HOUSE OF ASSEMBLY

Wednesday 8 December 2004

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

MEMBERS' INTERESTS

The SPEAKER: I lay on the table the Register of Members' Interests, Registrar's Statement, June 2004.

Ordered to be published.

PAPERS TABLED

The following papers were laid on the table:

By the Speaker—

City of Mount Gambier—Report 2003-04
Wakefield Regional Council—Report 2003-04

By the Minister for the Arts (Hon. M.D. Rann)—

Art Gallery of South Australia for the Year 1 July 2003—30 June 2004

By the Minister for Science and Information Economy (Hon. P.L. White)—

Bio Innovation SA 2003-04.

FREIGHT INDUSTRY

The Hon. P.L. WHITE (Minister for Transport): I seek leave to make a ministerial statement.

Leave granted.

The Hon. P.L. WHITE: I would like to report to the house another step forward in assisting our freight industry. The state government has been working with the industry and local government to improve safety, efficiency and access for heavy vehicles across the road network. This in turn is providing support for our exports and the economic development of South Australia.

From 6 January 2005, there will be an additional 36 roads in the authorised B-double network. The addition of these roads equates to over 1 500 kilometres of additional roads that the freight industry can now use for B-doubles. This will make a total of 63 roads having been gazetted in the past six months for the B-double network, totalling over 2 200 additional kilometres. This adds just over another 15 per cent to the gazetted road network. Those roads include: Burra to Spalding, Maitland to Ardrossan, Ardrossan to Minlaton, Maitland to Port Victoria, Kapunda to Gawler, Burra to Eudunda, Konetta to Naracoorte (that is, the Lucindale to Naracoorte section), Beachport to Millicent, and Ziegler to Cadell/Waikerie (that is, the Mid Murray/Loxton Waikerie Council boundary). Eighteen of those roads (1 249 kilometres) are currently gazetted for road trains but not for B-doubles.

These roads are located in the Far North of South Australia and include roads around Oodnadatta, Coober Pedy, William Creek, Olympic Dam and Yudnapinna (50 kilometres north of Port Augusta off the Stuart Highway). The gazettal of these roads across the regions of the Mid North, South-East, Riverland and Far North have been eagerly anticipated by the freight and farming sectors of our economy.

LEGISLATIVE REVIEW COMMITTEE

Mr HANNA (Mitchell): I bring up the 10th report of the committee.

Report received.

Mr HANNA: I bring up the 11th report of the committee.

Report received and read.

QUESTION TIME

CROWN SOLICITOR'S TRUST ACCOUNT

The Hon. R.G. KERIN (Leader of the Opposition): My question is to the Attorney-General. Did the Attorney-General have an exit meeting with Kate Lennon as part of her departure process from his department and, if so, on what date? Today, the Auditor-General gave evidence to the Economic and Finance Committee that Kate Lennon told him that she had had an exit meeting with the Attorney-General on her departure from the department.

The Hon. M.J. ATKINSON (Attorney-General): The last record we have of a meeting with Kate Lennon before she left my department is on 5 February. Yesterday, the Leader of the Opposition asked me to go back and look at all the agendas of my meetings with the chief executive in the period I have been the Attorney-General to see whether there was any reference to the Crown Solicitor's Trust Account. That is exactly what I did last night: I went through all of them. The place I would not have started was the very last meeting, but I read that one, too, and I have it here. I am pleased to table it for the house, because it is not my copy of the agenda: it is Kate Lennon's. It has 12 matters listed, with Kate Lennon's handwriting annotating each point on the agenda. There is no mention of the Crown Solicitor's Trust account.

Members interjecting:

The SPEAKER: Order!

The Hon. R.G. KERIN: I have a supplementary question. As the Attorney has raised the issue of the other agendas, how many times has the Crown Solicitor's Trust Account been mentioned on those?

The Hon. M.J. ATKINSON: Not once.

SUMMER EVENTS

Ms CICCARELLO (Norwood): My question is to the Minister for Tourism. What exciting range of events will be available for South Australians and visitors over the coming summer break?

The Hon. J.D. LOMAX-SMITH (Minister for Tourism): I thank the member for Norwood for her interest in activities during the next few months, and many of them occur in her own electorate. The summer season will be a stellar few months. We come off the very high base of the *Ring* cycle, with hotels full and buzzing, restaurants booked out and activity throughout the CBD and around the regions, where many of the *Ring* enthusiasts are taking trips to Kangaroo Island and country areas, and visiting wineries. At the moment, we expect an early boost from New Zealanders taking the opportunity to travel on our new Qantas Auckland-Adelaide flights, which begin next week, and we expect those flights to bring many visitors to the city.

January 2005 will be particularly busy. The Next Generation Australian Hardcourt Tennis Championship is being

sponsored by Australian Major Events. This year's event will see the return of the world No. 3 ranked player, Lleyton Hewitt, who, with many other international tennis stars, is coming to prepare for the Australian Open. Between 18 and 23 January, the Jacob's Creek Tour Down Under will be spread around a range of locations in South Australia, with some of the most picturesque views along hills, coasts and regional areas. Five Olympic gold medallists will compete for the Jacob's Creek yellow jersey in this event, including South Australia's own Stuart O'Grady. Not content with this, we have also added the 2005 Australian Open Road Cycling Championship, which will precede the AME sponsored Jacob's Creek Tour Down Under and will cement South Australia as the home of cycling in Australia.

For soccer enthusiasts, the International Soccer Challenge will also be held in January and will feature international youth squads from AC Milan, FC Barcelona and Aston Villa competing with Australia's top youth teams. In addition, through the end of December and beginning of January the Cadet World Championship Sailing Regatta will be held at Holdfast Bay. This will be a stellar event of world-class sailing and will make the Bay buzz with activity. The Bay will also benefit from the 118th Bay Sheffield, which is set to make its return to its old home at Colley Reserve.

Regional areas will not be forgotten during the summer months. The Tunarama Festival will be held in Port Lincoln, and those with a yearning can enjoy tuna tossing. The Kingston Lions Club Surf Fishing Competition, for those who are able to get their bag limit (and I know that some ministers will be competing), as well as the Copper Coast Rodeo, the Port MacDonnell Bayside Festival and the Two Wells New Year's Eve Rodeo will provide a range of activities for both domestic, interstate and overseas tourists. That is even before we start the great autumn Festival of Arts events. Of course, we should never forget that there will be international cricket at the oval. Stay in South Australia and enjoy the events because there is something for everyone and tourism is abuzz.

CROWN SOLICITOR'S TRUST ACCOUNT

The Hon. I.F. EVANS (Davenport): My question is directed to the Attorney. During the Attorney's exit interview with Ms Lennon or at the time of her leaving his department, did Ms Lennon advise the Attorney-General of the use of the Crown Solicitor's Trust Account? This morning in the Economic and Finance Committee the Auditor-General said:

> As my colleague Simon will explain from his notes, Ms Lennon stated that she had advised the Attorney-General of the use of the Crown Solicitor's Trust Account at the time of her leaving the department.

The SPEAKER: The Attorney-General has the call. I am not sure that this question has not already been asked.

The Hon. M.J. ATKINSON (Attorney-General): Mr Speaker, I have no recollection whatsoever of any—

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. ATKINSON: —information being provided to me—

The Hon. Dean Brown interjecting:

The SPEAKER: Order! The deputy leader will come to order.

The Hon. M.J. ATKINSON: —during my entire time as Attorney-General about the Crown Solicitor's Trust Account, let alone a so-called exit interview with—

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. ATKINSON: —Kate Lennon. I have no recollection whatsoever, and neither does my Chief of Staff, who has sworn on oath that he has no knowledge whatsoever of transactions in the Crown Solicitor's Trust Account.

The Hon. I.F. Evans: Until when?

The Hon. M.J. ATKINSON: Until the matter is raised by the new chief executive.

Members interjecting:

The SPEAKER: Order! I call the member for Giles.

EVERY CHANCE FOR EVERY CHILD PROGRAM

Ms RANKINE (Wright): Thank you, sir.

The SPEAKER: The member for Wright had the call earlier.

Ms RANKINE: I am sorry sir, I did not hear you. It is often difficult to hear the call in the chamber.

The SPEAKER: Especially if you are interjecting. The member for Wright has the call now.

Ms RANKINE: My question is directed to the Minister for Health. How many newborn babies were checked in the first year of operation of the Every Chance for Every Child initiative, which aims to have every newborn baby in South Australia visited by a child and youth health nurse in the first few weeks of its life?

The Hon. L. STEVENS (Minister for Health): I thank the honourable member for her question, and acknowledge her important role in this area of early childhood health. The Every Chance for Every Child community nurse home visiting program is an important part of the government's commitment to early detection and health promotion, and provides practical ongoing support to families where and when they need it. In the first year of the program, community nurses visited 98.5 per cent of the babies born in South Australia. That is more than 17 000 visits in its first year.

The early contact program is now employing more than 120 nurses, about one-third of whom have been employed in the last year specifically for this program. Each nurse visits up to 25 families every week. The home visiting program starts at hospitals soon after birth when an appointment is made with the family for a home or a clinic visit, and 86 per cent of the visits are now being conducted in the family home. The visit is then conducted within a few weeks by a dedicated nurse who conducts a health check, weighs and measures the baby and, more importantly, answers any questions new parents may have on myriad issues that confront them with a new baby.

The nurse also ensures the enrolment of the baby for ongoing contact with a child and youth health system, something that is quite unusual. In fact, South Australia is one of the few places that has access to a very significant database. Through this initiative, overall health enrolments have increased from 82 per cent in 2002 to 98.5 per cent in 2004. We have at our fingertips a very extensive database of every child born in this state so that we can monitor their progress. Ongoing family visit support is provided for up to two years for those who need it, with some 330 families currently in the program. This is part of the $16 million new initiative of this government.

I must say that a week or so ago at Marion we celebrated the first 12 months of the program. Many stories were told of the support and benefit to families of the program. In

particular, a young woman from Lebanon, who has no family whatsoever and no supports here, said that the visit from the nurse was really the first contact she had had outside her husband and the child. That nurse not only supported her in the early times with the child but also continued to go back, and she has introduced her to local playgroups and other contacts, essentially to link that mother, her child and that family into the social supports that are so important for children's development and, I think, for the sanity and wellbeing of parents.

CROWN SOLICITOR'S TRUST ACCOUNT

The Hon. I.F. EVANS (Davenport): My question is to the Attorney-General. While the Attorney-General was overseas, did his Chief of Staff Andrew Lamb, or anyone else, contact the Attorney-General regarding the Crown Solicitor's Trust Account? On 10 November, the Chief Executive of the Attorney-General's Department, Mr Mark Johns, gave evidence before the Economic and Finance Committee that when he became aware of the misuse of the Crown Solicitor's Trust Account, he advised the then acting Attorney-General (the member for Kaurna) and the Auditor-General. He said he advised them 'about what had transpired'. Mr Johns further gave evidence that he also informed Mr Lamb and asked Mr Lamb to inform the Attorney-General, who was in Europe at the time.

The Hon. M.J. ATKINSON (Attorney-General): Mr Lamb did phone me in Europe. I was in the village of Paleopirgous near Levidi in the Central Pelopponese in Greece. I received a telephone call on or about 21 August. The telephone call was to the telephone of a colleague with whom I was travelling, not to my own telephone. The call duration is roughly one minute and 30 seconds. There was no reference—

The Hon. I.F. Evans interjecting:

The Hon. M.J. ATKINSON: When I was overseas; that is correct. There was no reference in that telephone conversation to the Crown Solicitor's Trust Account, but there was reference to devices to avoid carryovers. I informed my Chief of Staff that I had no knowledge of hollow logs or devices to avoid carryovers or squirreling away the money, and I said that I would deal with the matter on my return to Australia—and that is precisely what I did.

The Hon. Dean Brown interjecting:

The SPEAKER: Order! The deputy leader will come to order.

CHILD PROTECTION

Ms BREUER (Giles): Given the increasing number of child protection notifications being issued in relation to high-risk infants, will the Minister for Families and Communities outline what action the government is implementing to ensure the safety of these children?

The Hon. J.W. WEATHERILL (Minister for Families and Communities): High-risk infants are an extraordinarily high priority for the government in its child protection system. Unfortunately, there are parents who do get into circumstances where their ability to parent and be protective of a child is compromised. In those situations the family circumstances are often an important key indicator. We are trying to shift our system of child protection away from merely an incidence-based investigation system to one that actually identifies some of these important risk factors. There are obvious ones, but together they give a strong indication of those families in which serious harm can come to a child. They include substance misuse, mental health problems, intellectual disability, serious domestic violence issues, or, indeed, the parents' previous neglect of a child and lack of a bonding with a child in the family.

This new policy shift will occur to an even greater degree from early next year when we commence two pilot projects (one in the Enfield area and the other in the Noarlunga area) for children between the ages of 0 and 2. Those pilot projects will, of course, be expanded if they prove to be as successful as we hope. We have negotiated a protocol between Child, Youth and Family Services and Child and Youth Health.

Members have just heard from the Minister for Health about the excellent success of the home visiting program and its next stage, the sustained home visiting element of the program. We are developing protocols between our two organisations to ensure that we are able to work more effectively together. What we have now is a system of great coverage for young children in our state. We have the first visiting program—

The Hon. Dean Brown interjecting:

The Hon. J.W. WEATHERILL: It really is sad that the member for Finniss wants to agitate a dead baby as a serious contribution.

Members interjecting:

The SPEAKER: Order! The minister has the call. The less attention he pays to interjections, the more relevant will be the information that he provides in response to the inquiry.

The Hon. J.W. WEATHERILL: I am sorry, sir, but the interjections are upsetting. They are upsetting because they are so offensive. I will struggle on.

There is a phased intervention here. We have the home visiting program and we have sustained home visiting for those families that are isolated. The next level of response is this very deep intervention with those families that are demonstrating these high risk factors. It is a fundamental change to our child protection system to be intervening on the basis of risk and not on the basis of a particular allegation of abuse. When there was a thorough assessment of the activities of the old FAYS, the new Child, Youth and Family Services, we found—

Members interjecting:

The SPEAKER: The honourable member for Bright and the Minister for Infrastructure will serve the purpose of the chamber better if they leave the chamber and have a chat to each other in the lobby.

The Hon. J.W. WEATHERILL: What we discovered in the analysis of the activities of the agency that was investigating child protection complaints is that many of the workers who were involved in the investigation of these complaints found that all of their time was spent merely investigating and not supporting these families.

We have a system that is driven by mandatory notification. This is one of the great paradoxes of this system, because everybody seems to say that mandatory notification is a good idea. However, if we have a flood of notifications and all we can do is investigate, we find that after completing an investigation we are involved in a re-investigation. There is about a 66 per cent re-notification rate. Whereas if some of those resources were placed into assisting these families, we are confident that we could achieve better outcomes.

We believe these pilot projects are destined for success. They will integrate with the excellent work that the Minister for Health has managed to achieve through the remarkable

take-up rate in her home visiting program and sustained home visiting program for infants.

CROWN SOLICITOR'S TRUST ACCOUNT

The Hon. I.F. EVANS (Davenport): My question is again to the Attorney. Given that the Crown Solicitor's Trust Account was detailed in the annual report of the Attorney's own department that was tabled by the Attorney, detailed in the Auditor-General's Report into his own department received by the Attorney, detailed in the Attorney-General's first day briefing notes that were received by the Attorney and raised in an exit meeting by former CEO Kate Lennon, will the Attorney now stand down to allow a full judicial inquiry into, amongst other things, his claim that he was not aware of the existence, use or operation of the Crown Solicitor's Trust Account?

The Hon. M.J. ATKINSON (Attorney-General): Mr Speaker, I will not be standing down because I have done nothing wrong. I have done nothing of which I am ashamed. I have told the truth on all occasions about that. And this morning in the evidence before the Economic and Finance Committee I have been vindicated. Mr MacPherson, the Auditor-General, states:

> The Attorney has been the victim of some seriously misleading and deceptive conduct. If it was sought to have the Attorney understand what was going on why would they—

referring to the former chief executive—

> have adopted the stratagem, in relation to this particular transaction—

that is, the construction of the police building—

> of splitting it so that the Attorney was kept out of the loop, out of understanding what was going on? This conduct speaks pretty loudly in terms of the culture that was going on in that place. I do not need to say any more than that; these documents speak for themselves.

Mr BRINDAL: On a point of order, Mr Speaker, the Attorney appears to be quoting from the minutes of the Economic and Finance Committee this morning. I seek your assurance that those minutes have been duly authorised by the committee and that the committee has given permission for them to be published. Otherwise, this is in violation of standing orders.

Members interjecting:

The SPEAKER: Order! First of all, the Attorney was not quoting minutes. Secondly, members of the opposition have quoted from the same *Hansard* record of the proceedings. Thirdly, the chair cannot be aware—

Members interjecting:

The SPEAKER: Order! The Attorney-General.

The Hon. M.J. ATKINSON: I am continuing to answer the question—this stale old claim to attribute knowledge to me from some extraordinary forces. It is only a few short weeks ago that the Leader of the Opposition came in here and claimed that the Crown Solicitor's Trust Account was mentioned on—what was it you told the house—pages 4, 5 and 6 of the incoming government briefing. What a deception! The truth is that it was a 700-page briefing, and it was not consecutively numbered. If it were consecutively numbered, it would have been pages 72, 73 and 74 of a 700-page briefing, and you haven't—

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. ATKINSON: That is the greatest misleading of the house that has occurred in the whole of this debate, and the Leader of the Opposition—

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. ATKINSON: —has not come into this house and apologised for that misleading.

Members interjecting:

The SPEAKER: Order! I reckon I could count more than a dozen members who lost it just then. It does nothing to edify the public respect for the proceedings of this chamber for members to carry on in such a crazy fashion. It is not even the kind of behaviour that you would find in a sandpit at a kindergarten.

The Hon. M.J. ATKINSON: Mr Speaker, the opposition case has now reverted to its narrowest base, and that is that, because my incoming government brief of 700 pages mentioned at dot point 25 of 29 dot points on pages 73 and 74 the Crown Solicitor's Trust Account, I should resign. What an absurd proposition, one they would never—

The Hon. I.F. Evans interjecting:

The SPEAKER: Order! The member for Davenport will come to order!

The Hon. M.J. ATKINSON: That is a principle which they would never apply to themselves. The Auditor-General deals with this question of the so-called exit meeting. I have tabled the last agenda that we have when Kate Lennon was the chief executive of my department. I reiterate: that is not—

The Hon. W.A. Matthew: The last agenda that you have. We heard that.

The SPEAKER: Order, the member for Bright!

