understanding that the local member is supportive of the agreement. The Liberal Party's position is supporting the local member, but, also, it has extended to supporting the commitment she gave for further consultation.

It is on that basis that we in this chamber will support the local member in seeking an adjournment. If this parliament does not agree to that adjournment, we will vote in accordance with the local member's wishes and the party's intentions to support the agreement.

The Hon. D.W. RIDGWAY: I move:

That the debate be adjourned.

The council divided on the motion:

AYES (10)

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

NOES (11)

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

Majority of 1 for the noes.

Motion thus negatived.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): It appears that everyone is in agreement on a way to proceed. The time delay in relation to the discussions that were to take place during the break was the critical point in the disagreement between the government and the opposition in relation to a way to proceed. It appears that the time frame is critical and also holding together the

basis of the agreement by which the government has negotiated with the prospective owner of the herbarium and what is known as Beechwood Garden. It is critical that we move this motion and carry it so that some certainty can be put into the process. The board of the Botanic Gardens and State Herbarium made a decision to divest Beechwood Garden following a review of the Botanic Gardens in 1995. The board has consistently reiterated this position as Beechwood Garden is a historic private garden with significant practical limitations to operate as a public garden. The board and government are committed to a solution which favours good management and presentation of Beechwood and which does not compromise the major public botanic gardens.

Beechwood Garden was purchased in 1980 for $185 000. The government of the day purchased the land freehold to protect it from subdivision. An indenture agreement put in place between the house owner and the garden owner significantly restrains any other potential purchasers, and the garden allotment has been offered to the owner of the house allotment. This reflects the board's expectations to manage the garden as a single identity. I will not go into all the history: it is in the second reading speech. Other members have made contributions and I think all members have had the opportunity to place their positions on record. I place my respect for the local member on record. I think she services the electorate very well, and she has taken up the issue. Although she is in agreement with the management program, it is the process and the timing where there is disagreement. My respect for the local member still remains in relation to her defence of what she sees as a sound, solid management structure. Let us hope we can get the management structure in place so that all South Australians can enjoy a wonderful place to visit.

Motion carried.

[Sitting suspended from 6.08 to 7.37 p.m.]

STAMP DUTIES (MISCELLANEOUS) AMENDMENT BILL

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

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

That this bill be now read a second time.

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

Leave granted.

The *Stamp Duties (Miscellaneous) Amendment Bill 2004* ("the Bill") contains a number of amendments to the *Stamp Duties Act 1923* ("the Act") to implement new and clarify existing exemptions and concessions, confirm the operation of existing provisions and make other minor administrative changes to update the State's taxation laws.

I will deal with each of the amendments to the Act in turn.

The first amendment to the Act is to ensure that the electronic lodgement of an application to register or transfer the registration of a motor vehicle under the *Motor Vehicles Act 1959* ("the MV Act") is subject to duty.

In late 2001, the then Minister for Transport and Urban Planning entered into a contract with EDS (Australia) Pty Ltd to jointly develop and implement Electronic Commerce facilities ("EC facilities") for motor vehicle dealers, local government and insurers ("the participants"), as agents for Transport SA. These facilities include the processing of certain registration and licensing transactions, such as applications for the registration, transfer and renewal of registrations of motor vehicles via the Internet or Interactive Voice Response (IVR) technology.

Applications for both the registration and transfer of registration of motor vehicles will be processed via EC facilities with participants required to forward the written application for registration or the transfer of registration of a motor vehicle to the Registrar of Motor Vehicles. It is reasonable to expect that, over time, there will be no need for these written applications.

RevenueSA is a significant stakeholder in the EC project, as Transport SA is an agent for RevenueSA in the collection of stamp duty on the registration or transfer of registration of motor vehicles.

Therefore, it is proposed that the Act be amended so that where applications for the registration or transfer of registration of motor vehicles are made by means of an electronic communication approved by the Registrar of Motor Vehicles, that electronic communication is taken to be an instrument, which is chargeable with stamp duty.

This opportunity is also being taken to make a number of minor and technical amendments to clarify the operation of existing motor vehicle provisions and exemptions in the Act.

The second amendment is to remove the requirement that stamp duty payable on an application to register or transfer the registration of a motor vehicle must be separately denoted on the certificate of registration of a vehicle.

The current motor vehicle registration process displays the total fee receipted for a transaction. It does not contain a cash register imprint of the stamp duty paid (as a separate component of the total fee) as required under the current provisions of the Act.

It is proposed that the Act be amended so that the stamp duty payable in respect of an application to register a motor vehicle or transfer the registration of a motor vehicle does not have to be separately shown as a cash register imprint on the certificate of registration. The total fee payable consisting of stamp duty, a compulsory third party premium and administration fees will continue to be denoted on the certificate of registration.

The third amendment is to limit the exemption currently available in respect of a motor vehicle held in the name of a totally or permanently incapacitated ("TPI") person to only one motor vehicle owned by that person at any given time.

An exemption from stamp duty is currently available on an application to register or transfer the registration of a motor vehicle for ex-servicemen who are totally or permanently incapacitated as a result of their service. There is currently no restriction on the number of vehicles in respect of which a TPI person can receive the exemption.

This is an unintended outcome and conflicts with another exemption in the Act, where a person is eligible for a stamp duty exemption in respect of an application to register or transfer the registration of a motor vehicle where the person has lost the use of one or both of their legs and as a consequence is permanently unable to use public transport, provided the person is the owner of the vehicle and it will be used predominantly for transporting that person. This exemption only applies to one vehicle owned by the disabled person at any one time.

The fourth amendment provides relief from stamp duty for spouses or former spouses, including *de facto* partners, where the registration of a motor vehicle has lapsed and an application to register a motor vehicle is lodged with the Registration and Licensing Administration Branch, Transport SA.

The Act currently provides a stamp duty exemption for instruments, the sole effect of which is to transfer the registration of a motor vehicle between spouses or former spouses. This provision was introduced to provide relief to both legally married and *de facto* partners in circumstances where motor vehicles are transferred as part of property settlements and the Commissioner of State Taxation ("the Commissioner") is satisfied that the relevant instrument has been executed as a result of the irretrievable breakdown of the parties marriage of *de facto* relationship.

On a strict interpretation of the exemption, spouses are not entitled to an exemption in circumstances where the registration of a motor vehicle has lapsed and subsequently an application to register a motor vehicle is lodged with the Registration and Licensing Administration Branch, Transport SA, as opposed to an application to transfer the registration.

Clearly, it is not intended to deny spouses or former spouses a stamp duty exemption in these circumstances. Accordingly, it is proposed that the Act be amended to correct this unintended outcome.

The fifth amendment removes the potential for double duty, where another instrument transferring property in the motor vehicle exists, but has not been lodged for stamping prior to an application to register or transfer the registration of the vehicle.

An exemption from stamp duty is provided on any application to register or to transfer the registration of a motor vehicle where duty has already been paid on another instrument by which the property in the motor vehicle was legally or equitably transferred to the applicant.

It is not reasonable that the timing of an application to register or transfer registration of a motor vehicle in these circumstances determines whether or not the exemption will apply. For example, the exemption will apply where an applicant executes an agreement transferring property in a motor vehicle, lodges the agreement at RevenueSA, pays *ad valorem* duty, and then registers the vehicle at Transport SA. However, the exemption will not apply if the applicant registers the vehicle at Transport SA, prior to lodging the agreement at RevenueSA.

The sixth amendment removes the potential for avoidance of stamp duty by primary producers, in circumstances where a primary producer has obtained conditional registration under the MV Act.

An application to register a motor vehicle is exempt from duty where immediately before the date on which the application is made, the motor vehicle was registered in the name of the applicant (and not in the name of any other person). This ensures that stamp duty is not payable each time a motor vehicle is re-registered in the same name.

The same exemption applies if an applicant satisfies the Registrar of Motor Vehicles that, immediately before the date on which the application is made, the motor vehicle was registered in the name of the applicant (and not in the name of any other person) under the law of another State or Territory of the Commonwealth and the applicant was a resident of, or carried on a business in that State or Territory.

The Act also provides an exemption from stamp duty payable in respect of an application to conditionally register a motor vehicle under the MV Act. The conditional registration provisions of the MV Act enable a primary producer to conditionally register a vehicle that is being used between two parcels of land, which are being worked on by the primary producer.

The potential for stamp duty avoidance arises when a primary producer obtains conditional registration under the MV Act, which is exempt from stamp duty and then fully registers the vehicle and obtains a further exemption from stamp duty because of the previous mentioned exemptions. The proposed amendment is intended to close this potential loophole.

The seventh amendment allows a person who is entitled under the MV Act to receive a *pro-rata* refund of registration fees, to also receive a *pro-rata* refund of the stamp duty on renewal certificates for compulsory third party insurance.

The Act provides an exemption from stamp duty on the renewal certificates for compulsory third party insurance where the application for registration is made by a person entitled under the MV Act to have the motor vehicle registered at a reduced fee.

The MV Act states that the registration fee for a motor vehicle will be reduced by the prescribed amount if the Registrar of Motor Vehicles is satisfied that a motor vehicle is owned by a person who as a result of service in a naval, military or air force of Her Majesty, is totally or permanently incapacitated, or is blind, or has lost a leg or foot, or receives under the laws of the Commonwealth relating to repatriation, a pension at the rate for total incapacity, or a pension granted by reason of impairment of the power of locomotion at a rate of not less than 75 per cent of the rate for total incapacity.

The MV Act provides the Registrar of Motor Vehicles with a discretion to refund part of a registration fee where the owner of the vehicle becomes entitled to an exemption from, or reduction of registration fees, at any time during the period for which the vehicle is registered.

It is proposed to provide a similar *pro-rata* refund of the stamp duty on renewal certificates for compulsory third party insurance.

The eighth amendment merely ensures that Councils continue to receive an exemption from stamp duty on the registration or transfer of registration of their motor vehicles following the enactment of the *Local Government Act 1999*, which replaces the *Local Government Act 1934*.

The ninth amendment allows the Commissioner to seek a valuation or appoint a valuer, where the Commissioner is of the opinion that the amount declared in an application to register or transfer the registration of a motor vehicle is not the true value of the motor vehicle.

The current motor vehicle provisions in the Act do not provide the Commissioner with the discretion to obtain a valuation or appoint a valuer in these circumstances.

The tenth amendment seeks to align the exemption provisions in the Act with the new Parts VIIIA and VIIIB of the *Family Law Amendment Act 2000* (Cth), which came into operation on 27 December 2000 and 28 December 2002 respectively.

These amendments also extend the exemption provisions to include co-habitation agreements made pursuant to the South Australian *De Facto Relationships Act 1996* where persons have co-habited continuously as *de facto* partners for at least three years.

The proposed amendments exempt from stamp duty instruments that effect the disposition of property, including interests in superannuation, between married parties and *de facto* partners during or after dissolution of marital or *de facto* relationships.

The eleventh amendment seeks to address a drafting matter arising from an amendment made to Schedule 2 of the Act by the *Statutes Amendment (Corporations-Financial Services Reform) Act 2002*. That Act amended the terminology in the principal Act to take into account the new concept of *financial product*. An amendment to an exemption in Schedule 2 that replaced the word "security" with "financial product" has caused some uncertainty as to the scope of the provision. The amendment was not supposed to alter the effect of the provision and so it is proposed to clarify the matter by again referring to a security (being a security similar to those already mentioned in the provision).

I would like to thank the various Industry Bodies and taxation practitioners who have made their time available to consult on the development of a number of the proposals contained in this Bill. The Government is very appreciative of their contribution.

I commend this Bill to Honourable Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides that the measure will come into operation on a day to be fixed by proclamation (other than the amendment made by clause 10(8) of the Bill which is appropriate to bring into operation on assent).

Clause 3: Amendment provisions

This clause is formal.

Part 2—Amendment of Stamp Duties Act 1923

Clause 4: Amendment of section 42A—Interpretation

Section 42A contains definitions for the purposes of the division of the Act dealing with motor vehicle registration. This clause inserts subsection (2), which allows an applicant for registration, or transfer of registration, of a motor vehicle to make the application by a means of electronic communication approved by the Registrar of Motor Vehicles. If an applicant makes application by an approved means, the electronic communication is taken to be an instrument executed by the applicant and is chargeable with duty as an application for registration or transfer of registration.

Clause 5: Amendment of section 42B—Duty on applications for motor vehicle registration or transfer of registration

This clause inserts into section 42B a number of new subsections after subsection (1). The existing subsection (1a) is therefore redesignated as subsection (1d) (and a consequential amendment is also made to subsection (2)).

The effect of the new subsections is to allow the Commissioner to obtain a valuation of a vehicle, at the cost of the applicant for registration of the vehicle, if the Commissioner is not satisfied that the amount stated as the value of the vehicle in the application reflects the market value of the vehicle. The Commissioner may then assess the duty payable by reference to the valuation.

The amendment to section 42B(2a) made by this clause removes the requirement that the amount of *duty* paid by a person on an application to register or transfer a vehicle be denoted on the certificate or transfer form but substitutes a requirement that the total amount paid by the person on the application be denoted.

This clause also inserts a new subsection (2b). This subsection clarifies that section 6 of the Act, which requires that the payment of duty on an instrument is to be denoted on the instrument by an impressed stamp, does not apply in relation to an application to register a motor vehicle or transfer the registration of a motor vehicle.

Clause 6: Insertion of section 42CA

42CA.Refund of duty on eligibility for reduced fee

Section 42CA permits the Commissioner to refund to the owner of a vehicle part of the component of duty paid in respect of an application for registration of a vehicle relating to a policy of insurance. The Commissioner may permit a refund if satisfied that the owner of the vehicle has become entitled to an exemption from, or reduction of, registration fees payable under the *Motor Vehicles Act 1959* at any time during the period for which the vehicle is registered.

Clause 7: Substitution of section 71CA

71CA.Exemption from duty in respect of Family Law instruments

This clause recasts section 71CA, which currently provides an exemption from duty for maintenance agreements and certain other documents under the *Family Law Act 1975* of the Commonwealth in certain circumstances, by extending this exemption to other instruments under that Act. The definition of "Family Law agreement" now includes a maintenance agreement, a financial agreement or a splitting agreement. These terms are separately defined in section 71CA(1). The section also provides an exemption for deeds or other instruments executed by trustees of superannuation funds to give effect to, or consequential on, a Family Law agreement, a Family Law order or a relevant provision of an Act or law (State or Commonwealth) relating to the transfer or disposition of property or any entitlements on account of a Family Law agreement or Family Law order.

Section 71CA, as recast by this clause, is in other respects substantially the same as the existing section.

Clause 8: Amendment of section 71CB—Exemption from duty in respect of certain transfers between spouses or former spouses

Section 71CB(2) currently provides an exemption from stamp duty for an instrument that has the sole effect of transferring an interest in the matrimonial home or registration of a motor vehicle between parties who are spouses or former spouses. This clause amends that subsection by extending the exemption to an instrument of which the sole effect is to register a motor vehicle in the name of a person whose spouse or former spouse was the last registered owner of the vehicle, either alone or jointly with the person in whose name the vehicle is to be registered.

