HOUSE OF ASSEMBLY

Tuesday 24 February 2004

The SPEAKER (Hon. I.P. Lewis) took the chair at 2 p.m. and read prayers.

STATE AQUATIC CENTRE

The Hon. M.J. WRIGHT (Minister for Recreation and Sport): I seek leave to make a personal explanation.

Leave granted.

The Hon. M.J. WRIGHT: I rise to make a personal explanation. Yesterday the member for Bright asked me questions about the proposal for a state aquatic centre. At the time I was asked those questions I was aware in general terms that my staff had liaised, as you would expect, with Marion council representatives in relation to arrangements for the aquatic centre announcement, but was unaware of the details. I was completely unaware yesterday when answering questions in this house that my staff allegedly had threatened or made demands of Marion council members or staff. I made inquiries about these matters that concluded after the house had risen and I now wish to clarify and add further information.

I was advised that there were a number of discussions between my office and representatives of the council about press releases, speeches and the launch. I was advised that one matter that was addressed in relation to Marion council's draft press release was whether or not the announcement was that the pool was to be built, as opposed to a call for expressions of interest being made. I understand this was addressed and a correction to the media release was made by the council. I am advised my chief of staff had a number of conversations with the mayor of Marion. I understand that my chief of staff made it clear to the mayor of Marion that he had not been able to speak to his minister about these issues. I understand that my chief of staff indicated that if the proposed announcement was covered prematurely in the *Advertiser* the media would be aware already of the announcement and that would reduce the coverage of the planned media event. I understand that my chief of staff indicated that he was unsure what his advice to his minister would be if the value of the event was reduced by premature publication.

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. WRIGHT: An article did appear in the *Advertiser* in relation to the aquatic centre on the day of the launch and, of course, I still participated fully in this important event. My chief of staff advises me that the conversations with the mayor were amicable and ended on a positive note. I am advised that the potential for a media article on the proposed announcement to refer to the member for Bright was discussed and I am advised that my chief of staff indicated that he did not know what his minister's views would be if that occurred. I am advised that in the course of these discussions it became apparent that the council, which was responsible for issuing invitations to the event, had not invited the local member of parliament.

I am advised that subsequently my office advised the member for Mitchell of the event and he, of course, attended. I am advised that my media adviser did speak to council representatives about the content of the mayor's draft speech. I saw for the first time last night the words contained in the Mayor's draft speech. I had no concerns with her draft speech whatsoever. I make clear to the house that the views I expressed in response to the questions yesterday were my honest beliefs at that time.

The Hon. W.A. MATTHEW (Bright): I, too, seek leave to make a personal explanation.

Leave granted.

The Hon. W.A. MATTHEW: During question time yesterday, I asked two questions of the Minister for Recreation and Sport alleging heavy-handed tactics by ministerial staff against senior personnel of the City of Marion, including insistence that the Mayor's speech be changed. I am informed that information I provided to the house as part of one of the questions was partially incorrect.

Members interjecting:

The SPEAKER: Order!

The Hon. W.A. MATTHEW: I advised the house yesterday that both the Mayor of the City of Marion and the council's media adviser received an accusing and threatening telephone call from the minister's Chief of Staff. I am now informed that, while such a telephone call to the Mayor of Marion was made by the minister's Chief of Staff, the call to the council's media adviser was actually made by a different person, a Mr David Heath. The government staffing list details Mr Heath as a media adviser employed by the Premier's office and assigned to the Minister for Recreation and Sport.

EUROPEAN WASPS

The Hon. R.J. McEWEN (Minister for Industry, Trade and Regional Development): It would seem that it is an afternoon for mea culpas. I seek leave to make a mea culpa.

The SPEAKER: Order! Does the Minister for Industry, Trade and Regional Development seek leave to make a personal explanation?

The Hon. R.J. McEWEN: I do, Mr Speaker.

The SPEAKER: Is leave granted?

An honourable member: Yes, sir.

The SPEAKER: Leave is granted.

The Hon. R.J. McEWEN: Thank you, Mr Speaker, and I apologise for jumping the gun. I was just reflecting on the fact that it was the third mea culpa for the afternoon.

The SPEAKER: Order! Get on with it.

The Hon. R.J. McEWEN: In question time yesterday, I answered a question from the member for Kavel concerning state funding for the eradication of European wasps. Since that time I have had an opportunity to discuss the matter further with the member for Kavel. My answer in the house yesterday was to the effect that research commissioned by the government had been inconclusive and that the eradication program for the European wasp conducted at a local government level was not proving to be the answer to the problem. I also said, based on advice I received, that we needed to change the emphasis on our wasp eradication strategy. On further considering my briefing on the issue, I have come to the view that my answers to this house might not have reflected all the conclusions of the 2002 research project and the associated report on controlling the European wasp. Amongst other conclusions, the report indicated that a viable alternative control mechanism would not be available for at least another two years. My answer yesterday to the question

asked by the member for Kavel, based on advice concerning the research result, to that extent was therefore incomplete.

I intend to review the results of the current and past research into the European wasp eradication which was commissioned by the former government and undertaken between 1998 and 2002 to establish whether there is any need or case to be made for additional or follow-up work, or assistance in the area. In the interim, I believe it appropriate that the European wasp control program be reinstated for the 2003-04 season, and I announce that a contribution will be paid by the state via the Local Government Association towards the European wasp nest destruction program that has been provided for some time by local councils.

DOGS AND CATS, CONSUMPTION

The Hon. M.J. ATKINSON (Attorney-General): I seek leave to make a personal explanation.

Leave granted.

Members interjecting:

The Hon. M.J. ATKINSON: It is Shrove Tuesday, and it is necessary to make confessions on this day and be shriven.

Members interjecting:

The SPEAKER: Yes. Well, I do not want any crucifixions, either.

The Hon. M.J. ATKINSON: Or even the imposition of ashes a day early. During the debate on the amendment to the Summary Offences Act to outlaw the slaughter for human consumption of dogs and cats, I cited two examples: one in Victoria and one in the Parks area. The case in Victoria involved the potential slaughter of a puppy and the one in the Parks involved the actual slaughter of an animal not usually served on paper plates. The Hon. Ian Gilfillan (on radio) made the bold claim that these are urban myths for which there is no evidence whatsoever, and the member for Unley has privately raised with me the veracity of one of those stories. I am in the process of gathering evidence, and I shall share it with the house tomorrow.

QUESTIONS

The SPEAKER: I direct that the following written answers to questions without notice be distributed and printed in *Hansard*:

FAMILY AND YOUTH SERVICES

In reply to **Hon. DEAN BROWN** (13 November 2003).

The Hon. S.W. KEY: Prior to 2002-03 Family and Youth Services (FAYS) operating revenues and expenditures were not identified as a 'stand alone' entity for budget and reporting purposes. FAYS has not in the past been separately identified in the Auditor-General's Report, including in the unaudited data referred to in the questions. FAYS activities formed part of Output Class 4—Community Based Care and Output Class 5—Accommodation and Support.

In order to provide greater clarity on Department of Human Services activities, the 2003-04 Portfolio Budget Statements replaced the 7 Output Classes with 21 programs and a further number of subprograms.

FAYS is now a specific program identified as K8—Family and Youth Services allowing more obvious reporting of activity and outcomes. The 2002-03 Auditor-General's Report includes a summary of operating revenue and expenditure by program and I refer you to pages 565 and 566 for details of FAYS operating result. Although not included in the Auditor-General's 2001-02 Report because of the structure of the outputs based budget structure FAYS 2001-02 expenditure and revenue is reported in the 2003-04 Portfolio Statements, Budget Paper 4, Volume 2, Page 7.33.

SNAPPER FISHING QUOTAS

In reply to **Dr McFETRIDGE** (3 December 2003).

The Hon. J.D. LOMAX-SMITH: The Minister for Agriculture, Food and Fisheries has provided the following information:

The snapper closure for the month of November was put in place after a review of the management arrangements which incorporated split three year seasonal closures used between 2000 and 2002. A further three-year period was chosen for the new one month November closure because the impact of the closure will take several years to take effect and be measurable.

The month long closure in November was identified from scientific research and commercial catch data as being the best period to gain maximum effect from a closure. The review of the previous split periods in August and November showed that a longer one-month period would have a greater impact on fishing effort. The fishing effort by both commercial and recreational line fishers is very high in the month of November and removing effort during this month provides protection to a significant proportion of the snapper spawning stock.

It is recognised that there will be some increased fishing effort either side of the closure and that the market for snapper will react to the rapid changes in supply.

However, the main reason for the closure is to protect a proportion of the snapper stocks during the key spawning period and enhance the sustainability of this important fishery. If a minority of commercial fishers are catching large amounts of snapper and dumping the product on the local market at low prices, they are only hurting themselves. Fishers who are prepared to catch smaller amounts and selectively build the market at a reasonable pace after the closure period are taking a prudent approach.

The government views very seriously any breach of the closed period and suggest that the member pass on any information he may have to Fishwatch on 1800 065 522.

The Marine Scalefish Fishery Management Committee which is the statutory body that provides advice to the Minister for Agriculture, Food and Fisheries will be monitoring the effects of the closure and the status of the snapper fishery on an annual basis.

LICENSING LAWS, MINORS

The Hon. M.D. RANN (Premier): I seek leave to make a ministerial statement.

Leave granted.

The Hon. M.D. RANN: A week ago, I advised the house that I wanted relevant ministers, the Australian Hotels Association, the Liquor and Gaming Commissioner, the Commissioner of Police, and the Department of Transport to advise me on how best to deal with the growing problem of under-age drinking in our nightclubs and pubs. The message from the hotel industry was quite clear: it wanted to cooperate with the government to deal with this problem. The message from the Police Commissioner was equally clear: the police wanted the laws simplified so that they could be enforced properly. There are, in the view of the police, too many grey areas that allow minors to get around the law. The industry, the licensing commissioner, the police and other government officers met subsequently and thrashed out a range of proposals for law reforms and other initiatives for consideration by government.

I met with this group this morning and received their submissions. I was impressed with their resolve and their commitment to deal with this vexed problem in order to protect our young people from potential harm. The proposals that we are looking at involve: greater restrictions on the access of minors to pubs and clubs; a more effective system of penalties for minors found in pubs and clubs (including on-the-spot fines) and compulsory counselling to help prevent young people from becoming chronic alcohol abusers; improving the security of identification and proof-of-age cards issued by Transport SA; better means of detecting false

IDs; and more effective policing and enforcement programs building on recent joint operations.

I have also requested today that SAPOL contact Scotland Yard to see what can be done about a UK-based web site offering fake IDs for use in numerous countries and states, including South Australia. However, it is a shame that more action was not taken by the former government when Labor MLC, the Hon. Carmel Zollo, asked the then attorney-general, Trevor Griffin, in November 1998 about the availability of counterfeit drivers licences for purchase over the internet.

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: I am told that a subsequent question in June 2001 was not even responded to. We want to toughen licensing laws in relation to minors. One reform we are looking at is to ban minors from entering or remaining on licensed premises unless they are accompanied by a parent or legal guardian. The proposed—

Ms Chapman interjecting:

The Hon. M.D. RANN: I cannot believe that a member of this parliament would show that kind of disregard for the protection of our minors. The proposed change means that kids in pubs must be supervised, and I believe that it will make the law more enforceable. Exceptions will include minors being allowed in designated dining rooms, and in bedrooms if they are staying in the hotel. Other exceptions will take into account the needs of rural hotels and sporting and other clubs which provide facilities that meet family needs. We have also been asked to consider controls over the supply of alcohol to minors by people other than their parents in private premises. In relation to penalties on licensees, currently—it appears, sir, that members opposite are not interested, but I will soldier on.

The SPEAKER: Order! The Premier has leave to make a statement about these matters arising from the abuse of the law under the licensing act provisions, not to make a statement containing spontaneous observations, hypothetically or otherwise, about what he thinks might be going on in the opposition.

The Hon. M.D. RANN: Thank you, sir. Currently, the law provides for a maximum penalty of a $10 000 fine against licensees for allowing minors on licensed premises. There is also a discretion to suspend or revoke the licence. However, the penalty for the second or subsequent offence is no different from that for a first offence. Therefore, it is now recommended that there be a mandatory suspension or revocation of the licence on the third or subsequent offence—that is, being on a premises. The penalty for actually serving alcohol to a minor is $20 000 maximum for a first offence and mandatory suspension or revocation of the licence for a second or subsequent offence. In relation to penalties for minors, currently minors who enter or remain on premises face a maximum fine of $2 500 and would be dealt with under the Young Offenders Act. The working group has recommended a combination of formal cautions, compulsory attendance at alcohol awareness counselling, expiation notices (on-the-spot fines) and court proceedings to deal with minors. While the details of such a multi-layered system need to be more thoroughly explored and worked through, such an approach represents a commonsense approach to this issue. It combines a proper mix of penalty, deterrence and behavioural intervention.

I now refer to identification and proof of age issues. Under the Liquor Licensing Act, the accepted identification or proof of age are:

- a current passport;
- a key pass identification card;
- a current driver's licence, licence being a photograph issued by Transport SA; or
- a current proof of age card issued by Transport SA.

Transport SA is now looking at tough new options to improve the integrity of the security of a driver's licence and proof of age card. It is believed that a common form of falsifying identification and proof of age by juveniles is by obtaining a replacement licence issued for an adult driver. This usually happens when a young adult claims their original ID was lost or destroyed, and they then apply for a replacement licence. In this way a number of 'licences' may be issued under the same name, each bearing a different photograph.

This rort will now no longer be available. Since October 2003, Transport SA has retained copies of photographs taken of licence applicants. Hopefully, this will substantially help reduce the number of false IDs in this way. Whenever a person attends to renew the licence or make an application for a replacement licence, the department will crosscheck the photograph to ensure it matches the applicant. Applicants for a duplicate licence will now be required to produce three forms of ID rather than just a signature. At the moment, when going in for the duplicate they only have to sign their signature, and that is checked. Now they will have to go through the same procedures of producing three forms of ID to get a duplicate as well as the original. The system will also operate for proof of age cards.

Transport SA is currently analysing data relating to applications for replacement licences. Statistics show that the 18 to 19 year age group account for a disproportionate number of applicants for replacement licences. While this may be in part attributable to adolescent carelessness, it is considered that it also represents a significant amount of fake IDs. Possible other initiatives to tackle the use of fake IDs include the trialling of ultraviolet light equipment to assist in the detection of tampered cards; the extension of a pilot program trialled in the Sturt local police area known as Against Fake ID; targeted joint operations by the police, Liquor Licensing Commissioner, fire services and the EPA on nightclub hot spots where there is an under-age problem, drug abuse, overcrowding and fire risk; and introduction of crowd controller reforms requiring bouncers to demonstrate an appreciation and knowledge of and skills and expertise in licensing laws responsible for service of alcohol and recognition of identification.

I turn now to some very effective measures for dealing with fake IDs. All offences under the Motor Vehicles Act relating to providing false information to obtain an ID, being in possession of a fake ID and tampering with an ID will attract a maximum penalty of a $2 500 fine or six months in gaol, plus, on my insistence this morning, mandatory disqualification for driving for six months. Those who produce or aid and abet the production of a fake licence face the same penalties. Minors will also be subject to on-the-spot fines if they are found with a fake ID.

Members interjecting:

The Hon. M.D. RANN: The message is quite clear. Young people who break the law in this way will face real consequences. You produce a fake ID, you will not be able to drive. If you fake a driving licence, you will not be able to have a driving licence. I will now be writing to interested

parties and asking for their feedback by the end of March. I am stunned that members opposite seem to think that the problem of under-age drinking in nightclubs and clubs and the associated problems with drugs should attract this kind of derision.

QUESTION TIME

The SPEAKER: Before calling on questions, in consequence of remarks that have been made to me throughout the time that I have been in the chair, I advise that questions asked by members seeking leave to explain them will be given leave in circumstances where it appears the meaning of the question is ambiguous. Ministers will have a minute in which to get to the subject of the inquiry or otherwise be seated.

FREEDOM OF INFORMATION

The Hon. R.G. KERIN (Leader of the Opposition): My question is to the Premier. Does the Premier agree with statements made by the Deputy Premier, his leader in another place and his minister for Urban Development and Planning that it would be improper to instruct freedom of information officers on how to process FOI applications? Last year the Minister for Urban Planning and Development said, 'Let us end this absurdity about so-called political interference in relation to FOI applications.' The Deputy Premier confirmed this view when he said:

'. . . it is entirely up to the FOI officers in my department. . . It is not for me to interfere in FOI requests. . . '

The leader of the government in another place said, 'It would be quite improper for me under the Freedom of Information Act to instruct that officer in any way.'

The Hon. J.W. WEATHERILL (Minister for Urban Development and Planning): It remains—as has always been the case—that the act provides that freedom of information officers are charged with statutory obligations to apply the act. Since coming in to office we have taken the protocol seriously that was signed upon us coming in to government. We have introduced a range of measures to support FOI officers, including additional training, forums and guidebooks—more support than they have ever had. That should be contrasted with the way in which FOI officers were overborne and, indeed, in some circumstances plainly suffered interference from the political process. We have turned our back on that system. We now support FOI officers. There is an unprecedented level of additional applications being made by MPs and an unprecedented level of responses. We have attempted to deal with the most spurious FOI applications, asking us to empty just about every document out of our filing cabinets, but we have tried our very best to comply with the requests that have come from those opposite which, at the very best, can be described as fishing expeditions. We have done all that in a proper way that respects the proper role of FOI officers.

The SPEAKER: May it please the house, I would add that I think the manner in which freedom of information legislation is being treated by members of parliament in both houses is, at present, farcical. It will only be resolved when parliament establishes a committee to review all applications made by honourable members which comprises members from both houses and both presiding officers to ensure that specious inquiries and broad trawling are not permitted. That committee will be set up to protect the public interest against the expense involved; it is otherwise frankly quite ridiculous and something which officers of the public service speak about openly in their social lives to the extent that it brings this institution into some measure of disrespect. Until we learn to more sensibly regulate the way in which we go about doing our business in the public interest, rather than the interest of the parties to which we belong, we will deserve that measure of contempt we are now earning.

POLICE, RECRUITING

Mr O'BRIEN (Napier): My question is to the Minister for Police. What progress is the South Australian police force making in recruiting more officers?

The Hon. K.O. FOLEY (Minister for Police): I thought I would provide a brief update for the house on progress to date with what I think has been widely acknowledged by most, if not all, in the community, with the exception of members opposite, the outstanding decision by this government to recruit 200 extra police above attrition.

Members interjecting:

The Hon. K.O. FOLEY: It's a pity you couldn't—

The SPEAKER: Order! The minister will ignore interjections.

The Hon. K.O. FOLEY: Members would be aware that in November last year the government announced that it would be recruiting 200 extra police officers above normal attrition rates. This means that South Australia will have more police than ever before. Since November, there has been a comprehensive print and television advertising campaign to attract recruits to our force. Radio advertising has commenced and online advertising has also been initiated—a first for police recruitment. Our force is high-tech in every sense of the expression. The online advertising through Seek and CareerOne has resulted in between 700 and 1400 hits per week, reflecting this medium's popularity with the target audience.

Ms Chapman interjecting:

The Hon. K.O. FOLEY: That is true. At least they are hitting the computer. From 8 December 2003 to 2 January 2004, the first four weeks of the advertising campaign, 126 applications were received. Experience from previous campaigns would indicate that we are expecting the majority of applications from mid-January through to April, and I am happy to come back and update at a later stage if members would like. The important point I would like to make here today is that I am advised that the standard is extremely high, as well as the number of applications. The very outstanding set of skills in most applicants is very good news for the future skill profile of our police force.

Training courses for new recruits commenced last month with new courses at this stage scheduled for February, March, April, May and June. Given that it takes about six months of training, we will seek significant new additional police on the beat, in the community throughout the state in various parts, and we will see, over the course of this program, an extra 200 police—an outstanding initiative, one I know that all members in this house would welcome, even the opposition.

FREEDOM OF INFORMATION

The Hon. R.G. KERIN (Leader of the Opposition): My question is to the Minister for Administrative Services. Given

the minister's earlier answer, what action will he take over the fact that the Premier's political adviser instructed the freedom of information officer in the Department of Premier and Cabinet not to release Economic Development Board documents sought by the opposition?

After being denied access to a number of Economic Development Board Documents, the Hon. Angus Redford MLC applied to the Ombudsman for a review of the decision. In a letter to the Ombudsman, dated 6 February 2004, the head of the Department of Premier and Cabinet, Mr Warren McCann, stated that in reaching a determination not to release the documents, the Department of Premier and Cabinet's FOI officer was, and I quote:

> . . . in reaching his determination about all but one part of one document, the FOI officer was instructed by Mr Lance Worrall, who is the Premier's economic adviser.

The Hon. J.W. WEATHERILL (Minister for Administrative Services): I thank the honourable member for his question. I do not know the precise circumstances he talks about, but I have no doubt that that would have happened in the Premier's office, as it happens now in every ministerial office: whenever there is an application that comes before a ministerial office, it goes to the relevant FOI officer, or indeed a department—

Members interjecting:

The Hon. J.W. WEATHERILL: Well, do you want to hear the answer to the question or do you, like the member for Waite, want to answer this question yourself? What happens in relation to FOI applications now, as opposed to the way in which it happened after the last regime, is we have a set of protocols.

Members interjecting:

The Hon. J.W. WEATHERILL: The protocols are that if a minister or if some adviser within a ministerial office wants to have an input into the process there is an orderly way in which that occurs. It is articulated in the steps in the process and it is made transparent, so that if the minister wants to proffer an opinion about a particular document, and whether in the public interest that document may or may not be released, that is then taken into account.

Members interjecting:

The Hon. J.W. WEATHERILL: It is not outrageous. What is outrageous are the arrangements that used to be in place; that is, someone would sidle up to an FOI officer and not in any transparent way put pressure on the FOI officer to make particular decisions. Under our regime, and with precisely this point in mind, we have promulgated protocols which provide opportunities for ministers and their advisers to have input. That advice is to be articulated and it is to be transparent. No doubt, because those opposite know about the matter, the reason they know about it is that it has been made transparent. They can make whatever point they like about it, but I can say that we are open and accountable and we put those opposite to shame.

The Hon. R.G. KERIN: I have a supplementary question. Given the minister's answer and the fact that the Ombudsman identified the fact that the adviser stopped those documents being released, does he stand by his previous statement, when he said, 'Let's end this absurdity about so-called political interference in relation to FOI applications'?

The Hon. J.W. WEATHERILL: There seems to be a misunderstanding about—

Members interjecting:

The Hon. J.W. WEATHERILL: There is a misunderstanding about the role that ministers and their advisers play in relation to these documents. A range of documents are held by government, and ministers can have legitimate views about why in the public interest material should or should not come out into the public sphere. If the minister is not entitled to proffer their opinion about what is in the public interest, I wonder who should. It is a responsibility of the minister to proffer their opinion about what is in the public interest. There is a range of ways in which that can be tested. In the first instance, the FOI officer has to make their own judgment about whether a document ought or ought not to be released. They will have regard to the particular views that have been provided to them by the minister or the adviser, if that happens to be the case. They will also have the opportunity to take legal advice—and they often do—and they will make their own decisions.

If those opposite are not satisfied with the decisions that they receive, they can then seek an internal review—they often do—and then that decision is either confirmed or overturned. If they still remain unsatisfied they can make application to the Ombudsman, and that is precisely what appears to have occurred in this case. If they have concerns about the minister's assessment about what is in the public interest or some other particular ground for not revealing a document at that time or some future time, they can persuade the Ombudsman. The system is designed to accommodate these matters. I must simply repeat: this is to be contrasted with documents arriving in a premier's office, members of staff rifling through those documents and critical documents missing from the public record. There can be no comparison between this government's honesty and accountability and the carping from those opposite.

The Hon. R.G. KERIN: I have a further supplementary question. Is the minister telling the house that the Premier's political adviser had the right to instruct the FOI officer of the department about what he could and could not release, rather than follow the act?

The Hon. J.W. WEATHERILL: Perhaps I should say it in words of one syllable for the Leader of the Opposition: opportunities are provided under the protocols that have been promulgated by the government—

The Hon. DEAN BROWN: I rise on a point of order, sir. The question from the Leader of the Opposition was very specific indeed, concerning the right of the economic adviser to instruct an officer of the Department of the Premier and Cabinet, because that is what the Ombudsman has released. I want to ensure that the minister answers the question under standing order 98.

The SPEAKER: Order! By way of background, can the chair, first, thank the member for Fisher for the way in which he as Deputy Speaker and Chairman of Committees has done a great deal of research, in collaboration with me, on matters such as this and others that affect the conduct of affairs in the house, especially in question time. I apprise honourable members that those discussions we have been having—my own interest in it with other parliaments pre-dating the time I was given the honour of being placed in the chair—have resulted in other parliaments now moving on ahead of what we in South Australia have achieved, where I would have personally wanted us to do that to clean up our act in the way in which the public expects us to.

In Victoria now, in the House of Assembly, in a bipartisan way, indeed all members agree on the necessity for the

reform which results in the Speaker being able to direct a minister to address the question without dodging the issue. More is the pity that that did not apply in earlier times—it probably would have saved Jeff Kennett's neck as well as John Olsen's. In this case, I propose to apply it here, unless the house otherwise directs me. The minister shall address the question. Regardless of whether or not the pain at the moment seems intense, it will be far less than the pain this place and the minister will suffer if we continue to allow the practice of dodging the issue to go on. The honourable minister.

The Hon. J.W. WEATHERILL: I do not seek to dodge the issue, sir. What has been put to me is that somehow there is some contention that an adviser may have offered some information as part of an FOI process.

Members interjecting:

The Hon. J.W. WEATHERILL: Well, they're your words. I have no knowledge of the information they proffer about the Ombudsman's opinion. All I can give to the house is what I know about the protocol I promulgated. I fully expect that this adviser complied with that protocol. I think that, as with most things in this house, what you hear in question time from those opposite and what you actually find out when you investigate the matter are two entirely different matters. So, I will undertake to investigate this matter. I have outlined to the house what the proper protocol is for the way in which ministers and their advisers can have input into an FOI application. I am confident that that was complied with in this case; I fully expect that it should have been. I will bring back an answer to the house.

PRODUCTIVITY COMMISSION, REPORT

Ms THOMPSON (Reynell): My question is to the Minister for Health. Did the Productivity Commission Report on Government Services released in January shed any light on the increasing demand on our public hospitals for services, including elective surgery?

The Hon. L. STEVENS (Minister for Health): Yesterday, I advised the house about the increasing number of people being admitted to hospital through our emergency departments. The Productivity Commission's Report on Government Services, released at the end of January 2004, reinforces the need for reform of our health system. The report is consistent with the findings of the Generational Health Review that our system is skewed towards acute care and illustrates the enormous pressures impacting on public hospitals. For example, the report states that during 2001-02 South Australia had a higher than average admission rate to our public hospitals of 227 per 1 000 compared with the Australian average of 210 per 1 000. Further, it stated that the number of available beds is highest in South Australia at 3.3 beds per 1 000 people compared with the Australian average of 2.7 beds per 1 000 people.

In the first 11 months to November 2003, our metropolitan public hospitals carried out 1 651 more elective surgery procedures than in the same period the previous year. To control this demand, we must reform the system to promote primary health care and keeping people well. The government is committed to our hospitals doing better. We are implementing the recommendations of the Generational Health Review, and we have increased spending on surgery, intensive care and nursing.

MINISTERIAL CODE OF CONDUCT

The Hon. R.G. KERIN (Leader of the Opposition): Will the Minister for Industrial Relations comply with his responsibilities under the Ministerial Code of Conduct and instruct WorkCover to resume preparing quarterly performance reports and making them available to the parliament and stakeholders? The Ministerial Code of Conduct states clearly:

> Ministers are obliged to give parliament a full, accurate and timely account of all public money over which parliament has given them authority.

In January, when the opposition called for the release of the overdue September quarterly report of WorkCover, the government revealed that it had failed to announce a decision of the corporation to no longer release quarterly reports.

The Hon. M.J. WRIGHT (Minister for Industrial Relations): The WorkCover board has decided that it is going to rely on actuarial advice, which it gets twice a year, as I understand. The new Chairman of the WorkCover board, Bruce Carter, who is doing a fantastic job, has informed the Leader of the Opposition of that. In fact, the information that is being provided by the WorkCover board (largely through Bruce Carter) is far greater than what the former government ever provided to us in opposition.

SCHOOLS, HECTORVILLE PRIMARY

Ms CICCARELLO (Norwood): Will the Minister for Education and Children's Services provide further information on the status of the former Hectorville Primary school site?

The Hon. P.L. WHITE (Minister for Education and Children's Services): Yesterday, the member for Bragg asked whether the property at Hectorville had been sold, and I answered that I believed the property was now in the hands of the South Australian Housing Trust. While approval was given for that transfer in December, I understand that the process is currently in the contract and settlement phase. The Down Syndrome Society, the last remaining tenant of the buildings on site, will imminently vacate the property and relocate to the Hampstead Primary School site. Yesterday the member for Hartley welcomed the Housing Trust as the new owners of the property and supported the development on it. We would not be having this discussion had the former government not closed the primary school in the first place in 2000, and it has been left vacant ever since. As justification for closing the school, the former government said that the number of enrolments had fallen below 200. Of course, when he took office in 1993 there were 139 students. So, that was not the real reason why the former government closed this school.

This highlights one of the differences between the former Liberal government and the current state Labor government. The former Liberal government was known for its closure of primary schools such as the Sturt Street Primary School, and who could forget the battle over the closure of the Croydon Primary School? The former government's administration reeked of school closures; this government is actually opening some schools which the former government closed, such as the Sturt Street Primary School, which was closed by the former government in 1996 and which was reopened recently. This government is more interested in keeping our schools open, supporting them and investing millions of dollars into our schools than the former government, which,

clearly, had one agenda—to decrease spending on education and close schools such as Hectorville Primary School.

UNIFORMS, JUSTICE PORTFOLIO

The Hon. R.G. KERIN (Leader of the Opposition): My question is to the Minister for Administrative Services. Will the minister assure the house that the interest and viability of South Australian small and medium businesses will be protected in the tender for uniforms for the justice portfolio being managed by the Department of Administrative and Information Services? A request for tenders has been released for uniforms for the justice portfolio, including the MFS, CFS, correctional services, the ambulance service and others. Previously, these uniforms have been provided by a range of small and medium South Australian businesses? The tender call says: 'You should be aware that the Department of Justice preference is to enter into contractual relations with a single entity.' It has been raised with me by a couple of the existing suppliers that this preference of the department is highly likely to see interstate or overseas companies win the tender and therefore significant job losses in South Australia.

Members interjecting:

The SPEAKER: Order!

The Hon. J.W. WEATHERILL (Minister for Administrative Services): I thank the honourable member for his question: it is a good question. I know that he has corresponded with me about this matter and, indeed, a letter should be on the way to him. The issue that people are concerned about may not necessarily arise. There is no reason why people could not tender on a joint basis. Similar issues arise in relation to our IT procurement and that provides an opportunity. However, the issues raised by the honourable member are serious and they will be given serious consideration in the tender process. Of course, we have certain international obligations and so on around our procurement, which means that we cannot necessarily completely exclude people in favour of only local competitors—in fact those international arrangements were entered into by the previous government. However, we will take those matters into account and address them.