The Hon. M.J. ATKINSON: That is not my copy of the agenda. It is Kate Lennon's copy of the agenda and it has all over it her handwriting. Not once is there a mention of the Crown Solicitor's Trust Account.

The Hon. I.F. Evans interjecting:

The SPEAKER: Order, the member for Davenport for the last time!

The Hon. M.J. ATKINSON: There is not even an allusion to the Crown Solicitor's Trust Account or anything remotely like it, and yet this ruse, this rort of squirreling money away in the Crown Solicitor's Trust Account had been going on since October 2002. So, we find out today at the last that, at its highest, Kate Lennon's claim is that she told me but I did not understand—that is her claim; that is what she told the Auditor-General—she told me, but that I did not understand, at an exit meeting in February 2004. Now, the opposition has been running the line for the last, what is it now, two months, that I was complicit all along, and it turns out that, at its highest, the claim is that I was told, but that I did not understand, in February 2004, after this rort had been going on with the Crown Solicitor's Trust Account since October 2002 to avoid the new government's carryover provisions.

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. ATKINSON: Mr MacPherson says this morning:

> . . . it's Kate Lennon saying that the minister didn't understand what she was telling him. It's a very different thing for the minister to say, 'I didn't understand.' If a minister were to say to you, 'I didn't understand,' at least you'd know that he'd been told something. But none of us knows whether she said anything at all. She herself is admitting to saying that the Attorney didn't know what she was talking about. Can I ask you just to reflect on this: if I was a CEO who comes to you as a minister of a department and I tell you something, and I know that I'm not registering, and I come away and say, 'Look, he didn't know what I was talking about or the significance of it,' I haven't really communicated with you.

That is the situation we find ourselves in.

ROADS, HEAVY VEHICLE ACCESS

Mr O'BRIEN (Napier): Can the Minister for Transport provide the house with a progress report on support for road access to industries using heavy vehicles?

The Hon. P.L. WHITE (Minister for Transport): On this matter, industries using heavy vehicles have been working with my department through their respective associations. This includes ongoing consultation with the South Australian Farmers Federation and the South Australian Road Transport Association, amongst others. A Heavy Vehicle Access Framework is being constructed to provide policy direction to the freight industry and local government on that particular matter. It is aimed at further developing a safe and efficient freight road network to better support the economic development of South Australia.

To date, a number of initiatives has occurred, including an initiative I mentioned earlier today, an increase in the number of roads gazetted for heavy vehicle use. The gazetting of those key vehicle access freight routes greatly improves transport efficiency by providing open and transparent access arrangements that assist industry to better plan for the future developments and transport tasks. Operating under a gazetted route network system also eliminates the need for operators to continually apply for permits which provides significant time and cost saving for industry.

Further improvements in services for the freight industry are also being planned. They include: faster turnaround times for permit applications for the very large and heavy specialised loads, easier permit application; and improved government processes. Our government is committed to removing barriers to exporting and supporting industry, and we are also focusing our efforts on using and maintaining existing infrastructure to its most strategic advantage.

VON EINEM, Mr B.S.

Mr HAMILTON-SMITH (Waite): Will the Attorney advise the house whether convicted murderer Bevan Spencer von Einem receives special privileges within Yatala Labour Prison? The opposition has a letter which states that a female correctional officer from the Protective Custody Unit took female clothes and make-up to Von Einem, at his request, for him to dress up. The letter also confirms that he has 'unlimited and unsupervised access to computers and printers and can do as he pleases'. The letter goes on to say that in Yatala Von Einem has 'status' among all staff and prisoners that can be compared only to that of a celebrity. The letter also states that the prisoner has been listed for laser corrective eye surgery at a cost to taxpayers of $6 000.

The Hon. J.D. HILL (Minister for Environment and Conservation): I answer this on behalf of my colleague in the other place, the Hon. Terry Roberts, who is the minister responsible for corrections. I am not at all aware of the allegations that have been made. However, if they are true, I can assure the member that the government is totally opposed to any special favours at all being given to Bevan Spencer von Einem, regardless of the peculiarities associated with them, and I am sure my colleague will address them. I can assure the house that we have made sure that von Einem has been DNA tested, against the protests of members on the other side.

Members interjecting:

The Hon. J.D. HILL: The member for Bragg wanted to protect the civil rights of Bevan Spencer von Einem, but that is not what this government believes. We are not in favour of special treatment for this man. I will get a full response from my colleague for the member.

The SPEAKER: I call the member for Reynell.

AUSTRALIAN INSTITUTE FOR SOCIAL RESEARCH

Ms THOMPSON (Reynell): Thank you, sir.

Members interjecting:

The SPEAKER: Order! The member for Reynell has the call.

Mr Brokenshire interjecting:

The SPEAKER: Order! The member for Mawson is the neighbour of the member for Reynell, but not the member for Reynell.

The Hon. K.O. Foley interjecting:

The SPEAKER: The Treasurer comes from the other end of town. The honourable Treasurer will come to order.

The Hon. K.O. Foley interjecting:

The SPEAKER: The Treasurer will not ignore the chair, or backchat.

The Hon. K.O. Foley: Don't be mad at me. I would never backchat you, sir; you know that.

The SPEAKER: What are you doing?

Ms THOMPSON: My question is to the Minister for Employment, Training and Further Education. How will the Australian Institute for Social Research assist this state to address the issues of an ageing population?

The Hon. S.W. KEY (Minister for Employment, Training and Further Education): South Australia is set to become a national leader on how to tackle the work force challenges created by an ageing population. This morning, Vice-Chancellor Professor James McWha and I launched the Australian Institute for Social Research, which is based at Adelaide University. The Institute for Social Research brings together around 35 staff and PhD students from a range of disciplinary backgrounds. The development of the institute has created one of Australia's largest social science research organisations. It will be a focal point for collaborative social science research projects, postgraduate studies, national and international visitors, conferences, forums and seminars. The institute was conceived by Associate Professor John Spoehr and Professor Graeme Hugo, who are assuming roles as Executive Director and Research Director.

Responding to the work force development implications of demographic change and the ageing of the work force is one of the most pressing challenges facing Australia. While the financial implications of our ageing population have been the subject of considerable analysis and debate, the focus has more recently been on the likely impact on our future work force. We have the oldest population in Australia, and it is ageing more quickly than any other state or territory. The establishment of this centre turns our experience into an advantage. The institute will work closely with government, industry and unions to help us address the demographic challenges in our work force, such as how best to avoid labour shortages from the retirement of the 'baby boomer' generation. Being a member of the baby boomer generation, albeit a younger member, I have to say that I am very concerned to make sure that our interests, in particular, are looked after.

Beyond South Australia, the institute is being positioned as a leading resource for research and advice on these challenges, not just in Australia but also in the Asia-Pacific region. South Australia boasts a solid foundation in work force planning expertise. The institute will build and extend upon that base and combine it with world-class expertise in demographics and social health to significantly advance the research capacity in these fields. It was a great pleasure to be part of the launch today at Adelaide University.

CROWN SOLICITOR'S TRUST ACCOUNT

The Hon. I.F. EVANS (Davenport): My question is, again, to the Attorney. Was the meeting scheduled for Thursday 5 February 2004 the last meeting the Attorney held with Kate Lennon?

The SPEAKER: I think the Attorney has already answered that.

The Hon. M.J. ATKINSON (Attorney-General): When trying to determine the last meeting I had with the chief executive, the best guide we had was to refer to the agendas held by the chief executive in her—

An honourable member interjecting:

The Hon. M.J. ATKINSON: Allow me to answer the question. The agendas were held in her office and they are her agendas with her handwriting on them. My understanding is that her absolutely last day in the department was 3 March, but we will check the diaries, as suggested, to see if there was a further meeting. What I cannot say is that there is a further agenda.

I want to make one thing perfectly clear. The suggestion made by Kate Lennon that she informed me of the Crown Solicitor's Trust Account—and, in particular, her illicit operation of the Crown Solicitor's Trust Account—is a mere allegation. Not only do I have no recollection of it, but also the person who attended all my meetings with the chief executive (my Chief of Staff, Andrew Lamb) has no recollection of it, either. He has no recollection of it and he has sworn an oath to that effect, as have I.

PRODUCT PACKAGING

Mrs GERAGHTY (Torrens): My question is to the Minister for Environment and Conservation. What action is being taken nationally to put in place tougher measures to reduce the environmental impact of product packaging?

The Hon. J.D. HILL (Minister for Environment and Conservation): I thank the member for Torrens for this question. I am pleased to advise the house that last week's meeting of Australia's environment ministers agreed to strengthen the national packaging covenant. The covenant's goal is to minimise the environmental impacts on consumer packaging, close the recycling loop, and develop economically viable and sustainable recycling collection systems.

This packaging covenant has been in place for, I think, five or six years now, but in South Australia we have been concerned that the covenant has not cut the amount of packaging going to landfill, so I am pleased that the ministers have agreed to revise the covenant to include stronger targets. These include reducing the total amount of packaging going to landfill, increasing the amount of packaging recycled, increasing the amounts of recycled packaging used in new products, and reducing the use of non-recyclable packaging.

At South Australia's instigation, ministers have agreed to develop alternative mechanisms if progress is not being made to meet the targets. As with plastic bags, whilst governments are keen to work with business to reduce waste, we also need to take firm action if voluntary measures are unsuccessful. This could include extending container deposit-style legislation to a wider range of product packaging—possibly to products such as computers, for example.

The South Australian government has identified improved waste management as a priority and has set a target in South Australia's strategic plan to reduce waste to landfill by 25 per cent within 10 years. We will not be able to achieve that without a significant change in behaviour by manufacturers, retailers and consumers.

CROWN SOLICITOR'S TRUST ACCOUNT

The Hon. R.G. KERIN (Leader of the Opposition): Will the Treasurer advise the house whether it is lawful under the Public Finance and Audit Act, and his Treasurer's Instructions, to backdate a financial transaction to deposit $1 million of police department funds into the Crown Solicitor's Trust Account on 30 June 2003, when approval for the deposit was not given until 9 July 2003? When Ms Debra Contala was asked by the select committee on 3 December whether the transaction was retrospectively dated to bring it in under 30 June, she replied:

> It appears on the documents that the authority occurred after the official date of the transaction.

The SPEAKER: Order! The question is out of order. It expressly inquires for an opinion. It is not orderly to ask a minister for an opinion, especially since in this case it is a legal opinion.

SPORT, HARASSMENT FREE

Mr KOUTSANTONIS (West Torrens): My question is to the Minister for Recreation, Sport and Racing. What is the government doing to encourage an harassment-free sporting environment in South Australia?

The Hon. M.J. WRIGHT (Minister for Recreation, Sport and Racing): The Office for Recreation and Sport partners the Australian Sports Commission to ensure that our state initiatives reflect the national harassment-free sport framework, which involves a number of initiatives, including member protection policy development and the 'Play by the rules' web site, which provides online training and information. The development and implementation of a member protection policy is one of the key components in promoting safe sporting environments. Information to assist sporting organisations to develop a member protection policy is available from the 'Play by the rules' web site and aims to:

- clarify the rights and responsibilities of organisations and their members;
- provide organisations with the capacity to better deal with issues such as the 'ugly parent' syndrome and inappropriate spectator behaviour;
- reduce the time, cost and effort of sporting organisations to develop their policy; and
- take a proactive and preventive approach in protecting organisations and their members.

The Office for Recreation and Sport will also provide training and support for member protection officers and will promote their role within their organisation and encourage them to join the member protection officer support network. The Office for Recreation and Sport will also conduct 'Play by the rules' presentations.

Resources, such as the 'Play by the rules' web site, and other initiatives are important in educating and informing the community about these issues and assist in ensuring that the government's aim of an harassment-free sporting and recreation environment is achieved.

CHILD PROTECTION, SPECIAL INVESTIGATIONS UNIT

Mrs REDMOND (Heysen): Will the Minister for Families and Communities explain to the house the level of skills and training the officers of the Special Investigations Unit with the Department of Families and Communities receive before they are permitted to investigate allegations of child abuse? Yesterday in the house, the minister said these officers have:

> . . . relevant skills and training to discharge the delicate task of investigating these allegations of abuse in care in an appropriate and effective fashion.

The opposition has been given a copy of a letter, dated 16 July, to the manager of the Special Investigations Unit from the CREATE Foundation (which has the interests of children in care at heart), in which the facilitator states:

> CREATE is concerned about claims that children and young people are:
> - being removed from workplaces and schoolrooms for meetings with investigative officers;
> - not adequately informed of the nature of the interview and interviewed without informed consent;
> - being interviewed without the presence of an advocate or support person identified by that child/young person, and this is not offered to them;
> - being given details of alleged abuse that is of inappropriate detail, which is leaving them distressed;
> - are identifying past experiences of abuse in care with no follow-up;
> - being left in environments after interviews are concluded where their carers or teachers are uninformed about the nature (and sometimes purpose) of the interviews and unable to support them sufficiently. In these situations the child/young person is expected to seek out support for him or herself and explain why they are upset; and
> - being verbally abused during the interview and pressured to sign statements.

The Hon. J.W. WEATHERILL (Minister for Families and Communities): It is true that, in carrying out its task, the Special Investigations Unit has attracted some attention. Certainly, it attracted some attention from some of the people who are now before the criminal courts facing charges; and, not unnaturally, people have sought to use their networks to attempt to undermine the Special Investigations Unit. I make no bones about it: the Special Investigations Unit has upset some people, but let us be absolutely clear what these people are doing. The unit is investigating allegations of sexual abuse against young people in the guardianship and care of the state.

It may have escaped the notice of those opposite, but today we are inquiring into the human wreckage that has occurred over decades as a consequence of precisely that same harm. We are proceeding carefully with this inquiry. I speak of the Special Investigations Unit's inquiry. We know that this is a new body set up by this government. It is investigating people. People are getting upset about it, and they are running around trying to discredit the role of the Special Investigations Unit. But what I find difficult is that I get correspondence from lawyers representing accused people before the courts and then I hear the echo coming back from the other side of the chamber. It is very disturbing indeed.

Mrs REDMOND: As a supplementary question, is the minister asserting that, in some way, the CREATE Foundation is part of the network of those who are accused of sexual abuse?

Members interjecting:

Mrs Redmond: That is what he said.

The Hon. J.W. WEATHERILL: No, I am not.

ILLICIT DRUGS

Ms BEDFORD (Florey): Will the Attorney-General inform the house whether the government is investigating the link between illicit drugs and crime?

The Hon. M.J. ATKINSON (Attorney-General): I thank the member for Florey for the hardest question I have received today. The Office of Crime Statistics and Research (OCSR) researches a range of topics. One issue that has occupied its time over recent years has been that of illicit drugs and its link to crime. Several strategies have been put in place within the justice portfolio to increase our knowledge of illicit drugs and their relationship to crime. This allows us to respond more effectively to people offending for drug and drug-related reasons.

OCSR has been undertaking long-term evaluations of the police drug diversion initiative, the Drug Court and the Court Assessment Referral Drugs Scheme, all of which are designed to provide alternative ways of dealing with offenders. They have also evaluated the police drug action teams, the indigenous community constables working with action teams and are trialing a drug-related community resilience program. OCSR is hosting a seminar tomorrow (Thursday) about South Australia's response to the link between illicit drugs and crime.

The seminar is broken down into five sessions. There are only five dot points here, not 29. I will expect the opposition to remember all of them and, as there are only five, to be able to recite them in two years upon examination. The five dot points are:

- an overview of available data on illicit drug use and crime in South Australia—what do we do?
- community responses to illicit drugs.
- exploring the links between drugs and crime.
- alternative justice responses to illicit drug offending.

I hope that if the member for Davenport is not able to recite these in two years he will resign from the front bench; and, finally:

- measuring our performance.

The purpose of the seminar is to share the key findings from our drug-related work with policy makers, practitioners and the public, so that those findings can be used for policy development within the South Australian justice portfolio's response to illicit drugs and crime.

DANGEROUS PRODUCTS, CHRISTMAS

Dr McFETRIDGE (Morphett): My question is to the Minister for Consumer Affairs. Why was there a delay of over a week in publicly releasing the list of potentially dangerous products which have been on sale in South Australian stores? Has the minister only now released that list because of editorial criticism in this morning's *Advertiser*?

The Hon. K.A. MAYWALD (Minister for Consumer Affairs): Each year product safety inspectors visit a selection of retailers to inspect, buy, test and assess the safety of toys, particularly toys that have recently come onto the market. This happens each year, and the results of this monitoring are publicised by the Commissioner or the minister in a media announcement. The announcement by the minister or the Commissioner represents the culmination of the testing process and notifies the public of what has been seized and recalled, giving the public an opportunity to crosscheck the information against presents they may have bought for Christmas and return a recalled product, if they have not done so already.

In 2004, 24 retailers were inspected in South Australia across a broad cross-section of store types. Some 2 500 different items were inspected in the lead-up to the Christmas trading period, and 23 items were obtained for detailed testing. Many products are visually inspected in stores for compliance with mandatory standards and labelling requirements. Other new and possibly hazardous items are taken away from the store to test. Tests are designed to check for:

- inhalation hazards (bean bags, etc.);
- small parts test (for infants);
- drop and break test;
- labelling (for example, for age-specific toys);
- projectile test (such as toy guns); and
- entrapment test (children's chairs).

Dr McFETRIDGE: I rise on point of order, sir. The question was why was there a delay of over a week. It was not about the list of items. We know the minister had some of the items already.

The SPEAKER: The minister.

The Hon. K.A. MAYWALD: My answer is detailing the process that leads up to the public announcement. Where a hazardous or insufficiently labelled product is identified, the Office of Consumer and Business Affairs either seizes the stock of the item or requires the relevant trader to remove all stock of the product from the shelves immediately. In either case the Office of Consumer and Business Affairs then requires the trader to issue a recall notice for any product that has already been sold. Several recall notices will be appearing throughout this week and next week following this season's inspections. The terms of the recalls are currently being finalised. The Office of Consumer and Business Affairs will also deal with the distributor (if locatable) to ascertain which retailers are selling the stock. A public notification of the item is issued if the Commissioner considers that there may be other traders selling the product that may not be aware of the product, and to reaffirm the right of consumers to return affected items to the stores where they were bought.

During this season's testing, three previously banned items have been found, and stock of these products has been seized from the traders. The banned items include:

- 20 flashing dummies;
- Five cap rifles; and
- 400 lead-wicked candles.

In each case, all stock was seized and the traders will be issuing recall notices for previously sold stock. If the item has been previously banned, the Office of Consumer and Business Affairs investigates further with a view to allowing criminal proceedings to be brought against the trader. It is taken very seriously.