Clause 9: Insertion of section 71CBA

71CBA.Exemption from duty in respect of cohabitation agreements or property adjustment orders

This clause inserts a new section. Section 71CBA provides an exemption from stamp duty in respect of cohabitation agreements and property adjustment orders under the *De Facto Relationships Act 1996*. This section is in similar terms to the new section 71CA, proposed to be inserted by clause 7, but provides an exemption to instruments relating to agreements in respect of de facto relationships.

Clause 10: Amendment of Schedule 2—Stamp duties and exemptions

Clause 10 amends a number of the provisions of Schedule 2 relating to applications for registration or transfer of motor vehicles.

The amendment to exemption 6 made by subclause (1) removes the possibility of an applicant being required to pay duty on a transfer or registration instrument when duty has been paid or is payable on any other instrument for the same transfer or registration.

Subclauses (2) and (6) replace references to the *Local Government Act 1934* with references to the 1999 Act.

The amendments made by subclauses (3) and (7) have the effect of limiting the stamp duty exemption available to a person entitled to a reduced registration fee under section 38 of the *Motor Vehicles Act 1959* to one vehicle. That is, such a person is not entitled to the exemption if he or she is already enjoying the benefit of the exemption in respect of another motor vehicle.

Exemption 15 applies in relation to any application to register a motor vehicle where the vehicle was, immediately before the date on which the application is made, registered in the name of the applicant. By virtue of the amendment proposed under subclause (4), this exemption will not apply if the vehicle was *conditionally* registered under section 25 of the *Motor Vehicles Act 1959* immediately before the date on which the application is made.

The amendment made by subclause (8) addresses a drafting matter arising from the *Statutes Amendment (Corporation-Financial Services Reform) Act 2002* to clarify the scope of an exemption under clause 3(2). This amendment is to have immediate effect from assent.

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

APPROPRIATION BILL

In committee.

Clause 1.

The Hon. R.I. LUCAS: Mr Chairman, with your permission I take advantage of clause 1 to raise some general issues with the minister. I am aware that he does not have senior advisers or even junior advisers with him tonight.

The Hon. P. Holloway: No advisers at all really.

The Hon. R.I. LUCAS: So, no advisers at all. Given that this is the last evening and we are filling in time whilst greater minds than ours resolve other issues, I am happy to place on the record a series of further questions seeking clarification from the government. I am happy to get an undertaking, if possible, from the Leader of the Government that he will raise the issues with the Treasurer's office and correspond with me during the seven week non-sitting period that is coming up. I raised a series of questions during the second reading in relation to enterprise bargaining arrangements with our key employment groups within the public sector. The government provided some responses to those questions, and I did want to place on the record again a further request for some information which still has not been provided.

In relation to the nurses agreement, the Treasurer has provided some details of the costs of that agreement in the forward estimate period. Given that the agreement has now been resolved, and given that the agreement was announced early in June (which would have been after the budget papers were prepared), therefore any additional payment for nurses, as a result of that agreement, which had not been included in the human services portfolio payments, would have been held in the contingency sums, and also given the agreement is now public and, therefore, there is no argument at all about revealing the government's negotiating position, I ask the Treasurer specifically: will he now provide the amount of money for 2004-05 which will have to be taken out of the contingency payments to meet the 2004-05 costs of the nurses enterprise agreement? I repeat that this is not a request for confidential information. The agreement has now been struck. We know what the total cost is for 2004-05. A part will be in the portfolio, and a part of that will be in the contingency sums and will have to be paid across to the portfolio, but we specifically ask for the amount of money that has to be paid across to the portfolio.

The Treasurer also conceded that there is no further payment for teachers, over and above the existing enterprise bargaining arrangements in 2004-05, and their next pay increase over the next EB will not be until the financial year 2005-06. Therefore, there will be no requirement, in terms of the teachers' EB, for money to come out of contingency to make extra payments to teachers. However, in relation to police, when does their current enterprise agreement conclude? In that agreement, what is the date of the last increase in salary for police? Is there an expectation that the first salary increase under the next enterprise agreement for police will be in 2004-05? Therefore, would there be a likelihood that an additional salary payment to police for the next EB will need to come out of contingency sums for police?

In relation to public sector workers, I understand that long, tedious negotiations are going on. Will the minister indicate when the last salary increase occurred for public sector workers under the last enterprise agreement? I assume the Treasurer will agree that, even though there is still some

disputation, at some stage a salary increase is likely for public sector workers some time in 2004-05. Therefore, a component of the public sector wage increase will need to come out of contingency payments and be paid over to the various departments.

I asked a series of questions in relation to classification rankings for teachers, nurses, police and public servants in terms of the national pay arrangements. The response I was given was disappointing in that it claimed that comparisons were not possible in a meaningful way due to variations in such things as 'duties performed'. I place on the record—as I did in my second reading contribution—that I know the Commissioner for Public Employment's officers in the enterprise agreements, together with the union representatives, map the national categories or the national rankings of their employees, so that in the negotiations for the EB they are able, to the extent that it is possible as employer and employee representatives, to say that South Australian teachers at this classification level are the lowest paid in the nation, or the highest paid, or ranked third or fourth.

I know that to be a fact because, as a former treasurer, copies of those graphs and documents were provided to me, as well as the minister for industrial relations, from the Commissioner's office. While it is difficult, and I acknowledge that there are variations in such things as duties performed, I am not asking for these to be constructed. I know them to exist, and I am asking, rather than having to go down the FOI route, to have them volunteered. I accept that the second part of my question is more difficult. I know that it has occurred in the past when we were in government in relation to disputes with the police and teachers. At this stage, I limit the request to the comparisons for which I asked as at 1 July 2004, so we are not asking the government to speculate about pay movements in other states; although I do know that officers indicate the extent of the bids or any public agreements that already exist in other states and map them out on a graph and a chart to compare the movements of salary levels for the major classifications in these areas.

I will clarify the request to the Treasurer. In relation to the category of employment for police, teachers, nurses and public servants (which contains the largest number of employees), could the Treasurer provide a ranking for the comparative classification in each of the other states at 1 July this year? The second area is in relation to the series of questions I asked about the Port River Expressway. The government has provided some information that the total budget capital cost of the Port River Expressway stages 2 and 3 is $136 million. The total budget of capital cost for Port River Expressway stage 1 is $85 million. In addition to that is a total of $9 million for road works associated with rail infrastructure upgrades on the Le Fevre Peninsula and the upgrade of the Pelican Point Road. So, we have those three components of the Port River project: $136 million plus $85 million plus $9 million.

I wanted to clarify that there has been an announcement by the government of further works at the intersection of South Road in the Wingfield area. I wanted to know whether that particular set of road works is part of those three projects to which I have just referred. Are those works at the South Road intersection in Wingfield part of that or is that argued to be a separate and unrelated project to the Port River Expressway project? In relation to the formation of the Public Non-Financial Corporation (PNFC) called South Australian Infrastructure Corporation to be responsible for the construction of the Port River Expressway stages 2 and 3, I thank the Treasurer for the response, but I want him to clarify that part of my question which asked, 'Do the current budget documents incorporate revenue lines broadly estimating toll revenue which comes back to the states?'

I asked the question and the government's response has been that the corporation is budgeted to receive a subsidy towards construction costs designed to ensure that it earns a commercial rate of return on its investment. Budgetary support for the corporation will be limited to the construction subsidy. The corporation will be expected to operate on a fully commercial basis thereafter, including paying dividends and tax equivalents to the states. I ask whether the dividends and tax equivalents are meant to be the revenue line which will incorporate the tolls that the corporation will collect and then pay by way of dividend and tax equivalent to the state. If that is the case, can the Treasurer indicate which budget line and in which document there is a reference to the payment of dividends and tax equivalents from the PNFC to the state? If it is not in the budget documents, is there a financial requirement for them to be incorporated in any annual report of the South Australian Infrastructure Corporation? Is the infrastructure corporation required to produce an annual report? If it is, when will the first one be available?

I also asked a question about the extent of the commonwealth commitment. In the estimates committees the opposition raised the issue that the federal government was offering $80 million. The Treasurer indicated that he thought that they were already expecting $64 million for the Port River Expressway plus an additional $11 million for the upgrade of infrastructure on the Le Fevre Peninsula. However, the answer to my question was that there had been no official advice from the commonwealth to that effect and that, as a result, the state budget was approved on the basis of a conservative $15.4 million commonwealth funding contribution to the Port River Expressway. Of that amount, $10.3 million from the commonwealth was budgeted to be received in this financial year (2004-05) and the remainder to be received at a later date. Therefore, is the minister saying that there is an approximate $65 million benefit to the budget as a result of the $80 million offer (assuming it is agreed to with the state) from the commonwealth to the state on this line? That is, the minister has conceded that there is only a $15 million commonwealth commitment. Now there is to be a potential $80 million commitment. Does that mean there is a $65 million budget benefit to the state as a result of potentially the $80 million offer?

The minister provided some answers in relation to the difficult new cash alignment policy introduced by the government. I seek further clarification on how this policy is going to operate. Under what authority does the cash alignment policy apply to agencies? We know that it was approved as a cabinet decision in October 2003, but will a Treasurer's instruction be issued to ensure that the policy has proper authority? Has any advice or comment been made by the Auditor-General on the cash alignment policy? We note from a policy document provided by someone within one of the government agencies that the Treasury decided not to seek the Auditor-General's approval to the policy. Has the Auditor-General made any comment to the Treasurer or Treasury subsequently about that policy? Why did the government or Treasury decide not to seek the Auditor-General's advice prior to cabinet signing off on the policy in October 2003? In his reply on 20 July the minister stated:

> The cash alignment policy makes no reference to savings achieved by an agency within its expenditure authority and the ability to reallocate those savings within the portfolio.

I want to return to that issue, because in my second reading contribution I put a specific question to the Treasurer in relation to how the cash alignment policy would operate with respect to savings that might be achieved by a particular agency.

What I am asking the Treasurer is as follows. The department may have an expenditure authority which might be a lump sum aggregate of $100 million. Certainly expenditure authorities do not go down to the last thousand dollars and agencies are given an aggregate sum. What I meant by that is that generally aggregate expenditure authorities are given to agencies and, in some cases, some components that are part of annual ongoing budget processes and bids might be provided as a specific component, but generally ongoing core functions of agencies continue to be funded in some ways.

Under this new policy, if an agency stays within its expenditure authority's limits and saves $3 million out of its $100 million expenditure authority, and wants to use that $3 million for another priority—that is, it saves money in one area and wants to spend it in a higher priority within the agency and is not going back for additional sums of money—can the Treasurer indicate whether the cash alignment policy allows an agency to make savings within its expenditure authority and to reallocate those savings within the portfolio to higher priorities?

I think it is a relatively simple question and certainly an issue that all agencies and ministers will confront, and that is that you do have an overall appropriation, you have an expenditure authority and you may well save some money in a lower priority area, and you want to transfer that to a higher priority area within the agency. There are many occasions where that occurs sensibly where a decision does not go back to cabinet or to the Treasurer, where the minister has delegated authority to say, 'Okay, I have saved a million dollars here, so I am now going to commit a new program within the Education Department, or whatever, to spend this million dollars on. I have still operated within my overall expenditure authority. I am not going back to cabinet to ask for any more money.' The question really is, if the new expenditure is to be at a stage later than the saving, and therefore cash is building up within the portfolio's accounts, what happens to that cash?

If the Treasury takes that money from the agency and all or some of that were to be kept by Treasury, there would not be much incentive for agencies to save money within overall expenditure authorities to try to self-fund new priorities within those agencies. I have repeated the question. There was not, as I could recognise, a specific response to that specific question, so I repeat it and hope that the Treasurer will be able to provide an answer to that question. The budget papers note:

> The cash alignment policy applies to cash balances held as at 30 June 2004 and the surplus cash held by agencies as at this date will be transferred to the Treasurer, Consolidated Account, in 2004-05.

If the government is expecting to collect $144.2 million from the policy, which is what is reported as return of cash to Consolidated Account cash alignment policy, as per page C.7 in Budget Paper 3, and this $144 million will not be sourced from savings, is the government then conceding that the $144 million is entirely from surplus cash that currently exists within agencies? If that is the case, why did the government not then adjust downwards 2004-05 appropriation amounts of expenditure authority levels for agencies and thus negate the need for the policy?

The minister's answer also refers to the fact that the surplus cash working account will not be interest bearing for agencies, so the agencies will lose the benefit of interest earned on surplus cash deposits while the surplus cash is tied up in the surplus cash working account. Does the government or the Treasurer concede that this loss of interest being accrued to agencies will remove some incentive for agencies to accrue surplus cash through savings measures, thus potentially contradicting the purpose of the cash alignment policy? To that end, I quote the Treasurer in the estimates committees on 16 June this year, when he said:

> The principle behind this policy is an important one to understand in that in my and Treasury's view large cash balances accruing in agencies leads to a temptation to overspend. If they think they have large amounts of cash, the temptation to spend over their expenditure authority is greater, so we think bringing that money back to Treasury provides much better discipline.

Can the government confirm then that Treasury officers are informally advising agencies that, in relation to agency cash balances, 'If you don't use it, you lose it'? In other words, Treasury officers are encouraging agencies to spend their cash balances, and some might argue overspend, and as I said going back to my earlier question, not look for savings and efficiencies which might at a subsequent stage be spent on higher priorities within that portfolio.

I want to take a further example in relation to the accounting treatment of this cash policy. For the transfer of surplus cash from an agency to the surplus cash working account in August 2004, based on 30 June 2004 balances, will the agency need to accrue or provide this amount in their 30 June 2004 financial report? That is, will the agency create a provisional account as at 30 June 2004 for the amount that is proposed to be transferred in August 2004?

In relation to amounts to be transferred in August 2004, can the government then confirm that potentially this money could be sitting in the surplus cash working account until June 2005, that is, almost 11 months not earning interest for the agency until a decision is made as to whether or not to sweep the money into the Consolidated Account? Page C.7 in Budget Paper 3, under 'Recoveries—Consolidated Account' reflects 'Return of cash to Consolidated Account—Cash Alignment Policy—interest' of $32.5 million in 2004-05. Can the government explain the nature of this balance and the linkage between this amount and the $144 million to be returned to the Consolidated Account in 2004-05, as explained previously? Certainly, on the surface of it, the interest amount seems to be very high.

I also asked some questions in relation to the Department for Environment and Conservation, just to look at the cash alignment policy and how it will operate for that department. On 1 July, I asked the following question:

> I refer to the Department for Environment and Conservation, where cash and deposits accrual will rise by almost $30 million from $69.9 million to $97.4 million in 2004-05. . . I specifically seek an answer from the Treasurer as to why, if there is this cash alignment policy operating, the Department for Environment and Conservation has a cash build up of $30 million, almost to $97 million, at the end of 2004-05 and how that equates to the cash alignment policy of two weeks cash being available to the particular agency.