ABORIGINAL YOUTH, CONSTRUCTION INDUSTRY

Ms RANKINE (Wright): My question is to the Minister for Employment, Training and Further Education. How are we assisting Aboriginal young people to enter the construction industry?

The Hon. J.D. LOMAX-SMITH (Minister for Employment, Training and Further Education): I know that the member for Wright is keenly interested in the skills shortage and also in youth unemployment. This matter speaks to both issues. We have recently formed a partnership between Regency TAFE, the Construction Industry Training Board and the Aboriginal Housing Authority to attract indigenous school students into the construction industry. The program called 'Doorways 2 Construction' is one of three school training programs delivered by Aboriginal Education and Regency TAFE. We selected students from five northern Adelaide schools, and they have completed Certificate 1 in Construction, whilst they remain at school. The program is designed to identify those young people who have an interest in the construction industry and some manual skills, and encourage them to take up apprenticeships in these areas.

The program where CITB is a partner has worked through their packaging and certification process and ensures that the trainees meet industry standards and have properly developed skills that are relevant to the construction industry and in areas where there are possibilities of future employment. The participating schools provide some resources in relation to ensuring that there is enough money for student safety equipment and basic transport needs in order to get the students to the Regency TAFE. The Aboriginal Housing Authority is a partner in purchasing building materials for the construction of transportable homes, which are then taken to the homelands and communities once the buildings are completed for occupation. The Regency TAFE coordinates and provides lecturing staff. The people who have been identified to enter the course and who have completed the course have been fortunate in having relevant skills and several have entered the construction industry. To date—

Mr Brindal: How many?

The Hon. J.D. LOMAX-SMITH: If you wait I will tell you. To date, 11 students have taken part in the course and seven have completed it. The four students who did not complete comprise two students who have transferred to other schools and therefore could no longer carry on in the course, and two students who transferred to the West Coast. So, seven out of the 11 students, that is, all the students who could have completed the year's course, have done so. Most importantly, those students who have been part of the course have had improved school attendance and a greater enthusiasm for literacy and numeracy skills at school, so the outcomes have been extremely good.

I will enumerate the successes from the course, remembering that all of the seven students who were available to complete have completed. One person has entered the construction industry as a gyprock fixer; three have combined the Doorways program with further study with the Aboriginal Education Unit at Regency TAFE and have entered an introductory vocational education and prevocational preparation course; two students are continuing the Doorways 2 Construction Program through their school; and one student has transferred into the Regency TAFE Aboriginal program in light fabrication. Of the four vacancies that have occurred, we have identified four new students. These are good outcomes by anyone's standards.

SCHOOL CARD

The Hon. D.C. KOTZ (Newland): Will the Minister for Education and Children's Services advise the house why her department has not processed outstanding School Card applications for the 2003 school year? On 24 December 2003, a constituent was advised that a School Card application that she had lodged for her three children before the start of the 2003 school year had been rejected. After contacting the Department of Education and Children's Services the same day, my constituent was advised that she should be eligible if she forwarded updated taxation records. My constituent was not informed of any time frame in which she had to furnish these documents. In the first weeks of the current school year she submitted her updated taxation records as requested, at the same time as applying for the 2004 School Card, only to be told that the department had instructed the school not to accept any documents relating to 2003 applications because the budget lines had been closed.

The Hon. P.L. WHITE (Minister for Education and Children's Services): My understanding of the honourable

member's question is that someone who applied last year but was rejected then thought that they had special circumstances or further information to give to the department, and was advised to do so, but did not do so for 10 months or so, by the—

Members interjecting:

The Hon. P.L. WHITE: Yes, but from what the honourable member said, it appears to me that there was an application early in 2003 that was rejected on the information given.

The Hon. D.C. Kotz: No, on 24 December it was rejected.

The Hon. P.L. WHITE: I think that there is something very wrong with the information that the honourable member is putting forward. If an application is rejected and people are asked to provide further information, that is assessed under hardship provisions, and I am quite willing to do that at any stage. Applications from 2003, which most people lodged in about March 2003, have been assessed. If an application to which the member refers is outstanding, she should give me the details and I will see whether that individual—

The Hon. D.C. Kotz: Why was she told that the budget lines had closed?

The Hon. P.L. WHITE: Because 2003 applications have been dealt with, and it sounds to me like this individual has come along as late as December and asked for hardship provisions. All schools were notified of the outcomes of their applications at four or five points during 2003. They were in March last year. I cannot remember the other dates but I have previously given them to the house so that members can refer to that record. At plenty of times along the way, those applications that were put in were notified to parents. If, subsequently, after having an application rejected an individual believes that they have extra special circumstances, they can write to me, the department or make an application through their school for those extra circumstances to be assessed. If the assessment is made that these are worthy cases then they are accepted. However, if the honourable member is suggesting that after a year of not providing that information the department should look at that subsequently—I do not think that that is a fair thing.

So, I say to the member, if she has a circumstance that she believes is worthy, please give me the details. I have not received any details from her at this point regarding the constituent she is talking about. However, if she feels that this person has special circumstances, please give me the details and I will investigate the matter for her. But what I say to the member is: don't come in here and make allegations, which are often found to be invalid.

The SPEAKER: The honourable member for Enfield.

The Hon. D.C. KOTZ: Don't tell me I am making allegations. You will get the details.

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: Point of order, Mr Speaker: I would ask that the member for Newland apologise to the house. It is unparliamentary for someone to storm over to a minister, slam her hand down and to make those accusations. I ask that she apologise.

The SPEAKER: I saw the honourable member for Newland crossing the chamber but I paid no particular attention to what she was doing—I was making notes.

Members interjecting:

The SPEAKER: Order! The honourable member for Enfield has the call.

PLASTIC SHOPPING BAGS

Mr RAU (Enfield): My question is to the Minister for Environment and Conservation. What is the evidence that the government's campaign to reduce the use of plastic shopping bags in South Australia is actually working?

The Hon. J.D. HILL (Minister for Environment and Conservation): I thank the member for his question. There are approximately 7 billion single-use plastic bags used in Australia each year but the campaign to get rid of these plastic bags is well underway in achieving results. I received a letter late last year from Coles Myer on bag use in South Australia. They were able to tell me that the consumers in South Australia have taken up the call to reduce plastic bag use quite dramatically. In fact, in 2003 the number of single-use plastic bags given away in South Australia by Bi-Lo stores fell by 19 per cent and, in Coles by 17.6 per cent. That compares remarkably well for the across-the-board reductions of 12 per cent across those stores. So, South Australians are responding very well to this campaign.

If that reduction was to apply across the retail sector in South Australia, that would mean that 140 million bags would be taken out of the wastestream in this state. That is quite a remarkable achievement. South Australians are also leading the nation in the purchase of alternative bags such as the reusable plastic and calico bags. The figures I have been given by Coles for the sale of reusable bags in supermarkets in 2003 show that 11 of the top 20 supermarkets in the country for selling these alternatives are in South Australia and that all of the top seven stores are in South Australia. Members might be interested to know which are the stores, because they are in their electorates. The top seven stores are: Gawler, Burnside, Colonnades (where I do my shopping and the member for Reynell does hers), Marion, St Agnes, West Lakes, and Mount Gambier.

So, I congratulate those communities on the interest they are showing in this campaign. South Australia put the issue of plastic bags on the national agenda more than a year ago. Since then, government has brokered a national agreement to phase out single-use plastic bags over the next five years. The supermarket chains have a target of 25 percent reduction within one year, and it would appear on these figures that we are at least on track in this state for a 50 percent reduction in two years.

TAFE, TRAINING FEES

Mr BRINDAL (Unley): My question is to the Minister for Employment, Training and Further Education. Will the minister reassess her decision to increase training fees by 50 percent this year, given her statements to this house about skill shortages and the need to upskill the work force generally? Under the traineeship scheme introduced by the former Liberal government, a fee of $1 per contact hour was payable for persons entering into a training contract to help with training programs in TAFE colleges. Collection of fees was optional and in the past some organisations chose not to collect it, partly because of administrative costs and partly because it was not being picked up by many employers, thereby placing an unfair cost burden on the young trainees. The opposition has been informed that the minister has not only raised the fee from $1 to $1.50 per contact hour but also mandated its collection by all TAFE institutes.

The SPEAKER: That is the kind of explanation which will not be acceptable in the future. Terminology of the kind which is pejorative is just not permissible. That is debate.

The Hon. J.D. LOMAX-SMITH (Minister for Employment, Training and Further Education): The matter to which the member for Unley alludes is a complex one that reflects both the institutes of TAFE fees and also the apprenticeship and trainee schemes. There are approximately 32 000 apprentices and trainees within the state and, as part of their training packages, they are usually required to have off-the-job training for which a fee is levied. In reducing the cost of our TAFE fees, it became apparent that there were some young people attending our TAFE institutes who paid in excess of $3 000 a year for their TAFE course. Those were mostly those courses in the IT sector and the courses where there were high overheads. In looking at the courses across the board, it became apparent that the entry costs were an impediment to access for people from low income families who were not employed. Most of the people who attend TAFE courses are not in employment. In contrast, those courses that were part of an apprenticeship and trainee scheme, that is, the user choice schemes, applied to those young people who were in employment and therefore had an income.

In comparing the costs, we were determined to bring down the cost of a TAFE fee and, at a cost of about $2 million, we capped the cost of a TAFE fee to a maximum cost of $1 200, but it was still apparent that those people who attended TAFE paid substantially more for a unit of a TAFE course than those people who were apprentices. We have increased the level of subsidies to those people who are on low incomes and brought up the cost of courses where there was a comparable cost for a course in an apprenticeship and trainee course.

I am trying to make this as simple as possible. We have capped all the fees and increased the subsidy to 14 000 low income students, and we have brought up the cost to bring parity to those people who are not employed. Those people who are not employed pay less, and those people who are employed pay slightly more. I think it is still true that those apprentices and trainees pay less than they might pay in other states. They still pay less than do those people who are unemployed and who go to TAFE as paying students.

YOUTH

Mrs GERAGHTY (Torrens): My question is to the Minister for Youth. What practical action has been taken recently to ensure that young people have a say in issues that affect their lives?

The SPEAKER: That is the kind of question which will not be accepted by the chair in future. It is far too broad. The minister.

The Hon. S.W. KEY (Minister for Youth): Sir, with your warning, I thank the member for Torrens for her question. I think it is important to remind the house about a number of initiatives that have been taken, particularly through the Office for Youth and the youth portfolio, to ensure that young people have an opportunity to be empowered so that they do not feel intimidated by the ways in which matters can be raised. Most of us would be aware that many structures that rule our lives are intimidating. We know this from constituents who come to our electorate offices, so one can imagine how forbidding many structures would be to the average 15 and 16 year old person.

With this in mind, and with the successful youth advisory committees we have established in each local government region, the ministerial youth council has been working on ways to communicate with young people and to support young people to access information and to make their voices heard. I am very pleased to talk about the youth participation handbook for young people. This has been worked on by not only the Office for Youth but also the ministerial youth council, and has a number of useful pointers for young people. The chapters include topics such as writing a letter to someone in authority; getting involved in local government; organising a petition; nominating for a position on a board or committee; and participating in formal committees. The booklet is available from the Office for Youth. If members are interested in having copies for their electorate offices, I am more than happy to arrange for those booklets to be made available to them.

I also commend the MAZE web site. I know the member for Unley has been an advocate for the MAZE web site. I think both the handbook and the web site are two ways in which we can try to make available information to young people and also to empower them.

GOVERNMENT YOUTH TRAINEESHIPS

Mr BRINDAL (Unley): What steps is the Minister for Employment, Training and Further Education taking to ensure that her department's original request for a minimum of 600 places in the government's youth traineeships scheme for this financial year be taken up, rather than the historically all time low level of 400 places, as provided for in the state budget? The former Liberal government's traineeship scheme, which in one financial year alone employed 1 500 trainees, had a successful placement rate into full-time employment of about 90 per cent, yet this has now been gradually diminished to the point there are only 400 places remaining.

The Hon. J.D. LOMAX-SMITH (Minister for Employment, Training and Further Education): Indeed, we have reconfigured many of our employment programs; in particular, we have altered the conditions under which we have the youth traineeships working through government. Previously, the former government had a process whereby there was a flat rate as an inducement for employment, but it became quite apparent there were levels of difficulty, might I say, and it was more effective to target the most difficult to place young people with the increased or larger subsidies. In fact, we have been very careful to ensure that the maximum inducements, opportunities and training programs are available for those who have the most difficulty in finding some employment. Having done that, we have a range of other programs for youth employment, which I will not digress to explain. To date the number of placements has been approaching approximately half of that for the year, and we have the opportunity to not only provide 400 of the fully funded places but also increase the numbers well beyond that—up to 600 places—by reducing the subsidies from the state government, but allowing the government departments to take up other available subsidies such as commonwealth subsidies. There is no limit to the number of places that might be taken up, if the other subsidies are used. We have regular reporting. As to how we audit those numbers, I receive regular updates from the department about progress, and I am optimistic that we will reach our targets by the end of the year.

WATER MANAGEMENT, EASTERN MOUNT LOFTY RANGES

Mr GOLDSWORTHY (Kavel): Will the Minister for the River Murray give an absolute assurance that stock and domestic water will not be included in the prescribed licence water volume for the eastern Mount Lofty Ranges? I have had discussions with the minister on certain aspects of this issue, and I appreciate the advice he has given me. However, I do have many constituents who are most concerned that stock and domestic water will be captured in the prescription.

The Hon. J.D. HILL (Minister for the River Murray): It is a good question the honourable member has asked. The honourable member did raise the question with me before the session began and I had a chance to look at some of the detail. We are going through a process where there is a notice of prohibition, which restricts the amount of water that can be used. During that process, of course, stock and domestic users continue using their water. Over the course of the next year or so, a management plan will be worked on for water in that area, which is to be prescribed, and a lot of conditions and arrangements will be developed, based on what the community wants.

As the member for Unley would know, having been through this process in other places, those conditions can vary. It is a little difficult to rule out absolutely that there will not be a way of licensing or regulating stock and domestic water. I think it is highly unlikely that would occur, but we have to go through this process. As I said to the honourable member, I will write to him and give him the detail of that. That is my best understanding of it at this stage.

BYARD, PROFESSOR R.

Ms BEDFORD (Florey): Will the Minister for Administrative Services report to the house on the Australia Day Award received by Professor Roger Byard, a senior specialist pathologist with the Forensic Science Centre?

The Hon. J.W. WEATHERILL (Minister for Administrative Services): I know the honourable member has a keen interest in the Forensic Science Centre and has raised with me a number of very interesting issues concerning the Forensic Science Centre. Professor Roger Byard was recognised in the Australia Day honours list this year, receiving a Public Service Medal for outstanding service in paediatric pathology. Professor Byard's skill and knowledge in paediatric pathology has provided South Australia with a significant resource in coronial matters. Investigation of the cause of death of infants is considered to be both difficult and complex. Professor Byard is known for his support to bereaved parents. Obviously, it is a very difficult time and the forensic exercise needs to be carried out with the maximum amount of care and sensitivity. He is well known and respected for his approach.

South Australia is very fortunate to have his expertise. Indeed, his work with the Forensic Science Centre and his clinical chairs in pathology and paediatrics at the University of Adelaide have allowed him to participate in some very important research in relation to sudden infant death syndrome and other causes of unexpected infant and childhood death in South Australia. He has made a very significant contribution to child welfare at state, national and, indeed, international levels. His contribution to the awareness of safety issues, such as safe sleeping, has been one of the significant factors that has caused the reduction in deaths due to sudden infant death syndrome over the past decade.

I believe that this house should be well aware of the Public Service Medal that Professor Byard has received. He deserves to be congratulated. Too few occasions are taken in this place to reward and acknowledge public servants for the crucial role they play in servicing this state. I know there are those opposite who from time to time like to pour scorn on our public servants, but they are entitled to our respect. This particular public servant is an international leader in his field and it is proper that we acknowledge him in this way.

HOSPITALS, REPATRIATION GENERAL

The Hon. DEAN BROWN (Deputy Leader of the Opposition): My question is to the Minister for Health. Following the unanimous vote of the State Council of the RSL last Thursday to reject the government's proposal for the Repatriation General Hospital to come under the funding or board control of the Southern Regional Board, will the minister give an assurance that the Repatriation Hospital will remain independent of the regional board, including not getting its funding through that board?

The Hon. L. STEVENS (Minister for Health): I wonder why it is that the deputy leader finds it so necessary to constantly intervene and interfere with a legitimate consultation process that is being undertaken—

The Hon. DEAN BROWN: I rise on a point of order, Mr Speaker. My question was quite specific in asking for an undertaking from the minister. I did not ask for a political diatribe.

The SPEAKER: Of the minute for backgrounding, the minister has 40 seconds remaining. The minister.

The Hon. L. STEVENS: As I was saying, it is interesting that the deputy leader continues to interfere and to engage in shameless scaremongering amongst veterans. The position of the government is clear: as a result of the Generational Health Review and the government's response to health reform, we are now in the process of establishing new governance arrangements in the Adelaide metropolitan area. Twelve hospital boards have already voluntarily agreed to dissolve in order to be part of the new regions, and one board has agreed in principle and is waiting for due diligence issues to be resolved. In respect of the Repat, we made it clear back in June (we have constantly made it clear) that the Repat has been invited to join this region—

The Hon. DEAN BROWN: I rise on a point of order, Mr Speaker. I asked a very specific question; the minute is up, and I am still waiting for a very specific answer.

The SPEAKER: And the minister is in the middle of a sentence providing it. The minister.

The Hon. L. STEVENS: Thank you, sir. The Repat Hospital has been invited to join the region, and the board of that hospital is now undertaking a very comprehensive consultation process, including with the RSL. I expect that the hospital board will take note of the RSL's view and will take that into consideration together with all the other information it is now collecting. I ask that, just for once, the deputy leader butt out, stop this shameless scaremongering in which he is now engaging and let a legitimate process take its course.

PUBLIC SERVANTS, ACCESS TO

Dr McFETRIDGE (Morphett): Will the Premier ensure that the government is open, honest and accountable by allowing public servants to answer questions from non-government members of parliament and staff? On more than one occasion, public servants have advised me that they cannot talk to me without the permission of the minister. My staff have also had difficulty in obtaining general or publicly available information from government departments for and on behalf of constituents.

The Hon. K.O. FOLEY (Deputy Premier): That is the time-honoured protocol that was in place under eight years of Liberal government and maintained under this government. I can say with absolute certainty from my experience—and I might be corrected, but it is my recollection—that very rarely was I given access directly to public servants, as is the protocol. In my circumstances, I often allow my public servants to meet with Liberal members of parliament without my own advisers present, unlike the former Liberal government, when you always had to have an adviser in place. What a nonsense question!

EQUAL OPPORTUNITY ACT REVIEW

Mr KOUTSANTONIS (West Torrens): My question is to the Attorney-General. What has been the public response to the review of the Equal Opportunity Act now that submissions have closed, and can the minister indicate the type of comments that have been received from the public?

The Hon. M.J. ATKINSON (Attorney-General): Last year the Minister for Social Justice and I published a framework paper setting out many proposals reviewing the Equal Opportunity Act. The period for comment on the paper was planned to close on 14 January but was extended to be closed on 2 February 2004.

Ms Chapman interjecting:

The Hon. M.J. ATKINSON: The member for Bragg says, 'I should think so,' and I agree with her. I do think that the original mailing list was to the usual suspects, and we did not distribute it as broadly as we might have to those whom we would reasonably expect would oppose it. The government has received more than 1 000 submissions. Some 60 of these came from organisations, including representatives of schools, churches, businesses, unions, government and the health sector, the charitable sector, and others. The government will consider all submissions before deciding on the form of legislation on this matter.

It is clear that there are differing opinions and values. Topics that proved particularly controversial were: the proposal to make employers vicariously liable for sexual harassment, the proposal to extend the act to cover both direct and indirect discrimination on the ground of family or caring responsibilities, and the proposal to extend the time limit to 12 months and allow the Commissioner to extend it further. Other matters of concern included the proposal to cut down existing exemptions for religious organisations on sexuality discrimination, the addition of new grounds such as local origin (that is, coming from the wrong side of the tracks) and physical features (the so-called 'ugly' clause).

On the other hand, some proposals seemed to gain wide acceptance, such as the proposal to adopt the commonwealth definition of 'disability', including covering mental health and infections; the proposals to cover potential pregnancy and breast-feeding; and the proposal to remove the Commissioner's role as an advocate for the complainant, provided that similar advocacy is delivered in some other ways.

Ms Chapman interjecting:

The Hon. M.J. ATKINSON: No; the member for Bragg is thinking of a completely different report. Support was given to the plan to include independent contractors and the plan to match the commonwealth's provision dealing with access to premises. There were 440 standard form letters supporting many of the proposed changes, particularly as they affect same-sex couples, and proposing some additional reforms.

Ms Chapman: I'll bet there were.

The Hon. M.J. ATKINSON: The member for Bragg is right: they were proposing additional reforms. These submissions supported the expansion of anti-vilification laws, the removal of sexuality discrimination exemptions, coverage of physical features and extension of all grounds to include indirect discrimination.

We received letters, too, signed by 312 people dealing with five main points or a subset of them. These were: that vilification laws should not be extended because they are liable to misuse; that religious schools should be at liberty to refuse to employ those who do not follow the religion; that associations should be able to exclude people on any ground, including homosexuality, to prevent infiltration; that employees should be able to require people to conform in appearance and dress; and that the act should not separately recognise transgender status.

The general tenor of those submissions was against any change. These letters appear to have been based on a circular sent out by the Hon. Andrew Evans MLC highlighting these five points as the aspects of the framework paper of special concern to Christians. I want to note the honourable member's contribution to this public consultation and thank him for extending the reach of the government's call for submissions. I do not know who it was who organised the 440 circular letters in favour of the rights of same sex couples; that information has not been supplied to me from the department.

We also received more than 150 letters arguing that christian schools should be protected against equal opportunity laws about sexuality, because the state should not interfere with the practice of religion or because parents have a right to choose to educate their children in an environment that promotes christian values and includes values against homosexuality, or both.

Mr Scalzi interjecting:

The Hon. M.J. ATKINSON: 'Sensible', says the member for Hartley. About 100 letters received did not discuss the content of the framework paper but expressed general opposition to any change to the Equal Opportunity Act on the grounds of catholic and christian values or because the changes were perceived to violate freedom of speech or freedom of choice. We, too, received a small number of submissions from private individuals giving their views on some particular matters or, indeed, on all issues raised in the discussion paper.

Government is now considering all the suggestions and concerns to see whether there is any way that they can be dealt with. Of course, it may be that some of them cannot be dealt with, and it may be that some expressed concerns are not well founded. Just the same, the government thinks they should be considered. It is the government's intention to prepare a bill shortly based on our policy and our response

to the submissions received. I thank all those who contributed their submissions.

HOSPITALS, PORT LINCOLN

The Hon. L. STEVENS (Minister for Health): I seek leave to make a ministerial statement.

Leave granted.

The Hon. L. STEVENS: Yesterday, the member for Flinders asked a question in relation to government services at the Port Lincoln Hospital. The Regional General Manager of the Eyre Regional Health Service has advised that, whilst the hospital is projecting a budget deficit, there are no plans for service reductions at the hospital. I am also advised by my department that discussions have been held regarding the budget and the various options available to manage the situation to the end of the financial year. As I said yesterday, the usual midyear reviews are occurring, so discussions will focus on a range of options that do not include service reductions.

INFORMATION AND COMMUNICATION TECHNOLOGY

The Hon. P.L. WHITE (Minister for Education and Children's Services): I seek leave to make a ministerial statement.

Leave granted.

The Hon. P.L. WHITE: As members of this parliament are aware, upon election the state Labor government significantly increased the budget for information and communication technology in our schools by a massive 20 per cent. This additional multimillion-dollar investment is being used to upgrade both the equipment used in schools and the skills of teachers who provide tuition to students. Last year, my department completed an audit of computer hardware in all government schools. The key findings of the hardware audit were that there were schools which had not achieved the benchmark set of one computer for every five students and that there was a large number of schools with old computers. The audit was in two stages. Stage 1 showed that four in every 10 classroom computers were more than five years old. Of course, older technology is slower, more prone to breaking down, and not suitable for many of the curriculum multimedia applications of modern schooling.

In response to the findings of the audit, the government has spent $3.4 million on subsidies for the purchase of 4 768 new classroom desktop computers and an extra $2 million for the purchase of more than 1 300 new desktop administration computers for our government schools, and for the first time computers have been supplied to all our 308 preschools. The criteria for distribution of these classroom computers was based on the computer to student ratio in each school and, importantly, the age of the computers.

The second phase of the audit has now been completed. Stage 2 was an audit of teachers' information, communication and technology skills, and use of computer technology in the classroom. Teacher skill is central to maximising the impact of information and communication technology on student learning and accountability, and the government has committed an extra $1 million per year for additional teacher professional development in ICT to ensure that our teachers are well placed to meet the demands of the modern day classroom with its integration of ICT.

The survey of teacher ICT skills collected responses from more than 7 500 government school teachers. All schools were asked to ensure that a good sample of their teachers participated. It found that three in every five South Australian teachers rate themselves as having above basic level computer skills and that three in every four believe that they have a sound knowledge of computer programs relevant to the job. The extra $1 million which the government has devoted to upskilling teachers in ICT is being spent on a number of different initiatives. Thirty ICT coaches have been employed to deliver training throughout the state to teachers. More than 2 700 teachers will have accessed a course with the coaches by the end of this calendar year.

This highly popular initiative involves trained teachers delivering training to other teachers. There have also been initiatives including: master classes with technology experts; new training software that teachers can use to boost their skills; and e-learning scholarships and research grants worth $160 000. A host of ICT courses have been provided for teachers in metropolitan and country schools and preschools, and these will continue throughout the year.

For the first time, all government schools have been required to prepare an ICT development plan. This plan details how they will improve the use of information and communication technology in learning and ensure that their staff have the necessary skills. This initiative ensures that schools forward plan for their computer replacement, rather than the ad hoc approach of the past which has sometimes been a factor in schools when it comes to teacher skilling and computer technology. The 2003 ICT Skills and Attitudes Survey revealed that: 49 per cent of teachers use email most days while a further 23 per cent use it two or three times a week; in the Anangu Lands, 83 per cent of teachers use email on most days; 39 per cent of teachers use the internet on most days, and a further 31 per cent use it two or three times per week—again, usage is highest on the Anangu Lands where 71 per cent use the internet on most days; 57 per cent of teachers rate themselves as being above basic level in word processing, computer file management, email and the internet; 47 per cent of teachers use a computer for more than six hours per week for their work; and 78 per cent of teachers have a clear sense of how to use ICT to enhance the learning of their students.

GRIEVANCE DEBATE

REGIONAL COMMUNITIES

The Hon. G.M. GUNN (Stuart): Yesterday afternoon, the Minister for Environment and Conservation, in response to an interview that I did on the ABC, joined in the discussion. Unfortunately, he did not address the issues I raised, and at the conclusion of his comments he raised a number of irrelevant matters which were of no help to the people about whom I was complaining who have been so badly treated. I bring to the attention of the house a letter that I have received from the Treasurer of the Yongala Hall Committee, which states:

I am writing on behalf of the Yongala Hall Committee. The Committee received its normal Account, including the River Murray Levy, from SA Water in which it is revealed that the committee, in

relation to the levy are being classed and subsequently billed as a business—annually this levy amounts to $135.

I wrote to the office of the Exemption Clerk seeking exemption from the levy on the grounds that the Yongala Hall Committee are nothing more than a management committee and are singularly involved in community work and service.

We received a letter back from the Billing Officer SA Water. This letter totally missed the content and structure of my letter to the Exemption Clerk. [The clerk I rang] pointed out that the content of her letter had missed making reference to my original request. Her response left me in no doubt that she had failed to read and understand my letter and for me to continue with the inquiry would be a waste of time for both of us.

I suggest to the minister that little communities such as Yongala and others which have community halls are manned by volunteers. They are small communities, they are providing a good service and they should be exempted from this levy because they are community organisations. It is unreasonable and unfair. They have very limited resources. I strongly endorse the letter from the treasurer of the hall committee, and hope that the minister and his officers will rectify this anomaly.

I also raise the situation of the people at Marree. Their progress association has been billed an extra $360 a year, and they say how unfair it is to their isolated community, which is struggling to raise funds. The association says, 'This is just an example of one association, other clubs and many households are in the same predicament.' They say that they have to raise funds continually just to have the basics. They have to raise approximately $10 000 a year for street lights, insurance premiums, barbecue area, airstrip and community hall. It is very difficult when the majority of people are on government support of some kind for their income. Their income does not go far, as the costs of supplies locally are very expensive. The treasurer goes on to explain that they have very poor quality water. They are paying the River Murray levy, and she indicates that it is not possible to drink the water.

I bring this matter to the attention of the house because, when you have these all encompassing charges across the state, consideration must be given to people in these small communities who are struggling anyway, and this is an unfair impost which should not apply. The people in Orroroo are in a similar situation. They are very annoyed. Some of them asked me what would happen if they did not pay it. I could not ask them to break the law, but I understand their sentiments. They are not hooked to the River Murray system—and some of these communities never will be. Therefore, I suggest that the time has come to have an urgent review to exempt these sorts of people from this unreasonable and unfair charge.

Another constituent from Port Augusta contacted me expressing concern that the rent they are paying to the Housing Trust has gone up. The letter says that so and so rang on behalf of their mother at View Street, Port Augusta. She is an aged pensioner who lives in a double trust unit and who has been a long-term resident. Her other daughter lives with her on a disability pension. Both receive a pension of $218.05 per week, and her daughter earns an extra $22 a week. Recently, a rent review was done. Currently their rent is $172 a fortnight, but it will increase to $91.40 a week (or $182.80 per fortnight) on 20 February. They have no assets, limited savings and are very distressed about the increase. They rang the Rent Review Board and were advised that the assessment is done on income and for an income earner rent is $98 per week. I would suggest in these cases that these people are facing continuing increasing demands, and I think an increase in rent it is a bit over the top.

HOSPITALS, QUEEN ELIZABETH

Mr CAICA (Colton): Being one of the younger people in the place, it is always an honour to follow the grandfather of the house, the member for Stuart—

Mr Koutsantonis interjecting:

Mr CAICA: Not so much younger as newer to the house. The opening of the new 200-bed facility on 8 February was a great day for the Queen Elizabeth Hospital. It was also a great day for the people of the western suburbs—and I know that other members in the house certainly have a very soft spot in their hearts for the Queen Elizabeth Hospital. I was born at the hospital, as was the member for West Torrens many decades later and, indeed, the Hon. Steph Key was also born there many decades earlier. It was certainly a great day for the people of the west and, indeed, South Australia. I cannot see any reason why anyone would want to go to the Ashford Hospital after seeing the facilities at the Queen Elizabeth Hospital. In South Australia they are second to none. I congratulate all the people who worked on the design and the construction of that hospital.

I also want to talk briefly about the staff at the hospital, because for some time they have suffered to a great extent in relation to the future of that hospital. Morale has been down and there has been no direction in relation to that hospital. Certainly, under the previous government there was no guarantee that the hospital would be anything else; in fact, that was the guarantee; that is, there would be nothing else but a 200-bed community hospital at that location. That affected the morale, the delivery of services and everything associated with what the Queen Elizabeth Hospital had once been renowned for, that is, outstanding and fantastic service. Things were down at that stage and, indeed, it had not picked up, because the people working at the hospital did not know what the future held for them.