In addition to the banned items, the Office of Consumer and Business Affairs' monitoring also uncovered wooden toys, including a train and an abacus. These toys failed testing and broke into small pieces, posing an ingestion/inhalation hazard for children under the age of three. The trader has withdrawn the stock from sale following OCBA's intervention and will publish a recall notice this week.

A child's folding chair and table set has been recalled because the chair poses an entrapment hazard. During the process of folding or unfolding, fingers could become entrapped in the legs, resulting in pinching or crushing of fingers. Two retailers had stock of this item. Both have withdrawn them following OCBA's intervention and will publish a recall notice at OCBA's direction.

OCBA uncovered fashion sunglasses where the diameter of the lens was too small and did not meet performance standards. OCBA is investigating this matter further with a view to prosecution. There will be a national recall of these items. It also uncovered flotation aids not meeting national standards because they did not have correct labelling. The aids themselves are not dangerous, and the distributors will correct the labelling following OCBA's direction.

OCBA's monitoring has three parts: removal of the hazard from the market, either by withdrawal or seizure; recovery of items sold prior to removal, through the publication of recall notices and the provision of refunds; and enforcement. As with all testing, the Commissioner acts to notify the public of any product that is on sale, or has been sold, that presents a danger and cannot adequately be dealt with by a recall notice. When a recall notice will be published, the Commissioner also publicises the fact.

The Commissioner advises me that he is satisfied that the Christmas inspection process is progressing exactly as planned and that, although a number of potentially hazardous items have been identified, appropriate action has been taken on each of them to ensure that they are removed from sale and recalled where they have already been sold. To suggest that there is somehow a failure to act or some withholding of information is absolute nonsense.

The Hon. DEAN BROWN: I rise on a point of order, Mr Speaker. We have now had eight minutes of dodging the answer.

Members interjecting:

The Hon. DEAN BROWN: Clearly the minister does not have the right under standing order 98 to debate the answer.

The SPEAKER: It is time to move on. I uphold the point of order.

COMMUNITY HEALTH SERVICES CHARGE

Mr MEIER (Goyder): My question is to the Minister for Health. Will the minister explain why some patients in the Wakefield health region are being charged a $72 per hour service fee, plus 62 cents per kilometre travel costs, whenever allied community health service providers visit them from Clare? From 1 December this year, for the first time ever patients at private hospitals and nursing homes in the Lower North health area are being charged a fee for allied health services by the state government. The fee is $72 per hour and 62 cents per kilometre travelled. I am advised that at Hamley Bridge Memorial Hospital Incorporated, which receives no government funding and is supported by the community, patients at the hospital are now being charged by the government for the provision of community health services.

The Hon. L. STEVENS (Minister for Health): I am very happy to get an answer for the honourable member and bring it back as soon as possible.

ADELAIDE POLICE STATION

Ms RANKINE (Wright): My question is to the Minister for Police. Can the minister advise the house on the details concerning the unspent funds for the Adelaide Police Station which have been the subject of comments by the Auditor-General and the upper house select committee on the Crown Solicitor's Trust Account?

The SPEAKER: May I advise the Deputy Premier not to go into the evidence that has been presented to any committee of the other place.

The Hon. K.O. FOLEY (Minister for Police): There has been comment about the so-called Adelaide Police Station money. In fact, on the weekend allegations were made by the shadow treasurer that some backdating had occurred of a transaction into the Crown Solicitor's Trust Account from 9 July 2003 to 30 June 2003.

I have been advised of the following: at the end of the 2002-03 financial year, the Department for Administrative Services returned funds to the Attorney-General's Department for the Adelaide Police Station project. I am advised that on 30 June 2003 an amount of $1 032 688 was sent by the Department for Administrative Services to the Attorney-General's Department.

I have a copy of a minute from Mr Vaughn Bollen, a senior officer within the justice portfolio, which I understand has been tabled today and copies of which will be circulated. It is important that I read this onto the record, although there is one four letter word for which I will use the letter 'f' and not repeat the whole word. It states:

1. I received a final reconciliation from DAIS about the Adelaide Police Station Demolition Project around the middle of June 2003.

2. I went to Kate Lennon in her office on receipt of the reconciliation and told her that the Attorney-General's Department had been over billed by DAIS and said we would get a refund from DAIS of approximately $1 million plus GST. I told her that in my view the money should be returned to Treasury. I was of the view that we had underspent on this project out of the appropriation and expressed the view that it should go back to Treasury.

3. Kate's response was to the effect: "'F' that; it's going into the Crown Solicitor's Trust Account."

4. At the beginning of July 2003 the Attorney-General's Department received an electronic transfer of $1 032 688. I sent an email to Kate on 1 July 2003 seeking confirmation of what to do with it.

5. The email exchange is attached to this statement.

That has been circulated. The interesting point is that I have also been advised—I understand this to be correct and I will stand corrected if it is not, but these are the words of the Auditor-General—that, in fact, the $1 million was broken up into two amounts so that they would not require the delegation of a minister. By doing the transaction in this way, it fell within the delegated authority of the chief executive officer to deal with the money instead of having to refer it to a minister, as happens if the amount is over $500 000. My reading of this is that they took the $1 million and Kate Lennon broke it into two parcels to avoid having to seek authority from the minister and to bring it under her delegation. That shows the contempt with which, clearly, Kate Lennon was dealing with Treasury, as stated in this minute.

Members interjecting:

The Hon. K.O. FOLEY: Character assassination, they say opposite. I think the Auditor-General, from what I heard on public radio today, said that these were acts of people conspiring illegally to undertake activities to deceive the Treasury. That is not character assassination by me; those are the words—or words to that effect—that I recall hearing on radio this morning. I have been provided with the actual quote, which states:

These people conspired together to break the law.

You can be as defensive of Kate Lennon as you like, but the words of the Auditor-General are pretty powerful indeed.

The Attorney-General's Department's records show that on 30 June 2003 a manual cheque was used to transfer these funds to the Crown Solicitor's Trust Account. I am advised that Kate Lennon had approved that this occur by email dated 1 July 2003. The formal approval of this transaction was made by Mr Kim Kelly, the Acting Chief Executive of the Attorney-General's Department, on 9 July 2003. The date of the manual cheque of 30 June is prior to the formal approval, as I am advised. The deposit into the Crown Solicitor's Trust Account and the formal approval to do this was undertaken, as I said, by the former management of the Attorney-General's Department. Accordingly, neither the staff of Sapol nor I as Minister for Police had any involvement in undertaking or authorising this transaction.

PARLIAMENTARY REMUNERATION (RESTORATION OF PROVISIONS) AMENDMENT BILL

Returned from the Legislative Council without any amendment.

GAMING MACHINES (MISCELLANEOUS) AMENDMENT BILL

The Legislative Council agreed to the amendment made by the House of Assembly to the Legislative Council's Amendment No. 11 without any amendment; did not insist on its suggested amendments Nos 2 and 3, to which the House of Assembly had disagreed; and agreed to the alternative amendments in lieu thereof without any amendment.

SITTINGS AND BUSINESS

Mr VENNING (Schubert): I move:

That for the remainder of the session standing and sessional orders be so far suspended as to provide that the sessional order adopted on 14 October does not apply to notices of motion for disallowances of regulations.

The SPEAKER: I have counted the house and, as an absolute majority of the whole number of members is present, the motion is accepted. Is it seconded?

An honourable member: Yes, sir.

Motion carried.

GRIEVANCE DEBATE

GAWLER HEALTH SERVICE

The Hon. M.R. BUCKBY (Light): I rise today in this grievance speech to talk about the Gawler Health Service, and in particular the Gawler Hospital. My comments that follow in no way reflect on the service that is delivered by the staff and the doctors of the Gawler Health Service, because that is exemplary, it is second to none, and the staff of the hospital,

and of the health service in its entirety, are excellent, and provide Gawler with an excellent service. But what I am concerned about is the health budget. What is happening at Gawler is happening right across the country and regional South Australia in that funds for country hospitals are being cut by this government.

The issue with the Gawler Health Service came to my attention approximately six to eight weeks ago when it was raised by Dr Lees of Gawler in our local paper that there were serious concerns with regards to the budget of the Gawler Health Service. I contacted Dr Lees and had a very lengthy and in-depth discussion with him about what he saw as the problems of the hospital, from the medicos' point of view, and I subsequently spoke with two representatives of the hospital board to ascertain just exactly what was the budget position of the Gawler Health Service. I am alarmed at the information that was given to me, but I must say not surprised, because it follows what is happening elsewhere in regional South Australia.

The health budget for the Gawler Health Service or the Gawler Hospital is $630 000 short on what they require to undertake their normal service delivery, and their normal operations. What is more, they did not receive even their continuing budget until the end of September, so for three months of this financial year the Gawler Health Service had no idea as to what their budget was going to be. As it happens, the budget has come through at $11.1 million, which is pretty much the same budget as the previous year. The minister came to the annual general meeting, which I also attended, only a short time ago, and indicated to the board, I am told, that the board must commit and adhere to it budget. There is one problem: the board cannot commit and adhere to its budget unless it cuts services.

The department has told the board of the Gawler Health Service that it cannot cut services but must adhere to the budget. So, we have here a classic catch-22 situation—the board has to adhere to the budget, but it cannot adhere to the budget because it has to cut services; but, no, it cannot cut services. So, the Gawler Health Service is in somewhat of a dire situation.

To address this, the health service will be closing down its elective surgery for three weeks over Christmas and four weeks over Easter, as it has done in previous years, because its budget has not been adequate in the last two years to cover surgery at this time. In addition, the service has closed the staff dining room in an attempt to cut its running costs. The number of elective procedures that used to be done by visiting specialists numbered six, but that has now been cut back to four.

If we look at the annual report, we see that the number of same-day surgery admissions has been reducing over the past couple of years. This is not good enough from a government that claims to be spending more on health matters. I note the Premier has come out saying in the last couple of days that the Wakefield Regional Health Service will receive an additional $1.55 million. I welcome any extra money, but the fact is that Gawler is part of the Wakefield Regional Health Service, but there are some 20 units across the Wakefield region. If you divide 20 into $1.55 million, it does not add up to $630 000 for Gawler. We have approached the minister but she has not as yet replied in terms of a meeting.

Time expired.

SCHOOLS, KLEMZIG PRIMARY

Mrs GERAGHTY (Torrens): I have the great pleasure of having many wonderful schools in my electorate. It is often the case with many of these schools that, whilst they may not have state-of-the-art facilities or huge amounts of money, they still have an excellent record of achievement. Several weeks ago, I spoke of the achievements of the Northfield Primary reception students in taking first place in the national maths competition two years in a row, which, I have to say, is an exceptional result by any measure.

Today, I want to talk about the achievements of Klemzig Primary School's year 4 and year 5 students in the South Australian Model Solar Boat Challenge. Last year, Klemzig Primary qualified for the national finals of the solar boat challenge, and a team of students travelled to Sydney to compete against other state champions for the national title. This year, the students travelled to Perth and narrowly missed out on qualifying. Some have indicated to me that there may have been a touch of industrial sabotage, but I am sure that is not the case.

Klemzig Primary has continued its high record of achievement in taking out major awards in the challenge. Awards for the boat with the best use of recycled materials and another for best engineering were presented to the students. These two awards are highly significant, recognising the technical ability and the innovation of the students above all others in South Australia that were utilised in the construction of their boats.

The value of the solar boat challenge is the way in which it allows the students to explore the use of alternative energies in an applied manner, which we all know is very important these days. This approach, in conjunction with encouraging students to look to alternative materials to construct their boats, is commendable, as it provides a direct focus on the need to look at alternative technologies, with a particular emphasis on those which are reusable and nonpolluting, as well as underscoring the importance of why these alternatives are needed.

Equally important is the fact that this encouragement is being provided to students at an age when it is most likely to have the greatest effect, thus ensuring that our young people will grow into adulthood with an advanced understanding of the effect that technology has on our society and, very importantly. our environment. The value of such an approach is unquestionable, particularly in the light of the drastic changes in the quality of the environment in recent years and the problems associated with fossil fuel use.

I cannot tell the house how happy I am to represent these schools with such an impressive record of achievement, and it is especially pleasing that these achievements are not just one-offs. The regularity with which, I am told, students have had wonderful results in a diverse range of areas demonstrates the high standard of schooling that South Australian public schools offer and the quality of teaching staff within those schools. I am proud to say that I have within my electorate schools which are setting up standards of excellence and providing students with valuable opportunities for building their skills, understandings and characters are being recognised at a state and national level for all their achievements.

I would like to give my warmest congratulations to the Klemzig Primary School students and staff on another wonderful effort. I would also like to say that the principal, Tony Zed, amazes me. He went out doorknocking once to

find out where all the children were around his school and why they were not coming to his school. He supports the students, and encourages them to take on new challenges and interests. As I said, he never ceases to amaze me, not just with his creativity but also with his dedication to those students.

TRAIN DERAILMENT

The Hon. I.F. EVANS (Davenport): Before I get to the main topic of my grieve I would like to thank the member for West Torrens for his inquiries about my father. Quite often during question time the member for West Torrens will yell across the chamber, 'Hey Ian, how is your father?' I know the Speaker notes that inquiry with interest, and I thank the member for West Torrens for his continuing interest in the health of my father, a former member of this place.

I wish to make some comments about the recent derailment of the freight train within my electorate. In making these comments I hope I am wrong (and if I am I will gladly apologise to those involved), but I have had a tip-off from an insider within the freight industry that raised this point with me, and I raise it for the consumption of the house today. As the house knows, there was a derailment within my electorate within the last month, and we were lucky that no-one was killed or injured in that particular incident.

Following that derailment members of the community raised a number of questions with me, and I am pleased to report to the house that I was involved with a teleconference last night with the office of the federal Minister for Transport, Mr Anderson, regarding some of those issues relating to the future of the line and safety aspects in relation to the freight line running through the Adelaide Hills. I thank the federal minister's office for their courtesy and for the hearing they gave both the federal member for Boothby, Andrew Southcott, and me in relation to this matter, and I will be more formally writing to the minister and to the Australian Transport Safety Bureau about this matter and these concerns.

The concern I wish to raise today is that I have had an insider ring me claiming to be a train driver, and I have no reason to doubt the bona fides of that caller. This person alleges that, when they are on the Belair line, the drivers of the freight trains and the passenger trains cannot communicate with each other. This means that if the driver of the passenger train noticed that something was wrong with the freight train as they passed they have no quick means of communication. It seems extraordinary to me that that would be the case in this day and age. In the most recent derailment—and there have been a number—it is now known that the first stage of that derailment occurred near the Belair station.

The freight train travelled some four kilometres with some of the train derailed. I understand that the first bogies fell off on the Blackwood side of Belair station, and the main derailment occurred four kilometres further on. As luck would have it, no-one was injured, nor was a passenger train hit. However, in different circumstances, had a passenger train passed the freight train, or, indeed, had it been in the passing loop waiting for the freight train to pass, it would have been a pretty simple measure to relay a message to that freight train driver that the bogie had come off near Belair station. The freight train driver could then have taken some action to try to restrict the damage and injury.

I hope that I am wrong with this information, but it has been given to me by someone who alleges to be a train driver. I promised that person that I would raise this issue in the interests of public safety. I will also raise it with the state minister in a formal letter, together with a range of other concerns that have been raised with me. It seems quite unbelievable that, in this day and age, freight trains and passenger trains use, essentially, the same line, or certainly the same corridor, without the capacity to communicate with each other quickly, easily and efficiently. If that is the case, it is a nonsense. Naturally, I call on the government and the appropriate authorities to take whatever action is necessary to put in place a simple communication method between the trains. Personal injury is not the only issue; material could be placed on the line, and dangerous goods could also be involved.

VIOLENCE AGAINST WOMEN

Ms BEDFORD (Florey): During the recent test match at Adelaide Oval, as I passed by each day on my way here I was glad and heartened to see so many men of all ages, either on their own or in groups (and some women were dotted amongst the throng), all heading towards the oval for a day's cricket. It prompted me to think about how important such events are for men, particularly as a meeting place and a special occasion.

Often, there is an uncomfortable connection between men and sport and violence towards women. I do not know whether male cricket fans or players are violent towards women after games, but AFL football has had its fair share of that sort of poor publicity and has taken definite steps to turn the situation around. While I do not want to single out varieties of football, other codes are making changes and are at different places along the same path.

Our sporting heroes are icons and role models, so a message from them is most important. It is only by recognising and stating emphatically that violence against women is unacceptable that we will make real progress, and it is all the more essential now as we work through the Amnesty International campaign to continue to wear a white ribbon.

I draw the house's attention to a report in *The Advertiser* on 6 December regarding the rape of a woman on her way to her car at Colley Reserve and the remark, made by a no doubt sincere man, which expressed the view that, when you have summer weather, drink and young people 'these sorts of things are going to happen'. This is not a position we can support. Violence continues unabated and must be addressed, particularly as we come into the festive season, when summer weather and alcohol (two of the identified risk factors in the article) are abundant and begin to have a more insidious effect. We need only look at the recent *Advertiser* article 'Terror on the streets' by police reporter Matt Williams which reported on the closure of two schools and a kindergarten, which were forced to lock students in classrooms after a shotgun-wielding man was seen less than 50 metres away. He was apparently the father of the two children trapped with his estranged partner in the house he was stalking.

We know that women are living in despair and that the law will never adequately protect them from abusive spouses or ex-partners. Time and again, traumatised women call the police and appear before the courts to relay shocking episodes of violence, only to see the perpetrator released to continue the abuse. Perpetrators need help. Violent men need anger management assistance, and we all need to understand relationships a little better. With the rise of the importance of men's issues groups, particularly on the federal agenda

(although we are yet to see an emphasis on anger management), I am constantly appalled by the rising incidence of reported rape in Australia.

Perhaps even worse is the apparent tolerance still increasingly shown towards sexual violence in much of Australia. Evidence of the tendency to excuse or even exonerate sexual attacks on women is a depressing trend on the part of society, especially the media, and to categorise sexual assault victims into either the 'innocent' or those who 'asked for it'.

The 5 393 assaults by intimates or family members reported to South Australian police in 2000 is thought to represent less than 20 per cent of criminal domestic violence perpetrated in South Australia that year. This means that approximately 27 000 acts of criminal domestic violence are committed each year. Further, of the reported cases it is estimated that less than 5 per cent result in a conviction. These assaults are predominantly heterosexual attacks. The sad fact is that conviction rates for sexual assault have actually decreased. Only 8 per cent of rape cases get to court in South Australia, and only 1.8 per cent achieve a successful prosecution (clearance rates for rape are significantly below those of other major assaults).