The Leader of the Government replied on 20 July, as follows:

> In respect of the Department for Environment and Conservation, the movement from the 2003-04 estimates result of $78.2 million to 2004-05 budget of $97.4 million is largely as a result of accrual appropriation of $13.7 million and additional working cash provided

of $8 million, offset by an inherent run-down in cash as a result of 2004-05 operations of about $2.5 million. Of the overall cash of $97.4 million, approximately $89 million of this amount is held in the accrual appropriation excess fund accounts.

That has not really answered the question as to why we have this build up within the environment and conservation portfolio predicted, given the stated guidelines of the cash alignment policy.

The budget papers show, for example, that, for the year 2002-03 actual, the appropriation was $83.187 million; cash alignment policy—payments to SA government, zero; and closing 30 June cash balance, $63.501 million. For 2003-04, the estimated result was appropriation, $93.493 million; cash alignment policy, zero; and the closing 30 June cash balance, $78.21 million. For 2004-05, the budget shows an appropriation of $113.196 million; cash alignment policy payments to SA government, $2.314 million; and closing 30 June cash balance, $97.441 million. So, over a two year period, appropriation has increased by $30 million per annum and cash has built up by $34 million to be at $97 million, and the cash alignment policy only requires a $2.3 million payment to Treasury. What is the $97 million being used for beyond 30 June 2005? What is meant by reference to 'accrual appropriation' in this respect, and how does this differ to 'normal recurrent appropriations' from a Treasury accounting viewpoint?

The Environment and Conservation 30 June 2003 annual report shows that, of the $63.5 million cash balance, $43.6 million is not sitting in the departmental operating account but in an account called 'Accrual Appropriation Excess Funds Account'. The Auditor-General's Report for the year ended 30 June 2003 advises that, at 30 June 2003, the Accrual Appropriation Excess Funds Account had a balance of $206.370 million. The account is interest bearing and the approved purpose of the account is 'to record all receipts and payments associated with surplus cash balances generated in agencies by the shift to accrual appropriations'.

Can the government advise when this account was established? It is our recollection that it was before June 2001, but can the government advise specifically when it was established and who administers the account? Which agencies make use of this account, and what were their balances within the account as at 30 June 2003? Can the Treasury explain the role of this account and why this special account needs to be maintained for surplus cash balances? What is the role of this account as a result of the operation of the cash alignment policy? Why is this account interest bearing and surplus funds under the cash alignment policy in the surplus cash working account are non-interest bearing? I suspect the answer to that might be that the first account is interest bearing to government and the second account may well be interest bearing to the government or Treasury but not interest bearing to the individual portfolios.

There are a huge number of questions in relation to this new cash alignment policy. A number of people within departments and agencies are raising questions with the opposition and also with the government and Treasury, many of which are in relation to this whole notion of how this policy is to be interpreted for an agency which wants to save some money and to move it from a low priority expenditure to a high priority expenditure without having it creamed off by Treasury into a central operating account which earns no interest for the agency at all. I know of one minister who will be very interested in the response the Treasurer provides to the parliament in respect of this ongoing series of questions.

I did raise some questions in relation to stamp duty, and it is possible that the Treasury officer preparing the answers misread the question. We had actually asked whether the Treasurer would provide answers on actual stamp duty collections. The specific question was in the area of stamp duty, and I asked the Treasurer, by head of stamp duty, whether he could detail the actual dollars collected and the dollar amounts budgeted, as per the budget papers for each year from 1989-99 to 2003-04.

When I asked about 'head of stamp duty' I was not referring to the overall head of stamp duty but the individual heads of stamp duty within the aggregate overall collection. The Treasury officer has just pulled out the aggregate amounts, and he or she might have been surprised as to why we were asking for those because they are self-evident in the budget papers. The reason for the question is that we are aware of the aggregate amount but we are looking for the heads of stamp duty, that is, on property and insurance, and there are a number of heads of stamp duty.

Revenue SA, obviously, does have all of that information available, and we are just seeking a breakdown of that information over those financial years. As a point of clarification, the Treasury officer noted that the 2003-04 estimated result is published in the 2004-05 Budget Statement. I am wondering whether the Treasury officer could advise us as to specifically where in the 2004-05 Budget Statement is that number of $1.080 billion in terms of stamp duty collections for 2003-04? There are a lot of numbers in the budget papers, obviously, but, at least at this stage, my officers and I have not been able to locate that number, and we would appreciate the assistance of the Treasury officer in that respect.

I acknowledge that the minister does not have present Treasury officers on the final evening, but I would be happy to receive from the minister an indication that he will take the questions on notice and have the Treasurer correspond with me during the seven week non-sitting period.

The Hon. P. HOLLOWAY: I indicate to the leader that we will endeavour to do our best to provide him with answers in writing as soon as possible.

Clause passed.

Remaining clauses (2 to 8), schedule and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

STATUTES AMENDMENT AND REPEAL (AGGRAVATED OFFENCES) BILL

Adjourned debate on second reading.

(Continued from 3 June. Page 1797.)

The Hon. A.L. EVANS: I wish to make a comment on some aspects of the bill. In part, this bill relates to some of the government's pre-election promises to introduce increased maximum penalties for some offences where certain aggravated factors are present. However, the bill goes beyond the specifics of these promises and also seeks to bring important aspects of our criminal law into line with the general approach adopted by the Model Criminal Code for Australia. Whilst I am prepared to support the general aims of the bill, there are a number of aspects that concern me.

I would like to acknowledge the important contribution already made in this place by the Hon. Ian Gilfillan and, especially, the Hon. Robert Lawson. The bill will bring about four main changes to the statutory criminal law of this state.

I have no problem in the upgrading of the summary offences of obstructing or disturbing religious worship. This welcome amendment will broaden the definition of 'religion' and 'religious services' so as to include a variety of services and ceremonies, such as weddings and funerals, whether of a secular or religious nature. However, this is only a minor aspect of the changes proposed.

The bill proposed a new kidnapping offence of which there are two components. The first component of this offence is concerned with kidnapping with the ordinary meaning that the person in the street would associate with the term. This traditional and ordinary understanding of kidnapping is considered to be a most serious and heinous offence by the ordinary person. I am very uneasy about the inclusion of a separate and very different type of offence included within this category of kidnapping. The second component included in subclauses (3) and (4) of new clause 39 would treat as kidnapping the wrongful taking or sending of a child out of the jurisdiction.

This type of kidnapping offence is regarded by the community as most serious and often leading to very tragic outcomes. In most of the circumstances envisaged under these provisions, a child will be taken by one of their parents, usually after or in the heat of a custody dispute for a mixture of motives, albeit sometimes including revenge. However, I believe that the general community would not feel right about associating it with the traditional understanding of kidnapping. I will move onto some more substantial aspects of the bill. One of the most important aspects of the proposed change is a replacement of most statutory non-fatal offences against a person with the simpler range of generic offences of causing harm or serious harm.

I believe that, on the whole, the careful definition of these concepts of harm and serious harm in the bill may help in making the law more understandable to the ordinary person in the street. A more general uniformity in the substantive elements of the various criminal codes across jurisdictions will further assist in the level of public understanding, as well as the efficient administration of justice. This is one of the principal reforms of the model criminal code, and I am happy to consider supporting this aspect of the proposed changes.

Part of the purpose of the bill's reforming amendments is to bring the law of assault into line with this more streamlined range of offences of causing harm. The new offences are: intentionally causing harm, recklessly causing harm, intentionally causing serious harm, recklessly causing serious harm and negligently causing serious harm. It is in regard to these last offences that I have some concerns. Some degree of intention or at least knowledge or awareness of the risk is considered to be fundamental to our criminal law. Whilst there are some areas of exception, generally notions of subjective culpability or proof of fault tied to the subjective mental state of the defendant have been regarded as being at the heart of this law and the necessary basis on which punishment was administered.

Therefore, the extension of the concept of criminal negligence proposed here remains problematic, because it requires no element of subjective intention to commit harm or actual knowledge or awareness of the risks of harm in the defendant's voluntarily chosen actions. Numbers of learned commentators have recommended against the exclusion of such a notion in our criminal law, especially in regard to offences other than summary offences or in the specific area of manslaughter. It is argued by this government, on the other hand, that the concept of criminal negligence is able to capture a class of actions that fall between the more seriously culpable offences of intention or recklessness and the less serious negligence dealt with under civil law. I am not yet convinced by this argument. Under this bill and in line with the model criminal code and judicial interpretation of this concept, the culpability of the defendant is to be determined objectively by reference to the standard of the reasonable person in the position of the defendant.

The bill's definition raises two significant problems. Clause 23(5)(a) provides the first element of the definition, that is, that the defendant's conduct will be criminally negligent if a reasonable person in the defendant's position would have been aware of a substantial risk that the conduct could result in serious harm. A number of commentators have raised concern that defendants, because of their intellectual disabilities or other physical or mental impairment, might be incapable of ever reaching or identifying the standard of a reasonable person. This element of the definition of criminal negligence could lead to severe injustice.

A second element in the definition of criminal negligence at clause 23(5)(b) is essentially circular in nature, whether or not the government's amendment on file succeeds. It is said that the bill seeks to distinguish criminal negligence from recklessness, but it would seem that the only real distinction comes in at the level of penalties. The penalty for the basic offence of recklessly causing harm is five years and is the same as the penalty for causing serious harm by criminal negligence. Accordingly, I have significant doubt about whether to support the inclusion of clauses 23(4) or 23(5).

I move to the second of the major changes provided for in this bill. The government, in accordance with pre-election promises, asks members to vote in favour of a range of new aggravated offences. It is argued that the additional circumstances listed in clause 5AA, if found to be elements of various criminal offences, warrant a higher level of maximum penalty. The government has sought, quite rightly, to respond to the general community's sense of outrage over particularly heinous offences against victims of special vulnerability. However, on this subject of aggravated offences, I wish to return again to the fundamental principles at the heart of the criminal law concerning culpability. I believe that such offences should be clearly and unambiguously structured around concepts of fault and culpability. Hence, I feel quite uneasy about several of the aggravated offences listed in clause 5AA(1). Paragraphs 5AA(1)(e), (f), (j), (k) and (i) deal with circumstances where the victim would appear to have an unusual or extra degree of vulnerability because of disability, weakness, age or occupational situation. It is quite right to identify an additional degree of culpability in offences that take particular and callous advantage of those vulnerabilities.

Clause 5AA(k)(ii) involves the aggravating circumstance of a victim in an occupation that is prescribed by regulation. Here I think there is a real risk that objective rather than subjective tests of culpability are, again, being introduced. The aggravation will be found without any reference to what was in the offender's mind or whether the offender knew that the victim's occupation was prescribed. I also fail to see how there would be any extra deterrent in this provision. I think that the relevant factors should be whether the offender perceived any particular vulnerability in the victim; otherwise, how can there be extra culpability? I therefore indicate that I will have difficulty supporting the inclusion of clause 5AA(k)(ii).

I am also concerned about the aggravating circumstances listed in paragraphs (e) and (f) and feel that, again, the government has missed the point concerning culpability. Arbitrarily choosing the age of 12 years and 60 years is introducing an unnecessary degree of inflexibility into the law on this matter. The offender's perceptions of the victim's vulnerability are central to their culpability in these aggravating circumstances. Why should an offence against a young-looking and slightly built 13 year old be regarded as less serious than a similar offence against a stronger and more mature looking 11 year old? Why should an offence against a fit 61 year old be considered more serious than an offence against a frail and poorly nourished 45 year old homeless man in the parklands? It is well known amongst those who work with the homeless that the ravages of life on the streets can dramatically age and weaken homeless men.

I believe that the government could have drafted a more general and flexible provision that provided for aggravating circumstances in cases of obvious vulnerability caused by age, youth, illness, disability, intoxication and even isolation by virtue of living arrangements or occupation. We are all aware of the particularly heinous cases of gang attacks on intoxicated homeless men. If the government is serious about aggravating circumstances then it should have taken into account, in its provision, these types of cases.

I believe that questions of intention, subjective fault and culpability should remain central to the criminal law, and any changes that seek to bring elements of objective tests of culpability could well lead to injustices down the track. Our judiciary deals with issues of culpability and aggravating factors on a daily basis and across a multitude of variations in cases. I think that the government should continue to allow them an appropriate degree of flexibility in these matters.

The government must exercise leadership in this area and avoid legislative responses that are simply geared to appeal to the populist desire for retribution and punishment or black and white responses. It is questionable whether, even in the case of premeditated offences, these increases in penalties will have any impact on the incidence of these offences. In many cases these offences are committed on impulse or by offenders from severely dysfunctional or impoverished backgrounds.

Many people believe that any real deterrent against crime lies in higher probabilities of apprehension. If that is the case, shorter sentences, better rehabilitation programs and more police might be a better response to the problem of crime. Whilst I am prepared to support most of these amendments, I would like to put on the record that I would be much happier to support genuine efforts to introduce greater elements of prevention and rehabilitation into our response to society's crime problem.

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): This bill introduces two systemic reforms at once, as well as updating some offences. It restructures existing, non-fatal offences against the person, some of them outdated and inconsistent, so that they become simple offences of causing harm. It spells out circumstances that will aggravate an offence and makes them elements of the offence. As with any systemic change, there may be some initial confusion in transition from the old system to the new. The result in this case should be a much simpler and fairer system of law to apply and to understand. Since the bill has passed the other place the Attorney-General has consulted further with the Chief Justice, the Supreme Court Criminal Law Committee and a consultant to the Model Criminal Code Officers Committee.

As a result, the government will be introducing amendments in committee that will: clarify a provision about alternative verdicts; ensure that the word 'harm' has the same meaning for the offence of threatening to cause harm as it will for the new offence of causing harm; make it clear that a person is not criminally responsible for an assault if the conduct constituting it is justified or excused by law; make it clear that conduct that is likely to endanger or harm another but does not in fact do so does not constitute an offence of causing harm; align the definition of 'serious harm' more closely with judicial interpretations of grievous bodily harm by removing specific reference to loss of a body part; require a consent to harm given on behalf of a person who is not of full age or capacity to be lawful; and correct a clerical error.

I note the opposition's support for and the Democrats' opposition to the bill. The opposition's support is qualified: it is conditional upon it being satisfied that, in the longer term, there will be benefits in adopting the partial codification proposed by the Model Criminal Code Officers Committee. I understand the reference to partial codification to mean the way that the bill converts various non-fatal offences against the person into offences of causing harm.

The aim of setting up a Model Criminal Code and encouraging each state and territory to adopt it progressively is so that, to the greatest extent possible, the same kinds of conduct are considered criminal wherever they occur in Australia, that those crimes are treated the same way wherever they are committed, and that the crimes are sensibly legislated. That is not to say that each state and territory may not criminalise different kinds of conduct. But if the structure and elements of offences we have in common are standardised across Australia, our criminal law will become much more certain and consistently applied.

This government is committed to carrying into effect the parts of the Model Criminal Code that substitute causing harm offences for traditional non-fatal offences against the person and that introduce aggravating circumstances as elements of an aggravated form of offence. The present South Australian law of non-fatal offences against the person is already a partial codification. Only assault is an offence at common law. All the rest is statutory in origin and most of it of ancient providence. It is in need of reform.