Whilst 8 February when the Premier and the Minister for Health opened the new facility was a great day for the QEH and, indeed, a great day for the people of the western suburbs, it was also a historic day. The reason it was a historic day is that on that day the Premier fulfilled his pre-election promise (that is, the pre-election promise of our party when we were in opposition) and announced that the Labor government would ensure that the Queen Elizabeth Hospital would maintain the level of service and bed capacity and would be staffed to properly provide a first-class health service to the western suburbs residents. Anyone who knows anything about the Generational Health Review undertaken by the Minister for Health knows that the Queen Elizabeth Hospital is important not only to the people of the western suburbs but also to all South Australians, including those living in the provincial areas. We fulfilled that promise, and it stopped over 10 years of uncertainty. The reality is that there was no decision by the previous government; indeed, there was no intention to go beyond that 200-bed community hospital.

The Premier's historic announcement fulfilling the pre-election promise also covers tertiary teaching and research and, as I said earlier, fulfils part of the overall plan in respect of the delivery of health in this state as developed through the Generational Health Review. There will be difficulties, but they are not insurmountable. For example, how do we place stages 2 and 3 into a hospital when it was never intended to have stages 2 and 3? That will be difficult but, through a

process involving not only the clinicians but also all the workers, their unions, local government and the Research Foundation, we will ensure that the completion of stages 2 and 3—and an extra $60 million has been provided, taking it up to $120 million to complete stages 2 and 3—will be as seamless as it can be—

Mr Brindal interjecting:

The SPEAKER: The member for Unley will come to order!

Mr CAICA:—for a facility that was never intended to have stages 2 and 3. The Premier's announcement on 8 February was a historic day and fulfilled our election promise.

I also pay tribute to those people who have lobbied and worked so hard to ensure that the Queen Elizabeth Hospital maintained its prominence not only in the western suburbs but also in the delivery of health in South Australia, namely, the Community Health Alliance and other groups such as Keep the Queen Elizabeth Hospital Delivering. I congratulate the Premier, the Minister for Health and all those involved in the decision to ensure that the Queen Elizabeth Hospital maintains its position as a premier hospital in this state and, indeed, Australia.

HOLDFAST SHORES

Dr McFETRIDGE (Morphett): One of the main grievances at Holdfast Bay at the moment is obviously the government's insistence that amended stage 2B of the Holdfast Shores development go ahead. Last week in this place the Hon. Jay Weatherill attributed some comments to me, saying that I agreed with this proposal. In fact, he read out a comment I had made in this place on 20 November 2002 (and it is in *Hansard* for everyone to read) where I said:

> I would like this government to be open and honest and to recognise the benefit, not only to the people of Glenelg and Morphett but also to the people of South Australia of the development which has taken place and which is continuing to take place at Holdfast Shores.

Unfortunately, the minister then went further and said:

> In fact, unsolicited, he [the member for Morphett] sought me out and said to me that he supported the compromise proposal that the government had worked out, that is, a nine-storey building on the side of the existing Glenelg Surf Life Saving Club.

There was an interjection and he was intimating that I totally agreed with this proposal. This proposal was never up at that stage. Let me go back two months before that statement to 16 December. I commented in this place about the people at Holdfast Shores, saying:

> 'We don't want more high rise at Holdfast Shores.' Sure, a plan came out months ago that both the council and I, the member for Morphett, looked at and said, 'We don't want 17 storeys there but, if we need to have another apartment block there to make it all go ahead, we could cope with that.' However, that was when there was no other alternative. Only fools and dead people do not change their minds. When you are given a better alternative, you obviously move on from there. If minister Weatherill tries to allude to the fact that council and I are in favour of another high rise there, he is wrong, wrong, wrong! The last thing I want in Holdfast Bay is another high rise.

That was two months before minister Weatherill selectively quoted. Let us look at the consultative process, at the plans that I was given a choice of, in December 2002. There were three plans: A, B and C. When I made my submission, I said 'None of the above.' Choice A comprised nine storeys where the surf club is and then another nine storeys of apartments above the entertainment centre. What a choice that was! Choice B was 15 storeys where the surf club is and another six storeys above the entertainment centre, so a total of 21 storeys of apartments. Choice C was 15 levels where the surf club is. There was no mention of nine storeys where the surf club was by itself. It was a choice of 18 storeys, 21 storeys or 15 storeys.

When the minister said that something is needed to finish it off, I agreed with him. The council has come up with a much better proposal. Last Monday in this place the minister, in answer to a question on notice, stated that the government had no plans to acquire Magic Mountain. Then he did a backflip in this place, saying that the government will do what it needs to do to acquire Magic Mountain. Will the government amend the Local Government Act to do so?

The Glenelg Amusement Park, which is lot 3 on the certificate of title, which I have with me, is where Magic Mountain stands on the sea side of Colley Reserve. It is a totally separate allotment. Under schedule 8, page 29 of the Local Government Act, the Glenelg Amusement Park is classified as community land and the classification is irrevocable. The City of Holdfast Bay must continue to maintain the park for the benefit of the community as a public park. The City of Holdfast Bay—not Baulderstones, not the state government. The City of Holdfast Bay must remain the owners of that park.

The act will need to be amended if the government wants to acquire it. The developers cannot buy it. The minister alluded to a legal agreement, a legal obligation, between the consortium and the council. This legal agreement is no more than an opinion from Stephen Walsh QC, dated 18 December 2003, that the consortium believes that it has an agreement. Show us the agreement. Show us the black and white print. There is no agreement. However, there is a lease between the City of Holdfast Bay and Foreshore Asset Holdings aka Baulderstone construction, which expires on 31 December 2001. As for Platinum Apartments, it goes on and on.

Time expired.

FRIENDS OF DRY CREEK TRAIL

Mr SNELLING (Playford): I am glad that the member for Unley is in the chamber because I noticed that, last week, *The Advertiser* reported the member for Unley referring to me as Gollum from *The Lord of the Rings*. I know that the honourable member has a secret fantasy that he is Legolas, the elf prince, but I rather think that in both stature, girth and facial hair, he far more represents Gimli the dwarf. However, that is not what I rose to speak about.

I want draw to the attention of the house the work of the Friends of the Dry Creek Trail in my electorate and that of the member for Florey. The Dry Creek Trail, in my electorate, runs through Valley View and down through Walkley Heights between the back of the Northfield Women's Prison and the Yatala Labour Prison. I would encourage any members who are visiting my electorate to have a look at the Dry Creek Trail. It is a superb example of a fairly pristine state and gives people a good idea of what the Adelaide Plains looked like before white settlement.

Maintaining the trail is a constant effort, and the Friends of the Dry Creek Trail is a volunteer organisation which sets about planting native flora in the vicinity of the trail. I am told that, over six planting days last year, 3 200 plants were planted. The other big job is weed eradication in the area. On the morning of their first planting day in 2003, they put in a record 840 plants, which is a remarkable effort for a volunteer

organisation—people who get together and spend their time improving that site. Believe it or not, I do a bit of jogging along the Dry Creek Trail—

Mr Koutsantonis interjecting:

Mr SNELLING: If the member for West Torrens is implying that I am not telling the truth, he can move a substantive motion. I do occasionally jog along that trail and it is a splendid place for families to recreate. I congratulate the Friends of the Dry Creek Trail on the tremendous efforts that they have made in maintaining that area for the enjoyment of my constituents.

FLOOD MAPS

Mr BRINDAL (Unley): I remind the member for Playford that, when in the final scenes of *The Return of the King* Gimli was fighting next to Legolas, he quipped, 'I would never have thought that I would die beside an elf,' to which Legolas replied, 'But what about beside a friend?' Gimli's answer was, 'That's fair enough.' While I might quip at the use of the word 'precious' by the member that he resembles Gollum, nevertheless I will continue to regard him as a good friend and a parliamentary adversary of some stature.

Mr Snelling interjecting:

Mr BRINDAL: It is a very good quote, so I thank you for it. The subject of my grievance speech is of great concern to my electorate and that of the member for West Torrens, and we have had many discussions about it. The catchment management board in our area recently released a map showing flood-prone housing in Unley and in the electorate of West Torrens. Some 5 000 houses are affected. That is very good because people have a right to know and a right to plan, but one of the problems is that, for many people, there will be questions about the resale of their house and the insurance on their house. While people have the right to know, many of the people who bought that housing were never apprised of the fact in the beginning that it was a flood-prone area. A lot of the current home owners are in a dreadful catch-22 situation. Not knowing their house was subject to flooding, having bought the house in good faith, they are now burdened because of the map's existence.

In the case of the Unley council, and I think in the case of the electorate of the member for West Torrens, too, where people are submitting a development approval for extension, the council is saying that, because it is a flood area, the slab for the extension has to be raised 30 centimetres above the rest of the house. If you want to advertise that something is wrong with your house, try building the new family room 30 centimetres above the rest of it, so that when eventually it is for sale, everyone walks in and says—

Mr Koutsantonis: It is a metre and a half in West Torrens.

Mr BRINDAL: The member for West Torrens says it is a metre and a half. When you climb the flight of stairs to get to the new family room, everyone will say, 'Why is the extension above the rest?' The response will be, 'Oh, it is a flood-prone area.' So, I point out the nature of the problem, but I also point out that one of the reasons we have the problem is that previous governments of both complexions have said to local government, 'Urban infill? But you are responsible for infrastructure'. The only piece of infrastructure that councils did not bother about was consideration of the stormwater run-off. We have seen in Burnside, Unley and Mitcham development after development completely infilling suburban blocks. You would remember the time when a suburban house occupied about one-third of the land mass of the block, and the rest was fruit trees, grass and a driveway. A lot of the water on that block was absorbed. Now, many of those blocks are divided into two; the house roof itself is much bigger and so those two houses have much bigger roof areas; and, because they are courtyard homes, everything around them is impermeably paved. Instead of having about one-third the run-off from each block, you now have 100 percent run-off. Times that by house after house in a street, demand by law that all the water goes into the street, and you have creeks that are now running more than they ever ran before European people settled on this plain.

We have created a flooding situation and then we have mapped it and said to people 'Well, isn't it awful? By dint of what we have done for urban planning we've put your assets at risk and we're prepared to show everyone that we have done it'. What I want to do is call on the catchment management board, the council and whichever party in this place is in government to fix the bloody problem and to actually do something to stop the run-off and utilise the water so that we have an asset utilisation program and not a program that causes hazards and risks for ratepayers. We created this problem for our citizens between us—Labor, Liberal and local government. It beholds this chamber to fix it.

SMOKING

Mr KOUTSANTONIS (West Torrens): It is not often that I rise in this place to agree with the member for Unley, but he is absolutely right: the member for Playford is of a high standard and stature and an excellent adversary. I agree with him wholeheartedly. I also agree with him on the issue of flood plain waters and the stormwater mitigation in our respective electorates. He and I are both vocal advocates for doing something about it. Of course, the infrastructure spending would be over $100 million to alleviate the effects. If I were to ask the Treasurer for $100 million I am sure he would go weak at the knees. Our two councils, the City of Unley and the City of West Torrens, have massive infrastructure spending on assets like nursing homes, libraries and all sorts of expenditure that I might find not to be as necessary as stormwater mitigation which they are required to alleviate under the act. That is another issue.

I have been thinking about my stance on smoking very seriously recently. The Premier himself has been at me for the good of my health and the example it sets for others, so I have made a decision to quit smoking.

Members interjecting:

Mr KOUTSANTONIS: Quit bludging yours? I do not mean to waste the time of the parliament by raising my own personal affairs, but I have made some speeches in the past that have been used by others in reference to smoking. I do not back away from those, but what I do say is that, after Jim Bacon's resignation from parliament last night due to the idiocy of his smoking, it hit home to me the effects that smoking can have.

Mr Snelling interjecting:

Mr KOUTSANTONIS: I have quit—well, I am attempting to quit. I do not make any promises, but I have bought the nicotine patches and I have covered my body with them—there is not a spare piece without them. I encourage all young people who are thinking of taking up smoking not to. I know that ever since I made my first speech the Premier has been on at me to stop smoking, because he thinks it is bad for my

health. I will do my best to stop it. I would encourage others in this place who smoke to break their habit, not because I think it smells or it stinks, but because I care about their health.

Mr Caica interjecting:

Mr KOUTSANTONIS: Yes. I have already saved you money. The reason I wanted to grieve today was in regard to my electorate. I am sorry for taking up the time of the house with my own personal affairs. The airport recently had a public meeting, which was attended by about 250 local residents. I thank the Southern Lockleys Residents' Association, which made sure that that meeting was well attended. What concerned me was that the proprietors of the airport discussed lowering the curfew. I understand that there are business considerations, but I do not take those into account as a member of parliament: I take them into account for the welfare of my constituents.

I have to say that the western suburbs puts up with a fair few problems. We have the flood mitigation problem where, as the member for Unley said, if you want to extend your property the extension has to be 1.5 metres higher than the rest of the house because of the flood problems. If you wish to sell your property, you have aeroplanes flying overhead which affect the median increase in the price of the house. If we compare the price increases of homes in the flight path with those that are outside the flight path, we see quite a significant difference. If we compare the price increases in Adelaide for the homes outside the flood stormwater problems with those in my electorate, we see quite a difference. So, we put up with quite a bit.

The airport now wants to lower the curfew for a few Emirates flights or other international flights. My point of view is, 'Bad luck'. I see the member for Morphett nodding and the member for Colton agreeing. I know that we three members of parliament will be fighting the airport every inch of the way. If it attempts to lower the curfew in any way, we will be fighting it in any way we know how.

Mr Snelling: In the trenches and on the beaches.

Mr KOUTSANTONIS: In the trenches and on the beaches and at the airport. I have spoken to my local residents, and they support me in this endeavour.

The Hon. W.A. Matthew interjecting:

Mr KOUTSANTONIS: Yes, it does, but it does not mean we do not try. I have spoken to my local residents, and I do not think that there is anyone in my electorate who supports the curfew being lowered. I will make sure that the state government also does not support that.

LAW REFORM (IPP RECOMMENDATIONS) BILL

Adjourned debate on second reading.

(Continued from 23 February. Page 1369.)

Mr HANNA (Mitchell): I rise to speak against this bill. This is called an insurance reform bill; in fact, it will have a serious effect on the rights of injured people to receive just compensation for the harm done to them by others. It needs to be spelt out that we are generally talking about innocent and unsuspecting members of the public who are injured as a result of someone else's carelessness or recklessness. For countless centuries our society and its predecessors have recognised that, when you cause harm to someone else as a result of wrongdoing, you should pay compensation for it. The Labor government appears to be willing to water down this principle because certain billion dollar companies are not making enough profit, or at least they were not, two or three years ago.

In my remarks today I may seem particularly harsh in respect of the Labor government, because I sincerely believe that this measure represents the betrayal of Labor Party principles. I am not so harsh on the Liberal Party, because it is in its element in transferring money from injured people to wealthy corporations. The measure was initiated at a federal level by a federal Liberal minister, but there has been no dissent from the state Labor ministers, who have willingly played to the same tune.

There are some major objections in principle to this legislation. One of the first points that could be made is that there is no real justification for bringing in these measures that will have such a harsh effect on so many injured people who in the future would wish to bring claims to court for negligence.

Before I refer to the commentary and the statistics which establish that there is not a need for this reform, I want to go into a little more detail about the impact on injured people. The proposal is essentially to alter the definition of negligence in some key respects. When the member for Bragg was offering her opinion yesterday, she played down the significance of alteration to the common law of negligence. In respect of causation, in respect of that principle which gives responsibility to injured people, to look out for themselves while they seek compensation from others for the wrongful acts of those others, the impact is actually going to be very significant. It is going to affect probably hundreds of people, perhaps thousands of people, a year in South Australia alone, and I refer to people who are injured, generally in public places. Some of those injured parties currently receive no compensation because it is almost entirely their fault that they are injured. There are also cases where it is simply a matter of accident and really no-one owed that person a particular duty to care for them.

However, there are thousands of cases brought to the attention of the courts every year where someone has been careless, someone has been reckless, and it is in circumstances where they ought to have taken more care. There is a fundamental principle there that people should be responsible for their actions or their inaction, particularly when it has an impact, a harmful impact, on other people. As I said, this is a principle which has been recognised in the common law virtually ever since society got together to develop a communal and legal system.

One of the great ironies of putting this legislation forward is that the Rann Labor government says that it is tough on people who commit criminal offences. The principle underlying that approach, leaving aside the fact of its populist appeal, is that people ought to pay for what they have done, people ought to bear the consequences of what they have done, as a matter of personal responsibility. So, if a person undertakes a criminal act, premier Rann might well say that there needs to be punishment, because that person needs to take personal responsibility for having done the wrong thing in the first place and they need to bear the consequences.

This bill does the opposite. So it is deeply hypocritical at a fundamental level of principle. It says that if there are people out there currently being careless and contributing to the serious injury of innocent people they should not have to pay for the harm done to those innocent people. They get off scot-free in many cases. One of the distinguished speakers in the Legislative Council suggested that this is harmless legislation because it does not prevent a person from suing.

I find that a piece of sophistry, because if the law is changed to the extent that one's prospects of success to sue for just compensation are stripped away to almost nothing, then it is worth nothing to have that right to sue.

As an aside, I make the point that this set of proposals referring to the insurance law reforms last year and presently before us were highly significant in initiating my estrangement from the Labor Party. I do not go into this matter to bore or entertain members of the house, but because it is a matter of accountability with my electorate. It was in the middle of 2002 that these reforms were first broached and, of course, the responsible minister duly broached them with the Labor caucus, of which I was then a member. Through all of the due processes of the Labor Party caucus, I argued against the introduction of these measures and even put up a compromise proposal.

When it came to the final vote in caucus, and I am not going to disclose individual contributions, because I think that would be wrong, something extraordinary happened. For the first time that I have been in the parliament there was an extraordinary meeting of the left faction called just before the Labor caucus meeting. For those outside this place, it worth saying that the Labor Party is something like several parties within a party. It is like an amalgamation of different groups which have different interests but one would like to think a broader social democratic underpinning.

Anyway, I was a member of the left faction at the time and this extraordinary meeting was called. The purpose of it was to corral the votes of the left members within the Caucus to vote in favour of this set of reforms. That was my final opportunity to argue in principle against the adoption of these measures. I repeat very simply that my underlying objection was the fact that it represented a transfer of money from injured people—people yet to be injured, in fact—to billion dollar corporations. I saw that as fundamentally inconsistent with Labor Party philosophy. If the Labor Party was not going to stand up for the ordinary person in the street who gets injured as a result of the carelessness of another, then who would?

In any case, the vote in the left faction meeting to which I refer I lost by one vote. Under the rules of discipline which I was following at that time we then went into the Labor caucus, the proposal was put and I said nothing. I do not regret that because I was acting in accordance with those rules of discipline at the time and there was a good reason for that. But on that issue and a number of others I have since come to feel that it was impossible to continue under the constraints of the Labor Party.

Returning to the bill. I have said that it is unjustified and I will expand on that. Before I do, I want to make another fundamental point, and that is that this has always been put forward as a quid pro quo reform, and that is to say that, if governments around Australia changed the laws of negligence thus leading to less successful claims, insurance companies would pay out less, they would have less costs and they would be able to make more profit and therefore they would be able to either cut premiums or begin offering in a more meaningful way public liability insurance to segments of the community.

If it is a quid pro quo, if the goal is to ultimately make insurance more available and more affordable, then what obligation is there on behalf of the insurance company? One of our best known political reporters, Matthew Abraham, asked in December 2003: what guarantees have been given by the insurance company that if we give up our rights to sue they will cap the premiums? The Hon. Kevin Foley, the Treasurer, said, and I am basing this on a transcript—I hope it is accurate—

> Well look. . . you can't get a written guarantee from the insurance companies, and that's where as governments we do take on risk, that is, the risk of making these reforms without the guarantee that premiums will come down.

This is the essential problem. We are giving a huge gift—and I mean millions of dollars a year—to the insurance companies. What are they doing with it? They are not passing it on in terms of lower premiums and they are not passing it on in terms of taking the risk of making public liability insurance more available but, rather, they are pocketing the money as profit. When Allan Fels, as Chair of the Australian Competition and Consumer Commission, was asked to comment on the matter, he pointed out in mid 2002 that there were serious issues to be resolved about consumer protection. In an article by Terry Plane in *The Australian* on 1 August 2002, he was quoted as saying, 'There are genuine, difficult issues whichever way you go in cutting back liability under insurance. . . ' There was a response attributed to a spokeswoman for the South Australian government who said, '. . . the need to cap liability had been forced upon governments as the only real means of controlling payouts.'

That is worth pondering, because I would have thought that the real goal was to cut premiums to make insurance more affordable. After all, there is a public function, a community role, that insurance companies play in offering insurance by being able to spread the risk of significant endeavours. That is the basic point of it. Until recently governments had absolutely no part at all in that community function of providing insurance. Yet, when there was an issue of insurance being taken out of the market by insurance companies, the goal or focus of the South Australian government—and this happened in respect of governments all over the country—was on controlling payouts, when the real point of it all is to control premiums, because we are here for the people, not for the insurance companies.

How does this measure control the premiums? How does it influence them at all? The answer is not at all. There is absolutely no obligation attaching to insurance companies as a result of these reforms passing the parliament. I know that ultimately they will pass the parliament because of the pact between the Liberal and Labor parties on this issue. It is regrettable that the Labor Party has joined the Liberal Party in putting the corporate end of town before injured people. On top of all this, as I say, there is no justification for measures to cut insurance companies' costs at the expense of injured people.

I will refer to just a couple of newspaper articles in the very limited time I have left. For example, in the *Australian Financial Review* just this week, Lisa Murray wrote:

> 'We've seen a couple of years of significant price acceleration but prices are now around technical levels where we get our targeted returns so any acceleration after that is likely to be in line with claims inflation,' Promina's chief executive, Mike Wilkins said.

Promina is one of the key players in the insurance industry. There have been numerous reports recently and over the past couple of years pointing to the profitability of the insurance companies. The insurance companies are not shy about it. In their annual reports and press releases they are boasting about how much profit they are making. They are making that profit at the expense of injured people in the sense that their public relations campaign to government has succeeded so sweetly

for them. In the *Financial Review* of 23 February 2004, Suncorp Chief Executive John Mulcahy is quoted as saying:

> The industry is now on a profitable basis. General price increases will be based on the claims and inflation environment.

This is after a couple of years where the insurance companies were struggling because of poor returns on investment in the share market after a couple of big disasters such as Enron, HIH and the World Trade Centre—which have flow-on effects through the insurance industry—and, after years of under-pricing in the Australian insurance market in the 1990s, there was a crunch for a year or two where profits were severely squeezed. However, the average profits enjoyed by insurance companies have been extraordinary and, certainly, good returns for their investors. A report commissioned by the Australian Plaintiff Lawyers Association was made by Mr Richard Cumpston from the Melbourne firm Cumpston Sarjeant, and, to cut a long story short—

The Hon. K.O. Foley interjecting:

Mr HANNA: Cumpston Sarjeant. I know the Treasurer would be familiar with it; he is well up with these things and actuarial matters. Basically, the report pointed out that, over the last 20 years, insurance company profit averages had been about 18 per cent of premiums—and that is in the public liability area. Profits in other sectors within insurance were even higher. What this set of reforms last year and this year will do is actually double their profit levels, potentially to 35 per cent a year on average. Extraordinary profits are being taken out of the premiums which mums and dads and injured people are paying. The very least they expect for that is that, when they sue another party because of negligence, they will be able to get just compensation for their injuries.

Finally, I refer to the financial impacts on government. When people fail in their claims and they are not covered by insurance, who pays? Sometimes it is the injured person, who is left flat on their back in the Julia Farr Centre for the rest of their days, but it is also the government through Centrelink and Medicare payments, and so on. There is also the problem of uninsured defendants; in other words, people who cannot get insurance and who are sued by injured people. They reasonably expect compensation, and their neighbour over the back fence who was negligent may get off scot-free under these laws. One or other of two innocent average people will bear the financial consequences of those injuries. It is abominable legislation.

The Hon. M.R. BUCKBY (Light): I rise to support this bill. This is an area about which, I am sure, many members of parliament have had constituents, certainly volunteer groups, approach them concerning liability and negligence and all those sorts of issues. It is an area where our community is headed down this path, following the American model of litigation.

Mr Hanna interjecting:

The Hon. M.R. BUCKBY: Certainly; the member for Mitchell said the statistics do not show it. I will tell members about the experience of a friend of mine who was riding his bike along Dequetteville Terrace. The car in front of him slammed on its brakes and he went headlong into the back of the car. He went over the top of the car and got off with a few bruises and a couple of abrasions. He took about three days off work and went to the doctor to get patched up. He was then approached by a legal firm saying, 'If you want to do a bit of claiming on this, we reckon we can get you at least $5 000.' My friend said, 'Forget it, I'm not interested. I have a few bruises, scratches and abrasions and, apart from that, I'm fine.' He was surprised that a legal firm would approach him and, if he decided to take action with them, they would be able to get him compensation, when in fact he had not sought it and was not seeking it. He looked at it and said, 'This is just going to be an additional cost to the system when there is nothing wrong with me.'

That is where I see the community tending to go down this path. I will give another example: just prior to Christmas, during the harvest period in the Mallala-Redbanks area, a constituent, who lives on the Germantown Road, was complaining about the amount of dust that semitrailers were creating when they were carrying grain along the road and the danger that it created. He claimed that the Mallala council should be doing something about this and that, if they did not and he had an accident at any time because of the dust impairing his vision or whatever, he would consider suing the Mallala council for the condition of the road. I said to him, 'Surely, you have some form of responsibility in either staying a certain distance behind that semitrailer or slowing down when you see one coming towards you and you can see the great pall of dust being created. Surely, you have some responsibility to assess the risk and then take action to ensure that you avoid, to the best of your ability, the risk of your being unsighted because of the dust and being involved in an accident.' He did not see it that way at all. He figured that the council should basically be sealing the road and that he should not have to take any responsibility at all for the dust being created by the semitrailers.

Mr Hanna interjecting:

The Hon. M.R. BUCKBY: They may not have, but that is the mindset I see beginning to appear in the community. It is a serious issue, particularly for volunteer groups when they are organising fundraising functions and having to assess the risk to the public attending those functions and the insurance they are having to pay to be able to run those sorts of functions and the operations of their clubs. It is becoming beyond the means of many of those clubs, and they are having to assess what type of functions they will run because of the insurance levels they are having to face.

We all know about the compulsory third party insurance and the levels the Motor Accident Commission advises government to maintain in terms of keeping that fund at a reasonable level to ensure that those people who suffer an injury as a result of an accident are covered for their injuries so that they become medically fit again and are ready for re-entry into the community. As this government would know (and as we knew when in government) those claims are gradually rising, and the legislation passed last year to cap those payouts was a good idea. One only has go back some years to when Jon Blake unfortunately had an extremely bad accident which left him in a coma for the rest of his life, basically. I stand to be corrected, but think that is the case. Unfortunately for him, I do not think there has been much improvement. I recall that the payout—and, again, I stand to be corrected—was in the $30 million to $40 million range, although it was subsequently reduced. The figure of $8 million or $9 million rings a bell, but that is still a large amount of money. Of course, none of us would want to be in his position. That just shows the pressure on the third party fund, particularly in the area of negligence and legal action taken against a government or another body.

This bill will ensure a sustainable system of compensation. I do not imagine that it will lead to an immediate fall in premiums, although one is always hopeful that might happen.

However, I will not hold my breath, but if it does hold the premiums at a level in line with the CPI that will certainly be an improvement for the community. The measure will not take away a person's right to sue but does modify the rules to ensure that there is a sustainable system of compensation. As I have said, the largest number of claims are for motor vehicle accidents, which accounts for the Motor Accident Fund and compulsory third party insurance increases.

Members in another place have given the example of the HIH insurance. That company was underpricing insurance policies and, of course, in order to retain its market share, the rest of the market then had to reduce its policy prices in order to compete with HIH. Unfortunately, as a result, we have seen the demise of HIH. An astute person would know that with the sort of discounting undertaken by HIH, you can hold that sort of policy for only a period of time, and most companies do that until they have a level of market share they can retain and they then readjust their prices to what is normal market pricing. Unfortunately, HIH fell over and was declared bankrupt in the meantime and, as a result, we are now seeing that the other companies who had reduced their premiums have now increased their premiums to a more reasonable level. This something that we are now having to assess.

The bill also refers to the liability of road authorities. It provides:

> A road authority is not liable in tort for a failure—
> (a) to maintain, repair or renew a road; or
> (b) to take other action to avoid or reduce the risk of harm that results from a failure to maintain, repair or renew a road.

It sets out the various definitions of road, road authority and vehicles. It goes on to provide:

> This section will expire on the second anniversary of its commencement.

This clause would allow road authorities to adjust in that two-year period to ensure that, where repairs are required, they can undertake those repairs or to identify areas that are in need of repair and to erect signs to ensure that the public is aware that there is a danger there so that they have undertaken their commitment in warning the public about the risk. Of course, it is then up to the public to assess their actions with that knowledge of that level of risk. I think this is a good thing to have in the bill. As I have said, it allows either Transport SA or the local government authorities time to adjust and ensure that they can advise road users and to undertake repairs, if required and if the budget funding is there to carry them out.

As I have said, the issue of negligence on the part of the government is also raised. It is pretty apt that only today I received a note from one of my constituents saying that there are three potholes on the Main North Road alongside Trinity College, which this lady had to dodge. She observed a car doing the same thing and the car nearly went up on the side of the road and out of control because the potholes are so deep. These potholes are in need of repair, and if that person had had an accident, would it be negligence on their part or does it fall to the government being sued? As I said, this liability of road authorities clause enables the government to ensure that either they fix those sorts of things or that signs are erected to advise the community of the risks that are there. The opposition has pleasure in supporting this bill. I believe that it will go some way towards improving the current situation.

The Hon. R.B. SUCH (Fisher): I will be brief. I have mixed feelings about this bill. At the end of the day, I am likely to support it, but I have some apprehension about insurance companies, because I think some of this so-called crisis in claims has been manufactured and exaggerated. I have not seen any convincing data to show that there has been an outbreak of outrageous claims. I have written to the Treasurer—I do not believe that I have received an answer; I apologise if I have, but I am sure I have not—on the issue of organisations such as the Pichi Richi Railway not being able to get insurance offshore because of some government ruling which I understand is imposed by Treasury.

The reason I raise this issue is that in August I had the privilege of travelling on the Pemberton Tramway in Western Australia, which is a similar sort of thing to Pichi Richi, running through tall timber country. They run steam trains and railcars seven days a week. It is a very popular tourist attraction in the Albany area of the tall timber country of Western Australia. I said to them, 'What has been the issue here in relation to insurance?' and they said, 'No problem at all; we went overseas and got insurance.' I thought about that and, as far as I know, insurance companies such as Lloyd's are still operating and have been for a long time. I do not think there is anything inherently evil about going offshore and getting a policy. In fact, I would imagine that the insurance industry spreads its risk both nationally and internationally.