Most rapes are committed by family members or acquaintances and do not necessarily involve physical violence. However, the stereotype remains that a rape is not really a rape unless the victim is attacked by a total stranger or strangers, she is beaten up or, worse still, murdered (that way we know that it actually happened) before a woman's word (tested in court, of course, but under the revised rules of evidence) is believed. What sadder measure is there of our society's unwillingness to value women than we tell a woman who complains that her very being has been violated that we do not believe her?

Women's safety is an endemic problem, and rape reform must be at the top of a long list of women's issues still to be addressed, especially as South Australia's rape and sexual assault laws have not been overhauled for two decades despite reforms in all other states. For a government that has made law and order a central plank of its public credibility, I am certain that the figures in rape convictions are totally unacceptable. I foreshadow today my intention to do all I can within the government to ensure that something is done about it in the very near future.

LAND TAX

Mr SCALZI (Hartley): Today I wish to talk about the problems of the increasing burden of land tax on self-funded retirees, with particular reference to migrants. Whilst—

Members interjecting:

Mr SCALZI: Mr Speaker, I cannot—

The SPEAKER: You cannot hear yourself?

Mr SCALZI: No.

The SPEAKER: No, and I cannot hear, either. I would ask members to have a conversation with each other sitting beside one another if they wish and not across the chamber.

Mr SCALZI: Mr Speaker, do I still have my five minutes?

The SPEAKER: Yes.

Mr SCALZI: While I welcome the government's recognition of an ageing population and, in particular, people from non-English speaking backgrounds (and I must say that the Italian segment of that ageing population is ageing at a greater rate than the general population), I was pleased that the Attorney-General was at the launch of CO.AS.IT., and I commend its President, Franca Antonello, on the launch of its web site on Monday 29 November. I commend the government's support of CO.AS.IT, which is an umbrella organisation. The initiative was started under the previous government with the help of the Hon. Mario Feleppa, a former member of the Labor Party.

Ms Bedford: He is still a member of the Labor Party.

Mr SCALZI: I meant to say a former member of parliament. I thank him for his work. We worked together to make sure that there was a project officer and that work was done to get that umbrella organisation off the ground. The Attorney-General attended the launch of proceedings of the second conference (The Impact of Italians in South Australia) as well as the book entitled *Memories and Identities* edited by Professor Des O'Connor on 1 December. I commend the government's providing funds for that launch, which assesses the impact on migrants and, indeed, the impact of migrants on South Australia.

I would like to bring to the attention of the house that, whilst we recognise the contribution of migrants, I believe that self-funded retirees from migrant backgrounds have been unfairly discriminated against. Like many other members, I have received many complaints about land tax, and the issue has again come to the fore as a result of increasing property valuations in the 2004-05 financial year, but with no increase in the property tax threshold.

Today I wish to highlight the hardships caused to self-funded retirees, and in particular migrants who have chosen to invest in property as an alternative to superannuation, as is the case for many retirees from the Italian community in my electorate. Again, I stress that these are not big investors but people who have invested their savings in property in order to provide for their retirement. A letter sent to me by an elderly man precisely in that predicament states:

> Dear Mr Scalzi, I am 70 years old, do not get a pension and my only source of income is from my two properties. . . However, the increase in my expenses over the past few years have now gotten to the point that we can't live. I am under a lot of stress and am losing sleep over this matter. Over the past four years, my land tax has increased by 100 per cent each year as you can see in my invoices attached. In 2001, I paid $1 023 land tax, in 2002 I paid $2 096, in 2003 I paid $3 003, and in 2004 I paid $4 092. Land tax is the last straw, as it is calculated by land value, the value of my properties have obviously increased and therefore, so too have all the council rates. In effect, I pay council rates, water rates, insurance and levies for three houses along with the land tax, which amounts to approximately $15 000. Yet, when I only receive $25 000 in rent per annum, I am left with only $10 000. This means we have approximately $384 per fortnight to live, meanwhile had we been on a pension we would receive approximately $794 per fortnight. It has come to the point where I am considering selling my properties and go on a pension, only then I will be hit with the capital gains tax and still won't get a pension as I will have cash assets. I don't know what to do, please help.

The reality is that these people are not wealthy. They worked at Holdens, Chryslers, somewhere else at night and in gardens on weekends. The only way in which they could secure their retirement was to buy some properties. They do not get a pension. They have no stocks and shares. They have no superannuation. How are they supposed to live and why are they discriminated against?

HEALTHY LIVING

Ms THOMPSON (Reynell): Sir, you probably recall that the Social Development Committee last year undertook an inquiry into obesity. It started off as an inquiry into child

obesity and extended its terms of reference. The committee identified a wide range of issues arising out of obesity, together with a wide range of strategies to deal with the matter. I recognise that a number of children and adults in my electorate are overweight, and I do what others do, I suppose, and look into the shopping trolleys of some people; and, often associated with people who are quite large, there is a shopping trolley that contains products that are rich in fats and salts.

The wisdom that we have about this is that to eat healthily people need to be introduced early to a range of tastes and textures. So, I met with some people in my electorate to see whether it might be possible to embark on a project to deal with some of the issues of obesity. Representatives from Christie Downs Community House, Noarlunga Health Village and I met initially to determine what might be possible. It was considered that we should involve one of the local schools, Lonsdale Heights Primary School, with which Christie Downs was already working, to develop some projects that would assist this. We put in a submission to the Minister for Health for a modest grant and she kindly provided a small grant of $5 000.

This project has been amazing. With this small amount, three separate projects were undertaken as part of the overall healthy food umbrella. One project worked with years 5, 6 and 7 girls at Lonsdale Heights on a project relating to body image. They developed mosaics that expressed their feelings about themselves and beauty. Another project involved working with the years 5, 6 and 7 boys on the topic of men and masculinity. The boys sought to think about what it meant to be a boy growing up today, and they also took on a project to beautify the already beautiful grounds at Lonsdale Heights as a long-running outcome of their project.

A particularly interesting bit of it was the Kindy Kids Kitchen, where parents of the kindy children were invited to come along and, together with community workers from the Community House and nutritionists from Noarlunga Health Village, the children prepare healthy meals and learn about nutrition right from when they were four years of age so that they would have an understanding right through their lives of different textures, tastes and some understanding of nutrition.

We had a celebration last Friday where all those participating in the project (and I) were served a healthy meal in a nice little box. The sandwich filling was peanut butter, grated carrot and cheese, which I am assured is quite a favourite with the children, and we had a child-sized piece of fruit—half a banana. As I talked with the mothers, I could see that these children were interested in drinking water and not juice and coke, etc. One of the mothers told me that she had been told by her child that shepherd's pie was not healthy enough and she wanted to eat only vegetables.

This project has had a real outcome. Besides the mosaics, a book has been produced on Kindy Kids Kitchen. Christie Downs is extending this project with funds they have received from other sources to at least three schools next year. Parents had a good time at school with their children. It was a really joyous occasion.

I would like to thank the drivers of the Kindy Kids Kitchen project: Denise Lane, the principal of Lonsdale Heights; Fluff Roberts, a parent involved in the project; Katrina Carpenter, the worker from Christie Downs Community Centre; and Liz Sanders from Noarlunga Health Village.

Time expired.

PUBLIC WORKS COMMITTEE: ADELAIDE LIGHT RAILWAY UPGRADE

Mr CAICA (Colton): I move:

That the 210th report of the Public Works Committee, on the Adelaide Light Railway Upgrade of Glenelg Tramway Infrastructure, be noted.

The 75 year old H-class trams are to be replaced between December 2005 and June 2006—

An honourable member: Shame!

Mr CAICA: —we are keeping some of them—by nine new light rail vehicles from Bombardier Transportation, and upgrading the tramway infrastructure will complement the new technology. The infrastructure works will consist of the following: full concrete re-sleepering of the 9.2 kilometre in-corridor ballasted section from stop 3 to stop 19; remediation of contaminated ballast; partial steel re-railing of some sections; regrinding the rails, augmenting the power supply and distribution system; modifying tram stop platform structures to ensure compatibility with the Disability Discrimination Act; modifications to the Glengowrie tram maintenance depot; and modifications to the undercarriage of the existing H-class trams.

The main objectives of the infrastructure works are: a safe rail track operating environment that matches the characteristics of the new vehicles and ensures the best ride performance for passenger control; a reliable power supply and distribution system; safe and equitable access to and from the vehicles; and safe working environments for servicing and maintenance.

The tram project will cost $71.9 million, of which $23.57 million is for infrastructure works. The net present value of benefits is $1.2 million in 2004 dollars with a benefit cost ratio of 1.1. The project is expected to provide: improved comfort for tram passengers; improved accessibility for disabled passengers; increased passenger numbers; reduced traffic flow on roads serving the south-western suburbs; lower noise impact on adjoining residential areas; and lower maintenance costs on both the infrastructure and the new vehicles. The works are to commence in early 2005 and to be completed by August 2005.

A key issue in the effective delivery of these works will be the successful coordination of construction activities to minimise the impact on existing tram services during the life of the project. A degree of innovation will be required to ensure that the work delivers quality outcomes within time and cost constraints. The works will affect existing tram service levels, but it has not yet been decided whether the most cost-effective and least inconvenient option will be to close the tram service for a short period or to operate a reduced level of service over a longer period. This will be decided following a tender call, and passengers will be informed.

There may be some risk arising from the construction noise, with the possibility of some night work and some work at weekends. There may also be some traffic disruption when work takes place at level crossings or in Jetty Road or King William Street. The committee accepts that this will be managed to minimise public inconvenience.

The Public Works Committee has several broader concerns about this project. It will fund only the modifications to infrastructure required to support the operation of the new trams. No allowance has been made to fund wider non-essential corridor improvements such as widespread landscaping and the provision of cycling and walking paths, etc.

that have been sought by councils and special interest groups. In particular, the Holdfast Bay and Adelaide City councils have each sought to have the terminus facilities upgraded and possibly relocated.

The committee believes that these options and the practicality of extending the tramline to the Adelaide Railway Station should have been considered as part of the upgrade. The committee also notes that the chosen tram design encourages the vehicles' use by cyclists. However, improved bicycle pathways have not been funded as part of the project, and discussions with councils have not been concluded.

TransAdelaide failed to identify the value and advantages of all reasonable options or question whether the tramway is the most viable way to move passengers in this region and this corridor. The tramway's iconic status hinders the adoption of alternative transport solutions, but this policy choice involves significantly more capital and recurrent costs than the bus alternative and offers less flexibility.

Difficulty was experienced in attracting interest from suppliers for the new vehicles. The committee is concerned about the ramifications of this if future opportunities to upgrade the use of the infrastructure rely upon even smaller orders for additional vehicles. The new vehicles and infrastructure will enable an improved peak service from 10 minute to seven minute intervals, but this may increase traffic hold-ups on roads that traverse the track. The committee is pleased to learn that a study is being undertaken to ascertain how to maximise the opportunities offered by the upgraded stock and infrastructure without dislocating other transport modes.

The committee was concerned by suggestions that the work is premature and not needed within the time frame established by the project proposal. However, we were told that existing sleeper infrastructure is at the end of its economic life and needs to be upgraded, and the H-class trams have significant maintenance costs. The most recent refits cost $1 million per tram, and they are 'really maintained by almost handmade spare parts now'. Also, with further delays the H-class trams will move 'into an era when [TransAdelaide] could no longer guarantee their safety'.

These are powerful arguments for early replacement of the existing vehicles, but requiring delivery before the end of 2005 has limited the choice of vehicle. It has not been possible to piggyback on future interstate orders or to take full advantage of the width of the existing corridor by delaying the purchase until the wider version of any of the recognised brands could have been purchased. South Australia will have the narrowest tram and the widest corridor. These public policy issues are raised for consideration by members. Pursuant to section 12C of the Parliamentary Committees Act 1991, the Public Works Committee reports to parliament that it recommends the proposed public work.

Mr VENNING (Schubert): I rise to support the findings of the Public Works Committee. I say at the outset that I am a supporter of Adelaide trams. I have often used them and I was very sad as a young person to see them taken off the streets of Adelaide. If anything could be done to put them back, I would certainly be supportive of that. I was disappointed that, as the Chairman has just said, we chose the narrowest tram when we have the widest corridors. I am disappointed because the trams are not very wide in the first instance, and these trams are almost cigar-like, they are so narrow. I believe we chose them because they were the only trams available in the short time that the government allowed for them, because they want the trams running before the next election—or late next year, anyway. I do not want to be too cynical about that, but I think we could have at least borrowed some trams from Melbourne's huge fleet in an interim arrangement while we had the wider trams built and delivered here to South Australia. I am disappointed about that because the wider trams are better, and they certainly are a great way to move people. But they will be rather cramped, and I am disappointed about that, because these are very expensive trams.

Also, I believe we could at least have explored having the bodies for these trams built in South Australia. I do not believe enough was done to explore having the recognised tram companies supply the rolling stock—that is the movable frame, the chassis—and the overbody, the coach work, being done here in South Australia. I cannot see any reason why we could not have had some of our old trams copied onto a new chassis. That would have been interesting, and it would have meant jobs for Adelaide. It also would have made our trams unique in the world, and I am disappointed about that. Perhaps in the next lot we could investigate that, and before we buy any more of these trams, we should see whether Adelaide body builders could build their body on an imported chassis, and see where we go from there.

I was also very disappointed that these trams were purchased before the Public Works Committee had deliberated on the upgrade of the track. I found that difficult because it pre-empted that we would approve the massive amount of money to be spent on upgrading the track; it pre-empted the Public Works Committee's actually giving the okay. I thought it was a bit rude of the government to say, 'We have bought the trams; now you guys deliver on the track.' If we had knocked back the money on the track, it would have left the government in a difficult position because they would have had the trams and no track on which to drive them on. So, I was disappointed about that, too, because this is a huge amount of money (a $61 million investment from the state government) for a service that goes from Victoria Square down to Glenelg.

I believe that every member of this house and a large proportion of the population of South Australia would support the extension of this service from Victoria Square down the middle of King William Street, around the corner into North Terrace, down North Terrace to the Adelaide Railway Station, onto the railway line, and then use the existing corridor down to Port Adelaide.

That would double the service. No more money would be needed for the trams, as I believe we have enough trams to do that. And we would have a fantastic coast to city to coast service, with the O-Bahn going the other way. This whole investigation brought into question the O-Bahn, its future and why the government has not chosen to extend the O-Bahn transport system. It certainly raises the question whether in hindsight the O-Bahn was the way to go (although it has its supporters and its detractors), and whether the corridor to Port Adelaide should be a tramway or an O-Bahn way, or even both.

So, this whole investigation brought forward many interesting matters for debate. I had an acquaintance—a previous director of agriculture here in South Australia, Dr John Radcliffe—who is a well-known tram buff, and he supplied me with very good information in relation to this report. I was pleased with the information he gave us. He certainly is a tram buff, or tram expert. I was pleased that he

genuinely supported the upgrade of the rail, as well as the purchase of new trams. Like me, I think he would like to have seen a unique Adelaide tram. I congratulate him and his group for the marvellous work they do at the St Kilda Tram Museum. Luckily, these old trams will never be lost to us, because they are keeping them out there. For us tram buffs they will always be preserved for our use.

Finally, I indicate that I support the findings of the Public Works Committee. I enjoy my work with the committee, and I congratulate our staff and the members of the committee. I will certainly be a passenger on the trams. I would hope that if the government is able to purchase the next lot of trams for Adelaide it would be even better still if they were wider. I support the motion.

Dr McFETRIDGE (Morphett): I rise to support the Public Works Committee's report. It is great to see that we are getting new trams. However, as members of the Public Works Committee would be aware, the new trams would certainly not have been my first choice. Bombardier, which makes the Flexity Classic tram we are getting, is a very good company, and it makes very good trams. I saw the Flexity Classic tram in Frankfurt last year, and it is a good tram. It is a 70 per cent low floor tram, not a 100 per cent low floor, which is the first disappointment. More disappointing for the people of South Australia is that they are only 2.4 metres wide. As the member for Colton said, we have the narrowest tram on the widest corridor. We could have had 2.65 metre wide trams: the old H class trams we have now are 2.65 metres wide. So, why did we get a narrow tram? Don't ask me, other than I am very suspicious that these trams were ordered for a political time line—to be delivered before the next election. I am very concerned that, if we want to extend the service and the number of trams, where are they going to come from?

I came in on the tram to Parliament House today, and there is no doubt that we do need new trams. The old rattlers are fantastic old trams, but they are costing a fortune to maintain. The previous Liberal government upgraded some of the trams with airconditioning and re-upholstered and redid some of the coachwork. However, when I watched an old lady trying to get up and down the steps of the trams, it was something that reinforced the fact that we need to have increased disability access for the people of South Australia—certainly, for the mums and dads with their babies in pushers and for people in wheelchairs.

The Bombadier Flexity Classic tram is a good tram, but it is not a tram we should be getting. I was in Melbourne two weeks ago, and I took a ride on the Siemens Combino and the Alstom Citadis trams (the other two big tram manufacturers). They are already in Melbourne, so I cannot see why we could not have waited a little longer and hooked into a contract where we would get trams that are already here—they are wider trams and, in the case of Alstom Citadis, a 100 per cent low floor tram; it is a fantastic tram.

The H trams we have are 75 years old next week (on 14 December), and I understand that there will be a celebration in Victoria Square. I have not received my invitation yet from Roy Arnold, but I am sure he will read this and send it on to me. I enjoy seeing the old H class trams, and I am very pleased to see that we are going to keep some of them, although only a few. However, we will need to use the others for spares because, as the member for Colton said, spare parts for the trams are very difficult to acquire. In fact, they have to be custom made, hand made, by the fantastic workers down at the Morphettville Tram Barn. I have been in there and spoken with them, and they are quite excited about the new trams. I must admit that some of them are a bit disappointed that we are not getting a different tram, that is, either the Alstom Citadis or the Siemens Combino.

Bombardier also makes a Eurotram, which is a 2.65 metre wide tram. It is very sleek looking and a very good tram. We seem to have been short-changed a little bit because of a political decision to get the Flexity Classic. I understand that the excuse was that Frankfurt is ordering 100 more Flexity Classics, so we are going to piggyback on that order, which will keep the price down. As we all know, the price has blown out. I would have thought it would have made more economic sense to have talked to the Bracks government to see what it is doing with its Alstom and Siemens trams and piggybacked on orders there. I know that Yarra Trams over there is expanding its network; it is a huge network over there. I would love to see an expansion of the Adelaide tram network—or light rail network, as we should now be calling it—back to a semblance of what it was in the past.