Indeed, the Mitchell committee recommended that it be reformed through codification. So far the commonwealth and Victoria have made the full conversion to the four causing harm offences. To date, only the commonwealth has followed the Model Criminal Code in having a list of aggravating circumstances that convert a basic offence into an aggravated offence.

I turn now to the opposition's criticism that, by this bill, the government is newly incorporating criminal negligence into the criminal law. That is not the case. The concept of criminal negligence has long been part of our criminal law as a mental element in cases of causing death. Examples are the offences of manslaughter and causing death by dangerous driving. But this bill does break new ground in South Australian law by introducing criminal negligence for non-fatal harm. The Model Criminal Code, laws in other Australian States and territories and laws in New Zealand and Canada already establish offences of causing harm by criminal negligence.

Examples may be found in section 24 of the Victorian Crimes Act; section 328 of the Queensland Code; section 306

of the Western Australian Code; section 86 of the Northern Territory Code; section 25 of the ACT Crimes Act; section 54 of the New South Wales Crimes Act; section 172 of schedule 1 of the Tasmanian Criminal Code Act; section 221 of the Canadian Criminal Code; and section 190 of the New Zealand Crimes Act 1961.

The most common maximum penalty in Australia for an offence of causing serious harm by criminal negligence is five years imprisonment. This is the maximum penalty proposed for the new South Australian offence. Each jurisdiction uses different words to describe the concept of criminal negligence, but the test for it is the same everywhere. It is based on the test of criminal negligence manslaughter adopted by the High Court in Wilson and developed in later cases. In order to avoid unnecessary litigation, the bill defines criminal negligence in precisely that way.

South Australia is the only Australian jurisdiction not to have a statutory offence of causing serious harm by criminal negligence. The opposition is asking this parliament to reject a clear proposal to bring South Australia into line with other Australian jurisdictions on a matter of basic criminal liability. In order to support its position, the opposition cites the Mitchell committee's recommendation that negligence be retained as a basis for criminal responsibility in summary offences only. But does the opposition really support this proposition? Does it understand that in making that recommendation the Mitchell committee was also recommending (and I quote the committee's fourth report on page 21) 'that manslaughter by negligence be abolished'? The opposition's rejection of the offence of causing serious harm by criminal negligence is ill-conceived. Let me make it clear that the government will oppose strenuously any amendment that would remove this offence.

The Hon. Robert Lawson supports the new aggravated penalty regime but, paradoxically, criticises it for increasing existing maximum penalties. He asks how many serious sentences over the past five years have applied the maximum penalty. The maximum penalty is usually reserved for the worst conceivable incident of a crime—a rare event, indeed—although I note the recent Canadian case of McArthur, in which the court found that it was not necessary to equate the crime to a hypothetical worst case before imposing a life sentence. Be that as it may, it is impossible to give an accurate number or percentage of sentences that impose a maximum penalty. In cases where a defendant is convicted of more than one offence—and this is by far the majority of cases—courts often impose one global sentence for all or some of the offences. That sentence will not exceed the total of the maximum penalties that could be imposed for each of the offences to which the sentence relates. By definition, that global sentence is not for any particular one of the offences and cannot be taken to represent a proportion of the penalty for any one of them. But the number of maximum penalties that have been imposed in the past five years is neither here nor there.

This bill does not set out to change the way in which courts approach maximum penalties. It simply increases the maximum penalty for some crimes when they were committed in particularly objectionable circumstances. At no time has the government said or implied that this bill requires courts to impose the maximum penalty—and the bill plainly does no such thing. The opposition also criticises the way in which the bill allows a court in limited circumstances to impose a higher penalty than the maximum 25 years' imprisonment prescribed for an offence of intentionally causing serious harm. This provision comes about partly because a 25-year penalty has been set for that new offence. The conduct it covers includes the more serious forms of some non-fatal offences which now carry a maximum penalty of life imprisonment and which will no longer do so under this new law. For example, in relation to the offence of wounding with intent to do grievous bodily harm, the bill proposes a determinate penalty because no court is likely to impose life imprisonment for a non-fatal offence.

But this leaves a gap between the previous and new maximum penalties. It may be that, in some cases of grievous bodily harm, the harm may be so serious that a prison term of 25 years would seem inadequate. Instead of retaining an indeterminate life sentence for all cases of serious harm, the government prefers to establish a determinate maximum and then allow the DPP to seek, and the courts to consider, the possibility of a greater penalty than the prescribed maximum in rare, very serious cases. The bill provides that the higher penalty may be imposed only where the victim suffers such serious intentional harm that a penalty exceeding the maximum prescribed for the offence is warranted. This is only on the application of the Director of Public Prosecutions. These are highly restrictive criteria. Of course, where a court will give such a sentence will depend, also, on what the defence has to say in mitigation. As far as I know, no other jurisdiction has a comparable provision.

I decline the opposition's invitation to say who recommended this provision or any other in the bill. The proposals were put to cabinet and cabinet's deliberation and decisions are confidential, although this provision is not, as the opposition asserts, motivated by a desire to see South Australian courts adopt the American system of sentencing people to 100-year or 300-year gaol terms. It should be noted, however, that in recent times a New South Wales court gave a sentence of 55 years on conviction to the ringleader of an aggravated pack rape.

I now turn to other criticisms by the opposition. The opposition asserts, as it did in the other place, that the bill makes it necessary for the prosecution to prove an alleged offender's actual knowledge of the aggravating circumstance, and suggests that the interests of victims would be better served if the element of knowledge were replaced by strict liability. In answer to this I note, first, the Mitchell committee's recommendation that strict responsibility in the criminal law be abolished. Secondly, the bill does not require proof of the defendant's full and complete knowledge to establish an aggravated offence. The bill defines an aggravated offence by reference to the circumstances in which it was committed. Because most aggravating circumstances depend on whether a person knows a particular fact, the bill also defines how a person is to be taken to have known of a particular fact. The effect of this is that, even if an accused person did not actually know a relevant fact at the time of committing the offence—for example, the fact that the victim was of a certain age—he or she may be taken to know it if it can be shown that he or she knew the fact was possibly true and it can be shown that, with this limited knowledge, the accused was reckless as to whether the relevant fact was true.

The same degree of knowledge is required in other offences but is expressed in a different way, because then it is an element of the basic offence. Framing the requirement in this way is much fairer than a strict liability. The point of this legislation is to punish more severely those who commit crimes in particularly objectionable ways. In most cases described in this bill, what is objectionable is the perpetra-

tor's taking advantage of a vulnerability in the victim that he or she knows or is reckless about. If the perpetrator is not aware of that particular vulnerability and did not take advantage of it, his or her actions are, by definition, not so objectionable. In other cases what is particularly objectionable about the offending is that it was done in the knowledge that there was a court order prohibiting it. Again, that knowledge is central to our perception of the crime being so especially objectionable.

Deeming that knowledge to exist in the way suggested by the honourable member misses the point. The opposition repeats the Law Society's argument that the concept of mental harm, although carefully drafted, may catch the ordinary disappointments in life in a way that existing legislation does not and, so, criminalise behaviour that should not be considered criminal. But it is already the law that it is an offence to cause mental harm to another. The expression 'bodily harm' in offences of causing bodily or grievous bodily harm has been interpreted as extending to a 'recognisable psychiatric illness' including clinical anxiety and depression. In discussing this, MCCOC stated:

> In Ireland and Burstow. . . the court noted that 'Neuroses [which were involved in the case] must be distinguished from simple states of fear, or problems in coping with every day life. Where the line is to be drawn must be a matter of psychiatric judgment. . . It is essential to bear in mind that neurotic illnesses affect the central nervous system of the body, because emotions such as fear and anxiety are brain functions.' The distinction between real harm and the ordinary results of everyday life is appropriate—indeed essential. However, it is this latter sort of distinction, such as between things that affect the brain or not, or the central nervous system or not, that the Committee wishes to avoid.

Hence, great care has been taken by MCCOC and in this bill to define mental harm so that, to quote MCCOC again, it covers:

> Significant psychological harms. . . [and] does not include normal everyday reactions such as distress.

It is not intended that ordinary reactions of fear or distress should make the conduct that cause the criminal conduct because, as MCCOC stated:

> [This would be to] greatly extend the reach of the criminal law. Not every 'harm' should amount to criminal harm.

The bill limits the offence of causing mental harm very strictly. For a start, the bill says that conduct that lies within the limits of what would be generally accepted by the public as normal incidents of social interaction or community life cannot constitute an offence of causing harm unless it is established that the defendant intended to cause harm. Where the harm caused is mental harm, the bill also provides that the offence can be established only if at least one or two prerequisites is present. One is that the defendant's conduct gave rise to a situation where the victim's life or physical safety was endangered and the mental harm arose out of that situation. That is a very specific pre-condition, mirroring precisely the common law on the subject. The other prerequisite is that the defendant's primary purpose was to cause mental harm to the victim. This limits the offence even further.

The bill goes on to set out examples of conduct causing mental harm that will be considered not to cause harm in a criminal sense. In each example the result of the conduct was a diagnosed mental illness or an exacerbation of it. In each example the conduct, otherwise quite lawful, took place in the knowledge that such harm might result. In each case the conduct is not to be treated as criminal conduct unless the prosecution could establish that the defendant wanted to cause harm and that this was the primary motivation for the defendant's conduct. The bill cannot define the offence of causing mental harm any further without making it inconsistent with the common law.

The opposition also objects to the way the bill allows an occupation or employment that is part of an aggravating circumstance to be prescribed by regulation rather than appearing in the act itself. Prescription is intended to be a last resort. It is likely that new sections 5AA(k)(i) and 5AA(c) will be enough. New section 5AA(k)(i) does not specify any particular occupations, nor does it need to. It allows the relevance of the victim's occupation to the offence to be determined by the court in each case. Under this section, a court may find an offence to be aggravated because it is the victim's occupation that places him or her in that vulnerable position at the time of the offence and also, importantly, because the offender knew this. New section 5AA(c) codifies existing law in specifically protecting the occupations of police officer, law enforcement officer and prison guard. Together, new sections 5AA(1)(k)(i) and 5AA(c) should achieve the objective of protecting people whose work makes them more likely targets for crime.

The opposition also objects to the requirement that a jury giving a verdict of guilt for an aggravated offence must identify which of two or more allegations of aggravating circumstances it finds to be have been established. The opposition says that this is contrary to the principle that a jury does not have to give reasons, but the bill does not require the jury to give reasons. It simply requires the jury to state which of the circumstances of aggravation stated in the charge it finds to have been established. Without such a provision, the sentencing court would not have a proper basis for sentence. The defendant would not know what to address in sentencing submissions, and the prosecution and defence would be denied information crucial to appeal. The Attorney-General has had helpful advice from the Chief Justice, the Chief Judge of the District Court and the DPP about the procedural and technical aspects of the bill as well as its broader application. They and the Law Society were concerned at the possible complexity of a judge's direction to the jury on alternative verdicts, given the various mental elements—intent, recklessness and criminal negligence—the two levels of harm (serious harm and harm) and the 13 factors of aggravation.

It is neither possible nor desirable for this statute to limit the judge's discretion by reference to which offences may be considered lesser on any given occasion. This would be artificial and unjust. It could lead to someone wrongly getting off altogether or being convicted of the wrong offence. It might be said that the definitional complexity of the 'causing harm' offences may, when combined with the possible factors of aggravation, add to the complexity of the direction to the jury. It might be said that, even without reference to the facts of the case, which may themselves require detailed direction, a jury direction in a commonly-used charge like causing serious harm with intent may be too complicated under this new law.

Of course, the greater the complexity of a direction, the greater the opportunity for misdirection and appeal. The question is whether a direction about alternative verdicts for an offence of causing serious harm under this bill must necessarily be so complicated. In the case of Perdikoyannis, the South Australian Court of Criminal Appeal thought that the trial judge should look very closely at whether the evidence fairly lent itself to a particular alternative approach and warned against the raising of a speculative hypothesis

that was not fairly open on the facts, given the defences raised. The court thought there was no miscarriage of justice in the trial judge's leaving a limited number of alternative verdicts to the jury, even though, technically, a greater number might have been available given the greater number of offences charged. I suggest that, in most cases of intentionally causing serious harm, the evidence will lend itself to a more limited direction on alternative verdicts, and common-sense will prevail.

The opposition repeats the Law Society's assertion that the effect of the new aggravated offence regime on young adult offenders, with limited criminal histories, who commit offences of serious criminal trespass on non-residential buildings in aggravated circumstances, may be to create injustice. I think this means that imprisoning such offenders for longer periods than are set by the law now may be unfair or counterproductive. Given that the maximum penalties for serious criminal trespass are already set very high, I doubt that this will really be a problem.

The opposition also wants to clarify the government's response to the Law Society's assertion that the definition of religion in the reconstructed summary offence of obstructing or disturbing religious services should not restrict the offence to religions that are 'generally recognised in the Australian community', but should also cover religions that are not necessarily recognised in the Australian community. The government's view is that, unless people understand or should be expected to understand a ceremony to be religious, they should not be convicted of an offence of disturbing or obstructing that ceremony because it is religious. In criminal legal terms, one should not be taken to have understood that a ceremony is religious except by reference to the norms of one's society (in the words of this bill, 'the Australian community'). That a ceremony may be considered religious in one country does not necessarily mean that it is or should be considered religious in a criminal legal sense in another.

The Hon. Robert Lawson also asked how many prosecutions there have been in the past 10 years for offences of interrupting or disturbing religious worship. The answer is seven. I cannot answer his next question of whether in that period there have been obstructions to secular services that have not been prosecuted for want of a provision like the one proposed in the bill. Such things are not recorded on any electronic database if recorded at all. I cannot justify an intensive manual record search for a record that may not exist and is of such little significance to the debate.

The opposition wishes to separate the offences of kidnapping and child removal, retaining each offence as drafted. By including the general offence of kidnapping, and the specific offence of wrongfully taking or sending a child out of the jurisdiction under the one heading (kidnapping), the bill follows the structure of the national Model Criminal Code (in chapter 5, non-fatal offences against the person, division 8, section 5.1.30). I quote this recommendation of the Model Criminal Code Officers Committee:

> In framing the draft in the discussion paper, the committee used the UK draft bill as a starting point. Unlike the UK draft bill, however, it was and is intended to cover the situation where a parent steals a child for the purpose of taking a child out of the jurisdiction. The UK draft bill dealt with that behaviour in a separate lesser offence. The committee took the view that child abduction is a very serious matter which leads to great anguish and consequent international litigation. It sees no reason why this sort of kidnapping should be different to any other. It should be noted, however, that in relation to this issue, the custodial parent or a person acting with the consent of the custodial parent commits no offence against this section.

The committee treated the unlawful removal of children from the jurisdiction as a form of kidnapping, precisely because it thought this conduct so reprehensible. The opposition takes the opposite view that it should be distinguished from kidnapping because it thinks kidnapping is a more serious offence. The government does not agree. It is not prepared to say that it is worse to kidnap a person and hold that person hostage than to kidnap a child and take the child out of the jurisdiction. It will depend on the individual circumstances of each case.