This may not be a key issue in relation to this bill, but I think it is important. Is there some provision arising out of a state government agency or government policy—whether longstanding or new—that prevents organisations such as the Pichi Richi Railway from getting insurance overseas? Is there some prohibition on that? If so, is it because those organisations may get government funding? I would be interested to hear what the Treasurer has to say in regard to this matter, because if it works for organisations in Western Australia I am puzzled as to why it cannot work for organisations here. That is the main focus of my point. I am not convinced that the insurance companies are actually on the bones of their backside, but I am comforted a little knowing that the outcomes of this bill will be reviewed in about three years by the so-called powerful Economic and Finance Committee. However, I am still not convinced that there has been an outrageous outbreak of excessive claims.

Mr WILLIAMS (MacKillop): I will not comment on how long I will take, because my intentions might not be fulfilled. I support the measure before the house at the moment. In fact, I lament the fact that it was not introduced and passed through this parliament much earlier. Many members have mentioned the fact that we have already passed no fewer than three bills to try to overcome the crisis in the public liability insurance sector. I note that a number of speakers have adopted the line that has been put in a number of letters that I have received from the Plaintiff Lawyers Association: that this legislation will merely allow greater profits for insurance companies and impact quite heavily on plaintiffs. Those are the issues that I particularly want to address. I think the lead speaker on this side of the house, the member for Bragg, has done an excellent job of explaining the individual elements of this bill and why the Liberal Party supports them. I see no reason in going over that ground. I congratulate her (as a lawyer) on putting this into the sort of language that we mere mortals in the house

can understand. I, for one, from time to time have trouble understanding legal and technical jargon.

Let me just say that I, for one, do not believe that insurance companies are going to be big winners out of this, because the reality of what has happened in the insurance industry in recent times is that insurance companies, instead of taking losses, have literally pulled out and have not been offering cover to certain people and organisations. In particular, my concern is for small community organisations which for many years have been able to get public liability insurance cover at a relatively small cost.

Mr Hanna: They went on strike.

Mr WILLIAMS: The honourable member is correct: the insurance companies went on strike. They did not go on strike because they were not making obscene profits: they went on strike because they were fearful of making losses—and I don't blame them. I say to the honourable member that, if he believes there are obscene profits to be made out there, he is welcome to go out and set himself up with an insurance company. That is open to any member of the community who believes that the matters before us will deliver obscene profits to the insurance companies. I suggest that they go out and invest their hard earned dollars in shares in insurance companies. I am quite happy to tell the house that I am not a shareholder in any insurance company—

The Hon. K.O. Foley: Smart move.

Mr WILLIAMS: The Treasurer says, 'Smart move.' He says that because insurance companies have been doing it pretty tough in recent times.

Mr Hanna: The shares are just about worthless.

Mr WILLIAMS: The member for Mitchell says that the shares are just about worthless. The same member suggested that this bill will deliver extraordinary profits to insurance companies. There is a problem with those two arguments. I believe that if we want community organisations, businesses and individuals to be able to purchase public liability insurance cover at a reasonable cost to allow functions to continue in our communities as they have for many years we have to deliver on these sorts of proposals.

The Ipp report is extensive and pretty solid reading for someone who is not legally trained, but I think it brings to book some very important home truths about what has been happening in the insurance industry. Page 28 of the introduction to the report talks about the primary and secondary costs associated with public liability insurance. Of course, the primary costs are the compensation which is paid out to an injured party, and the secondary costs are the costs of delivering that payment, largely made up of legal fees and insurance administration costs. It says:

> Secondary costs—

that is the legal fees, the administrative costs of the insurance company—

> are relatively very high. Empirical evidence from research projects conducted over the last 30 years suggests that they make up as much as 40 per cent of the total costs.

Empirical evidence over the last 30 years suggests that for every dollar that is paid for public liability premium cover, 40¢ ends up in the pocket of the lawyer or is used to run the overheads of the insurance company. I think that in itself indicates that we need to do something to redress that particular situation.

One of the other things which concerns me and which is also highlighted in the introduction to the Ipp report—and I love this reference—is as follows:

> . . . the present state of the law imposes on people too great a burden to take care of others and not enough of a burden to take care of themselves.

I think that very succinctly encapsulates the problem we have had with liability law and negligence law over the years and the way it has been developed. We expect every member of the community, whether an individual or an organisation, to be on their guard 100 per cent of the time, 100 per cent vigilant in looking after the affairs of everyone else moving around them, yet we have allowed individuals to go about their business and take no responsibility for themselves—and that is what this is all about. This measure before the house now is shifting the pendulum back to what I would call the middle ground so that individuals are more responsible for themselves.

I raise another point which again is covered in the introductory pages of the Ipp report. At page 30, it talks about the reality that only a very small number of injured people are in fact able to recover compensation because they can prove that their injury was caused by some other person through their negligence. It says 'that only a small proportion of the sick, injured and disabled recover compensation through the legal liability system'. It goes on to say:

> The vast majority of those who are injured or suffer disease or lose a breadwinner have to rely on their own resources and on other sources of assistance, notably social security.

In this country we have developed two systems. If you are very lucky and very fortunate and you have an injury or you find yourself in the unfortunate situation where you will be requiring huge amounts of expenditure on medical services for the rest of your life, you can blame someone else, get into the courts and get a payment. If you are the unfortunate one, you rely principally on the social security system, the safety net.

The reality is that the vast majority of people who find themselves in that most unfortunate situation where, through no fault of their own in most cases or limited fault of their own, they have a run of very bad luck which is incredibly costly to themselves, they are left to their own devices and/or to be cared for by their loved ones, their family and, in some cases, their friends, or the social security safety net. That is where the vast majority end up. The few lucky ones get recompensed through the courts. This is why we need to shift the pendulum back to have a fairer system where, whether or not you can blame someone, the final outcome is much more even.

I mentioned that had I received a number of letters from the Plaintiff Lawyers Association. I have done a considerable amount of reading on this matter and they certainly presented me with many cases from other jurisdictions, notably the USA, and I have seen a lot of information which suggests that tort law reform is not necessarily the answer to our problems in the liability insurance industry. It is very hard to make a judgment on that. I think it is most difficult. I really believe that we have to do what we can in this jurisdiction and hope that it does work and does make a difference. I must admit that I think every other member would have had a raft of representations, particularly from organisations in their electorate, over the last few years now. This issue has been getting worse for the past two or three years, and I do not believe that there is any other plausible solution that the government or this parliament can take to address the problem we have before us.

I certainly agree with the broad outline of the bill. A number of recommendations which came out of the Ipp

review have not been embraced by the government, and one which particularly concerns me is the notion of proportionate liability. I do not know why the government has chosen not to go down that path, but it beggars my imagination why a person who, even after being deemed by a court to be liable for a minimal amount—and it might only be 1 per cent or even a part of a per cent—can also be judged by the court to pay full recompense to the plaintiff for the damages.

I find that quite abhorrent. I believe that those who support that particular principle suggest that, in that case, it is incumbent on the defendant to collect from the other parties who bore the other parts of responsibility for the damage caused. I think that is a strange way to go about it. I do not see why someone should have to seek damages from someone who caused no injury to themselves and do it as a third party to recover their own expenses because of the anomaly with the way the law is. I understand that the Hon. Paul Holloway in another place has indicated that the government might look at that at some time in the future. I certainly hope that that is the case, but it disappoints me that proportionate liability is not embraced—

The Hon. K.O. Foley: Next bill.

Mr WILLIAMS: The Treasurer indicates the next bill, and I would encourage him to do that sooner rather than later because I think that is a very important principle in this whole area of law. It is one which has often confused me and others who have spoken to me over the years about this particular issue. I have not come across too many people who support the way in which the law currently interprets liability. I think I have covered the issues that I wanted to bring to the attention of the house on behalf of my electorate. As I say, I certainly support the bill as far as it goes.

Mr SNELLING (Playford): I wish to address one important and welcome aspect of the bill before us, that is, clause 58. It is mistakenly referred to as clause 59 in the explanation of clauses in the second reading explanation. Effectively, it overturns the High Court's majority decision in Cattanach v Melchior, which might be characterised as a wrongful birth case. The plaintiff had been surgically sterilised and subsequently fallen pregnant, and she sought damages for the cost of rearing her child. The Queensland Supreme Court awarded damages and a majority of the High Court upheld that decision. Such a decision has profound implications for the way the law views children. However, first I wish to speak to some of the practical problems of allowing such an award of damages, and in doing so I wish to draw fairly heavily on Justice Heydon's dissenting judgment.

First, if the parliament allows this judgment to stand, there will be no cap on future awards for damages. Such damages will always benefit the wealthy more than the poor, even though the poor will have to share the same burden through higher insurance premiums. The common law of torts compensates for loss and it does not allow for capping, so wealthy families who would have greater expectations about how much it costs to raise a child, particularly with regard to education, would be able to claim far greater damages than a family with a more modest background.

Secondly, any award of damages would always be given as a lump sum, and there is no way a court can guarantee that that lump sum would be spent on the child concerned. There is nothing to stop the parents awarded such damages spending all the money without its being put towards the actual cost of raising the child. My third point is that, whereas in a normal personal injury case there is able to be some sort of objective assessment of the injuries a person sustained, there can be no objective assessment on the future costs of raising a child. That encourages the plaintiff to make wildly exaggerated claims about the costs of raising their child and to exaggerate the needs and weaknesses of the child in order to maximise the damage. One can only begin to imagine the sort of effect that might have on a child, to have his or her parents get up in court and talk about how much a burden their child is to them, how the child has failed in various respects.

I turn to what I think is the heart of the matter. The majority in Cattanach v Melchior seeks to characterise the birth of a child, a healthy child at that, as a calamity in need of damages, and that is a fundamental change in the way the law has traditionally viewed children. Before this, children have been viewed as having an intrinsic value, irrespective of the circumstances of their birth or the characteristics or attributes of a particular child. As Heydon J says in his dissent:

> A duty lies on parents to preserve and nurture their children whether or not they actually experience joy from the existence of those children. To link that duty with the extent of pleasure which a particular child's life gives its parents would smack 'of the commodification of the child, regarding the child as an asset to the parents'. A child is not an object for the gratification of its parents, like a pet or an antique car or a new dress. Nor is it a proprietary advantage which has accompanying burdens needing to be met if the advantage is to be fully secured—such as a partly paid up share or mortgaged land. The child has a 'value' that must be fostered whether it pleases—

Mr SCALZI: I rise on a point of order. I have been listening to the member for Playford. He is having an impact on me, but I note there is no impact on the clock.

The DEPUTY SPEAKER: His speech is timeless. The clock has been amended. The member for Playford is one of the few members who speaks only when he has something to contribute.

Mr SNELLING: The passage continues:

> The child has a 'value' which must be fostered whether it pleases its parents or repels them. It is contrary to human dignity to reduce the existence of a particular human being to the status of an animal or an inanimate chattel or a chose in action or an interest in land. It is wrong to attempt to place a value on human life or a value on the expense of human life because human life is invaluable—incapable of effective or useful valuation.

Case law until now has refused disabled people damages because their parents failed to have them aborted, and for good reason. Failure to obtain an abortion should never be seen as a negligence, but, if this decision is allowed to stand, such cases will have to be revisited. If this parliament were to allow the majority decision in Cattanach v Melchior, the very concept of parental responsibility would be turned on its head. A couple would be able to off-load their parental responsibility onto a third party. I welcome the government's decision to override this decision in statute and restore commonsense.

Mr SCALZI (Hartley): I will make a brief contribution on this bill and say from the outset that I am not a lawyer and, like the member for MacKillop, I find some of the language difficult to follow. I understand the reasoning for the introduction of this and other pieces of legislation, that is, because there has been a problem with insurance, especially public liability insurance. As other members have experienced, volunteer organisations and others have come into my electorate office saying that they cannot get insurance. This has caused problems in the community, and we know that

some businesses were not able to proceed because of the crisis. We also know that legislation has been introduced in other states and federally and that organisations have not been able to afford the premiums. We are also aware of the impact that has had on community organisations, particularly volunteer organisations.

One could say that, because of those problems, something had to be done, and I do not have a difficulty with that. The problem had to be addressed. My question is: will this legislation address those problems in the short, medium and long term? Whilst some of my more learned colleagues who support the legislation have assured me that it does, I have my suspicions. I have been reading letters from the Plaintiff Lawyers Association and, despite my limited understanding of the law, some of their arguments appear to be logical, and their assessment of the problems seem to have some credibility.

The Hon. K.O. Foley: Which ones?

Mr SCALZI: The Treasurer is well aware of all the correspondence that he has had on this important matter. I do not believe that the problems have been brought about solely because of excessive claims. Whilst that might be so in individual cases, and members have clearly outlined some of those cases, I do not believe that that holds true for the whole industry.

With respect to the difficulty in the profitability of insurance companies I do not believe there is a direct link with excessive claims, as the members for Mitchell, Enfield, and my colleague the member for Heysen, have clearly outlined. It boils down to the fallacy of composition—that what is true for an individual case does not necessarily make it true for the whole. If we look at what has happened with the insurance industry in recent years, there is no question that competition increased between 1992 and 1998 when a number of competitors entered the Australian insurance market which, as I am told, resulted in increased price competition in the industry as competitors sought to retain and, in many cases, expand market share.

There is no question that in those times consumers benefited from the competition by the decline in the cost of insurance. The discounting was most apparent in the liability insurance arena; that is, insurance against a risk that someone else may make a legal claim against the insured, as opposed to insurance against the risks that the insured may suffer from other adverse events such as theft or fire, etc. As I said, the competition resulted in a significant expansion in the industry and insurers chased market share. Unfortunately, the expansion was partially caused by a greater tendency to imprudently write policies on poor risks at heavily discounted premium levels. In the short term, this strategy produces revenue and the opportunity to cross-sell other products to customers. However, in the long term these unprecedented policies carry greater risks of claim.

The problems of which we are all aware are not necessarily related to the excessive claims. A significant part of the problem could be, and I believe it is, as a result of the economic circumstances and the poor decisions that the insurance industry made in this period. There is no question that there are cases where there have been excessive claims. I welcome the clearer definition in the legislation—for example, incorporating roads with bridges, footpaths and so on—and that is sensible, but to think that this is going to be a panacea to the problems that we have experienced and that it is going to prevent them in the future, I think not.

Putting greater responsibility on individuals in that they must be responsible for their own actions makes sense and is logical, and I agree with the member for MacKillop, but equally there should be greater responsibility on the insurance industry to make sure that the funds that they have from insurance premiums are invested properly. If they make wrong decisions in the marketplace, then the blame should not automatically pass on to those who are seeking insurance, and, in particular, in relation to those areas which do not normally bring back greater returns.

I have some reservations with the belief that this is going to deal with the problems. I will look at the legislation in committee, and I have certainly listened to the debate and looked at the correspondence with interest because it is an important area. As some members have said, why should people not be able to insure from overseas?

After all, we are in a global situation. We bring down barriers on all sorts of trade, and there is no reason why, if better premiums can be obtained elsewhere, we should not be able to do so. I am not going to be critical to the point of stating that this is not necessary, because there are very important provisions, as outlined in the letter to all the members from the Treasurer. It clearly sets out the arguments and the questions that people have asked on this important area. As I have said from the outset, I do not believe that the problems that we have experienced in the industry are a direct result of excessive claims. In addition, I do not believe that this legislation is necessarily going to address those problems or make sure that we do not experience them again.

The Hon. K.O. FOLEY (Treasurer): I do not intend to speak for long, but I would like to thank members for their contributions. I thought it was a good debate, with some strongly held passions. I wish I had read the copy of the letter that I have just received from the member for Bragg. I have only just sighted it; I wish I had it when she was making her contribution last night. I thought it was a rather supportive contribution last night. It seems not quite what she has written in her letter to me, but perhaps we will discuss that on another day. We would have liked to have got this reform through before Christmas. The truth is that it was held up in another place, as is the wont of this parliament. We thought it important to get it through the parliament, so we introduced it in the upper house to clear it through there in the first instance when we had a log jam last year. Hopefully, with the blessing of this house, it will pass in the next day or so, today or tomorrow.

The process of reform is ongoing. There will be further legislation very soon, particularly on the issue of proportionate liability and professional standards. We are looking at that to see what we can put into a bill. We have had discussion papers out, and a normal, very good consultation process has been employed by my office over the course of the last two years. We want to consult widely and, while many members of the public as well as members of this house, such as the member for Mitchell, would disagree with a lot of what is put in our bill, I do not think I have heard any criticism from members about the consultation process. I would like to put on the public record that all the officers and my personal staff who have been involved in this process of consultation, particularly my office staff and advisers from the public sector here with me this afternoon, are to be complimented for their very good work and diligence in ensuring that we got as much comment from all people and sectors with a view on this.

I am going to Hobart on Thursday, thanks to the support of the opposition for a pair, to attend another ministerial council meeting on further law reform in this area. Senator Coonan is convening the meeting in Hobart, where we are looking at what other options may be available and needed by governments on a whole series of fronts, although I do not expect that it will be anywhere near as comprehensive or as detailed as this Ipp package and the earlier legislation we have had to deal with. It would appear that we are now seeing a significant improvement in the insurance market, clearly brought about by improved global equity markets, but also by consistent reform applied by the states around the nation.

We had no choice. Governments had to act because insurance simply was not being provided in some instances. A significant issue was the accessibility of insurance, not just whether or not one could afford the premiums. The situation was that insurance companies were retreating from the marketplace, and what I will not do, except in a limited number of instances, is have the government step in. The member for Bragg has asked me to subsidise insurance premiums. I will not do that; I do not think that is the role of government.

Ms Chapman interjecting:

The Hon. K.O. FOLEY: You have asked me to subsidise; you have asked me to 'provide extra funding to cover the increased extra insurance premiums'. Well, that is subsidies. This government will not subsidise insurance premiums, although we cross-subsidise for compulsory third party—that is a cross-subsidy. There are limited examples where we have provided direct financial relief in some limited cases when it comes to insurance, particularly involving doctors in our public hospitals, but the issue of government subsidising insurance is archaic. I would be interested to know whether that is the view of the shadow cabinet and the shadow treasurer. Is it the view of the shadow treasurer that we should subsidise insurance premiums? I would be interested to know whether Mr Lucas in another place supports the shadow education minister that we should subsidise insurance. I would doubt that, to be honest.

Mr Deputy Speaker, I will address some issues you raised. I thought deeply about them and pondered them while we had some time and I have come up with this response—or my adviser has given it to me, because everyone knows that I know nothing about Ipp law reform; I am just the minister who is carrying it into the parliament. Sir, you raised the question of heritage railways not being allowed to buy insurance offshore because of a Treasury ruling. My advice is that under sections 7 and 8 of the Rail Safety Act, a railway owner and operator must hold accreditation. In order to get accreditation, it must satisfy the administrative authority that it has the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the railway. The authority would probably require insurance with an Australian insurer because they are prudentially regulated under commonwealth law and have a better chance of meeting their liabilities than insurers who are not so regulated. Insurance in the Cayman Islands might be cheaper, but will it be there to pay the damages if there is a serious accident?

The government has provided a one-off grant to historic railways—and this is where there have been some limited examples—of $125 000 to assist them to meet their public liability insurance premiums in 2003-04. Relevant local councils have also contributed assistance. A working party has been established to explore alternative solutions to the insurance difficulties facing the sector beyond the current financial year. One of the options we did have with railways was for SAICORP to insure. I want to counsel members against this idea or notion that SAICORP (South Australian Government Insurance Corporation) should come in and fill the void of the market in some of these areas. That then means that we take on the risk. It is far more—

Mrs Redmond interjecting:

The Hon. K.O. FOLEY: Hang on, please let me finish. It is financially more prudent for us in this instance to provide the financial support (subsidy) to allow the insurance to be written with the private sector, so that if there is a catastrophe the private sector carries the burden of the risk, not the government.

Mrs Redmond interjecting:

The Hon. K.O. FOLEY: No, that is the point; not all of it is. There is a certain residual risk in some cases sitting with government.

Mrs Redmond interjecting:

The Hon. K.O. FOLEY: The point is that with railroads it is better for us to subsidise the insurance premium in this limited instance than to take on the risk. Why take on the risk when for $125 000 the private sector can take it on?

Mr Hanna interjecting:

The Hon. K.O. FOLEY: No, I have said 'limited'. If you want me to put $100 million—

Members interjecting:

The DEPUTY SPEAKER: Order!

The Hon. K.O. FOLEY: We have provided financial support to cover doctors' practising in public hospitals, from my recollection of events. Now, that is market failure and we have had to intervene. There is market failure in the railroads. No-one would insure them and if they did they had a premium that could not be afforded. There have been limited instances where we have done what I would rather not have to do. I resisted it for a long time, but in the end we had to do it. But if members think—

Ms Chapman: Name them!

The Hon. K.O. FOLEY: I am happy to give them to you. I have not got them in front of me, but there have been limited examples. There is nothing secret about it, but the honourable member is sounding like a old socialist government. The Liberal opposition is sounding like an old socialist government, that is, we should be in the insurance business. As long as I am Treasurer of this state I will not go back into the insurance business, because the last government that had a government owned insurance corporation lost the lot and this state was left with an unmanageable burden for many years. I am not prepared to put us back into that situation. But if members opposite, this so-called conservative opposition—

Ms Chapman interjecting:

The Hon. K.O. FOLEY: Honestly, the member for Bragg really makes me wonder what contribution she will make to public life, because on every single issue she says, 'Taxpayers should bail them out. Government should spend more money. Every problem can be fixed by throwing more money at it.' I have to say—

Ms Rankine: And don't tax them!

The Hon. K.O. FOLEY: And don't tax them! The member for Bragg's easy, cheap politics—well, it's not cheap: it is very expensive—is to throw money at the problem. I am sorry but that will not happen under my stewardship of the Treasury. We will provide financial support where we can, where it is needed and where it is targeted.

Ms Chapman interjecting:

The DEPUTY SPEAKER: Order! The member for Bragg is out of order. The honourable member can question in the committee stage.

The Hon. K.O. FOLEY: For many years in opposition, I maintained a very strong discipline with my colleagues.

The DEPUTY SPEAKER: Order! The Treasurer is starting to wander.

The Hon. K.O. FOLEY: I will wind up because I could argue with the member for Bragg forever. The member for Bragg and I are destined to have long debates about all sorts of things, but we have seen the member for Bragg's disregard for financial concerns when we saw her office refurbished with that beautiful American oak timber shelfing. She had no authority from me to install it, but she went ahead anyway—disregard for the taxpayer, but that is an issue for another day.

I thank the house for its support for this bill. It is good reform and I think it is making an impact. Recently, in Europe I met the world CEO of Alliance, the insurance company. For a variety of reasons I met the world head of Alliance, and one of the issues of discussion was the reform in Australia. He was well briefed on it and he made it clear that from his company's perspective they are viewing the Australian insurance market in a better light, in a more positive light, than they had previously. That is a good thing because that means Alliance should be in a position to provide better, more affordable coverage into the future.

One last comment I leave with the house is that at the ministers' meeting that will be held in a few days, I have requested Graeme Samuel (or one of his deputies) to come to the Hobart meeting to discuss the ACCC looking at insurance premiums. I know that is a point the member for Mitchell is particularly keen on.

Ms Chapman interjecting:

The Hon. K.O. FOLEY: Yes, but the ACCC's work to date has not been satisfactory, and we have all said that. In fairness to the ACCC, part of it is just how the commission can do it, because there are logistical issues involved. I can advise the house that Graeme Samuel is attending. So, Graeme will be with us in Hobart, and we will have a detailed discussion with him about ACCC supervision of insurance premiums, and I think that will be very good.

Mr Hanna interjecting:

The Hon. K.O. FOLEY: As I just said, the ACCC has been involved; the commonwealth government—

Ms Chapman interjecting:

The Hon. K.O. FOLEY: Yes, a little bit. So, we are going to talk about those issues and see how we can get better supervision from the Australian Competition and Consumer Commission and, despite my earlier concerns, I think Graeme Samuel is doing an outstanding job as Chairman of the ACCC. I will leave it at that, and I look forward to much debate during the committee stage. As much as this will greatly distress the member for Bragg, I advise the house that I will not be carrying this bill after the dinner break; the Attorney-General will be doing so, for a couple of reasons. The first is that I had a choice between a budget meeting and spending my time with you lot (I tossed a coin, to be honest) and, secondly, the Attorney has a far better grasp of the finer legal technicalities. I am sure the members for Mitchell, Bragg and Heysen and, no doubt, the member for Enfield and other learned lawyers in the house will probably get much better answers from the Attorney than they ever would get from me.

Mr Hanna: As long as he has good briefing notes.

The Hon. K.O. FOLEY: He has really good advisers. However, I will come back as soon as I can to spend some part of the night with you on this little journey we are taking on public liability reform.

The house divided on the second reading:

AYES (43)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Brindal, M. K.
Brokenshire, R. L.	Brown, D. C.
Buckby, M. R.	Caica, P.
Chapman, V. A.	Ciccarello, V.
Conlon, P. F.	Foley, K. O. (teller)
Geraghty, R. K.	Goldsworthy, R. M.
Gunn, G. M.	Hall, J. L.
Hamilton-Smith, M. L. J.	Hill, J. D.
Kerin, R. G.	Key, S. W.
Kotz, D. C.	Koutsantonis, T.
Lomax-Smith, J. D.	Matthew, W. A.
Maywald, K. A.	McEwen, R. J.
McFetridge, D.	Meier, E. J.
O'Brien, M. F.	Penfold, E. M.
Rankine, J. M.	Rann, M. D.
Rau, J. R.	Scalzi, G.
Snelling, J. J.	Stevens, L.
Such, R. B.	Thompson, M. G.
Venning, I. H.	Weatherill, J. W.
White, P. L.	Williams, M. R.
Wright, M. J.	

NOES (2)

Hanna, K. T. (teller)	Redmond, I. M.

Majority of 41 for the Ayes.

Second reading thus carried.

The SPEAKER: Can I say to all honourable members and, more especially, to anyone else who may be aware and alert to the needs of the chambers during divisions that I regard the reports to me as very serious indeed that members of staff and others have continued to use the lifts, despite the request that they not use the lift once the bells are ringing. The end consequence of that might be an embarrassing delay causing an honourable member to miss a division, whether in this house or in the other place.

I would have supported the legislation for the reasons that have been given in fulsome detail by all honourable members, although I believe that the committee stage of the bill will make it possible for us more clearly to understand how to further improve the legislation in order for us as a community to continue to do the things which, as a society, we have been doing very effectively for over 150 years.

Those folk from the ranks of the adults in our community—and even children—need to be allowed to continue not only to do things which make society a more civilised place in terms of caring for others but also in recreational activities and in providing services such as those which are otherwise now denied to us for our visitors. This legislation will make all of that possible so long as we take the trouble to get it right. It has taken us long enough to get to this point, God knows; let's get it right and get on with it.

Honourable members: Hear, hear!

Bill read a second time.

Mr HANNA (Mitchell): I move:

That the bill be referred to a select committee.

One of the points that has been made during the second reading debate is that this package of reforms (last year and currently) should be part of a quid pro quo, a deal with the insurance industry, so that if they receive the benefits allowing them to cut costs because of the law reform we are putting through they should provide a benefit to the community and cut premiums to the extent that they are getting the benefit from this legislation, and they should provide insurance where they had previously withdrawn from the market if they get a financial benefit from this legislation. That is the stated point of the legislation.

We need to establish, first, whether in fact there was a real financial justification for this measure in the first place and, secondly, the extent to which we could reasonably expect premiums to be reduced should these measures pass. These are complex matters which ought to be dealt with by a select committee. It may end up being embarrassing for the Labor government if a select committee is set up, because it may be a conclusion of such a committee acting reasonably that the insurance companies not only have no financial need for these measures to pass but in fact fully intend to pocket the financial benefits from the legislation in terms of greater profits rather than passing them on to the community.

If that does not appeal to the opposition as a matter of principle—saying that this measure demands greater scrutiny because of the potential financial impact on thousands of South Australian families each year—I would at least appeal to them on a political basis to say that a select committee into the impacts of this legislation and the need for it could severely embarrass the Labor government and expose their hypocrisy and their betrayal of historic Labor Party principles, that is, just compensation and a fair go for the injured person or the person in need as against the interests of the corporation.

The Hon. M.J. ATKINSON (Attorney-General): The reason these changes are being proposed by the government and supported by the vast majority of the opposition is that the people of South Australia have cried out again and again for a reduction in insurance premiums, particularly for public liability insurance. The members for Heysen and Mitchell tried to impugn the government's motives by saying that there had been no request for this legislation. On the contrary, from the day I became a minister almost two years ago I was waited upon by deputations of people from voluntary organisations asking for relief from the increases in the premiums for public liability insurance and for the government to do something about their being refused public liability insurance altogether.

It is in response to the cries of South Australian volunteers and voluntary organisations that the government of South Australia is proposing this law to parliament. The members for Heysen and Mitchell do not serve their constituents; they serve their plaintiff lawyer colleagues. They are playing up to the people who share their vocation of lawyer; they are not serving the public or the constituents of South Australia. This proposed select committee is nothing more than an attempt at delay. The members for Heysen and Mitchell are implacably opposed to the changes. They believe they can delay or defeat them by setting up a select committee, but they will not succeed because the impetus for these changes to the law comes from the federal government, in particular, the Assistant Treasurer, Senator Coonan. So, the Liberal Opposition would be at variance with the federal Howard government were it to agree to this select committee, which is not a genuine inquiry but merely an attempt at sabotage by people who are not serving the interests of voluntary organisations and volunteers in South Australia.

It is noteworthy that I posed a number of questions to the member for Mitchell when I spoke to this debate yesterday. I asked the member for Mitchell what was his attitude to, I think, three or four leading cases on negligence in Australia.

Ms Chapman interjecting:

The Hon. M.J. ATKINSON: The member for Bragg recalls the questions that I set for the member for Mitchell on these leading cases, but the member for Mitchell would not answer one of them. So, when it comes to answers, I say to the member for Mitchell: physician, heal thyself. As to questions that might be asked about this law, we are about to have the committee stage and get on with it. I do not doubt that some insurance companies (perhaps all) will not do the right thing in response to these changes to the law. All I can say is that both governments (state and federal) are monitoring what insurance companies do. There can be no arrest in the increase in premiums for public liability insurance and there can be no possible reduction in premiums for public liability insurance until such time as we have a sensible negligence law in this state and in this country. Now we have to do our part. Yes, the insurance companies have to do their part, too, on the question of how much profit they make and how good their investments are. There are many reasons why the cost of public liability insurance has gone up: the law of negligence is one of them.

Mrs REDMOND (Heysen): I feel I have to respond to the comments of the Attorney-General on a number of counts. First, he suggested that my motive and that of the member for Mitchell was to impugn the government's motives in bringing in this legislation. I cannot speak for the member for Mitchell, but I do not seek to impugn the government's motives. I accept and will happily place on the record that I think the government's motives are courageous and correct, and I have no difficulty with them, but the method will not work. We already put through a first raft of reforms on the law of negligence last year, and I said at the time of my second reading contribution on that debate that, whilst I was satisfied that it would reduce and redress some of the circumstances that we found unsatisfactory, it would not do anything to bring the premiums down.