We hear discussions about extending the tram up to North Terrace here and hooking it around to the railway station to connect with the heavy rail, and that certainly is something I would strongly support. As all members in this place would know, I have been pushing to extend the tramline from Glenelg to North Terrace and then out to North Adelaide, bringing it back around through the parklands to North Terrace, and bringing it back down past the Wine Centre, the Royal Adelaide Hospital, the universities, the Museum, the Art Gallery—all the cultural precincts. The technology is available, so we do not have to have the overhead catenary wires. We can have a third rail, or even another internal capacitor motor that will drive the trams without putting wires through the parklands. I saw many tramways and light railways in Europe, where you would not know the railway was there unless you were almost upon it, because it is embedded into sleepers which are then covered with turf. In fact, I have a photograph of them mowing along the tramway there. So, to say that it would wreck the parklands is incorrect.

As to the linear park that we could have from Glenelg to Adelaide, I look forward to seeing how that develops. There are a number of pinch points, as they call them, the crossing points, where cyclists and pedestrians will have to cross, but we are not exactly talking about New York City or the traffic in some of the cities I saw in Europe when I was there last year to look at the light rail. The need to develop more linear parks and to use that beautiful wide corridor, particularly with the narrower trams that will be running on it, is something that has to be considered very seriously.

The other issue concerns the replacement of the track—replacing the sleepers with new concrete sleepers is something that needs to be done. These new trams have a primary, secondary and tertiary suspension system; they are fantastically quiet and smooth. I would be very surprised if the passenger use does not increase from the little over two million now to who knows what—three million, or perhaps even more.

Obviously, we will need more trams. The trams will give a much smoother ride. The track will need to be upgraded and the sleepers replaced, although I am very concerned that the concrete bedding of the tracks in King William Street and in Jetty Road, Glenelg, will still cause some degree of disturbance and vibration for businesses along those two stretches—although the new trams will certainly cut back hugely the

disturbance we are now getting from the old H-class trams. You can sit in some of the cafes on Jetty Road in Glenelg and as the trams go past the table shakes, your coffee shakes and you cannot hear yourself talk because it is so loud. The new trams will certainly change that.

The member for Schubert mentioned the St Kilda Tram Museum, and I understand that some of the H-class trams will end up out at that museum. I suppose I have a dream where we move the tram museum to some place that is, perhaps, a little more user friendly, and that is down to West Beach by the Woolshed, in the member for West Torrens' electorate. We could run the fantastic vintage trams around through West Torrens, down by the airport and out around the bay. There might be some logistical problems with getting it across the Patawalonga, but we do have good engineers in South Australia and I am sure they can overcome that.

It is good to see that we are at last getting new trams; it has been a long time coming. I repeat: I am disappointed that we are getting these narrow trams. The profiles of the walls of the trams are thinner than the old style, but we are still limited to the internal capacity of these new trams, and it will be interesting to look at the internal layout. I am looking forward to the increased passenger use of these new trams. As I said, I came into the city on the tram today (I use the tram a lot to come in to parliament), and I look forward to the tramline being extended to North Terrace and possibly further. It would be fantastic to see it going down to Port Adelaide, back down to Henley, perhaps even down to the new Adelaide Airport, with the redevelopment down there, and out to Norwood.

When you look at the old network we had, you realise that what we have now is not even a shadow of its former self. When you look around the world at cities the same size as Adelaide, and which have a similar topography, it is clear that Adelaide is perfectly positioned for a massive extension of light rail. It is not cheap in the initial outlay, but with public-private partnerships and other ways of funding these huge infrastructure developments it is something that we need to consider.

I hope the government does consider extending the light rail, and I congratulate the Public Works Committee on looking at this project with the diligence it has and for raising the issues that it has. I look forward to the day when we get our new trams.

The SPEAKER: Order! I draw honourable members' attention to the delegation in the chamber with the Minister for Health. The delegation is from the Malaysian Parliament led by Dato' Dr Chua Soi Lek. Can I say to the minister and to the delegation he so ably leads, on behalf of all honourable members, 'Salamat datang ka Adelaide.'

The Hon. R.B. SUCH (Fisher): I welcome this report and I welcome the upgrade of the Glenelg tramway. As members can see in *Hansard*, I have been advocating for many years for Adelaide to have a light rail network, and the sooner we get on and do it the better. I think it is the way to go, and I agree with the member for Morphett that you can build that sort of light rail network without impacting severely on the environment. I urge the government, in the lead-up to the next election, to have a look at the possibility of a light rail network for Adelaide.

Mr CAICA (Colton): I thank honourable members for their contributions. I know that all members of the house look forward to the project concluding in a timely fashion and, indeed, as a member I support those comments made with respect to the future expansion of the light rail system throughout inner and metropolitan Adelaide.

Motion carried.

The SPEAKER: Before proceeding to the next motion, I would like to make it plain that I am disappointed—notwithstanding the romantic notion with which members have treated the proposition to extend light rail—that no attempt has been made to quantify the passenger kilometre contribution of greenhouse gases of light rail compared to buses or other forms of transport, nor the cost per passenger kilometre of, say, the O-Bahn compared with light rail, compared with a dedicated busway, compared with street operating buses. It strikes me as quaint that that was overlooked in the process of examining whether or not to proceed with that transport technology.

PUBLIC WORKS COMMITTEE: BLACK ROAD, FLAGSTAFF ROAD UPGRADE

Mr CAICA (Colton): I move:

That the 211th report of the committee, on the Black Road, Flagstaff Hill (Upgrade Flagstaff Road to Oakridge Road), be noted.

Many roads on metropolitan Adelaide's outskirts were established with a rural character and level of service. Most are now surrounded by urban development and lack the amenities of urban roads such as kerbs and gutters, footpaths, underground drainage and sufficient road lighting. Black Road, Flagstaff Hill, is a road of this type. It is an outer urban, two-lane arterial road which carries traffic generated in the southern foothill suburbs of Coromandel Valley, Flagstaff Hill and Aberfoyle Park. It is also a significant secondary arterial road within the northern region of the city of Onkaparinga.

Black Road has a poor level of amenity. It is unkerbed, there are minimal formal stormwater drainage facilities, property access is not defined, parking occurs randomly within the wide verge, and facilities for public transport users are poor. Traffic volumes are relatively high for a road of this standard, and there are significant safety issues because of the road's narrowness and the number of local turning movements from abutting residences, other local roads, and facilities such as the primary school and adjacent recreational centre. The local area is principally residential, and most properties have direct access onto Black Road. A primary/junior primary school is also located on the road.

The section proposed for upgrade is approximately 3.3 kilometres in length and extends westward, from the intersection with Flagstaff Road, to the eastern side of Oakridge Road. The main aim of the project is to provide a level of safety and amenity equal to similar outer urban arterial roads in high residential areas. In addition, improvements will be made to traffic accessibility from and to adjoining streets onto Black Road, particularly in morning and afternoon peak periods. The upgrade works will include:

- kerbing and a subsurface stormwater drainage system;
- on-road parking at specific locations along the road;
- indented bus bays and pedestrian platform areas at all bus stop locations;
- a cross-section that incorporates one traffic lane and a cycle lane in each direction;
- improved street lighting; and
- plantings of native vegetation.

The two-lane operation of the road will remain, but cycle lanes and parking bays will be introduced to the overall roadway cross-section. Additional width will be provided at most junctions to assist with traffic flows and to reduce potential conflict points. The project will improve the road infrastructure and level of service to the community by providing:

- a wider sealed width;
- facilities for cyclists and pedestrians;
- improved stormwater drainage systems, including kerb and gutter;
- controlled roadside parking arrangements; and
- improved public transport user facilities.

As a result of this project, the local community will enjoy improved visual amenity, reduced crash rates and their severity, and reduced delays, particularly at peak periods. In 2004, the total project cost is estimated to be $5 million. The City of Onkaparinga is contributing $1.425 million. An economic evaluation equates the net present value of benefits from reduced accidents and maintenance costs to be in deficit, with a benefit cost ratio of 0.3. This is a poor economic result, but it is to be expected when the majority of costs are directed towards amenity improvements that have no direct quantifiable benefit in dollar terms. Due to the site location, and the need to minimise the impact of wet weather on road users and the community, construction will be restricted to the drier months of the year. Consequently, work will be spread over the 2004-05 and 2005-06 financial years.

The committee was most concerned to learn that local members of parliament were not properly consulted about the proposed project. Therefore, we recommend that the minister instigate measures to ensure that a full and timely consultation occur with local members as a standard component of community consultation in relation to proposed projects. Pursuant to section 12C of the Parliamentary Committees Act 1991, the Public Works Committee reports to parliament that it recommends the proposed public work.

The Hon. R.B. SUCH (Fisher): I welcome this report and the commencement of works on Black Road. This project has a long history, and I congratulate the Hon. Trish White (Minister for Transport) for bringing this matter to a point where work can start and, as outlined by the member for Colton, where the scope of the project exceeds $5 million. The people of the area do not ask for much, and they do not get much. They want a functional road, but they want to retain the rustic character, and that means removing as few trees as possible, particularly the grey box (*Eucalyptus microcarpa*). On the evidence given to me by Dr Dean Nicolle, who is an authority on eucalypts, some of the trees on Black Road are several hundreds of years old, although they may not appear so to the novice. They are very slow growing and are increasingly threatened. Grey box woodland is certainly threatened, and very few high quality areas remain, although one can be found within the grounds of the Happy Valley reservoir.

The member for Colton mentioned the disappointment at the lack of liaison with local members, and my electorate lies to the south of the road, and the member for Davenport's is to the north. I strongly suggest to the Minister for Transport that there be a liaison officer who deals with local members when major roadworks involve her department and local councils. Even at this point, I have not seen a detailed map or plan of the roadworks, although I have a general idea of what is to happen. It is pretty difficult for a local member to interact with his or her community if they do not know the precise details. For example, I am told that there is an indication on the road surface of which trees are to be removed, but it is not easy to check that over a considerable length of road. I think that it would be in the interests of both the department and taxpayers that that liaison occur.

I am pleased that the upgrade will include a roundabout at the junction with Oakridge Road and Glenalvon Drive. I point out that drainage is an issue along that road, but I believe that it is not necessary to have an upright kerb along the whole length of the road. I understand that the City of Onkaparinga prefers upright to rollback kerbs in order to stop people parking along the edge of the road outside defined areas. However, I think it looks a lot better to have a rollback kerb wherever possible to help retain the rustic character.

Another point I make that may interest members is that I believe that Lord Kitchener sat under an old tree adjacent to Black Road (although I do not know whether he was eating one of his own buns). In 1911, there was military training in the area, and horse-drawn batteries and other weapons of war, which are probably more familiar to the member for Waite than me, were fired at the people of Blackwood, although I am not sure what they had done to deserve that. Apparently, if you look closely at the Flagstaff Hill area, you will find remnants of the mock battles. This is being researched at the moment by the archaeology department of Flinders University. The De Rose family, who have been long-time residents of the area since the 1800s, are particularly keen to see the tree saved. I am sure that Lord Kitchener no longer worries about the future of that tree or the future of his kitchener bun. However, I welcome this report and I welcome the upgrade of Black Road.

Motion carried.

PLUMBERS, GAS FITTERS AND ELECTRICIANS ACT

Mr HANNA (Mitchell): I move:

That the regulations made under the Plumbers, Gas Fitters and Electricians Act 1995 entitled Apprentices, made on 9 September and laid on the table of this house on 15 September, be disallowed.

This is a recommendation of the Legislative Review Committee, which voted to recommend the disallowance of these regulations at its meeting this morning. The regulations state that electricians who contract for work on electricity entities do not have to be licensed under the Plumbers, Gas Fitters and Electricians Act 1995. The reason is that such electricians are subject to the electricity entity's Safety and Technical Management Plan, which is intended to provide a scheme of regulation that protects electricians in the workplace and ensures that work is carried out to appropriate standards.

The committee noted that safety and technical management plans may not be easily accessed by the relevant electricians. Consequently, electricians may not be fully aware of the duty that is owed to them by their employers and the standards that they must uphold in carrying out electrical work. This would be an unintended consequence of the regulations and, as such, breaches the committee's principles of scrutiny.

The Hon. R.B. SUCH (Fisher): Just for clarification, I understand that the member for Mitchell moved that motion on behalf of the Legislative Review Committee: he did not move it as the individual member for Mitchell. I think that

there was some confusion. It was agreed unanimously by all members on the Legislative Review Committee.

The ACTING SPEAKER (Ms Thompson): That is recognised.

Motion carried.

BODY PIERCING AND TATTOOING

Mr RAU (Enfield): I move:

That a select committee be established to recommend options for managing and/or regulating the tattooing and body piercing industries and, in particular, to examine—

(a) the effectiveness of self-regulation, including existing harm minimisation approaches;
(b) any special measures to address the protection of minors and impulse tattooing of adults;
(c) the effectiveness of enforcement under the Summary Offences Act 1953 and other legislation;
(d) a comparison with other national and international regulatory and management regimes; and
(e) any implications of monitoring and enforcement of possible management options.

There is probably no need for me to canvass the detail of this matter. I think that people are aware of what is going on. I understand that members on both sides of the chamber have expressed interest in relation to serving on the committee. My only regret is that the number of people who have expressed a keen interest were not able to be accommodated, and I mention in particular the members for Hartley, West Torrens and Fisher, all of whom, I am sure, would have very much enjoyed the opportunity of serving on the committee. I guess that is always the way. I move for the establishment of the select committee as per the printed item on the *Notice Paper*.

Mr MEIER (Goyder): I have no problem with the motion moved by the honourable member. It would be a good idea to have this matter fully examined, and I wish the committee well in its deliberations.

The Hon. R.B. SUCH (Fisher): I support this development. I think it is unfortunate, but it is the way that things have turned out. Members would be aware that there have been several attempts to try to protect children in particular from having inappropriate tattoos in inappropriate places but, for some reason best known to themselves, some people in certain establishments seem to think that children should be fair game for anyone. This measure at least gives an opportunity for a considered view on the matter of tattooing and body piercing, and I commend the member for Enfield for moving for this select committee.

Motion carried.

The house appointed a select committee consisting of Hon. G.M. Gunn, Mrs Hall, Mr O'Brien, Ms Rankine and Mr Rau; the committee to have power to send for persons, papers and records, and to adjourn from place to place; the committee to report on Wednesday 9 February 2005.

Mr RAU (Enfield): I move:

That standing order 339 be and remain so far suspended as to enable the select committee to authorise the disclosure or publication as it sees fit of any evidence presented to the committee prior to such evidence being reported to the house.

The ACTING SPEAKER (Ms Thompson): I have counted the house and, as an absolute majority of the whole number of members of the house is not present, ring the bells.

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

Motion carried.

ROADWORK (REGULATION) BILL

Mr HAMILTON-SMITH (Waite) obtained leave and introduced a bill for an act to regulate the carrying out of roadwork that may have a severely adverse effect on the flow of traffic or the conduct of business; and to create a right of action in damages against an authority that carries out certain roadwork without taking appropriate action to minimise loss to businesses conducted in the vicinity of the work. Read a first time.

Mr HAMILTON-SMITH: I move:

That this bill be now read a second time.

I bring this bill before the house as the shadow minister for small business in an effort to solve what has become quite a serious problem in both metropolitan and country areas wherein government authorities, either state government or local government, plough down a road to either rebuild the road, lay pipes or conduct other works, as required, and, in so doing, have the effect of putting small businesses out of business by obstructing entry and exit to their premises; by interrupting the flow of goods and supplies; by interfering with access for customers; and in other ways.

The plight of businesses along Portrush Road, Norwood, where, at present, extensive work is going on, came to my attention in April. Some of the companies affected in that area include the Silver Earth Trading Co., the Norwood Garden Centre and the Robin Hood Hotel. They all have indicated to me that they have been adversely affected by prolonged roadworks on Portrush Road, and I know that this is of concern to my friends and colleagues whose electorates share Portrush Road.

These people reported to me that their businesses have been severely restricted by these roadworks, which have generally deterred people from visiting their enterprises. As a result, these businesses have suffered severe losses. The Silver Earth Trading Co. alone has lost $300 000, and at least 10 jobs have been lost. The company wrote to the Minister for Transport seeking assistance but was advised that no compensation was payable for the 'inconvenience' caused as a result of the roadworks.

The Portrush Road, Norwood, roadworks are not the only concern. I have also had letters from businesses on Unley Road, Unley, and King William Road, Hyde Park. A number of other roadworks are under way around metropolitan and country areas that are affected; and I will mention some of those in a moment. In my view, it is unacceptable that small businesses can be destroyed as a result of prolonged roadworks without consultation or compensation in cases where there has been no consultation. This matter has application across the whole state, within all 47 electorates represented in this place.

My bill seeks to ensure that, before embarking on roadwork which is likely to have a severe and prolonged adverse effect on traffic, or which is likely to harm businesses in the vicinity, a road authority must, first, obtain a roadwork impact statement setting out the likely effect of the proposed roadwork on vehicular and pedestrian traffic and the likely effect, if any, of the roadwork on business conducted in its vicinity and containing recommendations for minimising possible adverse effects of the roadworks.

Secondly, if a road authority fails to take reasonable steps to minimise adverse effects of roadworks on business, the failure is actionable as a tort by the owner of any such business who has suffered loss as a result of that failure. It is a defence for the road authority to establish that it has complied with its obligations. The bill therefore seeks to require that government, including both state and local government, take reasonable steps to protect small businesses from financial damage as a consequence of the roadworks. In most instances, these steps will already have been taken or should have been taken.

In many cases, authorities are presently performing and fulfilling their responsibilities to liaise and consult with small business, but there are cases where that is not happening. In my view, it is likely that the costs associated with compliance with this bill are minimal. I know an argument the government may put up is 'We do not want to expose ourselves to liability claims.' I put it to the government that in most cases authorities are already doing the right thing. Where they are clearly not doing the right thing and not consulting, it is proper and appropriate that some form of compensation should be paid.

You might ask, Madam Acting Speaker, for more information and more guidance on the circumstances that have led to the requirement for this bill to be written. I simply need to refer back to the events of King William Road in the mid-1980s when that road underwent substantial refurbishment. I have been in contact with a couple of businesses that suffered considerable financial loss and had stories to tell on that street.

I mention in particular Sal Tropiano from the Lorenzini boutique in King William Road, Hyde Park, who indicated that when these roadworks occurred, everybody suffered and many businesses closed down because of the way the work was carried out without adequate consultation. Lessons should have been learnt from this. In this case, his particular business at this time in the mid-1980s dropped by 50 per cent, but up to 30 per cent of businesses in the street simply went broke. The roadworks caused a lot of stress for business owners—even those that survived. Clothing shops, furniture shops and others went out of business.