A common example of kidnapping is a man holding a spouse hostage to demands about family law matters during a suburban house siege. This offence is likely to be resolved with the release of the victim within hours or days. By contrast, a child who is taken or sent out of the jurisdiction may never be returned, or the return may take years while the child remains isolated from family and friends. The anguish caused by each criminal act is acute but is often protracted in cases of taking children out of the jurisdiction. The government would prefer our laws, like the Model Criminal Code, to treat each offence as seriously as the other.

I turn now to the position taken by the Democrats on this bill. This legislation is not an attempt to mindlessly ratchet up penalties, as the Hon. Ian Gilfillan suggests. It puts in place, in a considered way, the government's election promise to introduce tougher penalties for assault, robbery and fraud when the victim is an old, disabled or vulnerable person. It is consistent with the government's Strategic Plan for South Australia, under which it is a priority action to:

> Legislate to ensure that the penalty fits the crime, by introducing a new category of heinous crime; and increasing penalties for crimes of violence—especially violence against the young, the elderly and the disabled—and to protect public officials such as police, emergency service workers and teachers who are assaulted in the course of their duties.

I would also like to point out that this law would not result in more people being imprisoned, as the Hon. Ian Gilfillan asserts. As I pointed out, courts rarely impose the maximum penalty under existing laws and there is no reason to suppose their approach will change under these new laws. People who will go to prison under the new laws would also have gone to prison under the existing law. It is just that some of them, and only some of them, may now stay in prison longer. I commend the bill, with the amendments I will move in committee, to honourable members.

Bill read a second time.

ADJOURNMENT DEBATE

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

> That the council at its rising adjourn until Monday 16 August 2004.

Monday 16 August is a nominal date for the return of parliament. Of course, we all expect that parliament is much more likely to be resuming some time in September. In fact, the Governor will prorogue parliament in the meantime, so one would hope that we will shortly begin our winter recess for 2004.

I take this opportunity to thank all members of this place for their cooperation during this past year and this session of parliament. I thank you, Mr President, for the capable way in which you have chaired the council. I thank the leaders of the other parties—the Leader of the Opposition, the leader of the Democrats—the members of the minor parties, the whips and,

indeed, all members, for their cooperation. I also thank the table staff in the parliament—Jan, Trevor, Noelene, Chris and Margaret—and the messengers for their assistance during this parliamentary session. I also extend my thanks to all other parliamentary staff, including Hansard, the security staff, the dining room staff, the Library, the accounting staff, and so on, for their cooperation. Finally, it was during this session that the council sadly noted the passing of Sean Johnson, which was an event of much sadness within this parliament.

I hope that, when parliament resumes in September, members will return refreshed from an enjoyable and productive winter break. As we all know, when members of parliament have a break from sitting in this parliament, they will be doing a significant amount of work in their various occupations. I commend the motion.

The Hon. R.I. LUCAS (Leader of the Opposition): I rise to support the motion. I thank you, Mr President, for your general good humour. On odd occasions, I have disagreed with some of your outrageous outbursts, although I should not say 'outrageous outbursts' but rather your words of wisdom—

The PRESIDENT: Sage advice.

The Hon. R.I. LUCAS: Yes, your sage advice, Mr President. In general terms, the members of the opposition thank you for your control of the chamber and your general good humour in managing the affairs of the council. I thank Jan, Trevor and all the table staff and all the staff of Parliament House, who are too numerous to mention. I thank them all for their help. I thank the Leader of the Government, the leaders of the other parties in the chamber and the Independents for their willingness to work together. I think we have managed to knock off most of the major issues that have been required to be debated in the Legislative Council generally without too much animosity. I thank all members for their willingness to work together in the interests of the Legislative Council. We remain under constant attack, as we see again in *The Advertiser* today.

The Hon. Sandra Kanck: How often does Dean Jaensch come and watch proceedings?

The Hon. R.I. LUCAS: Exactly.

Members interjecting:

The Hon. R.I. LUCAS: The Hon. Sandra Kanck denies all knowledge of that. I note her raising her eyebrows. I acknowledge the Hon. Sandra Kanck's interjection as to how often Dean Jaensch does come to the Legislative Council. There have been the odd cataclysmic events going on in the parliament where he was attracted in the earlier days to the Legislative Council. I think it would be worth his while and, indeed, that of Rex Jory and others who have editorialised in relation to this issue, to take the opportunity over the coming weeks to catch up with members of the Legislative Council to see that, as we move out of one stage of our work, which is sitting in the parliament, we move into a more important stage, which is interacting with the community and the various other committees and tasks that each of us undertakes. I am sure that each of us in our own way would be more than happy to spend some time with Rex Jory or Dean Jaensch, or indeed any of the other critics who seem to congregate in *The Advertiser* to criticise the Legislative Council as an institution and, by inference, Legislative Councillors as individual members of parliament.

The Hon. Sandra Kanck: Ian is offering them bottomless cups of coffee if they come and sit in the council.

The Hon. R.I. LUCAS: Let's place it on the record. The Hon. Mr Gilfillan will personally serve Dean Jaensch and Rex Jory bottomless cups of coffee, and I will go arm in arm with the Hon. Mr Gilfillan if that circumstance eventuates, to try to convince—

The Hon. Kate Reynolds interjecting:

The Hon. R.I. LUCAS: You said that you would not?

The Hon. Kate Reynolds interjecting:

The Hon. R.I. LUCAS: You are not wearing a frilly skirt? The Hon. Kate Reynolds says that she is not going to. I also thank the two whips, the Hon. John Dawkins and the Hon. Carmel Zollo. We operate our chamber in a different fashion from the House of Assembly, and sometimes the House of Assembly is critical of that. We are not as regimented in terms of our operations, because we have and have had over nearly 20 years now significant minor party and now Independent representation in the council, as opposed to the House of Assembly, which has seen that occur only in recent days.

I acknowledge the work of the two whips—and, as I understand it, the three whips who represent the Democrats on a rotating basis—who do a sterling job of managing our procedures. I want to acknowledge publicly the work of Carmel and John in that respect. I wish members well in the different work cycle that we go into for the next seven or so weeks before we meet again in September.

The Hon. SANDRA KANCK: I want to take the opportunity to make a few observations about political events in this parliament today, in particular, the announcement of the Hon. Karlene Maywald and her elevation to the front bench. She is a very talented person, and I think that she will do the job very capably; I have no doubts about that. It is very good to see another woman holding a ministerial position, although I do have to observe that the ALP seems to be adopting some very strange bedfellows. My main concern, however—

The Hon. R.I. Lucas interjecting:

The Hon. SANDRA KANCK: Interesting. My main concern is what this does in terms of the role of this place, because it is diminishing our role. When the Liberals were in government there were 13 ministers, and four of them were in this chamber. With the Rann government there are 15 ministers and only two of them in this chamber. I understand that the consequence of this announcement today is that the portfolios of regional development and small business have been divested from the Leader of the Government in this place and given to the Hon. Karlene Maywald, and this has a number of consequences for us in this place.

It means that even fewer questions asked in question time will be able to be answered directly by a minister. In other words, more of the questions will have to be referred on, and we will have to wait at the mercy of those ministers in the lower house. It is an effective neutering of this place to have created yet another minister in the lower house. The other consequence is that, when we are dealing with legislation, a greater amount of legislation will come through to us from ministers in the lower house. In other words, we will have ministers in this chamber who are not hands-on with the bills and portfolios concerned and who will be dependent on the ministerial advisers who sit beside them to answer questions, which makes it all the more difficult for members in this chamber to process legislation in a timely way. On the one hand, I congratulate the Hon. Karlene Maywald on achieving

this distinction but, on the other hand, I do register concern at the impact that this will have on the chamber.

Moving on to more pleasant things, can I say that this is the end of the session and I want to give my thanks to the President and all other members. There have been times in the past when we have reached the end of a session and tempers have been extraordinarily short. I thought that in this final week it could get to that, but that has not happened.

The Hon. A.J. Redford: We put something in the water.

The Hon. SANDRA KANCK: Well, almost everything has been dealt with in a reasonably friendly fashion, which has been good to see. I thank Jan and all her staff. I also give thanks to Chris Schwarz, who has been the secretary of at least three select committees of which I have been a member this year. I am afraid that his job must sometimes seem to be like that of herding cats when he tries to find a date in common with all our diaries. I am not surprised that, as time goes by, the amount of hair on his head is reducing. I also thank the members of Hansard, who diligently beaver away up there. We sometimes forget that they are there, particularly when there is a lot of talk across the chamber.

I also thank the other people who help us with the nuts and bolts and who are never in this chamber, but for whom we would not be able to do without, such as the catering and building staff. Thank you one and all. If I have missed mentioning anyone, I apologise. I look forward to resuming in September—in about seven weeks—when we will have all been talking with our constituents and gaining a lot more information. We will be fresh-faced, bright-eyed and bushytailed and ready to keep on fighting the good fight.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I would also like to say thank you to Hansard, the desk clerks and officers, and to the opposition for the way in which the final week of the business was carried out. Normally there is a lot of tension in the council during the last week and there are times when people get a bit worn and frazzled due to the long and silly hours that we work from time to time. However, as other honourable members have said, it has been a pleasure, if an arduous one, getting through this week's work—with your assistance, Mr President, of course, holding us all together—and also the way in which people have cooperated to get the business through without any rancour. Everybody has copped their loses—

The Hon. Ian Gilfillan interjecting:

The Hon. T.G. ROBERTS: Anything can happen these days. Even someone without a party stands a chance of being included in the ministry. Coalitions are starting to form and develop and, who knows, there may be a coalition with someone outside of the party that may include the Hon. Mr Xenophon, if he maintains his workload and keeps his eye on the ball. So I add my weight to—

The Hon. SANDRA KANCK: I volunteer to be environment minister.

The Hon. T.G. ROBERTS: That may have to be worked out around another table. I thank everyone for the work they have done.

The PRESIDENT: I rise also to support this motion. We have experienced another productive session within the Legislative Council. As I sit in this position and look down on the council and reflect on my period here, I see what has changed and what is the same as when I came to this august place. There is still a general good spirit between members of the council, and there is a reasonable amount of cooperation. We continue to be under the scrutiny of those commentators whom previous speakers have mentioned—on many occasions unfairly. I think it is fair to say that in the last session of parliament we have had some undue criticism emanating from another place, and it is of concern to me that we are continually under scrutiny from the outside.

Having also been the representative of the Legislative Council at the Constitutional Convention, I am particularly aware of and alert to the responsibility that we all have to maintain the integrity and reputation of the Legislative Council. As I have sat here and listened to the debates, I have reflected on the defence that I was happy to put forward during the Constitutional Convention for no change to the Legislative Council against all criticisms. This also takes place against a background of having just attended the presiding officers' conference, and in many parliaments there is a propensity these days to change the language, the standing orders and the procedures of the parliament.

My observation is that, in over 160 years of this particular parliament, all of our predecessors have been able to interpret and work within the rules to the extent that we have suffered no political violence in this state. Every matter has been handled constitutionally and within the parliament without violence and without a great deal of rancour. It seems to me that, given that record and looking at some of the instability in other countries in the world, many people would like to have the proud record that we hold in this parliament.

Many people have suggested to me that I am a conservative when it comes to the institution of the Legislative Council. That is, indeed, true. I think that the machinations about simple English and changing the standing orders and codes of conduct are a manifestation of ignorance and inability. All of our predecessors have been able to operate within the standards and the codes that we have come to expect, and I think the Legislative Council can stand proud on its history in the presentation of a proper parliament.

So, I make no apology for the defence of the Legislative Council, its practices, procedures and policies, but I would offer this perhaps sage advice, or members can take it for what they will. Because of the composition of our parliament, there is a different construction in the membership of the Legislative Council. There was a time when there were 16 members of Her Majesty's loyal opposition in the form of the Liberal Party and four members of the ALP. In an ara of some of the greatest change that has taken place in the past century, that position prevailed whereby members of the Legislative Council recognised that governments are made in the lower house and would warn of suggested amendments, but at the end of the day they took the view that the government was there to govern.

Parliament today is constructed of a number of different groups and I perceive, either rightly or wrongly, that there is a changing attitude in that, with the demographics of the council, the philosophy of the schoolyard bully could be incorporated into the practices of the council whereby, because you can, you do. Given the criticism from outside and within, I think it is something we all ought to contemplate and we should always remember that we have developed a proud history and an admirable reputation in the Legislative Council. It is not my desire under my presidency to see the critics of our institution have opportunities to blow the chill winds of constitutional change through the corridors of this council. I do not make these statements as a prophet; I make

them as an observation of one who was a defender of the Legislative Council.

I, too, wish to join with other speakers in thanking all members for their general good conduct. I am especially grateful to the staff of the Legislative Council—Jan and Trevor and the rest of the team—for the support that they provide me on a daily basis as well as the support they provide us all within the chamber. I hope that you all have a good break, come back refreshed and continue those great traditions which our forebears in this council have created and which we have a responsibility to uphold.

Motion carried.

PERPETUAL LEASES

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement on freeholding perpetual leases made earlier today in another place by my colleague the Minister for Environment and Conservation.

COMMISSION OF INQUIRY (CHILDREN IN STATE CARE) BILL

In committee (resumed on motion).

(Continued from page 2164.)

Remaining clauses (12 to 15) passed.

Schedule 1.

The Hon. KATE REYNOLDS: I move:

Clause 2, page 8, lines 3 to 8—

Delete subclauses (1) and (2) and substitute:

(1) The terms of reference are to inquire into—

(a) any allegation of sexual abuse of a person who, at the time that the alleged sexual abuse occurred, was a child in state care; or

(b) any allegation as to any other unlawful conduct against a person who, at the time that the alleged conduct occurred, was a child in state care, (whether or not any such allegation was previously made or reported).

(2) The purpose of the inquiry is—

(a) to report on whether there was a failure on the part of the state to deal appropriately or adequately with matters that gave rise to the allegations referred to in subclause (1); and

(b) with respect to the matters referred to in paragraph (a), to report on whether there was a breach of any duty or statutory requirement; and

(c) to report on any measures that should be implemented in view of any findings made in relation to a matter within the ambit of paragraph (a) or (a) (after taking into account any measures being implemented through existing programs or initiatives).

I will not take the time of the chamber debating this amendment. From what I understand it has no hope of getting up, unless the minister would like to advise any differently.

The Hon. P. Holloway: No; that is a pretty fair summary.

The Hon. KATE REYNOLDS: I am not sure that the record has made this clear, but quite some time has been spent this evening with the opposition and the government in negotiation. I am not sure what they have decided, but it does not seem that my amendment has any hope of progressing. So, I would like to place it on the record, and look forward to hearing what has been negotiated between the government and the opposition.

The Hon. R.D. LAWSON: I seek leave to move my amendment in an amended form.

Leave granted.

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

Clause 2, page 8, lines 3 to 8—

Delete subclauses (1) and (2) and substitute:

(1) The terms of reference are to inquire into any allegations of—

(a) sexual abuse of a person who, at the time that the alleged abuse occurred, was a child in state care; or

(b) criminal conduct which resulted in the death of a person who, at the time that the alleged conduct occurred, was a child in state care, (whether or not any such allegation was previously made or reported).