As the Attorney correctly points out, the cry from the public, the volunteers and the volunteer organisations is that they need the premiums brought down. We introduced a whole series of reforms last year and, far from their bringing the premiums down, the premiums of the insurance companies have continued to escalate at an enormous rate. Suncorp Metway has just brought down a staggering new record profit, yet we are not doing anything to make companies decrease premiums. In my view, what we should be doing is saying to them, 'At least consider bringing your premiums down and, unless you do, we will not put through the next raft of reforms.' What is happening at the moment is that we are reducing the circumstances in which they have to pay out and we are reducing the amounts of money that they have to pay out, but we not are doing anything to get them to bring the premiums down.

There is no way in the wild world that a private insurance company, whose motive is profit, will bring the premiums down unless they are forced to do so, and that can either be achieved by the carrot and stick approach—that is, using as the enticement holding back these reforms until such time as

we had some satisfactory cooperation from the insurance companies—or by what the Treasurer has already rejected, that is, entering into the insurance market ourselves through SACORP until at least such time as the premiums do come down in competition and then removing ourselves from the market again. I do take exception to the Attorney's assertion that I am implacably opposed to the changes; I am not and, indeed, in my second reading contribution, I indicated that there were some that, notwithstanding my general view, I will nevertheless support. I am not implacably opposed to most of the changes, but I think that we could be smarter about the way in which we do this. We could use them as an enticement to get the insurance companies to do what the government is aiming to do, that is, bring the insurance prices down so that the community can afford them.

The Hon. G.M. GUNN (Stuart): I do not support the committee. I am normally a supporter of having further inquiry into legislation. However, my constituency has suffered greatly in relation to the excessive and unreasonable public liability insurance premiums. It nearly put Pichi Richi out of business and it has probably put Peterborough Steam Town out of business. Other organisations have been faced with public liability insurance beyond their capacity ever to pay. Those communities are crying out for this parliament to take some steps to alleviate some of the effects of the huge hikes in premiums. I would be failing in my duty if I stepped in the way of any course of action which would delay these initiatives from being given a chance to work. It is in the hands of this parliament. If we do not see a reduction in insurance premiums in a certain time, this parliament should revisit this issue.

I do not have any problem with that at all, but I do have a problem with what is taking place in the real world. We can apportion blame to many. This legislation is one step. We have had a number of attempts already at trying to do something about these horrendous premiums with which voluntary organisations are getting lumbered and which will put these small voluntary organisations out of business. It is hard enough to get people to participate and run these organisations now without having this added burden. They cannot exist without insurance. I understand the motives in relation to the member for Mitchell, and normally I would support referring legislation to a committee to try to improve it and to give the public in general the ability to make comment and consider it but, because of the difficulties facing my constituency, I am compelled to support this legislation, because the organisations I have mentioned and others will not exist unless these steps are taken and taken quickly—every day is important.

It is beyond the resources of the City of Port Augusta and the Flinders Ranges Council to continue to assist Pichi Richi. Their ratepayers should not be called upon to spend $100 000 to provide insurance. It is beyond their capacity, and the Mayor of Quorn said they cannot pay any more. The previous state government put over $1 million into bringing the narrow gauge line into the railway station at Port Augusta. If these premiums continue to increase, it will be out of business. Therefore, I have no alternative but to strongly support this legislation and urge the parliament to pass it and get it brought into law as soon as possible.

The house divided on the motion:

AYES (2)

Hanna, K. (teller)	Redmond, I. M.

NOES (43)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Brindal, M. K.
Brokenshire, R. L.	Brown, D. C.
Buckby, M. R.	Caica, P.
Chapman, V. A.	Ciccarello, V.
Conlon, P. F.	Foley, K. O. (teller)
Geraghty, R. K.	Goldsworthy, R. M.
Gunn, G. M.	Hall, J. L.
Hamilton-Smith, M. L. J.	Hill, J. D.
Kerin, R. G.	Key, S. W.
Kotz, D. C.	Koutsantonis, T.
Lomax-Smith, J. D.	Matthew, W. A.
Maywald, K. A.	McEwen, R. J.
McFetridge, D.	Meier, E. J.
O'Brien, M. F.	Penfold, E. M.
Rankine, J. M.	Rann, M. D.
Rau, J. R.	Scalzi, G.
Snelling, J. J.	Stevens, L.
Such, R. B.	Thompson, M. G.
Venning, I. H.	Weatherill, J. W.
White, P. L.	Williams, M. R.
Wright, M. J.	

Majority of 41 for the Noes.

Motion thus negatived.

The SPEAKER: I would have favoured that course of action if only to ensure that the mechanism by which we achieved the savings could have been more effectively determined than appears to be the case at present. Without going into the merits of the arguments that have been put for or against already, I simply say, as member for Hammond, that at present all the government needs to do to ensure that we do get a reduction in premiums is to take all incorporated bodies that are said to be established and operating in the community's interest, whether recreational or leisure or community service or community protection, and have them demonstrate through appropriate audit and sworn affidavit that they have conducted annual general meetings and had their affairs kept in order.

Thereby that would qualify them to bundle up collectively through the government itself, as a facilitator, one lump of underwriting insurance and allow the government in the marketplace to obtain an underwriter for that purpose and divide the premium according to a formula, which the committee might have been able to help establish, amongst those organisations, and force the price down immediately. It is still possible for the government to do that or something akin to it rather than wait for two or three years until too many organisations are dead and other organisations have otherwise been stripped of any spare cash they had through the excessive premiums that still seem to be abroad in the insurance marketplace. I thank the house for its indulgence.

[Sitting suspended from 6.05 to 7.30 p.m.]

In committee.

Clause 1.

Mr HANNA: I have a couple of questions which are perhaps more to do with what is not in the bill rather than what is in the bill, but this is a suitable place in which to ask those types of general questions. Given that the bill is to give a benefit to the insurance industry in terms of less payouts—

The Hon. M.J. Atkinson: Surely 'fewer' payouts.

Mr HANNA: —less in the amount of the payouts—it becomes an important question as to whether this measure will be effective. Therefore, I ask the Attorney-General, who is the lead minister for the government in respect of the bill at this stage of the committee, whether there was an assessment of the impact of the legislative reform in this area last year. Members will recall that legislation passed through this parliament limiting the amount of damages to be paid, in particular, public liability claims—in other words, capping of damages—and also instituting a points system for the assessment of claims in respect of pain and suffering, and there were other changes in relation to recreational activities. So that we can have confidence in the reform process, can the Attorney indicate the outcomes to date of those reforms?

The CHAIRMAN: Just before calling the Attorney, I take it that the member for Mitchell does not have any problem with the title of the bill and he is just using this as a—

Mr HANNA: Both, sir.

The CHAIRMAN: Technically, a query should relate to a concern about the title, but the member has an amendment coming up with respect to the next clause, anyway. Just to expedite matters, do members wish to indicate which clauses they wish to ask questions on? We have foreshadowed amendments for clauses 2 and 27. We have a lot of clauses, and we do not want to be here all night. Apart from those clauses, are there any others about which members have particular questions?

Mrs REDMOND: I do not wish to hold up the committee, but I have questions on a number of clauses. I think it might be easiest and quickest if we simply proceed en bloc through the clauses as we approach them rather than trying to define at the moment what clauses I want to ask questions about.

The CHAIRMAN: The chair is happy with that.

Mr HANNA: Sir, I have a point of order. Since you have raised that procedural point, I do have other amendments to bring forward. I was not able to find parliamentary counsel during the dinner break, and I had expected him to be in the chamber before the committee session commenced. I do not know whether the Attorney can give me advice on whether parliamentary counsel is available; otherwise, I will simply write out the amendments as I move them.

The Hon. M.J. ATKINSON: Such is the member for Mitchell's anathema in respect of this bill, I think it is entirely legitimate that he should question its very name. Of course, when I sought to use that strategy in opposition, the chairman of committees always ruled me out of order; but you, Sir, are a merciful chairman of committees and I do not quibble with your ruling. The member for Mitchell asks whether there has been an assessment of last year's legislative reform. My recollection is that the first tranche of reforms was in 2002 and they were proclaimed later that year. I think it is much too early to—

Members interjecting:

The Hon. M.J. ATKINSON: The members for Heysen and Bragg cackle with mocking laughter at my answer that it is much too early. I do not know how swiftly the divorce cases with which the member for Bragg usually deals get to court.

Ms Chapman: Promptly.

The Hon. M.J. ATKINSON: Promptly, she says. Well, I can assure you that the cases we are dealing with here—negligence cases—take a long time to get to court. Very few of them have arrived in court yet because, given that this is a government that avoids retroactive legislation where it can, I can assure you that this legislation was entirely prospective and the cases just have not come to court. There have—

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: The member for Heysen says that premiums are paid out as if that is some killer point. Of course premiums are being paid out, but the actuaries working for insurance companies are not in a position to judge what the effect of these changes has been yet. That is a perfectly reasonable and truthful answer, and I stand by it. The ACCC is monitoring the effect of the changes—

Ms Chapman: Your Treasurer has just told us that it's not working.

The CHAIRMAN: Order! The member for Bragg will have an opportunity to ask questions in the appropriate manner.

The Hon. M.J. ATKINSON: The second ACCC monitoring report has been released. It is based on the data up to June 2003 and the changes to that date. Average premiums rose 88 per cent in real terms between 1992 and 2002. In the first six months of 2003, they rose 4 per cent in real terms. Average claim costs—

Ms Chapman interjecting:

The Hon. M.J. ATKINSON: No. For the benefit of the Pembroke-educated member for Bragg, 1999 to 2002 is not 10 years, it is three years.

Ms Chapman: You said 1992.

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: Then I apologise. In that period they rose 88 per cent, which is a steep rise in anyone's language and, in the first six months of the last calendar year, they rose 4 per cent in real terms. Average claims costs fell 10 per cent for the first six months of 2003 compared with the full year of 2002. Expected profitability from underwriting public liability insurance improved between 2002 and June 2003. All insurers expected premiums to rise in 2003; however, some insurers expected that government reforms would constrain the size of premium increases by about 3 per cent. Other insurers believed it was too early to quantify the impact of the reforms. Most insurers expected premiums to rise further in 2004 in a range of 5 to 15 per cent. State data on the 2003 expectations shows that in our state insurers expected premium increases of 7 to 12 per cent in the absence of tort reform, reducing to 3 to 10 per cent as a result of the government's reforms. Average premiums for professional indemnity insurance rose 128 per cent in real terms from 1997 to 2002 and a further 5 per cent in the first half of 2003. Further increases (between 15 per cent and 23 per cent) are expected in 2004, and no impact is expected from government reforms because our reforms have focused on personal injury.

Mr HANNA: In the same vein, has the Attorney, the Treasurer or the government had assurances, in writing or otherwise, from the insurance industry about the financial impact of this package of reforms we are dealing with in the parliament now? In particular, has the government or any minister received advice on the extent to which premiums might be reduced or the extent to which insurance coverage might be extended?

The Hon. M.J. ATKINSON: Insurers gave an undertaking to ministers nationally—that is, Senator Coonan's ministerial forum—that the changes would reduce claims costs and take pressure off premiums. In November 2002, Price Waterhouse said that the proposed changes would reduce premiums by 13 per cent, and insurers agreed. That is not to say that would reduce premiums in absolute terms:

it would reduce premiums from what they would otherwise go up by under the influence of factors other than the law of tort.

Mr Hanna interjecting:

The CHAIRMAN: If the member for Mitchell wishes to ask a question, there is a mechanism by which to do it, rather than interjecting. We are only on the title and should move on to some more substantive clauses. Can we deal with the title, because I do not think people are arguing about the title?

Mr HANNA: We are.

The CHAIRMAN: There are 80 clauses and the member for Mitchell can speak if he is specifically dealing with the title and a question relating to it but, if it is more to do with the substance of the bill, we should move on. Is it to do with the title?

Mr HANNA: I can certainly include that in my contribution.

The CHAIRMAN: You do not have to do that. There are 79 other clauses for you to link your question in.

Mr HANNA: I also have the right to divide on every clause but I do not want to go down that path unnecessarily. Did you call the member for Heysen?

The CHAIRMAN: No. Does the member for Heysen have a question in relation to the title?

Mrs REDMOND: I had a question in relation to the response the Attorney gave to the previous question from the member for Mitchell. That was just to seek clarification. The Attorney referred to advice in November 2002. I just wanted to clarify with him that he was then talking about this proposed tranche of changes and not the changes that we had introduced during 2002.

The Hon. M.J. ATKINSON: The Price Waterhouse report was addressing itself to the entire package.

Mr HANNA: In relation to the title, I certainly do have some other suggestions. It could be called the Law Reform Hand Money Over to Insurance Corporations Act. It could be called the Law Reform Transfer of Wealth From Injured People to Insurance Companies Act. It could be called the Law Reform Nil Effect in Terms of Benefit to the Community Act. But I do have a more substantial question, which follows on from the two that I have put so far, in respect of the contribution that this parliament is making to the insurance industry nationwide. I am sure the Attorney would concede that the proportion of the cost pressures in the insurance industry represented by pay-outs in South Australia compared with the rest of the nation would be minuscule. I therefore question whether the failure of the passage of this legislation would have any impact at all on the financial affairs of the insurance companies, given that these reforms have more or less already passed in the eastern states, in particular in New South Wales.

Members interjecting:

The Hon. M.J. ATKINSON: What the member for Mitchell is putting to the committee is that, because South Australia is a small state and the negligence claims in our state are an even smaller proportion of the pool than our proportion of the national population, we should welsh on the agreement and not make any changes, because the insurance premiums are decided on what is happening in the market in New South Wales, Victoria and Queensland. The member for Mitchell is saying that we should not make any changes, because our making changes will not be noticed by the insurers, because we are so small. There is probably something in that; we could welsh on the agreement. However, my opinion is that one of the reasons why the law of negligence in Australia is so perverted, so unjust and so one-sided towards plaintiffs, especially since Wagon Mound No. 2 is that—

Members interjecting:

The CHAIRMAN: Order! The Attorney has the call.

The Hon. M.J. ATKINSON: No, not Rottnest Island; that was the high point of perversion. It started with Wagon Mound No. 2. It is because judges have made decisions in the law of negligence in the sure and certain knowledge that defendants are insured. If those defendants were ordinary householders—individuals, members of the public—it could be seen that these court decisions were cruel and unjust in the extreme. The fact is most defendants are insured, and that has influenced the judiciary in its framing of the law of negligence. I think we should make these changes, because these changes are just; they are right. They are right, irrespective of whether or not the defendant is insured. It is probably true that South Australia could make no changes and it may not have much effect on the premiums nationally. Of course, at some point, the insurers could say, 'Well, we made a nationwide deal and South Australia is welching on it.' But my principal answer to the member for Mitchell is that these changes are pure justice and they deserve to be done in their own right irrespective of their effect on premiums.

Ms CHAPMAN: I wonder whether the government could give some explanation as to why we have incorporated Ipp recommendations in the title given that this bill does not incorporate all the recommendations and, in fact, quite specifically rejects some of them—some they started on side with and then, after the review, rejected them? I do wonder, especially as the other states have almost universally referred to civil liability amendments in their title. I rather like the New South Wales reference, which is Civil Liability Amendment (Personal Responsibility) Act 2002.

We are substantially amending the Wrongs Act in South Australia and the Limitation of Actions Act, so it did seem rather peculiar that we would move to that title description.

The Hon. M.J. ATKINSON: The title of the act will eventually be the Civil Liability Act. That is how it will enter the statute book, alas without the Latin introduction and the regnal date of the Queen owing to changes the Liberal Party made. However, it will be called the Civil Liability Act. There will be no reference to Justice Ipp, but it is included in the name of the bill because, although the bill does not adopt every recommendation of Justice Ipp, nevertheless, it is clear that his report is the principal origin of the bill, and it is appropriate to include it, I think, in the bill.

Parliamentary Counsel has been into the chamber to answer an earlier question, and Parliamentary Counsel would be best placed to advise me on answering the member for Bragg's question (the only question, of course, that has been pertinent to the clause so far), but Parliamentary Counsel has left for the perfectly good reason that they are drafting amendments for those who oppose the bill.

Ms CHAPMAN: The other matter I raise relates to the question of the effect of this bill as mentioned by the member for Mitchell. The member for Mitchell has made inquiry of the government as to the expected outcome of previous reform—which has been a forerunner to this legislation—in part of a package of attempts to at least arrest the substantial increase in premiums and the inaccessibility of insurance available to organisations and individuals. My question relates to the effect of ongoing increased premiums and inaccessibility.

One of the direct consequences of a steep increase in the premiums exacted by the insurance companies is that the state government receives a very substantial income from stamp duty—added income—arising out of the increase in the premiums. That is a matter that continues during this period while we are waiting to implement reforms, which allegedly will have the effect of making insurance more affordable and accessible to the applicants. Let me illustrate an example. The Burnside Hospital is a private hospital servicing South Australia which, I might add, is the only hospital to service the eastern part of Adelaide. We do not have any public hospitals—then again, we do not have any police in the seat of Bragg, and we do not have—

An honourable member interjecting:

Ms CHAPMAN: We have some schools, that is good. But, nevertheless, we have a hospital. It is one of the few hospitals left in Australia that actually still offers obstetric and gynaecological services because, as has been indicated, hospitals such as those at Stirling have had to close their service. So, the Burnside Hospital has undertaken and continues this service and, in doing so, it has needed insurance. The hospital, of course, has had to march off to London to get insurance because it cannot get it in South Australia. The hospital's insurance premium (which is due in May or June this year) has increased so much (an increase of well over $100 000 per year) in the past two years that the hospital has had a $19 500 increase in stamp duty on the premium.

I raise that as an example of one organisation that has had this very substantial increase in premiums, and I will not go into the reasons why this has happened. However, one of the purposes of the government introducing this bill is to arrest that problem. In the meantime, years have now passed since the hospital suffered this large increase in its insurance premium. Fortunately, I am told that the hospital is so popular that it has a 10 month waiting list for its obstetric services, which, of course, technically means a woman has to register before she is even pregnant. This is a massive extra cost the hospital has to incur, and when relief has been sought (and this has been put to the Treasurer) from at least the extra stamp duty—not the premium—that request has been met with an absolute blanket no, and repeated requests have been met with the same reply.

What is the government prepared to do? As indicated by the member for Mitchell, there is a monitoring process but no identified relief yet in relation to premium reduction—if that ever happens—so what processes will be put in place to have this review? What relief will the government give to organisations in respect of stamp duty increases—not the premium—they have had to suffer as a result of increases in insurance premiums?

The Hon. M.J. ATKINSON: The member for Bragg's contribution does not seem to have any relation to the title of the bill. The answer is 'none'.

Mr RAU: I accept immediately the same criticism in relation to the following comments, but I make them now to avoid having to make them seriatim throughout the discussion and thereby saving us all a lot of heartache—or at least tedium—throughout the evening. My question is directed to this point: the extensive briefing materials and discussions that have been conducted in relation to this matter (which I applaud fulsomely) have revealed—according to those who advise the government—that a majority of the material contained in this bill constitutes an attempt by the parliamentary draftsman to reduce into written codified form what is, in fact, already the law.

This will come up, Mr Attorney, throughout the legislation, and I know you addressed this matter briefly in your remarks the other day. Assuming for the moment, Mr Attorney, that your view is correct and the law of negligence requires reform and that elements of this package deliver the required reform—I am assuming that is correct—nonetheless, in the words of the people who are responsible for drafting this bill, most of the verbiage is not directed towards that reform. For example, section 41 deals with professional liability matters and obvious risk and so on, which clearly are changes, but the rest of it, as I understand it, is largely directed towards codifying what is the existing common law and is therefore not intended to change anything.

If that is the case, why bother going through the perilous exercise of allowing a single parliamentary draftsman to reduce into accurate language the complexity that the common law presently represents when it is already well known to all judges and practitioners? A more targeted approach would see that left alone—because, as I have already indicated, I understand that it is not intended to change anything, or at least that is how it is being sold—and simply put forward those very pithy issues that you spoke about before (and I take your remarks at face value) that do address an injustice—for example, the assumption of risk and the standard of care for professionals?

Ms Chapman: And the highway immunity rule.

Mr RAU: And the highway immunity rule, which is an improvement, I might say, on the original draft, which took us back to the 15th century. At least this bill takes us back to the early 1930s or 1940s, so we are in the 20th century with the proposed amendment. Bearing in mind that lawyers love new words, because that gives them an opportunity to litigate, which they love to do, this measure will involve everybody in wasting a lot of time.

The Hon. M.J. ATKINSON: The member for Enfield raises the question of why the bill seeks at several points to codify the common law. He thinks this to be unnecessary and possibly dangerous. There are two answers to this. At some points the bill makes changes to the common law so that it is not merely codified but clarified; at other points, a restatement was recommended by the Ipp committee to overcome errors that occasionally creep into the law. For example, as the member for Heysen said, proposed new section 35, which deals with the burden of proof, simply restates what we all know, or what we all should know. The reason for doing so is explained in the Ipp report at paragraphs 7.34 to 7.36. The committee wants to stamp out an error that has crept into recent judgments that would cast the burden of proof of causation onto the defendant in certain situations; likewise, proposed new section 32, which deals with precautions against risk.

The Ipp committee found that a common error is to assume that, once a risk is foreseeable, it must be negligent to fail to take precautions to prevent it; that is, the negligence calculus, although part of the common law, is often overlooked. The committee discusses this at paragraph 7.14, which states:

> The decision in Shirt is widely perceived to have created a situation in which the lower courts may be in danger of ignoring this point. In other words, there is a danger that Shirt may be used to justify a conclusion—on the basis that the risk was not far-fetched or fanciful—that it was negligent not to take precautions to prevent the risks materialising and to do this without giving due weight to the other elements in the negligence calculus.

For this reason, the committee recommends setting out in statute the process that goes into determining whether the defendant was negligent in failing to take steps to guard against a risk. There are other points at which codification has been used in conjunction with the addition of a development in the law. For instance, in respect of mental harm the provision largely codifies the law as it has been laid down by the High Court in the Tame and Annetts cases, but it also adds the new rule that a person cannot recover damages for economic loss for consequential mental harm unless the harm amounts to a psychiatric illness. That is a development based on and consistent with the High Court's rulings, but it is a new rule. Other reasons for setting out some parts of the law in statute are to make it clear and, where it has reached a satisfactory result, to try to stop it from changing.

Mr RAU: I thank the Attorney-General for that answer, but would the Attorney-General agree with me then that, to the extent at least that I have been advised by briefing papers and advisers, large sections of this legislation are simply codification as opposed to changes, that is a misrepresentation of the actual effect of the legislation?

The Hon. M.J. ATKINSON: In following this debate, I do not think it has been claimed in the past two years that we are dealing solely with codification. Anyone who has read the Ipp report knows what the government is doing. There is no attempt to mislead.

Clause passed.

Clause 2

Mr HANNA: I move:

Page 4, line 5—
Delete 'This' and substitute:
Subject to subsection (2), this

Clearly, the point of the amendments which I propose to clause 2 are aimed at shedding some light on the question of whether in fact there will be a quid pro quo; and whether in fact there will be a benefit to the public from giving this enormous financial benefit to the insurance company. When I say 'financial benefit to the insurance company', I am referring to the effect of these amendments as they have already been passed into effect around the country. I do maintain that the impact of our own South Australian amendments taken by themselves will not have a dramatic effect on the insurance company situation. They will have a dramatic effect on hundreds, if not thousands, of injured South Australians each year. Nonetheless, that is to clarify that point about financial benefit.

If we take the amendments as a whole, that is, as already effected in the eastern states and what we are proposing to do here, then it is essential to know whether we are going to have the intended effect. The intended effect, surely, is to see premiums reduced and the coverage of insurance extended into areas such as public liability. Obviously, we need to look at the figures. We need the insurance companies to open their books. Members of the House of Assembly can look to the amendment to see that what I am calling for is a report containing a detailed assessment of the predicted effect of this act on the cost to insurers of insurance.

That is their costs in terms of those payouts purportedly being reduced by the amendments we are passing. Rather than simply leaving it to the insurance industry, it makes sense for the Treasurer to go to an actuary and give instructions for that assessment to take place. The preferable course might have been to have a select committee look into the bill, because that would have entailed an examination of the likely effect of these changes to the law, and a lot of detail and questions could have been examined in such a committee. But that issue has already been decided.

The next best thing that I can see that we could achieve here is for an actuarial report to be delivered to the parliament. I make this appeal particularly to the opposition, because the way this place works I expect the government's ears to be blocked to any reasonable proposal such as this, its decisions already having been made. But I say to the opposition that, when we were debating whether there should be a select committee, one of the concerns reasonably raised by members of the opposition, in particular the member for Stuart, was the possibility of delay in respect of this reforming bill. Now, if there are members of the opposition who sincerely believe that the passage of this bill will reduce premiums or allow extension of coverage of insurance to areas such as public liability, I would ask them whether, at the very least, we can get an actuarial report done. We would not play politics in terms of a select committee and members of parliament grandstanding and inquiring of insurance company chiefs who earn over $1 million a year as to where the money is going—the money that their companies receive in terms of benefits resulting from this legislation. Let us not do that, but let us at least have an independent actuary deliver the information to us as the parliament. As responsible members of parliament, do we not at least want to know to the best we can predict what the likely effect of this act is going to be?

The whole point of it—everyone agrees—is to cut insurers' payout costs and therefore enable them to pass some benefits on to the community. If that is the case, let us get the information; that is all I am saying. I am not suggesting that we hold up the passage of the bill. If the opposition is determined to join with the government and see these changes go through, let it be so. But, when it gets to the executive council and the opportunity for Her Excellency the Governor to sign off on the bill, I simply put this reasonable obstacle in place: that an actuarial report be first prepared and presented to the parliament so that we know what we are doing. It will not stop the passage of the legislation, but it will defer its passage until we have that information. Once we have the information—and I have some mixed feelings and some regret about this—it will not stop the Governor then signing off and the legislation going through. It will not stop the amendments going through, but it will give us a clearer conscience because we will at least know—to the very best we can, short of asking the insurance companies themselves—what the likely financial effect of these measures will be. That is why the amendments are put forward. As I said, I will test the will of the House of Assembly on the first of the two amendments and we will take it from there.

The Hon. M.J. ATKINSON: As it is the member for Mitchell's proposition, I ask him, first, does he think, like I, that it is extraordinary that he is willing to give to the Governor the power to suspend the laws passed by parliament and, by the way, will he be doing it for other legislation; and, secondly, does the Governor in refusing to proclaim this legislation need to take the advice of her Executive Council?

Mr HANNA: The Governor is not placed in an embarrassing position by this proposal because it is expressed as the will of the parliament. If my amendments are passed, then, quite properly, the Governor may inquire of her ministers as to whether the described report has been tabled in parliament. There is no sense of giving the Governor extra power or an extraordinary power: it is rather a restraint built into the system according to the will of the parliament. There is

nothing unconstitutional about it, there is nothing improper about it; and I know that governors from time to time do exercise their right, their prerogative, to inquire of their ministers whether certain measures have been taken, whether there will be a certain effect flowing from the passage of particular legislation and so on. Executive Council, from reports I have received, is not merely a rubber stamping exercise. Individual governors, depending on their interests, experience and advice, frequently do make those inquiries of their ministers. There is nothing extraordinary about that, although it is perhaps an unusual measure.

This is a very unusual manner of reforming something so fundamental as the law of negligence, because we do so in a blind faith, according to the way that the government would have it. The government says that the insurance companies have asked for this reform, and we know they will benefit financially. They have said to us as ministers around the country that this is the only way we can proceed so as to allow continuation of public liability insurance, according to the coverage that the community demands, yet, at the same time, we have the insurance companies publicly saying, 'We are enjoying good profits. We had a couple of lean years, but we are back in the black. We are enjoying our regular profits; we are back up to 15 to 20 per cent profit out of the premium taken in.' That is in the financial papers everyday. We have a contradiction that is unexplained. We have a government which has produced no promise, nothing solid at all from the insurance industry to suggest that there will be a benefit to the community arising from this legislation.

Quite clearly, there will be harmful effects on a very significant section of the community, namely, those injured in public places; and so it is really quite extraordinary that the parliament would pass legislation on the say-so of a major industry, while, at the same time, the major industry is giving a double message: one message to Her Majesty's ministers around the country and another message to the financial community in reporting their extraordinary profits. For the committee and the parliament to say, 'We would just like some information, we would like the best prediction we can have, at least one independent actuarial assessment before this actually becomes law' is no more extraordinary than the whole exercise in which we are engaged.

The Hon. M.J. ATKINSON: First, I want to tell the member for Mitchell and the committee that I am not voting for this legislation because insurance companies want it. The fact that insurance companies want it is entirely fortuitous. I think it is a well overdue change to an outrageous law of negligence. Secondly, since the member for Mitchell is the promoter of this amendment and not me, could I ask him what happens if the actuarial report is not tabled to his satisfaction in parliament and the Governor nevertheless proclaims the bill; what is the remedy?

Mr HANNA: As the Attorney-General would know from his knowledge of constitutional law, remedies are available throughout the commonwealth and the Westminster parliaments, should the correct manner and form of legislation not be followed. The Attorney might seek guidance from cases that have dealt with such controversies.

The CHAIRMAN: The member for Kavel.

Ms Breuer: Thank God, not a lawyer!

Mr GOLDSWORTHY: A past banker, yes.

The CHAIRMAN: It is not necessary for members to issue a disclaimer that they are not a lawyer or have not transgressed in any other way in their past life. It is becoming a custom in this house for members to get up and say, 'I am not a lawyer and I have not beaten my spouse.' It is not necessary.

Mr GOLDSWORTHY: I have one question to put to the member for Mitchell. I was not able to participate in the second reading debate and obviously do not intend to make a second reading speech, but I will make a few general comments. How long does the member for Mitchell think that the actuarial study or review would take? Would you consult with the Law Society? Obviously you would go to the insurance companies and ask them for facts and figures and you would have to do some research on how many cases are put to the courts in regard to these issues. I would think that it would be a long drawn out process.

As we all know, insurance companies are public companies. This is something we could look at or investigate after the legislation is passed, as insurance companies are public companies, they produce balance sheets that are audited and obviously are accountable to their shareholders. There is an opportunity for all and sundry to investigate the books of any insurance company. That is one point. It would be a very lengthy and time consuming process to undertake an activity such as the member for Mitchell is proposing.

Some members have espoused the notion of regulating the cost of insurance premiums. I am puzzled how that could come into effect because businesses in this country operate in what is regarded as a relatively open market. Speaking from experience concerning the banking industry, interest rates are generally dictated to financial institutions from the Reserve Bank. That is obviously to do with monetary policy and the commonwealth government has a role in that. However, the other fee structures banks and the like implement are really only determined by competition. If one bank is charging a higher fee for whatever service and another bank is charging a lower fee for whatever product range it might apply to, the customers will look to go to the financial institution that offers the best deal. That is what our whole economic model in this country is based on: competition.

I have said before in the House, when we have talked about public liability insurance issues and debated legislation introduced in the first year of this government in 2002 and also last year, that I personally believe that, with a progressive introduction and passing of this legislation, it will make it more difficult for legal practitioners to argue a case against insurance companies with the expected result that reasonably large compensation claims will be made. If we make that more difficult, and therefore make the insurance industry more attractive to other competitors, I believe there is an opportunity for other insurance companies (domestic or overseas) to come in and identify that there is a real market opportunity here. They can establish a base in this state or in this country and start writing a tremendous amount of business by acknowledging the benefits made by these legislative measures and offering a much more competitively priced insurance product.