There were some positives in the end, because the street was cleaned up, strong businesses stayed and things were better after the roadwork. But there was chaos during the works, which went on for 16 to 18 months. Mr Tropiano understands that the work was prolonged by training programs being part of the context through which the work was carried out. He is concerned that another roadwork upgrade is due to be conducted a few years from now.

Another business on that street is Jarrett Legal Services, and Mr Warren Jarrett expressed the same concern. Major difficulties were experienced while they were digging up in front of his property. The only way to get in and out of the office at one stage was to wade through mud. He simply could not walk into the office. It disrupted his business for a number of months. How does a law firm conduct its practice in these circumstances? He confirmed that, while some businesses survived, many went broke, and businesses had little time to prepare. Mr Jarrett claims that the local government on that particular occasion was not particularly interested in their plight. It was simply a case of literally bulldoze through and get things done. That is fine from the point of view of completing the roadwork but not too good for the small businesses who suffered as a consequence.

Let me move to Unley Road, because I have also had correspondence from Mr Robert Miels of the Miels Clothing Shop at 154 Unley Road, who is presently experiencing dislocation as a consequence of roadworks currently under way near his two businesses on Unley Road. There are trenches being dug to put in underground power cables, and it looks like that work will go on until March 2005. They were given a week's notice, which turned out to be three weeks notice because the work did not start on time. Mr Miels says that the contractors have been fairly good and considerate, but the reality is there simply was not enough notice for businesses to prepare. For two to three weeks his shop was inaccessible and this, of course, had an effect on his business. Fewer people were able to access all the shops along Unley Road. Robert Miels told me that his business had changed its name and had sent out a lot of invitations to its launch. The invitations had already been printed and it was too late to change them. The roadworks almost completely ruined the launch of the rebadging and renaming of their business—another example of chaos flowing from roadworks.

Getting back to Portrush Road, I have spoken to Denis Northey and Mr Mark Caldicott of the Norwood Garden Centre. They told me that the roadworks have severely affected their business. People are avoiding the area, which quietened down business activity considerably. The centre had to lay off staff, two others have left and have not been replaced, and they had to cut back on hours. There was considerable dislocation and loss of revenue. The turnover has been down anything up to 25 per cent since last Christmas and, even before that, people were generally avoiding the Portrush Road area. This has been confirmed by Mr Matthew Binns of the Robin Hood Hotel who said there was a serious decline in its business over at least five or six months of the work. It was too hard for people to get in and out of the business. He told me that the restaurant, bars and drive-through were all affected due to difficulty in access. They had to cut back four or five full-time employees and the employment of casuals was affected.

The works went right through Easter, usually a strong period. Lanes were being blocked off and paving was under way, which was extremely frustrating for the customers, workers and the proprietors. It was a family owned business. They had been there for eight years. It simply created chaos for them. Again, they say the council were not that helpful when putting a sign out to show people how to get in. Of course, that was too late in that it was reacting to the roadworks already having interrupted their business. It was not done in a planned way. Mr Binns makes the point that the government offers relief in a range of circumstances where problems arise such as drought relief, but it seems there is no relief being offered when the department of main roads or some other entity comes through and ploughs up the road. Of course, I have mentioned the Silver Earth Trading Company, which has suffered considerable financial loss. They have written to the minister and virtually been flicked aside with the minister saying, 'We have no obligation to compensate or to consider you; we simply have at our discretion an option to show a duty of care to your concerns.'

For all those reasons, I bring this bill to the house. The government has a responsibility to its constituents: it has a responsibility to its citizenry and a responsibility to small businesses to give them a fair go. It has a responsibility to consult with you if it is going to dig up a road near your driveway and interfere with your shopfront so that customers

cannot come and go and goods and services cannot be picked up or delivered, because this will have a serious deleterious effect on the viability of your business.

There ought to be some sort of a small business impact plan. The government has undertaken to provide such a plan for all cabinet submissions. I do not know whether that is happening—I suspect it is not—but the government should certainly have a small business impact plan in cases where major roadworks are planned, as should local government. I know that local government and state government will not want to be held to account on this issue, but I say they should be.

The bill requires the government to be responsible and to consult. The government should demonstrate that they have done that, that they have spoken to businesses and given them a bit of notice, and taken into account their concerns. Maybe all their concerns cannot be ameliorated, but if the government has made an honest effort and done a reasonable job, that is a defence. Where it has not done that, where it has been reckless and irresponsible (whether in Whyalla, Port Lincoln, Burnside or Port Adelaide), businesses should have the right to say to the government, 'Fair go. You didn't let us know; you put me out of business; you cost people their jobs; there should be some compensation.' I ask the government to give this bill fair consideration. I seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The Bill will come into operation on a day to be fixed by proclamation.

Clause 3: Interpretation

Provides definitions of council, road authority and roadwork for the purposes of this Bill.

Clause 4: Roadwork to which this Act applies

Subclause (1)

Provides that the Act will apply to roadwork that is likely to have a severe and prolonged adverse affect on the movement of vehicular or pedestrian traffic; or is likely to harm (temporarily or permanently) businesses conducted in the vicinity of the roadwork.

Subclause (2)

Provides that despite Subclause (1) the Act will not apply to roadwork if the roadwork is urgently required to deal with an emergency or a problem requiring an urgent solution.

Clause 5: Preconditions to be satisfied before roadwork to which this Act applies is carried out

Subclause (1)

Provides that a road authority must, before embarking on roadwork to which the Act applies, obtain from a competent person or organisation that is independent of control by the road authority a roadwork impact statement setting out the likely effect of the proposed roadwork on vehicular and pedestrian traffic; and the likely effect (if any) of the roadwork on business conducted in its vicinity; and containing recommendations for minimising possible adverse effects of the roadwork.

Subclause (2)

Provides that where the likely adverse effects of the proposed roadwork are severe, or the roadwork impact statement recommends the submission of the proposals to public scrutiny under this section, the roadwork authority must publish a notice in a newspaper circulating generally throughout the State giving reasonable details of the proposed roadwork; and stating that the roadwork impact statement is available for inspection at a particular website or a particular address (or both); and inviting written suggestions (to be made within a reasonable time stated in the notice) for minimising adverse effects of the proposed roadwork.

Clause 6: Carrying out of roadwork to which this Act applies

Provides that in carrying out roadwork to which the Act applies, a road authority must give effect, as far as reasonably practicable and economically feasible to recommendations for minimising the adverse effects of the proposed roadwork contained in the roadwork impact statement; and if a notice inviting written suggestions for minimising adverse effects of the proposed roadworks has been published—to reasonable suggestions made in response to the notice.

Clause 7: Right to compensation for interference with business

Subclause (1)

Provides that if a road authority fails to take reasonable steps to minimise adverse effects of roadwork to which the Act applies on businesses in the vicinity of the roadwork, that failure is actionable as a tort by the owner of any such business who has suffered loss as a result of that failure.

Subclause (2)

Provides a defence for a road authority to establish that it has complied with its obligations under the Act in relation to the relevant roadwork.

Mr SNELLING secured the adjournment of the debate.

THE STANDARD TIME (EASTERN STANDARD TIME) AMENDMENT BILL

Mr HANNA (Mitchell) obtained leave and introduced a bill for an act to amend The Standard Time Act 1898. Read a first time.

Mr HANNA: I move:

That this bill be now read a second time.

I will give a brief history of the time zones in South Australia. Prior to the 1890s we were essentially on sun time and, wherever you were, your time relative to Greenwich Mean Time was the time that you took. There was a move in the 1870s and the 1880s for various nations to develop standard time zones for their respective nations. This obviously made commerce and communication easier because it was much easier to predict the time of people in other provinces, states or nations with whom you were dealing. It was also important for navigation and, prior to the federation of Australia, admiralty charts were produced, but they were of unnecessary complexity prior to standard time zones being introduced.

In 1894, the South Australia Parliament brought in a time zone by way of legislation which fixed our time zone with reference to the meridian coinciding with the longitude which runs through Oodnadatta. That essentially left us an hour ahead of Perth and an hour behind Sydney and Melbourne in terms of Greenwich Mean Time. However, very quickly, commercial interests in particular expressed their concern at the commercial disadvantage they experienced as a result of being behind the Eastern States. They therefore agitated for a time zone closer to, if not equal to, the Eastern States.

In 1898, this parliament said that the meridian by which our standard time was taken should be set further to the east. We therefore arrived at a situation where the time in Adelaide, instead of being ahead of sun time by about a quarter of an hour, was actually a quarter of an hour behind sun time. In other words, we were set one half hour behind the eastern states. So, it has remained that way ever since but I note that between 1886 and 1992 the Labor government attempted on occasions to bring South Australia into line with the time zone of Sydney and Melbourne. Those attempts were unsuccessful. However, the business community has persistently argued that we should be on the same footing in terms of time zone as the eastern states. After all, it has been the case ever since colonial days that the bulk of our exports, in terms of goods and services which go out of South Australia, go to the eastern states.

Notwithstanding the fact that technology has advanced, the reasons for having the time zone coinciding with Sydney and Melbourne are much the same. Although it is true that

these days one can email, fax or telephone a person more readily than one could in the 19th century, the fact remains that a mental adjustment has to be made if one is dealing with people in the eastern states. This is true for ordinary citizens as well as people of the business community. Secondly, the standard business opening hours in South Australia mean that we have gaps in communication with businesses in the eastern states when they are open. So, with South Australian businesses more or less opening half an hour later than the eastern states we are not available when our business counterparts in Sydney and Melbourne seek to contact us. And at the end of the day, when we might want to contact business counterparts in Sydney and Melbourne, they have already knocked off for the day. I know that there are exceptions to that but those general circumstances apply.

So, it is a matter of convenience for citizens and people in the business community. It is powerfully advocated for by Business SA, representing the business community and, indeed, the call is the same as it was from the Chamber of Commerce way back in the 1890s. But there is a more important reason today for aligning ourselves with the eastern states, and that is to send a message that South Australia can do business just as well as, if not better than, our counterparts in the eastern states. The government is currently spending considerable sums putting up billboards around airports and other places around the country saying that South Australia is good for business and open for business. If we were in the same time zone as the eastern states we would be sending a message that we are on an equal footing as far as doing business is concerned.

I recognise that people on the West Coast of South Australia then become further behind sun time than they already are. I propose to this house that we should approve the principle of this bill by passing the second reading and then look at whether we can, together, see if it is worthwhile having some alternative arrangement for people on the West Coast. That is not as ludicrous as it might look at first glance. In Western Australia there is something called Central Western Australian Time, which is three-quarters of an hour behind South Australian time. In other words, it is a time zone within Western Australian, itself a vast state, which is halfway between Adelaide and Perth times. So, that can be achieved within a state without too much confusion, and it maybe something that West Coast residents would prefer. They may prefer it now, let alone after the passage of this bill.

So, that is something that can be worked out and it is something that should be talked about. I hope that members of both major parties will take the matter away and consider it with an open mind over the summer, and I hope that we can come back in here in February and pass the second reading stage of this bill so that we can discuss what other permutations there might be.

I will briefly allude to the clauses of the bill by way of explanation. It is a very simple bill. The means of fixing the time zone in South Australia is to refer to a specific meridian, and members will see that, in clause 4, it is simply a matter of substituting the meridian of longitude 150 degrees east of Greenwich for the current meridian which is set at 142½ degrees east of Greenwich. To put it simply, there is one hour difference for each 15 degrees away from Greenwich, and that meridian then reflects the mean time or, in my simple language, the sun time of that place, and that is the place according to which the state would have reference to determine the time should this proposal be passed. I refer particularly to the transitional provision in clause 5. That is a standard provision. My intention with this bill is that it should come into operation at the end of daylight saving in March 2006, although I note that clause 2 states that it will come into operation on a day and at a time to be fixed by proclamation. That flexibility has been left within the bill. I commend it to the house.

Mrs PENFOLD secured the adjournment of the debate.

LOCAL GOVERNMENT (RECONSTITUTION OF LOCAL GOVERNMENT AREAS) AMENDMENT BILL

Mrs REDMOND (Heysen) obtained leave and introduced a bill for an act to amend the Local Government Act 1999. Read a first time.

Mrs REDMOND: I move:

That this bill be now read a second time.

I want to make it very clear at the outset that as to the matter that I am putting forward in this bill I am doing so deliberately in private members' time because it is my view and not that of the party necessarily, although I do hope to persuade my parliamentary colleagues in due course of the sensibility of what I am proposing in this bill.

In order to understand it, the most reasonable thing to do is to first go back to look at the provisions of the current Local Government Act. The act was basically renewed in 1999, where the previous Local Government Act 1934 was replaced by the new Local Government Act, a very comprehensive act passed in 1999. At the very beginning of that act there is a chapter on the system of local government. Chapter 3 deals with the constitution of councils; in particular, the creation, structuring and restructuring of councils. If one looks at the area of the bill that covers that issue, one will see a provision for the adjustment of boundaries under the councils. Indeed, there are things about the powers of the Governor in relation to issuing proclamations and about councils appointing the first members of the council, and so on.

In part 2, we get to the area of the boundary adjustment facilitation panel and reform proposals. That part sets up the Boundary Adjustment Facilitation Panel, and the act sets out the composition of that panel and the conditions of its membership, and so on, and how it will operate. Most importantly, in section 22, the functions of the panel are set out. It provides:

(a) to consider proposals for the making of proclamations under this chapter submitted to the panel, and to make recommendations to the minister on the basis of those proposals; and
(b) to assist councils and members of the public in the formulation, development and implementation of proposals and submissions under this chapter.

It goes on to provide for conducting inquiries into matters referred to the panel by electors or potential electors, formulating proposals for the making of proclamations, preparing and publishing guidelines, and so on. I am providing this in some detail for reasons which will become obvious in a moment when I get on to the provisions of the bill I am now proposing.

Section 22 also provides that this panel provide advice to the minister on matters referred to the panel by the minister and to take on any other tasks incidental to any of those functions. In order to carry out those things, the panel is further empowered to hold hearings, receive and consider

written submissions and oral evidence, and the like, and otherwise inform themselves as they think fit. When one looks further into this section of the Local Government Act, there is a provision for public initiated submissions in which a group of at least 20 eligible electors (and 'eligible electors' is defined) can submit to a council a submission that the boundaries of the council should be altered. There are a couple of other provisions, such as a new council can be incorporated from an area of the state which is not currently within a council, or the composition of the council—the nature of the representation, whether there are councillors, aldermen and mayors, and all that sort of thing—can also be considered by the boundary facilitation panel if a group of at least 20 eligible electors submit a proposal.

Members may be aware that for some time I have been of the view that not all amalgamations that occurred in about 1997 were successful in their outcome. Indeed, Mr Deputy Speaker, you initiated a motion on which I have already spoken in this house; it did not reach any conclusions but it invited consideration of those amalgamations and the nature of our councils. In the course of reflecting on all the issues that arose because of my views, I looked at the Local Government Act. It became clear that the public initiated submissions that are dealt with in section 28, and so on, in the existing act provide only for a boundary to be adjusted. They do not actually enable a de-amalgamation, for want of a better word, of an existing council.

So, even if the electors of an entire council decided as one that amalgamation had not worked and they no longer wished to be part of an amalgamated council, there is no provision under the existing legislation for them to do anything about it—at least in my view. I do not think that a boundary adjustment is what is necessary. What we are talking about is more than just a boundary adjustment, as contemplated in the current legislation. What I am talking about is removing the current constitution of the council, severing part of it and creating a new council in its stead, thereby creating a separate council. For instance, in the case of the Adelaide Hills Council, instead of the four councils that originally amalgamated, it could be made into two somewhat smaller councils.

I am not proposing that anyone be compelled to proceed down this path, and I am certainly not proposing that it is going to be an easy path, but I believe there is a lack in the current legislation in that, if electors wanted to de-amalgamate, there is currently no provision there for them to do that. Indeed, when I spoke to the former minister about this matter he expressed the view that it was, in fact, probably an oversight at the time the legislation was originally put through—and I guess that came about because of the focus on amalgamations at the time.

I am not looking to create a system whereby anyone is compelled to proceed to de-amalgamation (I do not like that word, but it really is the most effective way to describe what I am proposing). However, I think it is appropriate to put these enabling provisions into the legislation so that if people want to do it they can. I do not think, though, that it is appropriate for it to be as easy as is proposed under the current terms for a boundary change. A boundary change could be quite minimal—it could be moving just one street—and if that were the case 20 electors is probably an appropriate number.

My bill follows along the same sort of lines, but proposes that a request be initiated by not fewer than 200 people rather than the 20—so, 10 times as many and, therefore, 10 times as hard to achieve. Basically, it would then follow through the same sort of path as exists under the division 5 public initiated submissions provisions of chapter 3 part 2 of the existing act. So, it is a fairly straightforward mechanism, and all we are doing is inserting into the legislation an extra potential for that boundary facilitation panel.

I will just refer to the terms of the actual bill. After the short title and amendment formality-type provisions, the bill first introduces a new definition, and that is of severance proposal, as follows:

> a proposal to sever any portion of an area of a council from that area and to constitute a new council in relation to that severed area;

In other words, severance proposal (whilst that is the definition given in the bill) really means splitting something off and constituting that area as a new council—not simply severing it away but making it a new council.

Clause 9 amends what the Governor may do by proclamation. In the current act, the Governor is given certain powers in section 9. The Governor may, by proclamation, constitute a new council, amalgamate two or more councils to form a single council, define the area of a council, alter the boundaries of a council, and a number of other things. Nowhere is there a provision for the Governor to actually sever part of a council off and create that part as a new council, thereby creating a separate council but from an area already within a council. It is, therefore, proposed to include a new paragraph (da), and consequently there is an amendment to section 10 in relation to matters that can be included in the Governor's proclamation. That inserts into section 10(1), after 'constitutes a new council', the following words:

> (including in relation to an area that has been severed from the area of an existing council)

In other words, it simply makes it clear that section 10 and the ability of the Governor to include things in a proclamation will be included in relation to an area which is to be severed and which is to constitute a new council.

Similarly, section 10 is to have a new subsection (2a) inserted, which provides that if a portion of an area has been severed from the area of an existing council and a new council is constituted, made up of that originally part of the old council but now part of the severed area, the Governor may also, by proclamation:

> provide for an alteration to the composition of the council

That is because you may not want to have a council, for instance, with 12 councillors and a mayor: you may choose to revert to a council with, say, eight councillors who elect their mayor, or something like that. Secondly, the Governor can:

> make any special provision that may be necessary or desirable about the by-laws that apply in that part of the area that is remaining after the severance;

The Governor may also:

> make provision for the transfer, apportionment, settlement or adjustment of property, assets, income, rights, liabilities or expenses as between the relevant councils.