(2) The purposes of the inquiry are—

(a) to examine the allegations referred to in subclause (1); and

(b) to report on whether there was a failure on the part of the state to deal appropriately or adequately with matters that gave rise to the allegations referred to in subclause (1); and

(c) to determine and report on whether appropriate and adequate records were kept in relation to allegations of the kind referred to in subclause (1) and, if relevant, on whether any records relating to such allegations have been destroyed or otherwise disposed of; and

(d) to report on any measures that should be implemented to provide assistance and support for the victims of sexual abuse (to the extent that these matters are not being addressed through existing programs or initiatives).

The amendment is moved in this way following discussions between representatives of the government and the opposition. The terms of reference now proposed in my amendment are wider than the terms of reference originally proposed in the government's bill.

In particular, one of the purposes of the inquiry is stated to be a requirement to examine the allegations. There is a requirement in subclause (2)(a) to determine and report upon whether appropriate and adequate records were kept in relation to the allegations and whether those records have been destroyed or otherwise disposed of; and in subclause (2)(d) to report on measures that should be implemented to provide assistance and support for the victims of sexual abuse to the extent that those matters are not being addressed through existing programs or initiatives.

The Hon. P. HOLLOWAY: I indicate that the government will support the amendment moved by the Hon. Robert Lawson in its current form; he has changed it from the original. As has been pointed out in the discussions, there have been lengthy deliberations between the government and the opposition. We all want to see an inquiry proceed that will deal with these allegations that go back over many years. I guess the final form that we get for this inquiry, we can argue about the various details—and that has been done—but in the interests of trying to reach some solution this evening, on the last night of parliament, so this commission of inquiry can go forward, we accept the amendment in the form in which it has been moved.

The Hon. KATE REYNOLDS: I am not sure where to start. While the Democrats continued to hope that this inquiry would help in identifying and healing the hurt done to victims and provide some direction for policy and service change in the future, we are disappointed, angry and frustrated. The wheeling and dealing that has occurred in the past couple of hours has significantly weakened what this inquiry could have done. I place on the record that these negotiations were between the opposition and the government. My understanding is that no other parties or Independents were involved. I do not know how the numbers will pan out on this amendment, but I will put further comments the record.

The state government's own Child and Youth Health web site includes the statement, 'Child abuse is not new'. For centuries children have been abused. As we understand more about human development, we have come to learn that what happens in our childhood has an enormous impact on our adult life. Attitudes are changing so that we now look at babies and children as people who have a right to be protected. Babies and children have been—and are right now—wards of the state. The National Association for the Prevention of Child Abuse and Neglect (NAPCAN) describes physical child abuse as any non-accidental injury or pattern of injuries to a child that endangers or impairs the child's physical or emotional health and development. It is frequently a pattern of behaviour occurring over a period of time.

This inquiry was intended to look at patterns of behaviour over decades. NAPCAN says that the longer that abuse goes on, the more serious the effects on the victims, the child, the family and the community. NAPCAN believes—as we do—that children deserve the same level of protection from assault as adults. Physical punishment destroys a child's dignity. There is increasing evidence that physical punishment has serious long-term effects on some children. It teaches them that problems are best solved by using violence and does not lead to improved behaviour. Sadly, we know that some—and some people would say many—people and organisations responsible for the welfare of children in state care in the past did not subscribe to such beliefs. Sadly, obviously, neither the government nor the opposition care, despite their rhetoric of caring for victims.

The changes that have been negotiated between the opposition and the government, based on the amendment first circulated by the Hon. Robert Lawson, have taken out the words 'serious injury'. Unless someone was sexually assaulted or died, then this inquiry is not able to investigate what occurred. It is not able to look at systematic patterns of behaviour and it is not able to make recommendations about what could be improved in the future.

The amendment, which I circulated and on which I had considerable discussion with the opposition, the government and the Independents, used the term 'unlawful conduct'. That was done quite intentionally to ensure that the scope of the inquiry was not so broad that the commissioner would never be able to report. It was intended to reflect that community attitudes have changed, but it acknowledged that some of the most crucial laws in relation to the welfare of children have not.

Some members will know that in recent weeks the Democrats have been on the public record calling for this government to make changes to the law relating to reasonable chastisement, which is a law some centuries old and which basically allows parents or carers to inflict considerable physical punishment on children. I know that a number of members in this place have been contacted repeatedly by people who were in the care of the state and who suffered abuse that was not sexual or not just sexual. They feel absolutely left out and they will be absolutely devastated and angry when they realise what the opposition and the government have done.

The cyclical nature of abuse is so well known and so well documented that we cannot understand how the government and the opposition can weaken when the opportunity was here to get this right. The role of government in our view is to be accountable and to address abuse that it may, knowingly or unknowingly, have supported in the past. I do not think there is any member of parliament here who has paid any attention to recent debates who could be truthfully in denial about the fact that yesterday's or today's abused child is likely to be tomorrow's homeless youth, psychiatric patient, drug addict, criminal or abuser of their own child.

If the government is genuinely committed to dealing with the issue of child protection, as it nowadays so frequently likes to tell us, it would have properly widened the scope of this inquiry. It would have properly listened to the call from those people who wanted something other than just an inquiry into sexual assault. I do not take any pleasure from what could be my last remarks in this place in this session being anything less than positive, but it is the Democrats' view that, by refusing to accept stronger terms of reference, this sends a clear message to those people who spent time in care that unless they were sexually assaulted, the government and the opposition are not interested in hearing their stories and are not interested in accepting that the state had some degree of responsibility. We are disappointed, and this issue will not go away.

The Hon. J.F. STEFANI: I was not going to speak, but the events of the last hour or so have compelled me to say a few words. The deal that the opposition has done with the government today can be seen as parallel to the deal that was done with the cars and the dummy bill that came through this place. I think that those of us who believed in a particular course of action have been treated as dummies, and I feel very strongly about that. I assure honourable members that I will be very cautious in the future to be guided by what I consider to be in the first instance my own instinct, which would have brought a very different result to what we are discussing now. It would have ended the argy bargy in the session that we are now completing. The proceedings probably would have been over and done with hours ago.

I concur with the comments made by the Hon. Kate Reynolds in relation to the omission of the words 'serious injury'. If we take out those words from this particular amendment, we are going to lead the inquiry into establishing that through criminal conduct someone was killed, and that is a mammoth task, because we are saying that the inquiry has to establish that a person in state care was killed through criminal conduct and, quite frankly, that is just absurd.

It would be true to say that, apart from the sexual abuse, there would also be cases where serious personal injury has been inflicted on young children in state care and the scars of those serious personal injuries would be carried by that person for life. We are denying those people the opportunity to provide evidence to the inquiry and the commissioner, and to be properly heard, and for their particular concerns and injury to be addressed and compensated. We have let those people down. This parliament stands condemned for those actions.

Finally, in negotiations of this kind, there will always be compromises. I think that today we have compromised the very essence of this inquiry by the deals that have been reached between the government and the opposition.

The Hon. A.L. EVANS: I acknowledge the significant contribution of the Hon. Kate Reynolds in furthering the debate on this crucial question of expanding the terms of reference appropriately. However, I indicate at this stage that I will oppose the opposition's latest amendment formulating the terms of reference on file. While it offers a better compromise than the original government position, it lacks the breadth that was reflected in the previous opposition and Democrats' amendment; a breadth that was much more capable of addressing the real hurts and the needs of the

victims of this state. I am glad that there is some careful reintroduction of 'serious physical abuse' in the amendment to the terms of reference. I regret that it has been narrowed because of the government's intransigence and is limited to abuse causing death. Whilst this inquiry will go some way towards healing the victims who have had their concerns swept under the carpet too many times, it appears that many of these concerns will continue to be ignored.

The Hon. NICK XENOPHON: Unfortunately I share the sentiments of my colleagues the Hon. Kate Reynolds, the Hon. Julian Stefani and the Hon. Andrew Evans. I am particularly concerned about the decision that appears to have been made to remove the words 'or serious injury' so that it is not part of this inquiry. It does not make sense that this inquiry will look into the sexual abuse of a person and criminal conduct leading to the death of a person, but, if a person is beaten to within an inch of their life, it will not form part of the inquiry. That beggars belief. I do not understand that and—

The Hon. Ian Gilfillan interjecting:

The Hon. NICK XENOPHON: The Hon. Ian Gilfillan says, 'It defies compassion.' There may be many instances of people who have been so traumatised and so damaged that their lives are ruined and their ability to exist as functioning human beings in our society is so compromised that they will not be able to tell their story to this inquiry and find some justice, and that is something that others will have to explain because I simply do not agree with it.

The Hon. P. HOLLOWAY: I will respond to some of the allegations that have been made. First, I make the general comment that it is important that this inquiry proceed as quickly as possible. I think if less time was spent on nit-picking the terms of reference and more time spent on the—

The Hon. Kate Reynolds interjecting:

The Hon. P. HOLLOWAY: No, it is not ridiculous. At the end of the day, the nature of this inquiry will be, as was said earlier, an unusual inquiry. The circumstances are different. It will provide an opportunity for the victims of one of the worst sorts of crime to come forward. There are several points to make about why I think it is appropriate that there should be the distinction between the sexual abuse element and the criminal conduct that results in the death of a person. First, probably very serious injury in the form of a beating will be accompanied by a sexual element. It is likely to be the case that that sort of abuse will be covered—

Members interjecting:

The Hon. P. HOLLOWAY: No, certainly not always, but the point is that, at this stage, we do not know how many people will come forward with the sexual abuse element of it. I believe that it is appropriate that we should—

The Hon. Kate Reynolds interjecting:

The Hon. P. HOLLOWAY: The point is that it is the sexual abuse element which is most likely to have caused the long-term psychological damage which it is necessary to deal with in the inquiry. I do not want to be flippant in relation to that.

The Hon. Ian Gilfillan interjecting:

The Hon. P. HOLLOWAY: You will get into all sorts of problems with the definition of that. As I understood it, the main driving factor leading up to this particular inquiry has been to look at the issue of sexual abuse and to weed out those obnoxious perverts who have been preying on children. There may be people who have beaten children and so on and there was no sexual element—and I certainly would not condone that.

I believe the sort of behaviour we need to deal with is the most obnoxious, despicable behaviour of those sexual perverts who prey on children. I think that is why the sexual abuse should be the principal focus of the inquiry. I do not think that members opposite should belittle any negotiations between the government and the opposition to try to come up with terms of reference which are practicable and workable and which will deal with the main element of concern.

The committee divided on the Hon. Kate Reynolds' amendment:

AYES (6)

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

NOES (12)

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

Majority of 6 for the noes.

The Hon. Kate Reynolds' amendment thus negatived; the Hon. R.D. Lawson's amendment carried.

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

Page 8, line 10—
Delete '1 July 2004' and substitute:
the commencement of this act

The purpose of this amendment is to provide an end date for complaints that will be the subject of the inquiry. The government has proposed that it be 1 July 2004, that being the date upon which the government announced its intention to introduce the legislation. However, it has been indicated that there may be some delay in the commencement of the act, which will be by proclamation, and, accordingly, the effect of my amendment is that that cut-off date will be the commencement of the act rather than 1 July.

The Hon. P. HOLLOWAY: I indicate that the government accepts the amendment.

Amendment carried; schedule as amended passed.

Title passed.

Bill reported with amendments; committee's report adopted.

Bill recommitted.

Clause 8.

The Hon. R.D. LAWSON: The committee will recall that an amendment I moved inserted a new subclause (2a), which commenced, 'the minister must, after consultation with the Commissioner'. I now move the following amendment:

In lieu of the word 'must' insert the word 'may'.

The Hon. P. HOLLOWAY: The government will support the amendment. There was some discussion about this matter. Members of the committee were aware of it earlier. I would like to make the following statement on behalf of the government. There has been considerable negotiation around the issue of the provision of assistance to persons who may wish to give evidence to the inquiry. On the one hand it is necessary to ensure that people coming before the inquiry feel safe, confident and have access to such assistance as they may need.

On the other hand, the government has a legitimate interest in ensuring that an entitlement to this assistance does not entitle a potential witness to demand the provision of resources in the way of legal or other assistance. The final

position in terms of wording of the clause leaves a level of flexibility in the hands of the minister after consulting the commissioner. It is the intention of the government to provide all witnesses with assistance in the nature of that provided by the Victim Support Service. In addition, in appropriate circumstances, it will be necessary to provide some witnesses with a level of legal assistance to enable them to present their evidence. With that understanding I give on behalf of the government, we support the amendment.

The Hon. R.D. LAWSON: I am indebted to the minister for indicating to the committee the government's intention in relation to this particular clause. The statement just read by the minister was agreed between the minister and the shadow minister, and I thank the minister in this place for placing it on the record.

Amendment carried; clause as further amended passed.

Clause 11.

The Hon. R.D. LAWSON: The committee will recall that this clause as originally introduced by the government provided that the minister must cause a report to be laid before each house of parliament within five sitting days after the receipt of the report by the Governor. As a result of an amendment moved by me during the committee stage, the words 'within five sitting days' were deleted and substituted were the words 'on the next sitting day'. I now seek to amend the clause, and I move:

Delete the words 'on the next sitting day' and substitute the words 'within three sitting days'.

The Hon. P. HOLLOWAY: The government will support that compromise position.

Amendment carried; clause as further amended passed.

Bill reported with amendments; committee's report adopted.

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

That this bill be now read a third time.

From the government's point of view, we are pleased that at least there has been some progress as a result of negotiations that have taken place. However, I point out on behalf of the government that the provisions that were inserted earlier in relation to a parliamentary selection committee and the need to choose a judge from interstate is something that this government still finds unacceptable.

The Hon. KATE REYNOLDS: Mr President, there was a lot of noise. Can the minister please repeat the last part of his statement?

The Hon. P. HOLLOWAY: I said that the government finds it unacceptable that this bill in its amended form requires the selection of a judge from interstate.

The Hon. KATE REYNOLDS: This is a bit awkward. I understand that a deal has been struck already about who has been agreed to head the inquiry, but because I have not been involved in any of the discussions, and I believe that none of the Independents has either, it is a little hard to know. We are working in the dark here, but certainly what I have heard in the last hour or so is that a deal has been struck, and a name has been agreed to. I do not know whether that is the name that was suggested previously and announced in the media but that is what I thought. It appears that the bill still requires that a panel be established and that the judge be sought from interstate. So, I would like placed on the record that we are very unclear about what the government is doing here and what the opposition is supporting.

The PRESIDENT: This bill will be transmitted to the other house at the completion of this procedure.

Bill read a third time and passed.

TOBACCO PRODUCTS REGULATION (FURTHER RESTRICTIONS) AMENDMENT BILL

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

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill seeks to amend the Tobacco Products Regulation Act (1997) and the Tobacco Products Regulations 1997.

Tobacco smoking is the single biggest cause of premature death, disease and disability in Australia. This imposes substantial economic and social costs on the South Australian community.

Smoking is the single largest preventable cause of death in Australia and tobacco use has been estimated to cost Australia $21 billion a year in health care, lost productive life and other social costs**.** Smoking, more than any other identifiable factor, contributes to the gap in healthy life expectancy between those most advantaged and those most in need. Thirty South Australians die each week from diseases caused by smoking tobacco and smoking related diseases account for 75 000 hospital bed days in the State each year.