As other members have alluded to, their constituencies have suffered from the skyrocketing insurance premiums. They are no different from my constituency. I have a file in my office that contains scores of letters from concerned volunteer organisations, local town hall committees and institute committees saying that the insurance premiums being charged for those institutes and halls often exceed the funding capabilities of those very small community organisations. I understand where the member for Mitchell is coming from. However, I think he is looking at the wrong end of the equation in trying to remedy the situation. Insurance com-

panies are receiving increased profits as a result of this legislation. However, I think there is an opportunity for an astute business operator to enter the insurance industry and start writing business.

Mr HANNA: I will start by saying that I never mind being accused of being on the wrong end of the equation because, when I was taught maths, it did not matter which side of the equation you were on; they are both the same. In relation to the member for Kavel's admission that this bill is about delivering more profits to the insurance company, I am grateful to him for his frankness. I only wish that the government was as honest. In relation to legal claims, I point out the common misconception about this bill, that it will mean less claims. It will greatly compound the number of claims taken on appeal to clarify what the law is.

This is not a law to clarify or to simplify; in many cases, it is a rewriting of the law, generally speaking with a bias against plaintiffs (injured people) which will be tested time and time again in the courts. If you can think of all of the court cases that have gone to appellate courts in Australia in the last 20 years, there will be just as many in the next 20 years to work out what the hell this means. Everyone knows that it is going to be harmful to the interests of injured people, but how and exactly what effect it will have will be worked out in the courts over many years.

Let us do away completely with the misconception that this is somehow going to simplify things or create market certainty. That is absolutely untrue. The only thing that we can be certain of is that it will mean fewer payouts by insurance companies. I have not done it yet, but I take the opportunity to declare my interest as a legal practitioner. I am confident of being here after the 2006 election but, if I am not, I may well be one of the barristers taking cases to court to work out what this material means.

On a philosophical level, I was very interested to hear the remarks of the member for Kavel because he highlighted his ideal of a competitive market, and I find it very interesting and offensive that, when the competitive market is working to the satisfaction of those who are in the business to make profits, nobody complains about how the market works among that group of people. However, when the profits are not sufficient, who knocks on the door of government and says, 'We need help. We need the law to be changed. We need a hand-out. We need a tax cut. We need a subsidy.'? It is those very people who say, 'We are not making enough profit.' Just as the member for Enfield has done, I commend the insurance companies and their lobbyists for the considerable work that has gone into persuading the federal Liberal government to initiate this lengthy round of reform to the benefit of the insurance industry.

That same paradigm applies, that is, the perfect competition until someone goes under. That is the other circumstance in which everyone comes knocking on the door of government, so when we have the failure of HIH or Enron or other perhaps less notable examples, the survivors, whether they be in the industry, whether they be claimants or people who deal with those corporations, come knocking on the door of government to say, 'Please can we change the law?' or, more importantly, 'Can we have some sort of financial softening of the blow?' I suppose that is what this legislation is.

To deal specifically with the point made by the member for Kavel relevant to this point, I expect that a proper actuarial report would take more than weeks but it should not take more than a matter of months and, in the scheme of things, especially bearing in mind that this stuff has already been passed by the Eastern States parliaments, it would not make a scrap of difference to the insurance industry in national terms if we were to delay the enactment of this bill by a few months.

Mr GOLDSWORTHY: The member for Mitchell said that when business starts running a bit rough, they all come knocking on the door of the government for hand-outs. That certainly did not apply when the ANZ Bank and the Westpac Bank posted the first loss in the history of their trading in 1992. They may have spoken to the government about it but I can assure the member for Mitchell that, at that time, the government would have said, 'Bad luck guys: you either sink or swim'.

Mrs Redmond: And the State Bank sank.

Mr GOLDSWORTHY: The State Bank is slightly different, and the member for Heysen raises another issue. The State Bank was guaranteed by the state government, so that had some quite different ramifications from the major trading banks, as the ANZ and Westpac are. I repeat: the commonwealth government would have said, 'You either sink or swim, and if your share price drops below a certain point you are a very good target for a takeover.' So, it was left up to the banks' own volition to plot a course of action.

The member for Mitchell's comments are not completely accurate. They might be accurate in terms of the collapse of HIH and the like; I did not necessarily study that. I know that a lot of people suffered losses. The government obviously implemented a fairly detailed inquiry into the collapse of HIH. I would be interested to know whether the member for Mitchell can tell me what assistance the government provided with respect to the collapse of HIH, because it certainly did not provide any assistance when those two major banks suffered losses back in the early 1990s.

Mr HANNA: I commend the honourable member for addressing an issue about which he clearly knows something, and that is in relation to banking in 1992. But we are dealing with the insurance industry now. Clearly, the insurance industry has been very effective in lobbying the federal Liberal government and, in turn, the state Labor governments to act on its behalf, in its interest, to change the law of negligence so that it will have reduced cost pressures. Admittedly, that arose after a couple of difficult years for the insurance industry in financial terms because of the factors that I have previously mentioned.

Ms CHAPMAN: The amendment is not one for which I will be indicating any support. I appreciate the sentiment of the member for Mitchell in presenting this amendment because, essentially, it seems to me that he is saying that unless there will be a direct benefit manifesting itself in a more accessible and affordable insurance outcome for the people of South Australia, and it is determined by a certain formula and process, this bill should not be proclaimed. I understand that. The opposition has viewed this bill as not to be judged on the basis of whether it will have the direct effect as proposed by the member for Mitchell—and, indeed, we are rather sceptical as to whether there will be a direct benefit in insurance premiums in the foreseeable future. We have carefully analysed whether there is some codification, some reform and some incorporation of recent common law judgments and also the introduction of some aspects to amend the law of negligence that will have a benefit in the long term in dealing with this area of the law.

It is fair and, I think, accurate to say (as the member for Mitchell and others in another place have said) that, if any

one group will have a diminished entitlement in the amount of claims out of this, it will be the plaintiffs. That is a fair assessment. However, it is one that is taken in the context of producing an affordable regime for the rest of the community. Whether it is done by government, whether it is done individually by the person who might be responsible for the behaviour that precipitates the loss or damage to the plaintiff or whether it is done by insurance companies hedging their bets and having insurance to cover it (and some groups in the community, of course, are forced to have insurance), that in itself is not a matter that we see as being necessary to look at. We have made an assessment (although we would have hoped for more amendment, it nevertheless has had some amendment) and, on balance, the bill that is presented is an important area of law reform that cannot be dismissed just because we cannot reach the peg of saying there is justification on the modification of insurance accessibility and affordability.

The second reason that we feel it is unnecessary to go down this track—and would probably have the effect of a significant delay in the operation of important law reform—is that this bill comes to us with an important amendment that has been moved in another place. That amendment is to require the Economic and Finance Committee to investigate and report to the parliament on the act's effect on the availability and cost of insurance to persons at the expiration of three years—that is, at the expiration as soon as practicable in that three year period after the passing of this legislation. The reason that has been incorporated is entirely consistent with what was put and passed as a similar three-year sunset clause, if I can paraphrase it as that, in section 7 of the Recreational Services (Limitation of Liability) Act which was passed in late 2002.

We have caused, and indeed forced, the government in that instance to have a sunset clause of three years with the assistance of other members in another place. That is an important aspect which we see as having the benefit of being able to call upon the Economic and Finance Committee to undertake that work. They may or may not use actuarial investigations for the purpose of making that assessment—I expect they probably will. Indeed, that is the charter that they will be given on the passing of this legislation and that they will need to report to this parliament on. If it is clear, at the expiration of that time, and on the report from the Economic and Finance Committee to parliament, that there has been no arrest or turning back in making accessible insurance, and there is still a serious problem out there amongst South Australians to obtain affordable insurance, (or obtain it at all) then, of course, it is up to parliament to review this matter again and to be able to address it. However, we in the Liberal party take the view that it is important to still independently assess the benefit of reform in relation to the law of negligence and not simply to dismiss that because it does not have any immediate and demonstrable capacity to establish that it will have an effect on premiums. For the reasons I have indicated regarding the three-year sunset clause, we will not be supporting the member for Mitchell's amendment.

Mrs REDMOND: Once again, I will be supporting the member for Mitchell in this particular quest because the amendment being moved by him seeks to address the very reason behind my opposition to this bill. As I have indicated to the house before, I am not opposed to the thrust and intent of this legislation, and I believe that overall it is probably good, but it is just that thus far nothing we have done has had any effect on the premiums being charged by insurance companies. The Treasurer, when he introduced this bill, simply said that if the insurance companies do not come to the party and bring the premiums down we will be very upset. Well, that is not enough. We actually have to do something to bring the premiums down. I support the member for Mitchell in trying to address the issue by forcing the bill to go to a stage where it will not commence these changes to the legislation unless and until there is an improvement in the situation with regard to insurance premiums.

The Hon. I.P. LEWIS: For the same reasons that the member for Heysen has given I, too, believe that in the absence of any comment to the contrary from the Treasurer and Deputy Premier, or any other member of the government, an actuarial report to the parliament will go a long way towards ensuring that we adopt a satisfactory approach to rapidly reduce the premiums that are being paid, or will have to be paid, by organisations comprised largely of volunteers throughout the community.

We all know what we seek to achieve, yet we have overlooked including in the legislation the means by which we can tell the public how we propose to achieve it, other than that we wish the market to work. However, the market will not work where there is a cartel. In the case of public risk insurance, there is clearly a cartel. There are so few insurers presently operating in the marketplace that they will not have to talk to each other at all. So they will not be in breach of the ACCC nationally: they will simply watch each other's behaviour as they continue to bleed us white.

The Hon. M.J. Atkinson: It is conscious parallelism.

The Hon. I.P. LEWIS: I have operated in markets. The Attorney makes a sincere interjection to help me come to an alternative conclusion to the one that I am presently compelled to accept. We are simply living in, if you like, cloud cuckoo land if we believe that the few insurers operating in this market will suddenly drop their premiums. South Australia is an insignificant part of their total market. They will continue to underwrite their risk elsewhere in that market by charging the same premiums here. None of them has any commitment to the communities of this state. All of them are driven by the profit motive to gratify the needs of their shareholders—and quite properly. But they do form part of, if you like, an oligopoly. It is not a formal cartel. There is no agreement between them. All they have to do is watch each other. And it will take at least three years, in those circumstances, for it to break.

I have otherwise made the remark that the government needs to bundle up all of the risks of all the properly conducted community organisations for which there are audited statements around the communities of which this state is comprised, saying that, 'Yes, we do have our annual general meeting. And, yes, the election of office bearers is democratic and it is open to any member to nominate any other member of our organisation to take office. And, yes, we are here not for profit for any one of ourselves or for our organisation but for the benefit of the communities in which we operate', whether it is the Pichi Richi Railway or the local Apex club wanting to run a fundraiser.

The only way we can do it, if we do not go this way, is to bundle up that risk through the state government and go into the wider marketplace internationally and take bids to underwrite it. And, when those bids come in, we will pick the best of them knowing that the corporation to whom we give the business can meet the costs if there is a claim, and knowing that we are not dealing with an organisation that is involved in any other activity. Altogether, that will put

downwards pressure on the premiums that are offered by the corporations (the insurers) that are operating in our marketplace. We will not only be doing a service to the volunteer organisations in the South Australian communities at large (those organisations that are comprised of volunteers) but we will also be showing the way for the rest of the nation in this legislation. No-one else has shown they have the balls to do it, so why can't we?

I am not asking the government to underwrite the risk; I am simply telling the government that it could act as a facilitator to bundle it up. That is why it makes sense to go down the path proposed by this amendment, because I do not have any assurance from the Treasurer that he will go down the path I am suggesting. I can get that assurance, as can the member for Mitchell and the member for Heysen, if we support the member for Mitchell's amendment to the legislation. Then the Treasurer will go back to the Treasury officers and say, 'Why can't we fix it? Why can't we make it right? Why don't we do this thing in the interests of our volunteer organisations?' In this state, I would have thought that all 47 of us in this house would agree that the community counts. If nothing else counts, that ought to. So much of what we have to offer in our developing tourism product, for instance, comes from organisations which are not-for-profit and they cannot continue unless they get this backing.

Mr HANNA: Of course I support the remarks of the Hon. Peter Lewis in his capacity as the member for Hammond. It does recall, for members of the house, the fact that last year, in private members' time, I moved a motion, calling on the government through the Office of Volunteers to compile a list of those organisations which would benefit from such a scheme as outlined by the member for Hammond and to go into the market via a broker and let the private sector (through a broker) do the work of getting insurance which would cover people for public liability throughout South Australia and undercut those who withdrew their services from the market for the sake of making greater profits.

Incidentally, that would also be in accord with the views put forward by the member for Kavel, because he was so keen to see the operation of competition in the market to the mutual benefit of consumers and service providers. So, that is clearly a solution, but the fact that the government opposed that motion in private members' time last year does, unfortunately, cast a light of insincerity on their professed motives to benefit the public through the progress of this legislation.

The committee divided on the amendment:

AYES (4)

Hanna, K. (teller)	Lewis, I. P.
McFetridge, D.	Redmond, I. M.

NOES (42)

Atkinson, M. J. (teller)	Bedford, F. E.
Breuer, L. R.	Brindal, M. K.
Brokenshire, R. L.	Brown, D. C.
Buckby, M. R.	Caica, P.
Chapman, V. A.	Ciccarello, V.
Conlon, P. F.	Evans, I. F.
Foley, K. O.	Geraghty, R. K.
Goldsworthy, R. M.	Gunn, G. M.
Hall, J. L.	Hamilton-Smith M. L. J.
Hill, J. D.	Kerin, R. G.
Key, S. W.	Kotz, D. C.
Koutsantonis, T.	Lomax-Smith, J. D.
Matthew, W. A.	Maywald, K. A.
McEwen, R. J.	Meier, E. J.

NOES (cont.)

O'Brien, M. F.	Penfold, E. M.
Rankine, J. M.	Rann, M. D.
Rau, J. R.	Scalzi, G.
Snelling, J. J.	Stevens, L.
Thompson, M. G.	Venning, I. H.
Weatherill, J. W.	White, P. L.
Williams, M. R.	Wright, M. J.

Majority of 38 for the Noes.

Amendment thus negatived.

The CHAIRMAN: The member for Mitchell has indicated that he will not be pursuing the rest of his amendment to clause 2.

Clause passed.

Clauses 3 and 4 passed.

Clause 5.

Mr HANNA: This is a very simple question. The amendment is to replace the name of the Wrongs Act with the title 'Civil Liability Act'. I make the point that the trend amongst lawyers—and, I would have thought, drafting people as well—is towards plain English. I would have thought that the Wrongs Act as a title is very clear and speaks for itself. It is about people doing wrong to other people, whether it be through physical injury or injury to their reputation or whatever. Why do we need to call it the 'Civil Liability Act'? Why do we have to get into this legalese when everyone understands what 'a wrong' is?

The CHAIRMAN: The Attorney might be able to answer when he returns to his seat.

The Hon. M.J. ATKINSON: Of course, Mr Chairman, only a cad refers to a member's location in the chamber, or his absence from it. However, now that I am back in my place: the title of the proposed act, as recommended by Ipp, is the title used by other jurisdictions. Personally, I am sorry to see the Wrongs Act title not used.

Clause passed.

Clauses 6 and 7 passed.

Clause 8.

Mrs REDMOND: I have one question of the Attorney in relation to the definition of 'non-economic loss' which appears at the top of page 6 and which provides:

> non-economic loss means—
> (a) pain and suffering; or
> (b) loss of amenities of life;

and so on. I just wonder why it is not worded 'and/or'. It seems to me that non-economic loss can be any one of those (a), (b), (c) or (d) elements, or any combination of those. It seems to me that the connector for them should be 'and/or'.

The Hon. M.J. ATKINSON: The clause is in the same form as the current law. 'Or' in this current clause means that a plaintiff does not have to establish all the items enumerated there; a plaintiff need establish only one of them, so 'or' is the proper word to use. I remind the member for Heysen that the expression 'and/or' is a barbarism and should be avoided in all circumstances. Indeed, in the Attorney-General's style guide for his department 'and/or' is prohibited. Instead of saying 'sailors and/or soldiers', it should be 'sailors, or soldiers, or both'.

Mrs REDMOND: In that case why does the definition not end with 'or any combination of the above'?

The Hon. M.J. ATKINSON: The member for Heysen's strong point is not English. In her question, she uses the phrase 'in relation to' when she means 'about'. These additional words proposed by the member for Heysen are not

necessary. English is clearer when fewer words are used. Less is more in these circumstances.

The CHAIRMAN: That sounds like a good motto for the committee!

Mrs REDMOND: It sounds like too great a temptation to get up to try to make the point again, which is that it seems to me that, on a plain reading of the definition as proposed, an assessment of someone's non-economic loss might be restricted to one of the items (a), (b), (c) or (d), when I believe the intention is that any combination of them—one or more—is appropriate.

The Hon. M.J. ATKINSON: It is the intention and it is the effect.

The Hon. I.P. LEWIS: Can I ask the Attorney to spell that out in such terms as I can hear and understand. Is it one or any combination of those factors, or is it one or other of those factors?

The Hon. M.J. ATKINSON: It is one or any. The member for Hammond was right the first time.

Clause passed.

Clauses 9 to 26 passed.

Clause 27.

Mr HANNA: I rise on a point of order, sir. Are we dealing with an amendment to insert new section 42(3), because, if we are, I do have amendments to earlier new sections.

Mrs REDMOND: I did not think we were that far, Mr Chairman.

The CHAIRMAN: We will take them in order. I have not seen any other amendments but, if the member for Mitchell wishes to move one, he is at liberty to do so.

Mr HANNA: I may be stealing the wind from the sails of the member for Heysen, but I ask that we deal with each of the new sections one by one rather than jumping from new section 31 to proposed new section 42. This is one of those clauses which contains a whole raft of new sections, each with different topics and issues. In my respectful submission we ought to deal with them one by one.

The CHAIRMAN: Is that the wish of the committee?

Mrs REDMOND: Yes.

The CHAIRMAN: So, in relation to clause 27, that is, the insertion of Part 6—Negligence, Division 1—Duty of Care, new sections 31, 32 and 33, and so on, do you want to deal with each of them line by line?

New section 31.

Mr HANNA: Yes. In relation to new section 31, I make an inquiry because this section has a provision in relation to intoxication. Is it correct that this was the result of an amendment in the upper house? If so, what is the effect of the amendment compared with what was originally in the bill?

The Hon. M.J. ATKINSON: It is as a result of an amendment made in another place under the proposed law. Normally a reasonable person would be taken to be a sober person, but an amendment was moved that a person taking prescription drugs in accordance with medical advice could be a reasonable person. For the purposes of the bill, the member for Mitchell will recall from the days when he worked with Chris Sumner in the first days of my drunks' defence efforts that this was always an exception to our bill. It has been imported from the criminal law into the civil law by amendment in another place.

Ms Chapman interjecting:

The Hon. M.J. ATKINSON: Because we are not all wise.

The Hon. I.P. LEWIS: Does that have the effect of meaning that people who get themselves intoxicated on alcohol, or get stoked up on amphetamines, or high on heroin, or stoned on hydrocannabinol, or otherwise affected by any other trafficable substance not prescribed by a medical practitioner to treat an illness or a condition from which they suffer are expected to accept responsibility for the consequences of being so disabled?

The Hon. M.J. ATKINSON: The answer to the member for Hammond's question is that the persons he was talking about will be held to the standard of the reasonable person in the civil law.

Mr HANNA: Does the effect of section 31(2) mean that people are, essentially, being punished in civil terms for something which might be more appropriately dealt with by the criminal law? In other words, if there are intoxicated people engaged in some public activity and they are injured in the course of that through the fault of another, what is the rationale—apart from punishment, which in my submission is more appropriate under the criminal law—to take away their right to compensation for the injury resulting from the wrongful act of another?

The Hon. M.J. ATKINSON: This clause is about defendants who are drunk, not plaintiffs who are drunk.

Mr HANNA: I think the Attorney has put me on the right track now. Thank you for that last response.

New section agreed to.

New section 32.

Mr HANNA: I move:

Page 10, line 28—Delete paragraph (b).

The purpose of this amendment is to take an unnecessary complication out of the law. I will read the subsection to enable members, in the course of the debate, to make sense of it. It provides:

> (1) A person is not negligent in failing to take precautions against a risk of harm unless—
>
> (b) the risk was not insignificant

That is leaving aside the other two conditions. It seems to me to be unnecessarily complicating to say that a person is not negligent in failing to take precautions against a risk of harm unless the risk was not insignificant. Why not just say that a person can only be negligent if they fail to take precautions against a significant risk? In any case, introducing this concept of significance or insignificance presents a great difficulty not only to the judges who eventually have to decide these cases but also to the lawyers who have to advise plaintiffs and defendants along the way. If we leave out paragraph (b), the subsection provides:

> (1) A person is not negligent in failing to take precautions against a risk of harm unless—
>
> (a) the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known);

And the other condition states:

> In the circumstances, a reasonable person in the person's position would have taken those precautions.

It seems to me that there is a fair argument to say that, where a risk is foreseeable—that is, it is a risk of which the person knew or ought to have known—and a reasonable person would have taken precautions, then our civil law should say that the person should take those precautions. However, it is not helpful to add a further condition that the risk was not insignificant. Let us do away with the endless argument, leave it to the commonsense of the courts, and leave the clause as it is, imposing a duty effectively if there is a

foreseeable risk against which a reasonable person would take precautions.

The Hon. M.J. ATKINSON: Mr Acting Chairman, how nice to see you back in the chair dispensing justice and goodwill. The Ipp committee emphasised the need to restate the law. Without this formulation, the court has no guidance at the point below which a risk can be disregarded. The honourable member has asked about proposed new section 32(1), why the bill is expressed in terms of a double negative 'not insignificant'. It has been argued that this means the same as 'significant' and should say so. It does not mean that and it has been adopted for reasons set out in paragraph 7.15 of the Ipp committee report. The report says:

> The phrase 'not insignificant' is intended to indicate a risk that is of a higher probability than is indicated by the phrase 'not far-fetched or fanciful' but not so high as might be indicated by a phrase such as 'a substantial risk'. The choice of a double negative is deliberate. We do not intend the phrase to be a synonym for 'significant': 'significant' is apt to indicate a higher degree of probability than we intend.

I point out that New South Wales, Queensland, Victoria, Tasmania and Western Australia have all adopted the same expression, no doubt for the same reason. I thank the member for Mitchell for his amendments and I hope he will be gracious enough to acknowledge their author, that outstanding and accomplished parliamentarian, the Hon. Nick Xenophon.

Mr HANNA: Yes, I would ask the Attorney to acknowledge that within the Ipp report itself this phrasing was recognised as causing some difficulty. Does the Attorney accept that as case law develops it will lead to uncertainty in the courts about exactly what it means? I acknowledge the good and solid work done by the Hon. Nick Xenophon in another place in respect of that amendment and subsequent amendments that I will move.

The Hon. M.J. ATKINSON: The answer is no.

Amendment negatived.

Mrs REDMOND: I take it that now that we have finished with the amendment to new section 32 I can ask some questions on it as it stands in the bill. I refer to the matter on which the Attorney just touched. To say that a person is not negligent in failing to take precautions unless (a), (b) and (c), (b) being not insignificant, seems a quadruple negative, not just double. Would it not be simpler to say that a person is negligent in failing to take such precautions if the risk was foreseeable? In that event I would leave the words 'not insignificant' or use the term 'not far-fetched or fanciful' and in the circumstances a reasonable person would have taken those precautions. Why not address it in the positive instead of the negative, because we end up with a quadruple negative on that drafting?

The Hon. M.J. ATKINSON: The Ipp committee thought of exactly this point and stated in its report why it was not going down the track now advocated by the member for Heysen. We have faithfully carried out the Ipp committee's report on this matter.

Mr HANNA: I move:

Page 10, lines 31 to 38—
Delete subclause (2).

There are a couple of serious problems with the proposed new section 32(2). First, there is the classic trap into which black letter lawyers fall of trying to pin down something which cannot really be pinned down in the pursuit of justice. As to whether a reasonable person should have taken precautions against a risk of harm, until now the courts have looked at what was a fair thing. You can say it one hundred different ways, but essentially the case law has developed over a long period and in each case a judge will look at what the individual defendant should have done in the circumstances.

The government in this subsection seeks to set out a list which the court must consider. I would have less objection to it if it was a list of relevant factors which the court had the discretion to consider. That would make sense as the parliament would then be giving guidance to the courts about factors that are likely to be relevant to the precise issue. It is another thing entirely to compel courts to run through a list of factors, some of which may be more or less relevant, or more or less weighted, in the consideration of the particular case before a particular judge at a particular time.

The other point about it is that there is an objectionable factor placed there; it is in relation to the social utility of the activity that creates the risk of harm. One can look at past cases and see, for example, that administrative units can not be compelled to do things which are economically unrealistic. Nobody expects every speed hump in the country to be luminously painted to avoid anyone having discomfort with it. The problem with saying that the court in every case, where the court is assessing if a person should have taken precautions, must consider the social utility of the activity that creates the risk of harm means that that particular factor is raised in significance. There are real problems there. For example, there are many dangerous but commonly enjoyed activities which have very little social utility. Go to the Royal Adelaide Show when it is underway at the Wayville Showgrounds and you will see a whole range of dangerous activities, the social utility of which is marginal, almost trivial, because it is just about kids having a bit of fun.

However, they are inherently dangerous activities because, on the rides and so on, there is obviously a risk of machinery not working or of inadequate maintenance causing some bits to fall off or someone to fall out. It was only recently that we had the Spin Dragon incident at the show. I believe that members of the community would be horrified to think a judge might be asked to consider the social utility of the provision of such an activity, and to tend to rule against plaintiffs (injured people) on the basis that the activity in which they engaged had little social utility. In other words, it is offensive to the general public to think that, in a horrifying incident where a number of innocent young people are shockingly injured in a fairground incident, they perhaps will have no relief because they were engaging in an activity of little social utility. That is the concern I raise about the inclusion of 'social utility' as a factor which courts must consider in assessing whether precautions should have been taken.

So, rather than play around with the wording within that subclause, I would rather put the amendment that the entire subclause (2) be taken out. If it is taken out we are left with the current law and lawyers, whether they act for plaintiffs or defendants, more or less know what that law is and can advise their clients accordingly, whether they be insurance companies or injured people; no one would be worse off for it.

The Hon. M.J. ATKINSON: The member for Mitchell is going off on a different frolic. He is not really attacking the government's proposal as it seems. He is trying to get rid of part of the established law of negligence that, as a plaintiff lawyer, he does not like in the course of debate on this bill. The member for Mitchell is trying to create a different common law in South Australia from elsewhere in the

English-speaking world. His trying to get rid of the negligence calculus which is already part of our common law. The negligence calculus is not an optional extra; it is not something that is introduced by the government or by the Ipp Committee. It is part of the existing common law. It is one he finds an obstacle to plaintiffs recovering against defendants, so he comes in here and tries to remove it. This, more than any amendment, needs to be rejected.

Ms CHAPMAN: I indicate that, as occurred in the other place, this amendment is opposed by the Liberal opposition. It is important to have this aspect clearly and concisely identified. What has happened in this bill in identifying the duty of care, that is, the standard of care and the precaution against risk aspect, is in some ways a rather crude attempt to codify and possibly will be seen down the track as being inadequate, but this aspect does need to be clear.

The Hon. Rob Lawson in the other place has made some inquiry to go beyond the rather extensive inquiry of the Hon. Justice Ipp to see whether some other wording might help overcome what is on the face of it a fairly cumbersome way of describing in proposed subsection (2)(d) the social utility provision. One would like to see it described in a potential net benefit way, and that was considered in the Tasmanian legislation. Rather than adopt the social utility component, the alternative was to look at the potential net benefit of the activity, which exposes others to the risk of harm. Nevertheless, that inquiry has not come up with anything better than that proposed by the Hon. Justice Ipp, and accordingly the opposition opposes this amendment.

Mr HANNA: Does the Attorney admit that, if this amendment were successful, we would be left with the common law to undertake the exercise which he refers to as consideration of the negligence calculus?

The Hon. M.J. ATKINSON: We admit no such thing. It is important that the court have some guidance. If the member for Mitchell got his way, the court would be without guidance, and we will not have that.

Amendment negatived.

Mrs REDMOND: If section 32(1), which deals with the precautions against risk, is successful, the measure will provide that a person is not negligent in failing to take precautions against a risk of harm unless the conditions set out under (a), (b) and (c) are met, namely, the foreseeability, not insignificant risk and a reasonable person would have taken precautions against the risk. In practice, will that mean that the plaintiff will then be put to proof of (a), (b) and (c) of subsection (1) as part of the plaintiff's case?

The Hon. M.J. ATKINSON: Yes, and why should it not be so?

Mrs REDMOND: I thought I had the prerogative of asking the Attorney questions without his asking me questions in this process. Can the Attorney delineate what he thinks might be the considerations contemplated by the phrase in brackets used in subsection (2), that is, '(amongst other relevant things)'? Subsection (2) sets out what the court is to consider in determining whether a reasonable person would have taken precautions against harm, and they are: the probability that the harm would occur if the precautions were not taken; the likely seriousness of the crime; the burden of taking the precautions to avoid the risk; and the social utility of the activity that creates the risk of harm. I accept that that is a reasonable summation of the law as it stands and how things are assessed under the law of negligence at the present time, but what 'other relevant things' are there to be contemplated?

The Hon. M.J. ATKINSON: Crikey, Mr Acting Chairman, you cannot win in this committee. On one side of the chamber we have the members for Enfield and Mitchell criticising the government for spelling out to the judges what the parliament wants the law to be. They say how ineffective that is and that you should really just leave it to the judges, that they will know how to apply it, that if you try to instruct the judges you will just create more doubt and more litigation and it will be a lawyers' picnic. Now we have another lawyer, this time on the other side, asking, 'What does it mean to leave this out, for the courts to consider any other relevant matter?'

The phrase is derived from the wording in the Ipp committee's recommendation No. 28. It is the same expression used in New South Wales, Victoria, Queensland, Western Australia and Tasmania. It is simply a catch-all to indicate to the court that, although the matters listed must be considered, there may be other relevant matters and that, if there are, these also should be considered. There is nothing sinister in this. It simply makes clear that the court is not forced to disregard any relevant matter. I would have thought that the members for Enfield and Mitchell would be delirious.

Mrs REDMOND: Consequential to that response, I ask the Attorney why proposed new section 33 (and I will not ask a question on it specifically) provides that 'the circumstances of the case to which the court is to have regard include the following' and then four options are listed? Surely, that is the more standard way of expressing the idea that there are factors that the court would normally take into account, and it clearly does not preclude it from taking into account other factors.

The ACTING CHAIRMAN (Hon. G.M. Gunn): Can I remind the member that she has gone far beyond the supplementary question, and she is testing the tolerance of the chair. I suggest that she bring her supplementary question to a conclusion very quickly, or she will not be heard.

Mrs REDMOND: That is the question, Mr Acting Chairman. Why the difference in the terminology between the—

The ACTING CHAIRMAN: Order! The member is out of order.

The Hon. M.J. ATKINSON: A wise ruling, Mr Acting Chairman. It seems that the member for Heysen's real vocation is as parliamentary counsel. She can have an opportunity to do that after the next general election.

New section agreed to.

New section 33.