This is because when you have a single council and you divide it into two or more councils there will obviously be staff of the existing council and assets such as road work equipment, and so on. Fairly obviously, the land within a council area will generally fall fairly easily into whatever the new council area becomes, but it is the other assets that become more complex. Of course, that is the whole point of the boundary facilitation panel having the power to deal with these things.

Clause 6 is basically the area which sets out the ability of eligible electors, numbering 200, to proceed to propose a severance proposal. I do not intend to go through each of the subclauses in detail but, basically, it provides that if there is to be a severance proposal an 'eligible elector' will be defined as a person who has a residence or rateable property within the area that would be severed under the terms of the proposal. Subclause (3) inserts into section 28 the following:

A group of at least 200 eligible electors may submit to a council a submission that the council consider a severance proposal.

However, it provides that such a submission cannot be made in the period of two years immediately following a council having been constituted. In other words, once a council is constituted there can be no attempt to sever a part of it to create a new council within the period of two years. So, as I said, it is relatively straightforward. If it goes through the Boundary Facilitation Panel, clause 7 provides that, even if the panel has not recommended that the proposal proceed, it can keep the matter under consideration if at least 100 people out of the 200 who submitted the proposal originally wish it to do so. The minister is required to meet with five people nominated from the group of 100 and could still agree to the proposal going ahead.

I welcome that this bill has reached only the stage of my very brief second reading explanation, as I hope that during the break I will have the opportunity to consult even more widely with members of the public, councillors, council staff and the LGA in relation to the matters I propose. I commend the bill to the house.

Mrs GERAGHTY secured the adjournment of the debate.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE: WASTE MANAGEMENT

Ms BREUER (Giles): I move:

That the 52nd report of the Environment, Resources and Development Committee, on waste management, be noted.

This inquiry was referred by the House of Assembly to the Environment, Resources and Development Committee on 28 May 2003. The inquiry commenced in early 2004, following the completion of the inquiry into wind farms. The committee heard from 22 witnesses during this period and received 13 submissions highlighting the importance of appropriate waste management and resource recovery in our society. Our actions of the past—principally, just to throw away our waste—are no longer acceptable. Better use of these items, through recycling and reuse, is now being undertaken in metropolitan South Australia and, to a lesser extent, in regional and rural South Australia. It is estimated that 86 per cent of South Australian households have access to some form of recycling. All 19 metropolitan councils offer a kerbside collection service, and 17 of the 49 non-metropolitan councils also provide a recycling service.

The committee heard from several regional councils and local government groups about the difficulty experienced by councils in providing recycling collection services to their ratepayers. The expense of infrastructure, and the need to transport the materials long distances to reprocessing facilities, is proving to be prohibitive in many rural areas. Hence, the committee recommends that state government departments, such as Zero Waste SA, work with regional and rural councils and local government groups to review and identify current infrastructure that can potentially be used for recycling purposes and consider and identify mechanisms to improve the issues surrounding the large distances to transport these materials.

Recycling services in metropolitan Adelaide face different hurdles. Although every household has access to a bottle, can and paper kerbside collection service, there are around eight different kerbside collection systems across the metropolitan area. These vary between several collection bins, split bins, crates, or a combination thereof. The different systems cause confusion for the public, and this potentially reduces the amount of recyclables collected. The additional infrastructure requirements for each of the different systems are also a potential waste of resources. The committee encourages the government to continue to work with local councils to achieve greater uniformity in recycling collection services.

It was encouraging to hear that industry is also starting to play its part in resource recovery. The amount of building and demolition waste recycling in Adelaide has increased, with approximately 700 000 tonnes of material being recycled annually. This equates to 64 per cent of available waste material. The committee also heard about the potential to salvage building and demolition waste, particularly timber. However, this could be undertaken to a greater extent in Adelaide, as there appear to be some impediments to salvaging materials, such as time constraints on demolition and potential restrictions on the use of salvaged materials. These issues need to be addressed to allow greater salvaging and reuse of building materials.

It was also encouraging to hear about the increasing diversion of green waste from landfill. The expansion of local composting facilities has allowed, and will continue to allow, more councils to offer green waste collection services to their residents and industry to recycle this valuable resource appropriately.

With respect to other technologies as an alternative to landfill, concerns are still held by government and the community about waste-to-energy technologies and their environmental and health implications. Further investigations are required into the different processes being trialled or used interstate and overseas. Government also needs to provide the industry with a clear direction on how it intends to assess these technologies.

Although the recycling and reuse of waste materials is increasing, there is still a need to dispose of waste. At the commencement of this inquiry, there was concern over the closure of the Wingfield waste management facility (due to close at the end of this month) and what will happen with the waste currently being disposed of there. Evidence was provided to the committee that, at current filling rates, there is about 30 years' worth of landfill capacity to the south of Adelaide, and 90 years to the north of Adelaide. With this information, and the government's pursuit of zero waste, there should be adequate capacity to manage Adelaide's waste for the future. All new landfill applications for the management of Adelaide's waste should be considered in the light of these facts.

In rural areas things are different. The committee heard the concerns of councils regarding the recent regional approach to waste management, especially landfills being taken by the state government. Councils are currently not convinced that a regional approach will work for all areas. They perceive that there will be an increase in waste costs to council. They are concerned about the likely increase in illegal dumping of rubbish alongside roadsides if local facilities are not available to residents, and councils will be expected to manage this.

The committee believes that there needs to be further discussion between councils and the state government considering the issues of regionalisation, illegal dumping and community education to inform local residents of new services and appropriate waste management practices. It was encouraging to hear the ongoing government commitment to hazardous waste management, such as the program commenced earlier this year by Zero Waste SA to collect household hazardous waste via a council-by-council service in metropolitan and rural areas.

I encourage all households to take the opportunity to dispose of their household hazardous waste via one of these collection programs when it is in their council area. The committee also included the effectiveness of container deposit legislation within the terms of reference for its inquiry. The committee was pleased to hear the continuing strong support and recognition for CDL by South Australians, with 97 per cent of respondents to a recent survey agreeing that CDL is good for our environment. As most of us are aware, CDL applies to many different beverage items and a variety of containers. The committee heard with interest the actual extent of the scheme.

More than 2 500 beverage containers are currently approved by the EPA for sale in South Australia, and of these 70 to 80 items are iced-coffee containers. Although CDL is one of South Australia's success stories—and one that we need to continue to encourage the rest of Australia to adopt—some issues were raised with the committee that need further consideration. There is an anomaly relating to the legislation with respect to different capacity containers. That is, most containers required to be approved under the scheme are up to and including three litres. However, there are some that are less than one litre, but these containers are made from the same packaging materials.

This is confusing for the public and collection depot operators as it is the contents of the container and not the packaging material that dictates where a beverage container fits under the scheme. Only one capacity should be adopted under legislation to minimise confusion. When the legislation was introduced in the mid 1970s the deposit value was 5¢. It is still this today. This is of concern to the committee and was raised in several submissions. Arguments for and against raising the deposit value were heard—although both had merit, neither was conclusive. It is the belief of the committee that the deposit value for CDL should be further investigated to determine whether there is a need to increase its monetary value to maintain the success of the container deposit scheme. As a result of this inquiry into waste management, the committee has made 33 recommendations in total and looks forward to their being considered and implemented.

I would like to take this opportunity to thank all those people who contributed to this inquiry. I thank all those who took the time and made the effort to prepare submissions for the committee and to speak to the committee. I extend my sincere thanks to the members of the committee, the Hon. Malcolm Buckby, Tom Koutsantonis, the Hon. David Ridgway, the Hon. Sandra Kanck and the Hon. Gail Gago. Also, I thank current and former staff. I thank Mr Phil Frensham, who very ably looks after our committee. He does a lot of the running around for us and he is always very cooperative and easy to get on with. I thank Ms Heather Hill who, unfortunately, left us to go to better pastures. I also thank Ms Alison Meeks who joined us earlier this year. She came in at a very late stage and, as a committee, we were very impressed. As Chair of the committee I was impressed with the way in which she picked up on this report. She put it all together for us and prepared the report as it stands today. We are very appreciative and pleased that we have Alison to replace Heather Hill, who was also a very good research officer for our committee.

The Hon. M.R. BUCKBY (Light): I would like to make a few comments in addition to those of the Chair of the ERD Committee. I will not go over areas covered by the honourable member: however one area that was of particular concern related to the issue of waste management for rural councils and, in particular, the EPA guidelines in terms of disposal of waste in rural areas. The council received a number of submissions from councils in the South-East and on the West Coast. Those councils made the point that complying with EPA guidelines was costing them a lot of money.

That is why recommendations 27 and 28 call for the EPA to work with individual councils on new landfill guidelines and to establish some time frames within which councils are able to budget and implement those new requirements. That is particularly important, because councils do need to look at whether they will be able to share resources in terms of landfills or recycling as, in many cases, the distance between town centres and council landfill is quite great. The cost of transferring rubbish and that waste is quite high relative to the cost in metropolitan councils, for instance.

I believe that that area does require some urgent work to be able to help rural and regional councils. We need to set some time frames so that they can have decent lead time to be able to budget and to confer with other councils in terms of how they might share resources, as well as getting a bit of flexibility with respect to EPA guidelines and handling waste. I refer particularly to the regionalisation of waste sites rather than each council trying to manage not only their own waste site but also the cost. They need to try to reduce the cost of the transport of waste to the site.

This was a particularly interesting report. It showed that South Australia is doing extremely well in terms of recycling its waste. It also demonstrated that our container deposit legislation—South Australia being the only state with such legislation—is working extremely well. One only has to look on the roadsides to see the lack of cans and iced coffee containers, and those sorts of beverage containers, to know that this is a good idea. We impress on the minister to continue the fight at ministerial council level to encourage other states to follow this practice.

Motion carried.

HERITAGE (BEECHWOOD GARDEN) AMENDMENT BILL

Mrs REDMOND (Heysen) obtained leave and introduced a bill for an act to amend the Heritage Act 1993. Read a first time.

Mrs REDMOND: I move:

That this bill be now read a second time.

Members may recall that earlier in the year—indeed, in the last week before the end of the July session—the minister moved legislation to enable the sale of the heritage garden known as Beechwood in Stirling. For the past 20 years or so, that garden has been in the ownership of the Botanic Gardens. It was acknowledged by a large number of people that the ownership was not really appropriate; certainly the Botanic Gardens did not think it was the appropriate place for that

garden to be owned. It was put under its stewardship when it was sold out of private ownership 20 years previously, primarily to avoid the potential or possibility that it could be subdivided. For the past 20 years the Botanic Gardens has looked after things.

What the parliament dealt with in July was the sale of the garden back into private ownership. It is now in the ownership of the people who own the house, which is sitting in the middle of the garden. During the previous 20 years, there was a peculiar situation. It was very much a one-off and patched-together solution to an immediate problem. They had created separate titles; put the house onto one title and the other land onto a couple of other titles. That was owned and controlled by the Botanic Gardens, and there were various rights of way going either way. The gardens were looked after by the Botanic Gardens at public expense, but the people who lived in the garden had the benefit of the garden but did not have to pay anything for it; they had to open up the garden for up to six weeks a year.

In July it was agreed that it be sold back into private ownership. At the time there was some degree of public protest and, although I supported the government's move, I did give an undertaking to members of my community who expressed concern about the provisions of the Heritage Act. Section 32 of the Heritage Act provides that there can be heritage agreements. Section 32(3) provides:

> The minister may, after seeking and considering the advice of the authority, by agreement with the owner of the land to which a heritage agreement applies, vary or terminate the agreement.

That subsection was of considerable concern to a number of residents in the immediate vicinity of Beechwood Garden. They felt that even though the new arrangement was to be protected by a heritage agreement, which was registered on the title and which would bind all future owners of the property (the house and the garden), it would not prevent anyone from taking an approach to the minister and the minister agreeing to vary or terminate the agreement.

In order to provide an added protection and bring the status of the garden back to where it was in terms of the level of protection, this bill provides that, while that provision will continue to apply to other heritage agreements, the heritage agreement that concerns Beechwood Garden is to be slightly different in that the garden is to be subject to a special condition so that the heritage agreement cannot be changed by the minister. This particular heritage agreement is to be varied only if authorised by a resolution of both houses of parliament. In terms of changes to it, that is the status this garden had as part of the Botanic Gardens, because the Botanic Gardens Act provided that things could be changed only by resolution of both houses. This bill proposes to leave the garden subject to the heritage agreement, but say that, for this particular heritage agreement, instead of the normal provision of section 32(3) applying, if they want to vary or terminate the agreement it must get the approval of both houses of parliament.

I do not intend to go into detail about the terms of the legislation other than to say that we have prescribed the land by way of the interpretation clause to the particular certificates of title, which are the property in question; and schedule 2 then provides that the heritage agreement relating to Beechwood Garden can be authorised only by a resolution passed by both houses of parliament after giving notice of it at least 14 days before the matter is determined. With those few words, I commend the bill to the house.

Mr SNELLING secured the adjournment of the debate.

PARLIAMENTARY COMMITTEE ON OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION

Mr CAICA (Colton): I move:

That the Annual Report 2003-04 of the Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation be noted.

The committee has an important role in investigating matters relating to the administration of the state's occupational health, safety and compensation legislation and other legislation affecting these matters, including the performance of the WorkCover Corporation. The Occupational Safety, Rehabilitation and Compensation Committee differs substantially in operation from other standing committees. Whilst a number of factors are identical to all other standing committees of parliament, the key difference with this committee is that the members are not remunerated. However, the workload of the committee has increased exponentially due to the government's reform agenda, which touches on the jurisdiction of the committee.

All the members are committed to the important work of the committee and have applied themselves diligently to their responsibilities. The committee has worked well and collectively, and each member has contributed an enormous amount of time for a very important cause, and each can feel proud of his or her efforts.

The Occupational Safety, Rehabilitation and Compensation Committee met on 23 occasions in the last financial year and undertook three extensive inquiries, two of which it has completed and already reported on to this house. The third inquiry relates to the government's review into the workers compensation system known as the Stanley review. The committee continues with its work in relation to this matter.

Importantly, the committee notes that WorkCover's estimated liability continues to rise due to a variety of factors including new actuarial assessment methods, increasing claim numbers, and a delay in return to work rates of injured workers. However, the committee is heartened by the efforts being made by the WorkCover board and its senior management team to take steps to address a wide range of problems. The committee realises that it will take the board some time and a range of strategies to bring about an improvement in WorkCover's performance.

However, this is not just a matter for the WorkCover board; it is important for every employer and employee to focus on workplace health and safety so that workplace injury, death and disease are prevented. This is one of the most important ways in which individuals can help reduce the unfunded liability.

This brings me to the state's workplace death and injury performance rates. South Australian compensable fatality rates are lower than the national average, but the same cannot be said for workplace injuries, which are above the national average. The increasing claim numbers and the decreasing return to work rate have a negative impact on WorkCover's unfunded liability.

The committee has been advised by WorkCover that legal proceedings undertaken pursuant to section 120 of the Workers Rehabilitation and Compensation Act, which relates to dishonesty, has saved the scheme an estimated $2.95 million. 48 prosecutions were finalised at a cost of $1.13 million of which 79.2 per cent were successful with the

defendant being found guilty. The courts have awarded a total of $593 581.92 in restitution to WorkCover.

The eighth report of the Occupational Safety, Rehabilitation and Compensation Committee summarises the committee's work for the financial year 2003-04, which has been extensive, whilst the cost of the taxpayer for this work has been minimal. The total expenditure for the committee for the financial year was $1 603.

I would like to take this opportunity to thank all those people who have contributed to the inquiries undertaken by the committee. I thank all those people who took the time and made the effort to prepare submissions for the committee and to speak to the committee. I extend my sincere thanks to the members of the committee: the member for Mitchell, the member for Heysen, the Hon. John Gazzola, the Hon. Ian Gilfillan and the Hon. Angus Redford. I would also like to thank the staff—Mr Rick Crump and Ms Sue Sedivy—for their efforts throughout the year.

Mrs REDMOND secured the adjournment of the debate.

ROAD TRAFFIC (DRUG TESTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 November. Page 1046.)

The Hon. W.A. MATTHEW (Bright): I rise to support the Road Traffic (Drug Tests) Amendment Bill and, in so doing, I congratulate my colleague the member for Schubert for his vigilance in following this issue through. This is the second occasion on which the member for Schubert has brought a private member's bill to this house in a bid to ensure that our roads are made safer through requiring people who may be drug affected to be subjected to very simple and straightforward drug testing. This bill and its predecessor also follow two motions that the member for Schubert has brought to this place seeking that such testing be brought forward.

I was somewhat surprised to hear recent reports in the media that, after two years of the member for Schubert highlighting these issues, the government is about to bring in its own bill. A characteristic of this state Labor government seems to be that on any occasion something is first brought forward they will resist it if they can, but then if public pressure starts to mount, if evidence from the scientific community starts to mount and if media pressure is brought to bear, the government then knee jerks and reacts. It would seem that on this occasion the government is about to knee jerk and react yet again: they finally, it would seem, recognise the wisdom of the endeavours by my colleague the member for Schubert and they are about to introduce their own bill.

However, they have not yet done that. This bill—the Road Traffic (Drug Test) Amendment Bill—is the one that we are debating today in this house. Through his bill, the member for Schubert is endeavouring to legislate that people can be pulled over by the police force and a drug test undertaken by way of a simple swab of the inside of the mouth. That test process, which takes about 30 seconds, will then be used to determine if there is evidence of any unlawful substance present. If any evidence of such a substance is found, a further test should be applied using mobile testing equipment. That test may then take up to about 30 minutes to determine what substance is registered and, further, the amount of the substance that is present.

There are those who have had concerns in relation to this testing process. There are the usual civil liberties groups which have trotted out their opposition to it but, quite simply, I—as does the member for Schubert—see this type of testing as being no more intrusive than the breathalyser testing that occurs at present. I well remember that when breathalyser testing for drink driving was first put into place there were the usual objections from the civil liberties groups. I have been tested a number of times by the police mobile breath testing units. It is a very quick process. A driver is pulled over at random, you breathe into the police testing device, the officer looks at the reading and thanks you for your time, and you go on your way. This process takes a few seconds, and it has helped to make our roads safer. It has taken many a drink driver off the road, and it has worked very effectively.

What the member for Schubert proposes through this bill is that drivers who may be under the influence of a prohibited substance (a drug) be tested. Their time will be taken up in a similar fashion if they are innocent, if they have not been taking drugs, or if there is nothing to answer for. I do not believe there can be any legitimate opposition to this move. The member for Schubert has not only persistently lobbied ministers and brought the matter to the house on, now, this fourth occasion, but he has also been very vocal through his local media as well as the statewide and even national media. That is to his credit, because I know from my discussions with the member for Schubert outside this chamber that he is absolutely determined that this type of legislation will see the day when it passes in this house because it is sensible, just and the right thing to do.