In late 2002, the Government established a Hospitality Smokefree Taskforce in response to growing concerns about the health and comfort of staff and patrons in licensed premises and gaming venues.

The role of the Taskforce was to provide advice to the Government on ways to further protect patrons and staff in hospitality areas from exposure to passive smoke.

The Taskforce explored the many complex issues relating to the introduction of further bans, with much discussion on how best to protect the public from exposure to tobacco smoke while allowing businesses and the community to adequately prepare for any changes.

As a result of this extensive process and the ensuing public debate and consultation, a phase-in process was recommended. It was considered the best way of balancing the competing forces of protecting workers and patrons from unwanted and unreasonable exposure to tobacco smoke—and protecting the financial viability of the hospitality industry **and** the jobs of hospitality workers.

The Government determined that it would be unreasonable not to allow a phase in program for those venues affected by the ban. Businesses know where they stand and the public will expect them to make appropriate arrangements to accommodate the new laws as they roll out.

When announced in November 2003, this raft of decisions by the Government, meant that South Australia was the first State to name a date to ban smoking totally in enclosed public areas. In addition a range of other measures agreed to will particularly target the reduction of smoking in young people.

This package puts South Australia's reforms ahead of every other jurisdiction in the country.

The South Australian Labor Party platform made a commitment to strengthen legislation and to reduce the incidence of smoking by young people. This commitment to the young people of South Australia was endorsed in our State Strategy. We have set a target to reduce the number of young people smoking by 10% over the next decade.

Before honourable members come to debate the provisions of this Bill I ask that we all remember one critical thing and that is the harm caused by tobacco. Strong measures are needed to reduce the number of young people that are taking up smoking. We need to create an environment that helps current smokers to quit and those who quit to remain smoke free.

Environmental Tobacco Smoke

The provisions in this Bill will protect South Australians from exposure to environmental tobacco smoke in the places in which they work and relax.

This Bill strengthens and consolidates provisions for smoke-free workplaces and smoke-free enclosed public places, including hospitality settings in South Australia.

Passive smoking is an occupational health and safety hazard and public health risk; it is not an issue of comfort or choice. The National Occupational Health and Safety Commission recently recommended that exposure to environmental tobacco smoke should be eliminated from all Australian workplaces.

The majority of workplaces already have voluntary smoke-free policies, but not all. Too many workers in blue-collar sectors such as factories, workshops and small workplaces are still involuntarily exposed to environmental tobacco smoke at work.

Currently, 31% of South Australian restaurant and bar workers are exposed to passive smoking at work with the associated risks to their health.

Recent litigation also highlights the legal risks for all areas in the hospitality industry that are not smoke-free. Throughout Australia, there is an increasing number of out of court settlements and damages awarded through workers compensation and common law related to passive smoking. A recent study conducted by US Health Physicist, Professor James Repace, commissioned by the NSW Department of Health, estimated that each year 70 NSW bar workers are dying prematurely due to occupational exposure to tobacco smoke.

Separation and ventilation are not solutions. Smoke drifts and spatial separation of smokers and non-smokers offer inadequate protection. South Australian research concluded that ventilation does not offer a solution. Eliminating smoking indoors is the only way to protect worker health and reduce the recruitment of new smokers.

Smoking is now prohibited in restaurants, nightclubs and bars in five US States and hundreds of municipalities in the USA and Canada. These include major cities such as Ottawa, New York, Los Angeles, San Francisco, Boston, Dallas, and Miami, as well as cities such as Lexington, Kentucky, in the heart of America's 'tobacco country'.

California has had smoke-free bars since 1998, and studies of the Californian experience have found that the law has become increasingly popular and has led to improvements in bar-workers' respiratory health.

It is time for South Australia, also, to join Ireland, Sweden, Norway, New Zealand, and India, as well as other Australian states, to legislate to protect its workers from passive smoking.

Exposure to environmental tobacco smoke in enclosed public places is also a public health issue. In 2001, a representative survey of over 3000 South Australians, aged 15 and over showed that more people are exposed to passive smoking in hospitality venues, than in any other place (including private homes). 36% of South Australians report that they have been exposed to passive smoking in a hotel or bar in the past two weeks. The majority of South Australians are aware of the health consequences of passive smoking and are concerned about their own exposure to passive smoking.

The evidence demonstrates that smoking bans in workplaces would not only protect non-smokers from the dangers of passive smoke, but they would also have the important secondary benefit of reducing the number of cigarettes smoked in a day by smokers, and even encourage quitting. There is anticipated to be a reduction in the recruitment of young people to smoking. As a consequence, smoking bans in workplaces are likely to help reduce South Australia's smoking rate.

There will be complete bans on smoking in all workplaces, except in the hospitality and gaming industry, from October 31, 2004.

Enclosed Shopping malls, many of which already have voluntary smoke free policies, will now be required to be smoke free from October 31 2004.

Restaurants and cafes have had five years to become fully accustomed to being smoke-free. Any exemptions in this sector will be removed on October 31 2004.

There will be a phased in approach to smoking bans in bars, nightclubs, bingo and gaming areas, including the high roller room in the Casino, and these will be smoke free by October 31 2007. As part of this phased in approach, smoking will be banned within one metre of all service areas in licensed hospitality venues, including gaming tables at the Adelaide Casino, from 31 October 2004. There will be an exception for narrow bars that have only 3 metres between the drinks service counter and the wall. If 75% of their drinks service counter borders an area that is less than 3 metres wide, proprietors shall make 25% of their drinks service counter and floor area smoke free instead (if it is not designated a non smoking bar).

There is now increased community support for smoke-free public places and workplaces. In 2002, three-quarters of South Australians said that they wanted smoke-free bars, nightclub and gaming venues. The responses to the 2003 public consultation about the proposed smoke-free legislation were 92% in favour of smoke-free enclosed public places and workplaces.

South Australian research suggests that not only would smoking bans make visiting hotels and bars more enjoyable, most South Australians predicted that it would increase rather than decrease how often they attended these venues. Even smokers predicted that a smoking ban would make little difference to their patronage of hospitality venues.

Other Measures –effective 31 October 2004

The original Bill made changes to Section 44 and consultations are still occurring about this matter. The Government expects to bring in further amendments to this Section at the committee stage. That not withstanding, this legislation introduces broader restrictions on tobacco promotion. It prevents the advertising of a tobacco product in the course of a business for any direct or indirect pecuniary benefit. This definition does not capture non-pecuniary advertising such as tobacco logos on a t-shirt that a member of the public might wear. It will not prevent the incidental use of tobacco in a community dramatic production or in the context of a television program. It is important to protect children from tobacco advertisements and other inducements to take up smoking.

A 2002 survey of nearly 3000 South Australian Secondary School children demonstrated that great progress has been made in reducing smoking uptake in South Australian young people. Rates of smoking are at their lowest point ever recorded, having virtually halved over the past two decades. However, we must remain vigilant with our efforts to discourage young people from taking up a habit that kills one in two long term users. The research showed that experience of smoking increases markedly with age. At the age of twelve, 74% of boys and 84% of girls have never smoked at all. Whereas, by the age of sixteen and seventeen, 19% of these young people are regular smokers.

Since 1999, controlled purchase operations have been conducted in both metropolitan and rural areas. This involves supervised, trained young people (usually from 13 years to 15 years of age) attempting to purchase tobacco products from retailers. They are instructed not to lie about their age and will produce valid identification if asked.

Despite the publicity surrounding this process, one fifth of retailers throughout the State are still selling cigarettes to minors. In 2002, 23% of children reported having bought their last cigarette from a retailer. It is unacceptable that children are able to purchase cigarettes easily and this Bill introduces a number of measures that will enforce compliance.

This Bill seeks to make employers vicariously liable for the sale and the supply of tobacco by their employees to children aged less than eighteen years. This means that employers will need to train their staff to seek valid proof of a purchaser's age to ensure that those who purchase cigarettes are aged eighteen or above.

The sale of herbal cigarettes is to be restricted to retailers who have a merchant's licence. Whilst not containing nicotine, herbal cigarettes still release tar and other cancer-causing agents into the body and the air. There is evidence that young people have been introduced to smoking through the use of these products. Restricting the sale of herbal cigarettes under licence will mean they are available only through licensed outlets.

There will also be restrictions on mobile sales of cigarettes and bans will be imposed on mobile trays and also on toy cigarettes. Mobile sales and trays are a common form of marketing in nightclubs. My Departmental officers have often reported nightclub tobacco vendors dressed in tobacco-company colours approaching young patrons with trays of tobacco for sale or sampling. Research has demonstrated that smoking relapse often occurs under the influence of alcohol in a social setting and so this Bill will prohibit this form of blatant youth advertising and recruitment.

A business should not be able to promote a smoking permitted area as a marketing strategy. This legislation makes it an offence to display a sign or undertake an activity which advertises that a business welcomes or permits smoking on its premises. Allowing business to promote smoking environments goes against the intent of this legislation.

Licensing and display measures—effective 31 March 2005

As children have been 100% successful in buying cigarettes through vending machines under our current system, restrictions on access will be tightened. Vending machines will become employer

operated (through purchase tokens) or will need to be placed in a gaming room that is age restricted.

The legislation includes the introduction of a tobacco merchant's licence fee to sell tobacco products for each retail outlet. Under previous arrangements it was possible for large franchises, such as supermarket chains, to pay a single licence fee for multiple outlets. This has led to inequities for small business proprietors who pay the same fee for their one retail outlet as a supermarket chain does for its multiple stores. The shift to a single tobacco merchant's licence fee for each outlet will remove this inequity. It also ensures that the local manager is liable for compliance.

Each tobacco outlet will be required to prominently display their tobacco merchant's licence certificate adjacent to the point of sale as part of their licence conditions.

In order to ensure tobacco retailers the number of points of sale to a minimum, tobacco outlets will be limited in their points of sale.

The provisions of this Bill will begin coming into force on 31st October 2004. Licensing and display measures affecting retailers from March 31st 2005 and further restrictions on bars and gaming areas will occur on October 31st 2005. By October 31st 2007 there will be completely smoke free workplaces and enclosed public places in South Australia.

During this time there will be an extensive communication campaign to ensure the legislation and its implications are well understood. The introduction of these measures will also be accompanied by a Business Consultancy Service for licensed country hotels and clubs to assist them in adapting to the new legislation.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal. The commencement provision and the *Acts Interpretation Act 1915* will allow different provisions of the measure to be brought into operation at different times.

Part 2—Amendment of *Tobacco Products Regulation Act 1997*

4—Amendment of section 4—Interpretation

A number of new definitions are added for the purposes of the amendments.

A wide definition of ***advertise*** is introduced.

Definitions of ***public place workplace*** and ***shared area*** are provided for the extended ban on smoking.

Shared area is an area in multi-unit premises the use of which is shared by persons from various parts of the premises that are in separate ownership or occupation, for example, lobbies, lifts, garages, etc. The ***workplace*** definition is based on the *Occupational Health, Safety and Welfare Act 1986* definition with certain exceptions such as occupied residential places, self-employed persons' workplaces and work vehicles that are not shared.

The new definition of ***enclosed*** is intended to remove subjectivity in deciding whether a ***public place***, ***workplace*** or ***shared area*** is sufficiently enclosed to warrant application of the proposed smoking ban. Under the new definition, a space will be enclosed if the total actual ceiling and wall area exceeds 70 per cent of the ***total notional ceiling and wall area*** (which is based on a continuous horizontal ceiling and continuous walls).

Tobacco product is now widened to include any product that does not contain tobacco but is designed for smoking. This will mean that such products will only be able to be sold by licensed tobacco retailers and all other provisions relating to tobacco products will apply to such products.

5—Insertion of section 4A

A provision is added to exclude any power of the Independent Gambling Authority to restrict the sale or consumption of tobacco products.

6—Amendment of section 9—Licence conditions

The conditions of a tobacco retailer's licence may include—

- a condition under which the holder of the licence will be prevented from selling tobacco products except at a single place specified in the condition (with the effect that a separate licence will be required by the person for any or each other place at which the person sells tobacco products); and
- a condition that will restrict the points of sale of tobacco products within the place at which the holder of the licence may sell tobacco products under the licence.

7—Substitution of heading to Part 3

Part 3 is now to deal only with the supply or promotion of tobacco products.

8—Repeal of section 28

Section 28 currently defines ***tobacco product***, for the purposes of Part 3, to include any product that does not contain tobacco but is designed for smoking. This definition is now unnecessary in view of the change to the general definition of ***tobacco product*** in section 4.

9—Amendment of section 32—Tobacco products in relation to which no health warning has been prescribed

A reference to the Minister for Human Services is replaced by the Minister (that is, the Minister to whom the Act is committed).

10—Repeal of section 33

This section, which requires health warnings in tobacco advertisements, is to be deleted. This provision is unnecessary in view of Commonwealth laws and the proposed changes to section 40.

11—Substitution of section 36

The prohibition on the sale of confectionary designed to resemble a tobacco product is extended to other non-confectionary products designed to resemble tobacco products.

12—Substitution of section 37

This section currently restricts the location of cigarette vending machines to licensed premises under the *Liquor Licensing Act 1997*.

Under the proposed new section, a person will be prohibited from selling cigarettes or any other tobacco product by means of a vending machine unless—

- the machine is situated in a gaming machine area under the *Gaming Machines Act 1992*; or
- the machine is situated in some other part of licensed premises under the *Liquor Licensing Act 1997* and can only be operated by obtaining a token from, or with some other assistance from, the holder of the licence or an employee of the holder of the licence; or
- the machine is situated in a part of the casino in which the public are permitted to engage in gambling activities under the *Casino Act 1997*.

13—Substitution of section 38

Section 38 currently contains a prohibition on the sale of tobacco products to children. This is replaced by—

- a provision that makes it an offence for a person to go amongst persons in premises carrying tobacco products in a tray or container or otherwise on his or her person for the purpose of making successive retail sales of tobacco products; and
- a tighter prohibition on the sale of tobacco products to children that extends the offence to the proprietor of the business by which such a sale is made and requires the production of evidence of age of a kind fixed by regulation (this is intended to be certain photographic evidence).

14—Amendment of section 39—Power to require evidence of age

This is a consequential amendment only.

15—Amendment of section 40—Certain advertising prohibited

A wider prohibition on the advertising of tobacco products is introduced.

16—Substitution of sections 44 to 47

These sections contain various smoking offences that are now unnecessary in view of the wider prohibition on smoking in proposed new section 46.

A new control is introduced prohibiting the display of signs or any practice designed to promote a business as welcoming or permitting smoking on its premises.

Proposed new section 46 bans smoking in any enclosed public place, workplace or shared area.

Certain detailed temporary exceptions are allowed for licensed premises.

In licensed premises (other than the casino) with multiple separate bars, the ban does not apply until the end of October 2007 in separate bars or lounge areas designated by the licensee as smoking areas if—

- any designated smoking area does not include—

- the area within 1 metre of any service area; or
- in the case of a narrow bar, 25 per cent of the bar area (adjoining 25 per cent of the length of the drinks service counter); and
- at least 1 of the separate bars in the premises is not a designated smoking area; and
- no more than 1 of the designated smoking areas consists of or includes a dining area.