Mr HANNA: I move:

Page 11, line 5—Delete 'a person of normal fortitude in the plaintiff's position' and substitute 'the plaintiff'.

In my submission, there is no need to refer to the hypothetical person of normal fortitude. I am concerned that it will make it more difficult for people with pre-existing vulnerabilities to recover damages.

The Hon. M.J. ATKINSON: I think that the amendment would actually narrow the duty of care not expand it. The member for Mitchell may not remember but, on the question of mental harm, I spoke at the ALP State Council three or four years ago.

Ms Chapman interjecting:

The Hon. M.J. ATKINSON: No. The member for Mitchell might have been there had he attended State Council, and I argued the position that I am arguing tonight. I did it before ever an insurance company wrote to me

because I believed that the current law on nervous shock was getting right out of control. Concern has been expressed in the house today that the reference to a person of 'ordinary mental fortitude' could prevent especially vulnerable people from bringing claims; and alas, this misunderstanding has dogged this provision. It may be helpful if I clarify it. The provision deals with the defendant's duty of care in cases of mental harm.

It is not about who can sue—it is only about when a duty of care arises. It answers the question: when must a defendant take care to see that his or her actions do not cause others mental harm? The answer is: when the defendant can reasonably foresee that those actions might cause harm to a person of normal mental fortitude. That is, when planning our actions, we do not have to consider what might be their effect on a specially sensitive person such as Mrs Tame in the recent High Court decision. We have to consider only how they would affect ordinary people. If an ordinary person might be harmed, then we owe a duty of care. This is a corollary of the general rule that you do not owe a duty of care about unforeseeable risks, only foreseeable ones. If we breach that duty, then any person who is injured can sue for damages and those damages will reflect the harm actually done, even if the person sustains unusual harm because of unusual sensitivity, like our acting chairman.

The Tame case is a good illustration of this rule. The High Court held that the police officer did not owe a duty of care not to cause mental harm to Mrs Tame by writing down an incorrect blood alcohol reading in the police record. This was because, among other things, he was not expected to foresee her unusual reaction. He was expected only to foresee the reaction of an ordinary person. I ask the honourable member to consider the difficulty we would be in if we had to consider, in every situation, how our actions might conceivably injure the most vulnerable person among the public.

Justice McHugh, one of my favourite High Court judges, in the Annetts case, expands on this in detail:

> Once the notion of reasonableness regains its rightful place at the front of the negligence inquiry, it must follow that a defendant is entitled to act on the basis that there will be a normal reaction to his or her conduct. The position is different if the defendant knows that the plaintiff is in a special position. But otherwise the defendant should not be penalised for abnormal reactions to his or her conduct. . . To insist that the duty of reasonable care in pure psychiatric illness cases be anchored by reference to the most vulnerable person in the community—by reference to the most fragile psyche in the community—would place an undue burden on social action and communication.
>
> To go further and require the actor to take steps to avoid potential damage to the peculiarly vulnerable would impose an intolerable burden on the autonomy of individuals. Ordinary people are entitled to act on the basis that there will be a normal reaction to their conduct. It is no answer to say that the defendant ought to be liable to peculiarly vulnerable persons because the defendant is guilty of careless conduct. The common law of negligence does not brand a person as careless unless the law has imposed a duty on that person to avoid carelessly injuring others.

Mr Justice McHugh says later in the judgment:

> To repudiate the normal fortitude test then is to repudiate the touchstone of the common law doctrine of negligence—reasonable conduct. To repudiate it also ignores the rights of citizens in a free society not to have their freedom of action and communication unreasonably burdened. Most motor vehicle accidents could be avoided if cars were driven at a speed less than 10 kilometres per hour. But to impose such a standard of care on drivers would unreasonably hamper the speed of travel, increase congestion on the roads and burden the economy with unnecessary increases in the cost of transporting goods and persons. In the law of nervous shock, as in other areas of negligence law, the notion of reasonableness should condition the duty to exercise reasonable care for the safety of others.

Some commentators have claimed that the bill on this point conflicts with the eggshell skull rule. This is not so, and demonstrates their misunderstanding. That rule is a rule about the assessment of damages. It says that, if the defendant is liable to the plaintiff, then the defendant must pay for the damages caused by his or her negligence even if the damage is much more extensive than the defendant might have expected because the plaintiff has some special vulnerability. That will continue to be the law under this bill.

So, the section does not mean that if you are specially vulnerable you have no claim. Far from it. If you are owed a duty of care and it is breached, causing your injury, you can claim even if your injury is far beyond that which a person of normal fortitude would suffer. Rather, the normal fortitude test is used to work out what the defendant is expected to foresee and guard against and, thus, whether a duty of care arises in the first place. This is just the approach that the High Court took in the Tame case. If the honourable member has a difficulty with this bill on this point, she has exactly the same difficulty with the High Court's decision—

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: No, I am not going to let the member for Heysen get away with this. This is exactly the point she raised during the second reading debate and it has now been raised in committee by the member for Mitchell. So don't you pretend, member for Heysen, that you did not raise this point.

Mrs REDMOND: Mr Acting Chairman, I thought the use of the term 'you' is not allowed across the chamber.

The Hon. M.J. ATKINSON: It is not, and I apologise. Rather, the normal fortitude test is used to work out what the defendant is expected to foresee and guard against and thus whether the duty of care arises in the first place. On this point, the bill simply proposes to restate that rule in statute. And, if you raise this point again, I shall have to tort you a second time.

Mr HANNA: I advise the committee that I propose to withdraw my amendment. I was, in fact, persuaded by the Attorney-General's answer in about the first minute but, of course, he was so much enjoying giving his answer that he must be permitted that indulgence.

Progress reported; committee to sit again.

SITTINGS AND BUSINESS

The Hon. K.O. FOLEY (Deputy Premier): I move:

That the time for moving the adjournment of the house be extended beyond 10 pm.

Motion carried.

STATUTES AMENDMENT (INTERVENTION PROGRAMS AND SENTENCING PROCEDURES) BILL

The Legislative Council agreed to the bill with the amendments indicated by the following schedule, to which amendments the Legislative Council desires the concurrence of the House of Assembly.

No. 1. Clause 4, page 3 line 13—After 'behavioural problems' insert:

(including problem gambling)

No. 2. Clause 6, page 5, line 22—After 'behavioural problems' insert:

(including problem gambling)

No. 3. New schedule—After clause 14 insert:

Schedule 1—Review of intervention program services

(1) The Minister must, as soon as practicable following the 12 month anniversary of the commencement of this Act, appoint an independent person to carry out an investigation and review concerning the value and effectiveness of all services included on intervention programs (within the meaning of the *Bail Act 1985* and the *Criminal Law (Sentencing) Act 1988*) in the 12 month period following the commencement of this Act.
(2) The person appointed by the Minister under subclause (1) must present to the Minister a report on the outcome of the investigation and review no later than 6 months following his or her appointment.
(3) The Minister must, as soon as practicable after the receipt of the report under this clause, cause a copy of the report to be laid before both Houses of Parliament.

STATUTES AMENDMENT (COMPUTER OFFENCES) BILL

Returned from the Legislative Council without any amendment.

LAW REFORM (IPP RECOMMENDATIONS) BILL

Debate in committee (resumed on motion).

Mr HANNA: I move:

Page 11, line 9—delete "is to" and substitute "may"

I simply make the point, as previously, that this parliament should not be so prescriptive in terms of the work of judges coming to adjudicate these cases.

The Hon. K.O. FOLEY: I disagree with the amendment.

Amendment negatived.

Mr HANNA: I move:

Page 11, lines 12 and 13—delete subparagraph (ii)

This is a factor among this series of factors which the government intends to be mandatory topics of consideration for judges in these cases of so-called pure mental harm. This particular factor deals with whether or not the plaintiff witnessed at the scene of an accident a person being killed, injured or put in peril. The difficulty I have with that is that there are, in these cases where people are killed or injured in a public place, close family members of plaintiffs who are distressed, not so much by what they see at the scene of an accident but by the aftermath. Family members in these cases are often asked to identify the body of a deceased person. They often visit the injured person, either at the scene of the accident if they are called there or very shortly thereafter at a public hospital; and there they have the opportunity to witness, perhaps, shocking injuries, decapitation or some such horrific sight.

So, for the parliament to place such an emphasis on the plaintiff's witnessing the accident itself—or rather the effects of the accident itself—at the very scene is, in my submission, going to do a disservice to those who are genuinely distressed at the horrific sight of their loved one when they view them shortly after the accident at, for example, a hospital, in an ambulance or, perhaps, after a death, in the morgue. That is my objection to this factor being cast in stone, as it were, in terms of the mandatory nature of this particular subparagraph.

Amendment negatived.

Mr HANNA: I move:

Page 11, lines 16 and 17—Delete subparagraph (iv)

Again, we have a factor which this new section would render a topic of mandatory attention for judges in these cases of pure mental harm. The factor relates to whether or not there was a pre-existing relationship between the plaintiff and the defendant. I am not saying that that factor, the previous factor or any of the factors to which I have referred are irrelevant. Clearly, they are relevant to doing justice in some particular cases. My objection is that by setting them into a mandatory check list, as the government would wish in this manner, an undue weighting is given to whether or not there was a pre-existing relationship between the plaintiff and the defendant.

It is conceivable that a police officer or a nurse, for example, might come across the scene of a particularly horrific car accident, or some other type of accident, and see a person's body split open, or brains scattered around or a decapitation. It would be offensive to me and the community if such people were to be excluded from compensation on the basis that they did not have a pre-existing relationship with the injured person.

Mrs REDMOND: I have listened to the argument put by the member for Mitchell and, in making up my mind about whether to support or otherwise the proposed amendment, I ask the Treasurer: what is the point of subparagraph (4)? I understand that the amendment put by the member for Mitchell is to delete subparagraph (4), which basically says that, when you are dealing with a case of pure mental harm, the court is to have regard to a number of factors, including whether or not it was suffered as a result of sudden shock and whether the plaintiff actually witnessed the death or injury or someone being put in peril, and the nature of the relationship between the plaintiff, the claimant and the person they saw injured or put in peril. I would like some clarity regarding the relevance of whether there was a pre-existing relationship between the plaintiff who is claiming mental harm and the defendant who presumably caused it.

The Hon. K.O. FOLEY: In my view, a good illustration is found in what is commonly referred to as the Annetts case, which was decided by the High Court in conjunction with the case of Tame.

Mr Hanna: One out of two ain't bad.

The Hon. K.O. FOLEY: One out of two?

Mr Hanna: Yes; they won one and lost one.

The Hon. K.O. FOLEY: Mr and Mrs Annetts were the parents of James, a 16-year-old lad who died tragically when left with a companion of a similar age in charge of a remote outpost on a cattle station in the Kimberleys. The High Court was called upon to decide whether the station owners owed a duty of care to Mr and Mrs Annetts to protect their son. Two factors weighed in favour of finding a duty of care, the first of which was the relationship between Mr and Mrs Annetts and the deceased child, James. They were his parents—people close to him who might reasonably be expected to sustain mental harm if harm came to James. That is the factor denoted by subparagraph (iii): the relationship between the person claiming damages and the person killed, injured or put in peril.

Secondly, the court looked at the relationship between the station owners and Mr and Mrs Annetts. The station owners had assured Mr and Mrs Annetts that they would take care of James and supervise him properly. The parents had relied on that assurance in agreeing to let James go. This is an example of the factor denoted by subparagraph (iv)—the pre-existing relationship (in this case, one of reliance) between the plaintiff and the defendant. If the plaintiffs in this case had not been James's parents but his neighbours, or if the station owners had refused to give Mr and Mrs Annetts any assurances about James's safety, the result might have been different.

This provision, then, is entirely consistent with the factors that weighed with the High Court in that case.

Amendment negatived; new section agreed to.

New sections 34 to 36 agreed to.

New section 37.

Mrs REDMOND: I seek some clarity about the way in which proposed new subsection (1) will operate. It provides that if a defendant raises the defence of volenti non fit injuria and the risk is an obvious risk, the plaintiff is taken to have been aware of the risk. Who decides whether it is an obvious risk? Is that something that the plaintiff will have to plead and prove, or is it something that the defendant will have to rely on as part of the defence of volenti non fit injuria? When that defence is raised, saying, 'You voluntarily assumed this risk?' does the defendant at that time have to raise as part of that defence that the risk was obvious under this new subsection?

The Hon. K.O. FOLEY: Whether it is obvious is clearly a fact for the court to determine, and the defendant would seek to prove that in the court. My adviser should be giving the answers. We should have that system, but then we would be irrelevant!

Mr HANNA: It would be possible for me simply to oppose new sections 36 to 39. However, I have an amendment on file that does just that, and it is a shorter way to deal with those four new sections. I move:

Clause 27, (new Part 6 Division 3—Assumption of risk (new sections 36 to 39)), pages 12 and 13—

Delete Division 3 (comprising the Divisional heading and sections 36 to 39).

This amendment deletes the entire division comprising the heading and the four new sections. In so doing, I state that this is one of the more significant changes rendered by this bill. I would call it a fundamental alteration to the law of negligence. I say that it will make the prospects of success much more difficult for many plaintiffs in South Australian courts—and that means injured people who are mums, dads and children.

To limit circumstances of recovery where there is an obvious risk is to present a huge obstacle to those wishing to recover for their injuries. The essential question I ask the Treasurer, who is now here to answer questions about this bill, is: what is meant by 'obvious'? Ironically, that is not at all obvious. It is quite clear that this will lead to one or possibly several High Court cases as we, as a community, grapple with just what it means when the defendant says that there was an obvious risk that they faced but, nonetheless, they proceeded.

The problem is that one can think of countless everyday examples from sport, from recreation and from a wide range of leisure activities where the risks are 'obvious', to use the word in the bill. Of course, we are talking about risks which may be obvious even though of low probability. That is what the proposed new section 36(3) provides. For example, even if you jump off the end of the jetty where you have seen many other people do it, nonetheless there is a risk that you will dive straight to the bottom. Even in three metres of water, there is a risk that there might be a shark in the water. It is not clear to me what is obvious and what is not.

However, if we are to exclude the possibility of people recovering from their injuries in circumstances where they are skylarking about or undertaking everyday normal recreational or sporting activities, we are altering radically the law of negligence, the insurance industry and the way in which we go about our activities. The government and others—and not just those speaking on behalf of the Labor government but also on behalf of the Liberal opposition—have said that there is a litigation explosion and that we are adopting the American culture's readiness to sue.

I find that this clause represents change of culture to a more heartless culture because in a year or two a lot of injured ordinary people out there will get smashed up down at the beach, playing sport or walking in the Hills. They will go to their lawyer and say, 'I have shattered legs, a broken arm and my body has been gashed open, and I think it is their fault.' The lawyer will have to advise them, 'Under the amendments that the Labor governments around Australia put through, you will probably will not be able to recover. We don't know what it means yet. We can take your case to court and it might have to go to the High Court, but you probably will not recover, so put it down on Medicare and try to forget about it'. I think that is unfair; hence, the amendment.

The Hon. K.O. FOLEY: I refer the honourable member to new section 36, 'Meaning of obvious risk', which provides:

(1) For the purposes of this division, an obvious risk to a person who suffers harm is a risk that, in the circumstances, would have been obvious to a reasonable person in the position of that person.
(2) Obvious risks include risks that are patent or matters of common knowledge.
(3) A risk may be obvious even though it is of low probability.

The committee divided on the amendment:

The CHAIRMAN: There being only one member for the ayes, I declare that the amendment is negatived.

New section agreed to.

New sections 38 and 39 agreed to.

New section 40.

Mr HANNA: Would the Deputy Premier outline the variance between the standard of care as set out in the new section 40 and the current common law?

The Hon. K.O. FOLEY: We think it is a restating of the common law to reduce the temptation of the courts to operate with hindsight.

New section agreed to.

New section 41.

Mr HANNA: I have two amendments in relation to new section 41, and they are both quite different and important. I move:

Page 13, lines 37 and 38—

Delete 'by members of the same profession as competent professional practice' and substitute:

as best practice by members of the same profession

What I object to on behalf of those people who, in future times, will be injured at the hands of professionals is that standard which is set by the opinions of the mates of the professional who does the wrong thing. In this hypothetical case we have a professional who maltreats someone—it might be a surgeon or some other kind of professional—and that person, to some extent, is careless, and so the injured person takes that case to court. What this proposed change to the law does is to say that the court will look to the opinions of members of the same profession in a competent professional practice. It might be thought that this happens in practice, anyway, and, to a large extent, that is true, except that it sets the bar at the orthodox thinking in whatever profession it might be.

In terms of medical negligence that is particularly important because we all know that, over time, there will be new methods of healing and surgery; that is, what is unortho-

dox today could become orthodox tomorrow if it works and it is safe. There is a real danger in codifying an insistence upon asking for the opinion and relying on the opinion to set the standard of care of other professionals who currently are in the mainstream in that field of endeavour. By definition, practically they will be orthodox in their practice at that particular profession. It is particularly concerning to think that a person who has unorthodox methods, even though they might work perfectly well most of the time, will be judged in the way put forward in the legislation. In essence, there is no need for a change to the law in respect of this matter.

In practice, judges do consider the relevant medical experts in the field. However, they have a discretion in how to weigh that evidence, and so there might be three medical experts who say, 'Our mate who is said to have been negligent, we would have done just the same thing: it is what we do everyday', but there might be a very persuasive medical expert who says that those four medicos are wrong and have been doing the wrong thing. In other words, the just result might be going against what mainstream practitioners or practitioners with an orthodox style of operation would consider. It is much safer in the interests of justice to leave the law as it is, hence the amendment.

Amendment negatived.

Mr HANNA: The Deputy Premier did not respond to the points I made in moving my amendment. I presume he agreed with them, even though he did not support them when it came to calling out how he was going to vote. If there is anything wrong in what I put forward I would appreciate the guidance of the Deputy Premier, otherwise I will acknowledge that the argument has considerable force.

The Hon. R.J. McEWEN: On a point of order, sir, how can we revisit an amendment that has already been put?

Mr Hanna: No, my amendment's lost, but your amendment's still there.

The CHAIRMAN: The committee stage is somewhat flexible. In order to get members home before it gets too dark—

The Hon. K.O. FOLEY: I will quickly read something, and I apologise because I did not realise the honourable member was wanting an explanation—my mistake. This would remove the proposed offence based on Ipp recommendation 3. It is of no use to provide for a defence of compliance with best practice. The standard required by law has never been perfection, only reasonable care. There is no justification for raising the standard beyond reasonable care. There is a well-known but undesirable tendency for the law of negligence to gradually creep towards the standard of perfection, as does strict liability. That is an error. Professionals like other human beings cannot be expected by law to deliver perfection. The law does and should expect only reasonable care. That is a standard that can be met by everyone. It is a flexible standard that can take into account particular circumstances. It allows for the difference, for example, between working in a well-equipped city hospital and working in a remote community.

The defence of best practice has no work to do and no place in law that requires only reasonable care. The Ipp report recognises the limitations of the Bolam test. In fact, the provisions it recommended were designed to remove the deficiencies of the Bolam test, hence the provisions in the bill before us. The government therefore opposes this amendment.

Mr HANNA: I commend the Deputy Premier on working so closely with the Leader of the government in the Legislative Council since they both had precisely the same thing to say in relation to this amendment which, after all, was moved by the Hon. Nick Xenophon in another place.

The Hon. K.O. FOLEY: Same response for the same amendment: sounds fair to me.

The CHAIRMAN: The Treasurer has shown that he has an outstanding legal mind.

Mr HANNA: I move:

Page 13, line 40—Delete 'irrational' and substitute 'unreasonable'.

This is a different point but extremely important because the Ipp recommendation and the government's move in this regard makes it extremely difficult to surmount that body of orthodox opinion to which I just referred. It means that the court has to go so far beyond orthodox thinking or the opinion of a group of a particular professional's mates to consider that the opinion is irrational before a finding for the plaintiff can be made. This raises the bar considerably for the plaintiff and, again, we will have people missing out as a result, people who currently in all justice would be receiving compensation for the wrong done to them by negligent professionals. The amendment, which seeks to replace 'irrational' with 'unreasonable', simply gives the court the task of assessing whether the medical experts before the court are reasonable in the arguments they present.

There will not be many cases where a body of experts giving expert medical opinion all give irrational evidence; that is an extraordinary barrier to a plaintiff's claim. It may be that that body of professionals is giving unreasonable evidence. For example, it may not be taking into account a new discovery in medical science. It is not too much for a judge to say that the opinion is unreasonable in that kind of example. At the very least, I ask the Deputy Premier to acknowledge that the use of the word 'irrational' is significantly raising the bar for plaintiffs.

The Hon. K.O. FOLEY: Is it or is it not? This is a question that we could debate for hours. It really is a subjective question, is it not? The word 'irrational' is used so that we do not have the court being the arbiter between two competing bodies of learned opinion. Surely that is obvious.

Amendment negatived.

Mrs REDMOND: I would like to ask a question about 41 now that we have finished with its amendment. I would like to ask the Treasurer what is meant by the term 'professionals'?

The Hon. K.O. FOLEY: It will, of course, have its natural plain English meaning. It is a matter to which the government gave some thought. The view was taken that it may be best to leave the term undefined. Victoria has defined the term to mean 'an individual practising a profession'. New South Wales, Queensland and Tasmania have also used the expression 'a person practising a profession'. The honourable member may think that these definitions do not take matters much further because the real problem is to define the profession. The government intends for the term to have its natural meaning, not confined, as it once was, to law, medicine and divinity, but used in the more general sense that it now has. The member for Heysen suggested a definition along the lines of 'recognised Medicare providers'. Although that might be adequate for doctors, this provision is not confined to doctors, but covers practitioners of other professions such as lawyers, accountants, engineers, architects and others who do not have Medicare registration. In practice, the government does not think the absence of a definition need

cause too great a difficulty, because in relation to the proposed offence, it will not be possible for every occupation to identify widely held views about proper professional practice. If not, the defence is not available.

Mrs REDMOND: In relation to the Treasurer's answer—and I appreciate that the definitions used in the other states really do not take matters any further—if one is, for instance, an osteopath or an aromatherapy expert, do they come under section 40 or section 41? Is a separate standard of care imposed and will there be endless argument about which standard of care applies to someone providing a service to another for fee or reward?

The Hon. K.O. FOLEY: They are not different standards of care. It is just that section 41 gives a defence. It is pretty obvious.

Mr HANNA: The Deputy Premier said that he was concerned about judges being asked to decide between two bodies of opinion.

The Hon. K.O. Foley: Two bodies of widely held opinion.

Mr HANNA: I thank the Deputy Premier for his assistance. When we go further into proposed section 41, I see that in the contemplation of the section there could be two bodies of widely accepted opinion. Is it not the case that, in light of subsections (3) and (4), it could be that the very exercise that the Deputy Premier found objectionable is still going to be carried out under the new law?

The Hon. K.O. FOLEY: I do not agree. In fact, I reject it flatly.

New section agreed to.

New section 42.

Mr HANNA: I move:

Pages 14 and 15—

Delete Division 5 (comprising the Divisional heading and section 42).

This is the section of the bill dealing with the liability of road authorities. It is my proposal to scrap this altogether, because it represents winding back the clock a considerable way, and there are real practical implications. This means that there will be less pressure on road authorities throughout the state to take proper care of their roads. There will be less pressure to take the sort of care of their roads that the community expects. We all understand that not every road in South Australia can be a sealed, four-lane highway. That would be nice but it is just not going to happen.

An example was given earlier in the debate this afternoon when the member for Light referred to a lady driving down a road that had a number of potholes. What the government seeks to go back to is the situation where a driver has to take the entire responsibility for the situation in which roads are poorly or shabbily kept, kept in such a way as to create a danger, and that is unacceptable to the community. We know that the community does not really expect all the roads throughout the state to be perfect, as I said.

But there is an expectation that road authorities will take reasonable steps to maintain, repair and renew the roads that they have to look after. It is a truly unfortunate step backwards, not just for the particular plaintiffs who run off the road because an appropriate sign has not been put up at a sharp downhill bend, but because there will be less economic pressure on road authorities throughout the state to do their job reasonably and properly.

The Hon. K.O. FOLEY: I am happy to respond, but I would be repeating, in large part, what has been said in another place. Would the member like me to respond?

Mr HANNA: If the Deputy Premier could summarise the argument, that would be good.

The Hon. K.O. FOLEY: I think the leader in the other place (Hon. Paul Holloway) could not have said it any better. He started off by saying:

> It is true that the common law surrounding the rule has been academically criticised, just the same as it embodies an important principle. The principle is that it is for governments and not for the courts to determine how public money shall be spent.

As Treasurer, I could not agree more. The Hon. Paul Holloway continued:

> Behind the rule was the reasoning that a statute that conferred powers on a public authority to control and maintain roads should not be construed as giving rise to a private right of action in tort for failure to exercise those powers unless such an intention was clearly evident from the statute. This state of the law left it up to the relevant authority to decide what road work should be undertaken and how much money should be spent on road maintenance, compared with competing obligations such as the many obligations of a local council. Without the immunity, it might be that a very substantial part of an authority's budget would have to be diverted to this use to minimise the risk of a suit.

I could continue. Is the member satisfied with that explanation?

Mr HANNA: Can I ask a question in relation to that? It seems to be the government's position that road users simply have to be on their own lookout. If they are injured as a result of a poorly repaired or poorly maintained road, it is entirely on their own shoulders. A couple of questions arise, the first of which relates to education. Will there be any government education program that gets the point across to people that there is no point complaining, in a legal sense, about roads that are clearly inadequate? Secondly, is it realistic to say that the remedy is political? If I am driving through the northern part of the state, is it going to do me, as one individual, any good to campaign for a better maintained road with the local authority when I do not live there and I will probably not travel there again? I am suggesting to the Deputy Premier that it is just not realistic to suggest that the remedy to woefully inadequate maintenance of local roads—or state roads, for that matter—is political rather than through the courts.

The Hon. K.O. FOLEY: Why do we have governments? We have governments to build and maintain roads and to make judgments as to how we spend money. It is not for courts to be dictating to governments how and where money should be spent.

Mrs REDMOND: I have some sympathy with the point made by the member for Mitchell, because my reading of this proposed section is that it will reinstate the ancient principle of the highways authority never being held liable for mere non-feasance and only for actual misfeasance.

The Hon. K.O. Foley: Correct.

Mrs REDMOND: Over the last several years, at least, there have been some inroads against that ancient principle, and we are reverting to the old system. My concern is this. Subsection (1) provides that a road authority is not liable in tort for a failure, firstly, to maintain, repair or renew a road—no problem with that. Subsection (1)(b) provides:

> to take other action to avoid or reduce the risk of harm that results from a failure to maintain, repair or renew a road.

I wonder whether that does not leave us with the situation where, for instance, if a bridge is washed away and the council chooses not to put up any warning sign that it has failed to take that action under paragraph (b); therefore, it is not liable in any way in negligence. Notwithstanding that the council has been aware that the bridge has washed away and

that considerable danger is likely to result but, if it fails to take any action, it is not liable.

The Hon. K.O. FOLEY: Paragraph (b) is there to prevent paragraph (a) being evaded.

Amendment negatived.

The Hon. K.O. FOLEY: I move:

New section 42(3), page 15, lines 4 and 5—
Delete these lines

In another place, this bill was amended so that clause 42 restoring the highway immunity rule would expire two years after its commencement. This amendment would undo that so that the highway immunity rule would remain indefinitely. The government is aware that in Victoria work is progressing towards new road management legislation. In summary, the legislation would permit road authorities such as local councils to adopt road management plans for their areas. A plan would set out what the authority must do by way of inspection, maintenance and repair of local roads. In effect, the plan would set the standard of care that the authority must meet at law. If the authority were to be sued, proof of compliance with the plan would, generally speaking, establish that the authority was not in breach of its duty of care.

This government is interested in the proposals in Victoria and will monitor them to see whether they might, in the longer term, provide a useful model for South Australia. However, it is quite unrealistic to think that the answer to that question will be known within two years. The Victorian proposal is not even law yet. A bill is likely to be introduced into the Victorian parliament early this year and, if passed, the Victorian government expects that the new laws will commence on 1 July 2004. The provision that restores the highway immunity rule in Victoria will expire on 1 January 2005, so the new system will only affect claims arising after that date.

The proposed new system is far from simple—it entails many new processes. Roads will need to be registered on the register of public roads. Councils will need to decide whether to adopt road management plans which are not compulsory or rely on the general law of standard of care. If a council decides to adopt a plan that would need to be tailored to local needs and resources, there will be considerable work in devising it. It will also take some time from the expiry of the present immunity on 1 January 2005 for claims to arise and be brought as litigation under the new law. We all know that it is not uncommon for litigation to take one to two years or more to complete. All the lawyers in this chamber would know that.

It will therefore be some years after the expiry of the immunity in Victoria before one can gather the information needed to evaluate the success of the new law. Will it produce satisfactory standards of road safety? Who knows? What volume of claims will arise following the removal of the statutory immunity? Who knows? What will be the effect on the resources of local government and its ability to meet its other responsibilities? A sensible evaluation of the Victorian model answering these and other questions cannot be expected until the new system has been operating for some years. It is quite unrealistic to think, as the amendment added in another place assumes, that we can know these answers after the Victorian system has been operating for only 18 months.

The government therefore thinks that it is unreasonable to put a two-year expiry date, or any expiry date, on this provision. If the parliament is satisfied that the highway immunity rule needs to be retained, at least for the moment, then we should legislate simply to retain it. It can always be reviewed and amended at any time in the future. It can be replaced with a different regime if and when it is determined that it would be in the public interest to do so. This will allow proper and prudent long-term evaluation of the results of the Victorian experiment. I remind members that Queensland and New South Wales have restored the highway rule indefinitely. The proposed amendment therefore would remove the provision that the immunity would expire after two years. Its effect would be that the immunity rule would apply indefinitely. Again, I appeal to members, particularly the opposition, because this is an attempt to get some national consistency. This is the direction that Senator Coonan wants us to take. I would ask members to support the government's amendment. The point was well-made but in this instance the government will insist on its removal.

Ms CHAPMAN: The opposition opposes this amendment. Whilst the opposition agrees that there is some justification for the effective reinstatement of the common law position as it stood until 2001, the government's proposal under this amendment to delete the two-year sunset clause would effectively not only restore the common law position but also be quite contrary to the whole of the recommendations in the Ipp report. It would have the effect of giving back to the government a common law position that it had enjoyed without taking any of the responsibility by way of a policy decision defence to protect that.

Interestingly, section 2 sets out quite clearly that this is an act to bind the Crown. It provides:

> This act binds the Crown in right of South Australia and, so far as the legislative power of the Parliament of South Australia permits, the Crown in all its other capacities.

To restore this highway immunity provision, or rule, would fly directly in the face of that general statement.

I refer to what was published by the government in its review statement which preceded the original proposal in the bill. In its discussion paper, it said:

> In summary, Ipp proposes that where a defendant is sued for alleged negligence in the exercise or non-exercise of a public function, it can defend by showing that the exercise or non-exercise of its powers was based on a policy decision on economic, social, or like policy grounds. He also proposes that a public functionary can be liable for injury damages for the negligent exercise or non-exercise of a statutory public function only if the provisions and policy of the relevant statute are compatible with the existence of such liability.
>
> As to the proposed defence, the reasoning is that, because the authority has both an obligation to discharge statutory functions and a limited budget, in deciding how to carry out its functions, it must be allowed to allocate its budget in accordance with its policies and priorities. This may mean that it chooses to carry out some functions ahead of others, or to take action in one area and not another. This is a governmental decision, not a decision to be made by the courts.
>
> The proposed policy-decision defence would not be generally available to the authority in all its activities. It should apply only where the alleged negligence consists in the performance or non-performance of a public function. By this, Ipp means 'a function that required the defendant to balance the interests of individuals against a wider public interest, or to take account of the competing public demands on its resources'. He notes that whether a function is 'public' in this sense requires a value-judgment to be made by the court. It is possible that not every statutory obligation of the authority is a public function. Ipp also points out that the policy-decision defence could be available not only to a public authority, but to a contractor engaged by the authority to perform the 'public' function.
>
> The effect of the defence would be that the public authority would not be liable for an injury alleged to have been caused by the negligent exercise or non-exercise of a public function, if it had taken a policy decision to act in that way. However, Ipp proposes an

exception for the case where the court finds that the authority's decision was so unreasonable that no reasonable public authority could have made it.

As to the compatibility principle, this is similar to the present law. The existence and content of a duty of care arising from the performance of statutory functions will be determined by the court having regard to the provisions of the statute.

The government proposes to adopt these recommendations. The government notes that rather than expressly creating a policy decision defence, New South Wales has stipulated four principles to be applied in determining whether a public authority owes a duty of care. These are listed and they are known in the report—I will not repeat them all—but in section 43, New South Wales provides that in an action against a public authority for a breach of a statutory duty, no act or admission of the authority can be a breach of statutory duty until it is so unreasonable that no authority with those functions could consider it to be a reasonable exercise of functions.

This bears an analogy with the proposed policy of decision defence, but does not require the making of a decision. It is a more general protection for any action or inaction of the public authority. It then proceeds to set out what has occurred in other states. It goes on to say that the government considers that there is no reason to treat injury cases differently from any other cases based on the breach of duty of care. New South Wales has made its relevant provisions applicable to all liability and tort and Queensland also proposes this. The government proposes that this defence would be available regardless of whether the damage was injury or some other loss. It then refers to the Brodie v Singleton Shire Council decision, and I will not detail that. I think it is well known to the Treasurer and others in the chamber who have shown an interest in this debate.

It goes on to say that the government intends to take an approach similar to that in Victoria. The highway immunity will be restored for an interim period to 30 June 2005, or two years from the commencement of the legislation, whichever occurs later. In the meantime, the government will work to explore options to develop appropriate road maintenance standards.

When this bill came into the house, the Treasurer, notwithstanding that position that was presented by the government last year in its discussion paper—having accepted it quite comprehensively in its presentation to the public—now says that if there is a restoration of the immunity rule, there ought to be a time period on that to facilitate the provision of road maintenance standards, (which is a sort of catch-all description of an objective set of standards to which there needs to be some compliance) and that it would ensure that whilst the immunity provision was restored, there would, on the other hand, be the subjective road maintenance standards.

Now the Treasurer has told the parliament that:

As a result of comment, and also of the High Court's decision in the case of Ryan v Great Lakes Shire Council, the government has decided not to proceed with a policy decision defence for public authorities. Accordingly, the highway immunity rule is to be restored indefinitely. In the longer term, however, it may come to be replaced by a defence based on adherence to objective road maintenance standards.

The position is quite clear here. The government wants to have its cake and eat it too. They want to have all the protection and nothing to ensure that they adhere to what they actually say was a good idea and which now still seems to be a good idea, but they should not be put under any time limit to ensure that they bring it into effect.

We say, as was clearly the position by the majority in another place, that it is not acceptable to restore this immunity rule and not have with it the requirement that is imposed by the time limit to ensure that the protection that would go with it is introduced. I would suggest that the government has not made out a case to go against what they were prepared to accept last year, unless there is some comment which they wish to disclose for us to consider, which they have not to date and certainly had not in another place.

The position is that they say two years will not be long enough to make an assessment of the jurisdiction of the decision that was made in another jurisdiction, namely the state of Victoria.

The opposition says that that is a nonsense. If it is a situation where, as it has in the past, the government considers that there needs to be objective road maintenance standards, that could be introduced with it when it gets its act together, or it could take advantage of it as the bill currently stands. It could enjoy the privilege and benefit of that immunity in the two years and then get its act together to ensure that we have this protection. It was good enough a year ago. It is a clear recommendation of Justice Ipp's committee. The government simply cannot cherry pick out what it wants for protection with no commitment and obligation. The opposition opposes this amendment.

The Hon. K.O. FOLEY: The government's position is quite clear. That paper was exactly what the honourable member said it was—a discussion paper. I would be criticised in this place if I put out a discussion paper, listened to everyone and then simply put to the parliament what I originally put in the discussion paper. The truth is that, throughout this entire process, we have widely consulted and modified our proposals on advice from various quarters.

Ms Chapman: Who put in this submission?

The Hon. K.O. FOLEY: I am getting to it. As I said earlier, Queensland and New South Wales have already restored highway indemnity.

Ms Chapman interjecting:

The Hon. K.O. FOLEY: Sorry?

Members interjecting:

The Hon. K.O. FOLEY: Well, if you are not interested, I will not bother.

The Hon. Dean Brown interjecting:

The Hon. K.O. FOLEY: Do you want to listen or not?

The Hon. Dean Brown: We are.

The Hon. K.O. FOLEY: For example, whilst APLA was not supporting our position, it did not want the immunity restored at all.

Ms Chapman: Exactly.

The Hon. K.O. FOLEY: Well, APLA suggested that the Victorian system was unwieldy; that the boom area in English law is suing councils for incompetent management plans. APLA did not think that the Victorian process was a good idea at all. We took those views on board. The Law Society said:

The proposal to develop appropriate road maintenance standards would be a fruitless exercise because of difficulties enforcing those standards in the light of the budgetary constraints which might exist, particularly amongst districts or municipal councils.

Our view is that, having put this out for discussion and having consulted, you either have it or you don't. We have an opportunity to see whether or not local management plans work in Victoria. If they work we can review the situation.

Members interjecting:

The Hon. K.O. FOLEY: Well, what is all the anxiety about whether or not it has two years? If the Victorian road management plans work, we can see that and then we can adjust it. We are simply wanting to restate a law that was here for decades when members opposite were in government. Honestly, for members opposite to provide that level of debate about something that was in place for the majority of their government—

Ms Chapman interjecting:

The Hon. K.O. FOLEY: Of course the High Court got rid of it, and we are putting it back, just like Queensland—

Ms Chapman interjecting:

The Hon. K.O. FOLEY: We are putting it back the way that it was.

Ms Chapman: The High Court got rid of it for good reason.

The Hon. K.O. FOLEY: Well, do you want it or not?

Ms Chapman interjecting:

The Hon. K.O. FOLEY: Do you want it—

The CHAIRMAN: Order!

The Hon. K.O. FOLEY: Putting on my Treasurer's hat, I say this: there is a real issue about road funding in this state, and do you know who does not give us the money for road funding? Your lot in Canberra.

The Hon. Dean Brown interjecting:

The Hon. K.O. FOLEY: You know that it is Canberra, Dean; you were premier for a number of years, and a minister. The share of national road funding—

The Hon. Dean Brown interjecting:

The Hon. K.O. FOLEY: Pardon?

The Hon. Dean Brown: Your government has cut the funding, too.

The Hon. K.O. FOLEY: Yes, I have had to make cuts because of incompetent budget management, particularly in the Health Commission where you, as health minister, presided over a debacle.

The CHAIRMAN: Order! Members are straying from the substance of the bill.

The Hon. K.O. FOLEY: The truth is that we do not have endless pits of money. We have to allocate scarce resources as best we can. This is a simple amendment, and the suggestions put forward by the opposition simply do not carry any water.

Mrs REDMOND: I seek some clarification from the Treasurer. He has indicated that the proposal came about as a result of the consultation from the discussion paper, but he did not answer the member for Bragg's question as to who suggested this particular change.

The Hon. K.O. FOLEY: I do not have that information with me. We had hundreds of submissions come back.

Mr HANNA: In light of my previous comments in relation to the immunity rule, I am attracted to the expiry period, so I will oppose the Treasurer's amendment, although not for the same reasons as outlined by the member for Bragg.

The committee divided on the amendment:

AYES (23)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Caica, P.
Ciccarello, V.	Conlon, P. F.
Foley, K. O. (teller)	Geraghty, R. K.
Hill, J. D.	Key, S. W.
Koutsantonis, T.	Lomax-Smith, J. D.
McEwen, R. J.	O'Brien, M. F.

AYES (cont.)

Rankine, J. M.	Rann, M. D.
Rau, J. R.	Snelling, J. J.
Stevens, L.	Thompson, M. G.
Weatherill, J. W.	White, P. L.
Wright, M. J.	

NOES (23)

Brindal, M. K.	Brokenshire, R. L.
Brown, D. C.	Buckby, M. R.
Chapman, V. A. (teller)	Evans, I. F.
Goldsworthy, R. M.	Gunn, G. M.
Hall, J. L.	Hamilton-Smith, M. L. J.
Hanna, K.	Kerin, R. G.
Kotz, D. C.	Lewis, I. P.
Matthew, W. A.	Maywald, K. A.
McFetridge, D.	Meier, E. J.
Penfold, E. M.	Redmond, I. M.
Scalzi, G.	Venning, I. H.
Williams, M. R.	

The CHAIRMAN: There being 23 ayes and 23 noes, I will explain my situation. Given the assurance of the Treasurer that this matter—

Members interjecting:

The CHAIRMAN: Order! The chair is entitled to express a view. The Victorian Road Management Scheme will be monitored and, if that is shown to require a change, the assurance of the Treasurer is that it will be acted upon. I have some reservation about allowing local government authorities not to fully maintain roads but, on the other hand, this has been a provision for many years and, accordingly, I support the amendment.

Amendment thus carried; new section as amended agreed to.

The CHAIRMAN: There is a clerical error: instead of section 45, it should read section 46. It should read, 'See sections 27 and 40 of this act.' That is a clerical error and I take it that the committee accepts that and approves it.

New section 43.

Mrs REDMOND: I have a couple of other questions. The first is about section 43, the exclusion of liability for criminal conduct. I notice that the section provides that, if someone has engaged in conduct that constitutes an indictable offence and they have an injury resulting from that activity, they cannot claim. Subsection (1) provides that the court has to be satisfied beyond reasonable doubt that that is the case. That is, the court must be satisfied that the accident occurred while the injured person was engaged in this criminal conduct of an indictable offence. I am curious about the intent of the legislation. I note under subsection (3) that, if there is a conviction, that is conclusive evidence or, if there is an acquittal, that is conclusive evidence the other way. That is fine; I have no difficulty where there is already a conviction.

However, is the Treasurer contemplating that, under this new section, an action could be brought in a civil court which then leads to the civil court not only considering the issues on the normal civil balance of probabilities but also satisfying itself beyond reasonable doubt; that is, could there be a trial on that issue within the civil trial, or is it the intention that there will always be, as a precursor to the new section coming into place, a conviction or an acquittal under a criminal prosecution?

The Hon. K.O. FOLEY: It could happen either way. If there has been a conviction or an acquittal, that has clearly determined it; if there has not, it is then a matter of having to prove it, as in subsection (1).

Mrs REDMOND: I accept the situation where there is already a conviction or an acquittal. I want to be clear about what will be the law where there has not already been a conviction or an acquittal. That will mean there is a separate trial within a trial in the same court and in the same proceedings. That court will hold its own mini trial, so to speak, to establish beyond reasonable doubt that it is satisfied beyond reasonable doubt that this person was engaged in the conduct of a criminal offence.

The Hon. K.O. FOLEY: I am advised that it works like a criminal injuries compensation claim in that sense.

The Hon. I.P. LEWIS: That raises for me some considerable anxieties under the Criminal Law Consolidation Act, if it is necessary to establish whether there would have to be a determination that, for instance, defamation has been proved in a civil court before defamation can be proved as criminal defamation under the Criminal Law Consolidation Act. I always understood that the contrary was the case and that the court itself did not have to be satisfied that defamation had occurred in a civil determination before the action of committal and prosecution of the criminal offence for criminal defamation could be put on foot.

What I am being told (if I am not mistaken) is that criminal defamation can be proceeded with and that, within the context of the criminal defamation trial, a determination can be made on the balance of probabilities that defamation has occurred. This is a fairly serious variation. I am just trying to find the particular section of the Criminal Law Consolidation Act in which that is stated, because it means there is an inconsistency in the way in which the law is to be processed through the courts. I ask the Premier if I am mistaken in my understanding. It is relevant to this clause.

The Hon. K.O. FOLEY: First, I point out to you, the member for Heysen and others that this, in fact, is already law. We are simply shifting this particular provision from one place in the act to another. This was passed in the reforms that we made in the latter part of 2002 or early 2003, I think, from memory. So it is already law.

I am advised that the issue that the member for Hammond has raised is not a matter for this particular clause. This relates specifically to civil liability for damages.

The Hon. I.P. LEWIS: I point out to the committee that if there are no damages taken in the civil action, or no attempt made, does that also mean no action can be taken under criminal law? In other words, as a precursor in criminal law, for criminal defamation to be prosecuted someone will have had to take a civil action in the first instance.

The Hon. K.O. FOLEY: I have just advised that this particular clause has no bearing on the matters that you are covering.

The Hon. I.P. Lewis: Yes, it does.

The Hon. K.O. FOLEY: I am advised that this clause does not in any way require you to take civil action before you can prosecute.

The Hon. I.P. LEWIS: I can tell the Treasurer that I am reassured, and declare my interest in the matter.

New section agreed to.

New sections 44 and 45 agreed to.

Clause as amended passed.

Clauses 28 to 31 passed.

Clause 32.

Mrs REDMOND: This section, which is set out in three subsections, talks about three different types of mental harm: 'mental harm', 'pure mental harm' and 'consequential mental harm'. If we look at the definitions section and the general definition of 'mental harm', that simply means impairment of a person's mental condition. If we look at 'pure mental harm', that means mental harm other than 'consequential mental harm', which in turn is defined as mental harm as a consequence of bodily injury to the person suffering from the mental harm.

As I read those definitions, what you have is the general term 'mental harm' divided into pure mental harm, where you have not suffered a physical injury: you have simply suffered from a diagnosed, recognised psychiatric illness as a result of your injury and that is a claim for pure mental harm; and, under the same umbrella of mental harm, on the other side is consequential mental harm, where you have suffered a physical injury and, as a consequence of the physical injury, you then have the diagnosed illness. I am puzzled as to why subsection (1) provides that damages may be awarded only for mental harm (that is, the whole umbrella of mental harm, encompassing both consequential and pure), if the injured person was physically injured in the accident or is a parent, spouse or child of the person killed.

It would seem to me that what was intended was consequential or, rather, pure mental harm, rather than simply the whole umbrella of mental harm under subsection (1). I seek some clarity about what is the intention of subsection (1) providing that the whole concept of mental harm is that you can get damages only if you are physically injured in the accident, present at the scene, or the parent, spouse or child.

The Hon. K.O. FOLEY: It does cover both, because consequential mental harm will apply where you have been physically injured in an accident.

Clause passed.

Clauses 33 to 74 passed.

Clause 75.

The Hon. DEAN BROWN: I move:

Page 23, new section 45A, after line 9—
Insert:

(8) For the purposes of subsection (7), the court will only be satisfied that there is good reason to excuse the non-compliance if it is shown that the non-compliance was due to gross negligence or mental incapacity on the part of the plaintiff's parent or guardian.

The reason for raising this is as a result of the impact on the whole area of medical negligence. We know that that was one of the key areas where there was an outcry because of the rising premiums and problems with one of the two major insurers in the whole of Australia which went into insolvency. The federal government had to bail them out. As a consequence of that, there has now been a significant increase in premiums but, at the same time, the doctors insured with that particular company have been asked to pay additional amounts to cover past liabilities, and the federal government has also come in with a very generous package to ensure sustainability. A huge problem continues to develop in the medical indemnity area. Just to give an example, in the obstetrics area the premium for an obstetrician is likely to be about $90 000 a year.

That is huge for someone who specialises in the area of obstetrics. A country GP does a relatively small number of births in a country hospital—probably about 25 to 35 births a year. With anything less than that they are discouraged from doing obstetric work as they need about that many to maintain their proficiency in the area. That doctor would be paying about $15 000 for indemnity insurance. On top of that, because of the change in federal law, whereas the two main insurers in Australia have been mutual organisations, they are

no longer such and are required to take out a formal contract. That then gets caught with 11 per cent stamp duty in South Australia, so the Treasurer is imposing 11 per cent on top of that premium.

The Hon. K.O. Foley: You brought in the 11 per cent.

The Hon. DEAN BROWN: There was no stamp duty on medical indemnity because it was not a contract, but as of 1 July 2003 it is a contract and any government with any sensitivity in this area would have forgone the revenue. It was not revenue it was getting before, it was new revenue and you should have forgone it for the sake of trying to maintain lower premiums in the medical indemnity area.

The Hon. K.O. Foley interjecting:

The Hon. DEAN BROWN: It is a sharp impost indeed: a grab by the Treasurer of $10 000 on the $90 000 premium. There have been other huge consequences in South Australia. For instance, the number of doctors—GPs with obstetric specialist skills—who have dropped out of doing deliveries in the country area, including in public hospitals, has been quite remarkable. In the country there are 66 public hospitals. If I recall, no private hospitals are doing births in the country at all, so it is purely a public affair. There are vast areas of South Australia where women cannot give birth in their local hospital, whereas they could before, and one of the key reasons is the risk and exposure the GP faces. It is not only the risk and exposure of something going wrong at birth but the fact that they face that exposure for many years after.

The AMA and doctors have been asking for far greater certainty in terms of the period of claim. One of the provisions is that there be a statutory period of six years, a statute of limitation, but with the right to go beyond that. That is what this amendment deals with. It strengthens that right so that it is only under very exceptional circumstances, as I have outlined with the amendment, and that is where there is gross negligence or medical incapacity on the part of plaintiff's parent or guardian. The AMA wrote to the Treasurer on 29 April last year and I will quote part of that letter:

> If the bill as proposed were to become legislation, the level of uncertainty for insurers with regard to the ability of children to sue up to the age of 21 remains. We note that the cost of medical treatment and legal work incurred by parents would not be claimable by the defendant, but in reality an insurer would need to factor into their actuarial analysis the principle that a child may sue until they are 21 years of age. The wording as we interpret the clause provides no real inducement for the action to occur within the proposed six years and as such provides no benefit to insurers and therefore will have negligible impact on the ability to access affordable medical indemnity coverage.
>
> The AMA (SA) is seeking a clear cut legislative response to the statutes of limitations for minors and the bill fails to provide this clarity. Similarly, the statement 'that unless the court is satisfied that there is good reason to excuse the non-compliance' provides a broad opportunity for the court to determine that the reasons for non-compliance were valid. We believe that the wording should more accurately reflect the proposed wording for section 48 whereby the decision about the appropriateness of the extension or non-compliance should be based on clearly codified reasons materially related to the case. 'Good reason' is so broadly worded as to be a all encompassing and provides the court with much latitude, and therefore makes ineffective the six year statute of limitation. We would recommend that this section be further tightened to reflect that non-compliance should be tolerated only on the grounds of parental or guardian neglect or incapacity and that merely failing to act would not be satisfactorily good reason.

The AMA has good reason for raising this point. I have highlighted the impact in the area of obstetric work in South Australia. I believe I would be right in saying that, in the past year, at least 15 of the state's GPs in country areas who do this have dropped out. That is about a 15 per cent decline. There was a further 15 per cent decline the year before. Therefore about 30 GPs have dropped out. There are areas where there is still a great question mark, and Naracoorte is a classic example where they have sat back and, for a while, stopped doing births. They came back in again, but whether they continue or not will depend on the future premiums.

Last week in this house the Minister for Health made a ministerial statement praising the agreement that has now been reached. I highlight that they have been looking for that agreement for the past two financial years. It does not become effective until 1 July this year, but, in June 2002 and June 2003, there was absolute chaos among country GPs about their medical indemnity insurance. At one stage it looked as if 30 or 40 of the GPs, which represents approximately 35 per cent of GPs doing obstetric work, would drop out of doing it in country South Australia because of the absolute shambles.

The GPs rang me saying, 'Here we are; we have 24 hours or 48 hours to go before we need new medical indemnity coverage, but we still do not know what package the state is offering'. That is pathetic. I have highlighted the problems that exist in terms of obstetrics. The other area with enormous problems is neurology. One of the issues that concerns the medical profession is that, whilst they can deal with it in terms of that six years, they may retire in five or six years, and some 15 years after they have retired—

An honourable member interjecting:

The Hon. DEAN BROWN: It is the attitude of the Treasurer on this very important issue that reflects the problem. They may retire and, 15 years after they do, there may be a claim against them over a birth that occurred or over some surgery they did 21 years ago. The problem has magnified itself considerably. To say that we did not do anything is incorrect; we were the ones who introduced the rural enhancement package which, for the first time, gave the doctors support with their medical indemnity. We introduced a $6.5 million package, and for the Treasurer to say that we did nothing is wrong. He should talk to GPs in country areas. We reversed the decline in the number of country GPs. We assisted them very significantly and they appreciate that greatly. No government in Australia did more than we did in terms of helping GPs in country areas.

This is a huge issue for local communities within South Australia because they want births back in their local hospitals. Clearly if the government goes ahead and rejects this amendment, then the likelihood of recovering those births in those country hospitals will deteriorate very significantly. I want the Treasurer to clearly understand whose responsibility it will be if the government rejects this amendment and goes back to the likelihood that 21 years will be a fairly easy pushover in the court system, as it is likely to be as the AMA has pointed out, and no-one seems to dispute that.

As a consequence, we will find that the cost of medical treatment in Australia soars, that the cost to the state for its own medical indemnity in public hospitals soars considerably, and therefore people find that they cannot get the treatment they need in their hospitals at the time they need it. I support the amendment.

The Hon. K.O. FOLEY: We could be here for hours because the Deputy Leader of the Opposition just goes off on tangents. Let us remember that the member for Finniss was an appalling health minister. There is an Auditor-General's Report which is an indictment of his time in that portfolio, which he maladministered, together with his chief executive officer whom we removed shortly on coming into office. We are sorting out the mess that is that department, and the health

minister, Lea Stevens, is doing an outstanding job in correcting the situation that built up over eight years.

The Hon. Dean Brown: You are the joker of the year!

The Hon. K.O. FOLEY: You were an appalling minister; the Auditor-General has said as much.

The CHAIRMAN: Order! The minister is straying from the substance of the bill.

The Hon. K.O. FOLEY: My view is that the Auditor-General's Report was an indictment. I hope I never have a report that makes reference to my administration like that.

The Hon. DEAN BROWN: On a point of order, sir, as the Treasurer knows, members must be referred to by their electorate.

The Hon. K.O. FOLEY: The package that we have put together for doctors in our public hospitals is a very significant one, a package that quite appropriately—

Mrs REDMOND: I rise on a point of order. I fail to see what the package put together by the current government for doctors in hospitals has to do with the amendment before the committee for discussion.

The Hon. K.O. FOLEY: So the deputy leader could rabbit on for 20 minutes about how bad we are as a government over doctors in the community, but I cannot respond? Fair enough. We oppose the amendment, and as we made clear in the other chamber, it would mean that a child could only establish that there was good reason for the failure to notify the claim in rare circumstances of gross negligence or mental incapacity on the part of the parents or the guardians. The government thinks this is too harsh.

For example, there might be a case where the child has not disclosed the injury to anyone. The purpose of stipulating a requirement for good reason is to leave it to the court to decide whether in the circumstances the reason was adequate. This seems to be a fair way of dealing with the diversity of situations that might arise. Like everything in this package, we have had to make carefully considered judgments, not giving everyone what they wanted, not agreeing with everyone, not disagreeing with everyone. We agonised over this for many hours. This is an improvement on what we have now. It is something for which there is a better degree of certainty for doctors.

It is not everything the AMA wanted, and I would have thought that, as health minister, the deputy leader had plenty of disagreements with the AMA. It is not that we should sign up to everything that the AMA has put forward. We have had good consultation with them. We think this is a fair outcome; I accept that the opposition does not. We oppose the amendment.

The Hon. DEAN BROWN: The AMA had considerable discussion with the Treasurer and the government on this matter in April or May last year. It went away from those discussions with the clear understanding that, in fact, this type of amendment would be accepted and agreed to by the government. I just ask for what reason has the government now suddenly changed its mind and, therefore, left the AMA high and dry on this issue when, in fact, it had given a clear indication to the AMA that it would support a very strong provision that it would be limited to six years.

The Hon. K.O. FOLEY: I say to the Deputy Leader of the Opposition, 'Don't walk into this place saying untruths.' I do not know what has been said to the Deputy Leader of the Opposition by the AMA. It was quite some time ago, so I stand to be corrected if he can produce a piece of paper. I was in that meeting, as were my advisers. If the AMA left that meeting with that impression, it did not bear any resemblance, from my memory, to the conduct of that meeting. In all my consultations, as far as I can remember, when it got to these matters I never stipulated which way the government would go: I listened. If it is the meeting that I am thinking of, I think the parties present were the AMA, the plaintiff lawyers and the Law Society. It was quite an experience to see the lawyers and the AMA having a fair old debate about this, but I cannot recall any suggestion that we would be adopting what the AMA wanted. If I had done that at the meeting, the deputy leader would have had the lawyers writing off to him saying, 'The Treasurer has just agreed to the AMA's position. Shock, horror! The world will end.' That is not what the AMA wanted; it is not what the lawyers wanted. We think it is a reasonable compromise. If I have got both the lawyers and the AMA off side, I have probably got it about right.

The Hon. DEAN BROWN: What does the Treasurer say to those doctors who are within their last 10 years of practising, who could be retired for about 10 years before they even know that, in fact, they are about to be hit with a very substantial claim? They could at that stage be 75 years of age, and would have thought that they had retired and had no further worries in their life, and suddenly they are hit with a claim. In fact, if this was to occur when they were 60, for example, and if they practised for five years, I think I am right in saying that they can only get coverage up to 10 or 11 years from the two medical insurers that operate at present. I think one of them is, in fact, offering only eight years. Even though they have retired and have no further income from their practice, they are expected to somehow maintain their own insurance protection for that 21-year period. I think the doctors deserve some explanation about how they will cover their retirement, bearing in mind the high exposure they face for that extra 15-year period, because of the ability for anyone to put an application to a court and expect to have an extension beyond the six years of limitation.

The Hon. K.O. FOLEY: The deputy leader was the health minister for six years, and he did not see this as an issue then. It is a bit rich to say that I am not acting. We are improving the law, unlike the deputy leader, who for six years sat on his backside and twiddled his thumbs. He did nothing. It was 21 years when the deputy leader was the minister. What we are now requiring for an action for damages is extended by this act to more than six years from the date of the incident out of which the injury arose. Notice must be given within six years, unless there are exceptional circumstances. That is a significant improvement on where the law is at now.

The Hon. Dean Brown: It is only a marginal improvement.

The Hon. K.O. FOLEY: We think that it is a significant improvement. The deputy leader calls it marginal. I know one thing for certain: it is more than he did in the six years that he was minister.

Amendment negatived; clause passed.

Clause 76.

The Hon. DEAN BROWN: I move:

Page 23, line 12—
After'material' insert:
in itself

This is very much the same issue that I have been raising in terms of what the AMA has raised with the government. In a letter of 29 April, the AMA suggested that this amendment be for the purpose of placing further emphasis on the need for the material fact to be of a greater consequence and thus

tightening the limitation of extensions being granted for less serious reasons. The intended purpose of this amendment, which is to insert the words 'in itself' after the word 'material', is to place greater emphasis on the need for the new material fact to be a significant fact. I mentioned in moving the earlier amendment (which was not carried) that extension of time upon the discovery of a new material fact was quite commonplace. Whilst we support the tightening of the regime for the granting of the extension of time, it is still not as tight as it could be. Accordingly, we seek to have this nuance of the meaning changed somewhat by the insertion of these words for the very reasons that I have given previously.

The Hon. K.O. FOLEY (Deputy Premier): I move:

That standing orders be so far suspended as to enable the house to sit beyond midnight.

The SPEAKER: I have counted the house and, as an absolute majority of the whole numbers of the members of the house is not present, ring the bells.

An absolute majority of the whole number of members being present:

Motion carried.

The CHAIRMAN: Treasurer, do you wish to respond to the amendment?

The Hon. K.O. FOLEY: I simply say that we oppose it. We believe it tends to confine the effect of the provision. It certainly is a nuance, as the Deputy Leader of the Opposition has suggested. The words 'in itself' would appear to suggest that this particular fact might have a different meaning if the fact was associated with some other fact. Whilst I am not entirely clear about the purpose of the amendment, we believe that it could tend to confine the effect of the provision, which is probably not the direction in which the deputy leader would necessarily wish us to go.

The Hon. DEAN BROWN: The Treasurer said he did not quite understand what the amendment would do. The amended section would then read:

A fact is not to be regarded as material in itself to the plaintiff's case for the purposes of subsection 3(b)(1) unless—

(a) it forms an essential element of the plaintiff's cause of action; or

(b) it would have major significance on an assessment of the plaintiff's loss.

I point out that people with far better legal knowledge than the Treasurer or I have recommended this as an appropriate amendment to deal with the very issue that I was talking about earlier. The AMA has taken advice on this and feels it is very important indeed. I highlight the fact that this is not about anything else but trying to ensure that we have more accessible medical services and more doctors who are willing to provide those services throughout the entire state. The defeat of this amendment and the previous amendment, I believe, will have a significant and lasting adverse effect on the availability of medical services, particularly in country areas and in the fields of obstetrics, neurological surgery and some other key areas such as those.

The Hon. K.O. FOLEY: I simply say, without being too flippant, that the opposition has its legal advice and the government has its legal advice and, on that advice, we oppose the amendment.

Amendment negatived; clause passed.

Remaining clauses (77 to 80), schedule and long title passed.

Bill reported with amendments.

The Hon. K.O. FOLEY (Deputy Premier): I move:

That this bill be now read a third time.

Mr HANNA (Mitchell): I would just like to say that, despite best endeavours, the bill has not been amended substantially, and that is regrettable for people who are injured in public places in South Australia in the future.

The house divided on the third reading:

AYES (34)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Brindal, M. K.
Brown, D. C.	Buckby, M. R.
Caica, P.	Chapman, V. A.
Ciccarello, V.	Conlon, P. F.
Evans, I. F.	Foley, K. O. (teller)
Geraghty, R. K.	Goldsworthy, R. M.
Hall, J. L.	Hamilton-Smith, M. L. J.
Kerin, R. G.	Key, S. W.
Koutsantonis, T.	McFetridge, D.
Meier, E. J.	O'Brien, M. F.
Penfold, E. M.	Rankine, J. M.
Rau, J. R.	Scalzi, G.
Snelling, J. J.	Stevens, L.
Such, R. B.	Thompson, M. G.
Venning, I. H.	Weatherill, J. W.
White, P. L.	Williams M. R.

NOES (2)

Hanna, K. (teller)	Redmond, I. M.

Majority of 32 for the Ayes.

Third reading thus carried.

ADJOURNMENT

At 12.13 a.m. the house adjourned until Wednesday, 25 February at 2 p.m.