In licensed premises (other than the casino) with a single separate bar, the ban does not apply until the end of October 2007 in an area of the bar designated by the licensee as a smoking area or in separate lounge areas designated by the licensee as smoking areas if—

- the area within 1 metre of any service area is excluded from any designated smoking area (however, this condition does not apply to a narrow bar); and
- any designated smoking area in the bar does not exceed 50 per cent of the total area of the bar and is not alongside more than 50 per cent of the length of the drinks service counter in the bar; and
- any dining area in the bar consists of or includes the part of the bar not within the designated smoking area; and
- no more than 1 of the designated smoking areas consists of or includes a dining area.

In the casino, the ban does not apply until the end of October 2007 in bars or lounge areas designated by the licensee as smoking areas if—

- any designated smoking area does not include—
- the area within 1 metre of any service area; or
- in the case of a narrow bar, 25 per cent of the bar area (adjoining 25 per cent of the length of the drinks service counter); and
- no more than half of the bars in the casino are designated as smoking areas; and
- no more than 1 of the designated smoking areas consists of or includes a dining area.

Until the end of October 2005, in a gaming area, the smoking ban does not apply in an area designated by the licensee as a smoking area if—

- the area within 1 metre of any service area is excluded from the designated smoking area; and
- in the case of a gaming area in which gaming machines may be operated (not being the casino)—
- the designated smoking area does not contain more than 75 per cent of the gaming machines; and
- the gaming machines not in the designated smoking area consist of a single row or grouping of machines separated from the designated smoking area by not less than 1 metre; and
- in any other case—the designated smoking area does not exceed 75 per cent of the total area of the gaming area.

From the end of October 2005 until the end of October 2007, in a gaming area, the ban does not apply in an area designated by the licensee as a smoking area if—

- the area within 1 metre of any service area is excluded from the designated smoking area; and
- in the case of a gaming area in which gaming machines may be operated (not being the casino)—
- the designated smoking area does not contain more than 50 per cent of the gaming machines; and
- the gaming machines not in the designated smoking area consist of a single row or grouping of machines separated from the designated smoking area by not less than 1 metre; and
- in any other case—the designated smoking area does not exceed 50 per cent of the total area of the gaming area.

For the purposes of the above provisions—

- a "narrow bar" is one whose public area is not more than 3 metres wide alongside the drinks service counter;
- a "gaming area" includes a place where a bingo session is being conducted.

17—Amendment of section 71—Exemptions

This is a consequential amendment only.

18—Amendment of section 81—Vicarious liability

A new stricter vicarious liability provision is added.

19—Amendment of section 87—Regulations

These are consequential amendments only.

The Hon. R.D. LAWSON secured the adjournment of the debate.

STATUTES AMENDMENT (ELECTRICITY AND GAS) BILL

The House of Assembly agreed to the amendments made by the Legislative Council without any amendment.

COMMISSION OF INQUIRY (CHILDREN IN STATE CARE) BILL

The House of Assembly agreed to amendments Nos 8 to 14 made by the Legislative Council in the bill without any amendment and disagreed to amendments Nos 1 to 7.

Consideration in committee.

The Hon. P. HOLLOWAY: I move:

That the Legislative Council do not insist on its amendments Nos 1 to 7.

The first seven amendments relate to the proposal that was put forward by the Deputy Leader of the Opposition that, rather than having a judge from the Supreme Court of South Australia, Justice Mullighan, whom the government had proposed to be the commissioner of inquiry, the opposition had put forward that we should have a judge from outside this state. For the reasons that I outlined during the committee stage today, the government believed that that really is not acceptable. As a state of 1.5 million people, we should be able to address those problems that occur within our society. We believe that we are very fortunate in securing the services of Justice Mullighan. He is a person who is eminently suited, by any criteria, to undertake the sort of task that is required in this very difficult commission of inquiry. This does nothing for our reputation. This issue is not about the victims of child abuse: it is a quite fundamental issue, and it is about a matter of principle that this state should be able to provide from within its midst an eminently suitable person to undertake the chairing of this commission of inquiry.

As I said during the earlier debate, there has not been any precedent of which I am aware where a government, in establishing such an inquiry, has gone to such convoluted means to choose a person to be the chair of that inquiry. It is an executive inquiry and it will report to the Governor. It is entirely appropriate that the government should appoint the person and, obviously, the government should be accountable to the public for the calibre of that person, and we are quite happy to be so. For all those reasons and the other reasons that I gave earlier, I move that the council do not insist on its amendments Nos 1 to 7 so that we can finally get this very important commission of inquiry up and running and so that it can do what it needs to do to address the immediate concerns of the victims of these despicable crimes.

The Hon. R.D. LAWSON: The issue for the Liberal Opposition was: were we to have an inquiry at all or would the government abandon this inquiry, as it clearly was threatening to do, if the Legislative Council insisted upon its amendments—and good amendments they were—to establish a parliamentary process for the appointment of the chair of the commission and to insist upon the appointment of a judge from outside South Australia to head up the inquiry? I simply do not accept the arguments addressed by the minister a moment ago. The fact that it was unprecedented to establish

such a mechanism should have been no disincentive to the government to have adopted it.

I thank the honourable members in this council who fought with the Liberal opposition for the amendment to this bill to improve it in the manner that I have suggested. It is a matter for regret that the government took the view that, if we were to have an inquiry at all, we could not have an interstate judge appointed by the parliament. I think it is a matter for great regret and it will be a matter for great regret in the community, and especially amongst those victims of sexual abuse, that the government has not bitten the bullet and accepted that it is the proper function of this chamber to amend and improve legislation.

However, we were faced with the reality that the government could call off the inquiry, emasculate it or, in effect, frustrate it. A number of important changes have been wrought, and I suppose I should express some gratitude to the government for accepting those changes which were made in this place, but the most important for the Liberal opposition was an agreement to separate the investigation of abuse of state wards in institutional care from the abuse of foster children. We believe that this will allow the inquiry to progress in stages and in a more focused fashion.

I must acknowledge that the changes that have been forced upon the Legislative Council by the government will impact on the confidence of some victims to come forward but, as I said, it is clear that the government was not going to budge on this aspect and would have frustrated the inquiry if not defeated it entirely.

I emphasise again that the credentials of Justice Mullighan were not at issue. The victims simply wanted an inquiry headed by somebody beyond the legal and political system which let them down in this state. However, after fighting hard and long for this inquiry, we had to make an agonising choice if the inquiry was to proceed. The government was not prepared to compromise and would have dropped the inquiry if we had held out for someone from interstate. However, I think we in this place should draw some comfort from the fact that we were able to achieve some major improvements in the inquiry process, improvements which the government had originally rejected out of hand when proposed by us in the lower house during the initial passage of the bill.

I conclude my remarks by once again thanking the Hon. Andrew Evans and the Hon. Nick Xenophon, who supported the amendments moved by the opposition. This is a matter for regret, but we should put that regret behind us and trust that this inquiry will deliver the intended benefits for the victims of this foul abuse which has occurred over very many years.

The Hon. KATE REYNOLDS: The Democrats do not accept that the government would have dropped the inquiry. In fact, in discussion with the minister earlier this week I reminded him that, if they were not prepared to negotiate with the opposition, the Democrats or the Independents, they could say, 'We have changed our mind. This is a bit hard. We will have another form of inquiry. We will not tolerate having our choice of commissioner criticised, so we will drop this form of inquiry and we will have a royal commission', which of course has been called for for many years. Some time after other people had been making that call, opposition members joined their voices to that call. I do not believe that the government would have dropped the inquiry. I do not believe that it would have had the political will to do that, because the flak would have been absolutely—

The Hon. Sandra Kanck: Not this populist government.

The Hon. KATE REYNOLDS: As my colleague the Hon. Sandra Kanck points out, not this populist government—it would not have been willing to wear the flak. I want to refer briefly to a comment made by the minister. I am not sure of his exact words, but it was something like: this inquiry is not just about victims of child abuse. I would like to place on the record that this is about victims of only one form of abuse. So, if you were not sexually assaulted, if you were physically or emotionally assaulted or abused over the years, then you are locked out of this inquiry. We still maintain that that is shameful, so of course we will vote that the council insist on its amendments.

I thank the members on the crossbenches who did not cave in, who fought right until the end, including going to see the minister after the bill had passed this place to try to seek a further amendment in the lower house. I thank the Hon. Nick Xenophon, the Hon. Andrew Evans, and the Hon. Julian Stefani for their support for the Democrats' position.

An honourable member: What did he say?

The Hon. KATE REYNOLDS: I have been asked what the minister said. The minister said that he would take the amendment to the opposition and discuss it with them. My understanding is that neither the government nor the opposition was prepared to entertain the idea of having the words 'endangering life' inserted into the terms of reference, so that it would include people who had been sexually abused or, as we prefer to name it, sexually assaulted, who had had their life endangered or who had died as a result of abuse in care. The minister and the opposition would not entertain that idea. Returning, I thank the honourable members who did not cave in and who fought to the end to make sure that victims of physical and emotional assault were given the opportunity to have their stories heard, and to have some form of healing process begun.

The Hon. NICK XENOPHON: I am disappointed in the outcome in relation to these amendments. Having said that, I hope sincerely that this inquiry will at least make some significant inroads in giving victims a sense of justice. I am still extremely disappointed that the terms of reference are not as wide as I believe that they should be but, now that the deal has been done, I want this to work as well as it can to give victims the voice that they have been denied for so long and a sense of justice, and hope that the process will be thorough and that at the end of the day some good will come out of it.

The Hon. A.L. EVANS: I agree with the Hon. Kate Reynolds in that I do not believe that the government would back down. There is too much pressure out there, there are too many voices out there, there are too many things being said: this will keep going on and on until they get what they desire. It is an opportunity missed to make it a total healing for these victims and put the past totally behind us as a state. I want to say that I am very sad and sorry that we did not stand up and not falter. Now I will have to try and explain to the victims what has happened and trust that I can modify the approach and the attitudes of those that I am in contact with, but it is going to be a very difficult battle for us, and I can see this fight continuing on, which could have been done and brought peace to our state.

The Hon. SANDRA KANCK: I want to put my dissent on record, particularly in relation to the moves that my colleague made to attempt to have victims who were emotionally and physically abused brought into the picture. I have a friend who was institutionalised in the 1970s and, when these matters blew up a few weeks ago and the government announced that there would be an inquiry into

those children who had been sexually abused, she rang me. She was distraught, because she said that it was as if she did not matter, and that all the pain that she had gone through did not matter to the decision makers in this state. I do not think that a lot of the politicians that have made this decision fully understand what they have done and said to these people. She was on the phone to me for an hour, and I was extraordinarily moved by the way she told me that she was a nobody because she had failed as a child, because she had been taken away from her parents. That was back in the days when children were actually charged and not the parents. So, she saw herself as a failure. She was abused and there were attempts to sexually abuse her but she managed to talk her way out of it. She was emotionally and physically abused.

She is a wonderful person and contributes greatly in this community, but she will not be able to put her story on the record. She will not be able to be heard, and she will not have that opportunity to say to the community that she was badly treated. I really regret that the government and the opposition have rejected my colleague's amendment on this. Finally, I would like to make one other comment in terms of the grandstanding that the opposition made on the appointment of Justice Mullighan. I think that the way they behaved was quite shameful and, in fact, it was a slur on the whole of the judiciary in this state. They really should think about what they are doing.

The Hon. J.F. STEFANI: In adding these few words for the record I just want to say that the government has used bluff tactics, which would not work with me. The simple fact is that the government was committed to having an inquiry; if it did not have an inquiry it would be condemned by the community as a whole. The Rann Labor government is a deal-maker, and that is on the record. It has made so many deals that I do not have to repeat them now: everyone is aware of what they are. Again, this is a method that the government uses to have the opposition succumb to its way of doing things. It is not a good way to govern, because if the government of the day relies on stitching up deals and using bluff tactics—if not blackmail tactics—then we have a very poor government. In that process we are not providing the opportunity for closure to people who have been injured in state care, and I am sure that many people would be able to have their particular concerns addressed by an inquiry that should have been established to address those issues. Today the parliament of South Australia, because of the government and the opposition reaching a deal, has failed them.

The Hon. P. HOLLOWAY: The government has not failed anyone. I again remind the house that within weeks of this government coming into office we set up the Layton review, and this government has actually spent tens of millions of dollars on child support services over the past few years—there has been a massive increase, as there needed to be. That money has come at the expense of other areas of government, and every day I and other ministers stand in the parliament of this state and get criticised because there is not enough money going into other areas. This government has determined that this is an area of priority need and it has, in quite difficult times, put many tens of millions of dollars into child protection, because we appreciate the need for it. That is to prevent children being abused today. But we also have to address those people who have suffered abuse in the past, particularly those in institutions, over many years. The government has accepted that.

The Hon. Kate Reynolds is quite right in saying that it is wrong to suggest that the government would have dropped the inquiry, but I guess that, if this had not been changed, we would have dropped this legislation, because there are other means by which the government could establish an inquiry. But it is far better that any inquiry that we do establish should have as much support as possible from this parliament so that it is seen, as much as possible, to be one that has the support and endorsement of as broad a section of the community as is possible.

Let me make one point to the Hon. Kate Reynolds. I think that she suggested that she would oppose this because her amendments to the terms of reference were not accepted. I remind her that the motion I have moved is that we do not insist on amendments 1 to 7. These purely relate to the choice of the person—the judge—to preside over the committee of inquiry. Those amendments do not relate to the terms of reference: that opportunity has passed. By not supporting my motion to not insist on amendments 1 to 7, all the honourable member would be doing is reverting to the situation of having this bizarre selection process. It is appropriate that parliament should debate the terms of reference and so on, but I hope that what will come out of this process is that we do have a commission of inquiry set up.

It will not be just those victims who have made themselves obvious who will avail themselves of this inquiry. No doubt, for every victim of sexual abuse or assault, whatever you like to call it, who has come forward, there are probably dozens more in the community. They should also have the opportunity to come forward. It is incumbent upon all of us as members of parliament to encourage the community to use the processes that are established and to assure those victims that they should have faith in the system. If we in this state cannot make this system work properly to protect them, we have failed indeed. I hope all of us can encourage those people, whatever their views might be.

All of us must make the systems in this state work for the benefit of the people of the state. Some dreadful atrocities have been committed against people in this state by the system. The government is pouring millions of dollars into trying to improve it, but, clearly, we need this sort of inquiry to ensure that everything possible is done. Perhaps we will never be able to eliminate those sorts of atrocities totally, but we should do everything we can to reduce them. Let us hope that, as a result of the passage of this bill, this commission of inquiry will do as much as it possibly can to ease the burden on those poor victims who have suffered from those abominable crimes.

Motion carried.

ADJOURNMENT

At 11.21 p.m. the council adjourned until Monday 16 August at 2.15 p.m.

Corrigenda

Page 1933, Column 2—Line 26—Insert 'and' after 'minister'.