It is a sad fact that we live today in a community where people take prohibited substances. Further, while under the influence of such substances, people drive a vehicle, putting not only themselves but other road users at risk of injury or worse, simply because of their stupidity. Only recently we have seen much media attention given to parties at which prohibited substances are taken. Having two teenagers in my family, I know the number of times they have encountered situations where people are selling drugs and they are aware of people who have taken them. This is a problem.

Debate adjourned.

STANDING ORDERS SUSPENSION

The Hon. K.A. MAYWALD (Minister for the River Murray): I move:

That standing orders be so far suspended as to enable Order of the Day, Private Members' Business Bills/Committees/Regulations No. 28 to be taken into consideration forthwith.

The DEPUTY SPEAKER: Is that seconded?

An honourable member: Yes, sir.

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

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

The house divided on the motion:

The SPEAKER: Order! There being only one for the noes, I declare the vote for the suspension carried.

STATUTES AMENDMENT (MISUSE OF MOTOR VEHICLES) BILL

Consideration in committee of the Legislative Council's amendments.

(Continued from 6 December. Page 1172.)

Amendments Nos 1 and 2:

The Hon. R.B. SUCH: I move:

That the Legislative Council's amendments Nos 1 and 2 be agreed to.

Mr HANNA: In my view, if we are going to consider the matter we should have a full explanation of just what the changes are from the member for Fisher or someone else.

The Hon. R.B. SUCH: These amendments were made in the upper house with, as I understand it, the support of all honourable members up there. What it seeks to do in relation to clause 6, page 4, line 29, is ensure that there is no ambiguity in terms of who is the driver of a vehicle. This relates particularly to noise emanating from a vehicle, and a police officer can require identification by way of licence or other identification so that there is no vagueness or loophole.

This amendment was included not as a result of my intervention but after legal advice was taken that there could be a loophole if the person driving could not be properly identified—so that is the reason. It is a protection to ensure that the person who is being dealt with is the person involved and not someone else. It is really a safeguard in that sense to ensure that proper procedures are followed. It is consistent with the rest of the bill but, because the noise element was added to the bill before it was finally drafted, it needs this to be consistent and to be fair to any driver who is asked questions by a police officer.

Mr HANNA: I have two issues with that. One is in respect of the current law. Is it not the case that police can ask the name and address of any driver in any case, and does that not obviate the need for amendment? I ask the member for Fisher why it is necessary if the current law allows police to identify a driver in any case? Secondly, if a vehicle is to be impounded, why is there not differential treatment of drivers and owners, or is the owner left to look out for the loss of property for 48 hours, regardless of who the driver is?

The Hon. R.B. SUCH: As I indicated previously, I did not initiate this amendment. Rather, it arose because of the use of the expertise of parliamentary counsel, who have more expertise than I have—certainly in matters of law. The upper house took that advice and accepted that it was necessary in order to provide clarity in regard to that aspect of the bill relating to noise emanating from a vehicle and, accordingly, was put in by the upper house.

Motion carried.

[Sitting suspended from 6 to 7.30 p.m.]

MARITIME SERVICES (ACCESS)(FUNCTIONS OF COMMISSION) AMENDMENT BILL

The Hon. P.L. White, for the **Hon. P.F. CONLON (Minister for Infrastructure)**, obtained leave and introduced a bill for an act to amend the Maritime Services (Access) Act 2000. Read a first time.

The Hon. P.L. WHITE: I move:

That this bill be now read a second time.

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

Leave granted.

The *Maritime Services (Access) Act 2000* establishes a South Australian Ports Access Regime and regulates essential maritime industries. The Essential Services Commission performs a central role under the Act. Essential maritime industries are regulated industries for the purposes of the *Essential Services Commission Act 2002* and the Commission is required to keep maritime industries under review with a view to determining whether regulation (or further regulation) is required under that Act. The Commission monitors and oversees access matters, determines information requirements, and refers access disputes to arbitration.

Regulations have recently been made extending the access regime for a further 3 years as recommended by the Commission following a review conducted under section 43 of the *Maritime Services (Access) Act 2003*.

This amending Bill confers compliance responsibilities within the South Australian Ports Access Regime on the Commission. This is designed to avoid potential delays in dispute resolution and will, in particular, enable procedural disagreements arising before a formal access dispute to be dealt with by the Commission.

This approach is similar to that taken under the *AustralAsia Railway (Third Party Access) Act 1999*.

I commend the Bill to members.

The Hon. I.F. EVANS secured the adjournment of the debate.

FIRST HOME OWNER GRANT (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 November. Page 1119.)

The Hon. I.F. EVANS (Davenport): This bill is a short bill with three elements to it. It is mechanical in nature, and seeks to tidy up some issues in relation to the First Home Owner Grant Scheme. The first issue is that the bill seeks to tighten the scheme so that those who seek to obtain a first home owner grant and are successful will need to occupy the home for a period of six months. Currently, there is what some have called a loophole, where people who obtain a grant do not necessarily need to occupy the home for any real length of time. Therefore, some of the grants have gone to investment properties, rather than properties that would be occupied as a first residence. As the title 'first home' would indicate, most people would assume a person would be occupying it, rather than it being an investment property. So, the first principle within this bill seeks to put a requirement that those who receive the grant need to occupy the home for a period of six months. That is the first general principle.

The second principle is that the bill provides for a penalty, so that people who do not meet certain requirements under the act can be charged a penalty. From memory, the penalty indicated in clause 11 goes from $2 500 to $5 000, and that is in relation to false and misleading statements in regard to the grants scheme. The third principle also relates to matters with respect to penalties, and it increases the time limit within which the applicant can be prosecuted for an offence under the act from two years to three years, which brings it broadly in line with some of the interstate schemes, although I do recognise that some of the interstate schemes have a longer time. South Australia has adopted a middle of the road three year penalty regime.

The Treasurer's second reading contribution accurately reflects the opposition's understanding of the bill. We thank the minister's officers for the briefing. As I said, it is a small mechanical bill. The opposition is not opposing the bill.

The Hon. P.L. WHITE (Minister for Transport): I thank the honourable member for his comments on this important piece of legislation.

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

CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL

Second reading.

The Hon. P.L. WHITE (Minister for Transport): I move:

That this bill be now read a second time.

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

Leave granted.

The *Correctional Services Act 1982* (the **principal Act**) is currently under review. This Bill addresses issues that require amendment to support current practice of the Department for Correctional Services (the **Department**). The philosophies, attitudes and practices of the Department have changed over time and the principal Act does not currently reflect those changes.

The Bill seeks to expand the authority of the Chief Executive of the Department in regard to a prisoner's leave of absence from prison. The amendment would allow the Chief Executive to revoke any of the conditions placed on a prisoner who has leave of absence from prison. The principal Act provides for leave conditions to be varied by the Chief Executive, but does not allow them to be revoked. The Bill also seeks to give the Chief Executive the power to impose further conditions on a prisoner who has leave of absence from a prison.

The Bill proposes to insert a new section 27A in the principal Act. There is currently no provision for prisoners to travel interstate for short periods or to manage prisoners who are in this State on leave from an interstate prison. The Bill will address the issues of authority and responsibility for prisoners on leave in South Australia from interstate and will include the authority to respond in the case of an escape of an interstate prisoner while in this State. All States have agreed, and a number have already introduced legislation, to provide for prisoners to be allowed to take leave of absence interstate. The leave may be required for medical, compassionate or legal reasons.

The Bill seeks to amend section 29 of the principal Act which deals with work undertaken by prisoners. The Bill provides for additional control of prisoners who might engage in work that is not organised by the Department. The amendment proposed will require the prisoner to have the permission of the manager of the correctional institution in which the prisoner is held before the prisoner can be engaged in work, whether paid or unpaid and whether for the benefit of the prisoner or any other person. This is aimed at preventing a prisoner from carrying on a private business from prison but is not intended to prevent a prisoner from undertaking tasks that are just of a personal nature.

Section 33 of the principal Act deals with prisoner mail. The Bill makes provision for tighter control of the mail that prisoners are allowed to send and receive while in prison. An additional item is to be included in the list of mail that is deemed to contravene the principal Act; that is, mail that contains material relating to, or that constitutes, work by the prisoner that the prisoner is not authorised to perform. This will also maintain consistency with the amendment to section 29.

The principal Act does not currently allow for the random search of prisoners. The Bill seeks to amend section 37 of the principal Act by inserting a subsection that provides for the random search of prisoners' belongings for the purpose of detecting prohibited items. This will bring the principal Act into line with current practice for the control of prohibited substances in the prison environment.

Current section 37AA provides for the drug testing of prisoners by way of urinalysis. The definition of **drug** has been expanded to include alcohol. It is proposed to enable the presence of drugs or alcohol in a prisoner to be tested by means of an alcotest or a **prescribed procedure**. Such a procedure would be prescribed by regulation and would consist of the taking of a sample of urine, saliva or sweat for testing and the manager of a correctional institution could require a prisoner to undergo testing—

- on the prisoner's initial admission to the institution;
- on the prisoner's return to the institution after an absence;
- if the manager reasonably suspects the prisoner of unlawfully using a drug;
- if the manager wishes to ascertain the incidence of unlawful drug use in the institution;
- in some other circumstance determined by the Chief Executive Officer (for example, prior to approving a period of home detention, whilst on home detention, prior to being granted parole, etc.).

The Bill proposes to amend section 37A of the principal Act to restrict home detention to the last year of a fixed non-parole period. The amendments will also ensure that prisoners who receive a sentence of 12 months or less will not become eligible for home detention until they have served at least half of their sentence in prison.

Other amendments contained in the Bill seek minor changes to the principal Act that will enable all authorised officers, both public and private, to be able to effectively carry out day to day prisoner management.

Sections 85A and 85B of the principal Act are to be repealed and replaced by provisions that are updated and reflect better the current practice and philosophy of the Department.

Current section 85A is concerned with the exclusion of persons from correctional institutions. From time to time, it is necessary to evict or bar visitors to institutions. This may be as a result of the visitor contravening the principal Act by, for example, bringing in or attempting to bring in prohibited items, or their bad behaviour. The Bill proposes an expanded section 85A that provides more detail about how, and in what circumstances, a person (other than staff) can be required to leave an institution. The new section will also allow for the banning of a person from a specified correctional institution or all correctional institutions.

Section 85B currently provides for the power to detain and search non prisoners and vehicles entering a correctional institution and is mainly applied to visitors to institutions. The new expanded section 85B proposed goes into some detail about the sorts of searches that may be carried out on persons who are not prisoners, and vehicles, entering an institution. It also provides that if the driver of a vehicle detained for the purposes of being searched does not comply with reasonable directions in relation to the search, the manager may cause the driver and the vehicle to be refused entry to or removed from the institution. Information about detention of persons under the section will have to be provided in the annual report submitted under the principal Act.

Some of the changes recommended in the Bill are necessary to allow the correctional system to operate more effectively and provide the legal framework necessary to prevent the potential abuse of the system by prisoners, while others are of a minor "housekeeping" nature that will assist in the effective operation of the private prison.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of Correctional Services Act 1982

4—Amendment of section 4—Interpretation

This amendment proposes to insert a number of definitions in section 4 of the principal Act, including definitions of alcotest, drug (which is expanded to include alcohol), drug test (includes an alcotest and any other prescribed procedure), nearest police station and prescribed procedure.

5—Amendment of section 27—Leave of absence from prison

The amendments proposed to section 27 will mean that if a prisoner is granted leave of absence from prison by the Chief Executive Officer, the prisoner will be able to be released in the custody of, and be supervised by, an officer or employee of the Department. The amendment further provides for the Chief Executive Officer to be able to vary, revoke or impose further conditions on a prisoner's leave of absence from prison under this section. A prisoner may not be granted leave of absence in circumstances set out in the regulations.

6—Insertion of section 27A

New section 27A makes provision for a prisoner to take leave outside of South Australia.

7—Amendment of section 29—Work by prisoners

It is proposed to insert a new subsection (5) into the current section to provide that a prisoner in a correctional institution is not entitled to perform remunerated or unremunerated work of any kind (whether for the benefit of the prisoner or anyone else) unless the prisoner has permission to do so by the manager of the correctional institution.

8—Amendment of section 31—Prisoner allowances and other money

9—Amendment of section 33—Prisoners' mail

These amendments are consequential on the amendment proposed to section 29 of the principal Act.

10—Amendment of section 37—Search of prisoners

It is proposed to insert a new subsection that would allow the manager of a correctional institution to cause a prisoner's belongings to be searched for the purpose of detecting prohibited items.

11—Substitution of section 37AA

It is proposed that the manager of a correctional institution may require a prisoner to undergo a drug test in any of the following circumstances:

- on the initial admission of the prisoner to the institution;
- on the prisoner returning to the institution after being absent;
- if the manager reasonably suspects that the prisoner has unlawfully used a drug;
- for the purpose of ascertaining the incidence of unlawful drug use in the correctional institution;
- in any other circumstance that the Chief Executive Officer thinks fit.

A prisoner uses a drug if the prisoner consumes or smokes, or administers to himself or herself, the drug or permits another person to administer the drug to him or her.

12—Amendment of section 37A—Release on home detention

Section 37A(1) gives the Chief Executive Officer a discretion to release a prisoner from prison to serve a period of home detention. The proposed amendments to section 37A will provide that the exercise of the Chief Executive Officer's discretion is subject to certain limitations, including limitations that may be determined from time to time by the Minister. Each of the limitations that is relevant in relation to a particular prisoner must be satisfied before the prisoner can be released on home detention.

A prisoner who is serving or is liable to serve a sentence of indeterminate duration and has not had a non-parole period fixed cannot be released on home detention.

The release of a prisoner on home detention cannot occur earlier than 1 year before—

(1) in the case of a prisoner in respect of whom a non-parole period has been fixed—the end of the non-parole period;

(2) in the case of a prisoner in respect of whom a non-parole period has not been fixed but whose total term of imprisonment is more than one year—the day on which the prisoner would otherwise be released from prison.

A prisoner cannot be released on home detention unless—

(1) in the case of a prisoner in respect of whom a non-parole period has been fixed—the prisoner has served at least one-half of the non-parole period;

(2) in any other case—the prisoner has served at least one-half of the prisoner's total term of imprisonment.

13—Amendment of section 52—Power of arrest

14—Amendment of section 85—Execution of warrants

These amendments correct a drafting oversight. The proposed amendments will simply insert "officer or" wherever "an employee of the Department" is mentioned.

15—Substitution of sections 85A and 85B

Current sections 85A and 85B are to be repealed and new sections substituted.

85A. Exclusion of persons from correctional institution

New section 85A provides that, regardless of any other provision of the principal Act, if the manager of a correctional institution believes on reasonable grounds that a person lawfully attending the institution in any capacity (other than a member of the staff of the institution) is interfering with or is likely to interfere with the good order or security of the institution, the manager—

(1) may cause the person to be removed from or refused entry to the institution; and

(2) may, in the case of a person who visits or proposes to visit a prisoner pursuant to section 34, by written order, exclude the person from the institution until further order or for a specified period.

If the Chief Executive Officer believes on reasonable grounds that a person who visits or proposes to visit a prisoner in a correctional institution pursuant to section 34 is interfering with or is likely to interfere with the good order or security of that or any other correctional institution, the Chief Executive Officer may, by written order, direct that the person be excluded from—

(1) a specified correctional institution; or

(2) all correctional institutions of a specified class; or

(3) all correctional institutions,

until further order or for a specified period.

The manager of a correctional institution may cause any person who is attempting to enter or is in the institution in contravention of such an order to be refused entry to or removed from the institution, using only such force as is reasonably necessary for the purpose.

85B. Power of search and arrest of non-prisoners

The manager of a correctional institution may—

- with the person's consent, require any person who enters the institution to submit to a limited contact search, and to having his or her possessions searched, for the presence of prohibited items; or
- if there are reasonable grounds for suspecting that a person entering or in the institution is in possession of a prohibited item, cause the person and his or her possessions to be detained and searched; or
- if there are reasonable grounds for suspecting that a vehicle entering or in the institution is carrying a prohibited item, cause the vehicle to be detained and searched.

If a person does not consent to a limited contact search, the manager of the correctional institution may cause the person to be refused entry to or removed from the institution, using only such force as is reasonably necessary for the purpose.

If a prohibited item is found as a result of a search, or a person fails to comply with a requirement lawfully made for the purposes of a search—

- the manager may cause the person/driver to be handed over into the custody of a police officer as soon as reasonably practicable and to be kept in detention until that happens; and
- the item may be kept as evidence of an offence or otherwise dealt with in the same manner as a prohibited item under section 33A may be dealt with.

If the officer or employee who carries out a search of a person suspects on reasonable grounds that a prohibited item may be concealed on or in the person's body, the manager may cause the person to be handed over into the custody of a police officer as soon as reasonably practicable and to be kept in detention until that happens.

The manager must, on detaining a person under this proposed section, cause a police officer to be notified immediately.

In any event, if a person or vehicle can be detained under the proposed section for the purposes of being searched, the manager may, instead, cause the person or vehicle to be refused entry to, or removed from, the institution , using only such force as is reasonably necessary for the purpose.

The annual report submitted under the principal Act by the Chief Executive Officer in respect of a financial year must include particulars about the number of persons

detained pursuant to this proposed section during the year and the duration of each such detention.

This new section does not apply to a person who is a prisoner in the correctional institution.

16—Amendment of section 89—Regulations

This amendment is consequential on the insertion of new section 37AA.

Mrs HALL secured the adjournment of the debate.

PETROLEUM (SUBMERGED LANDS) (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 8 November. Page 746.)

Mr WILLIAMS (MacKillop): The Petroleum (Submerged Lands) (Miscellaneous) Amendment bill has been through the other place and is now before the house for our consideration. The waters subject to the Petroleum (Submerged Lands) Act 1982 are those state coastal waters in the strip extending three nautical miles from South Australia's baseline. The baseline cuts off the bays and gulfs which come under the jurisdiction of the Petroleum Act 2000.

In 1979 South Australia, along with the other states, territories and the commonwealth, agreed, under the Offshore Constitutional Settlement, to maintain common principles, rules and practices to regulate and control exploration and exploitation of petroleum resources within all of Australia's submerged lands. The Commonwealth Petroleum (Submerged Lands) Act 1967 applies to the seaward side of the three nautical mile strip to the outer limit of the continental shelf. This legislation is administered by a joint authority comprising the commonwealth Minister for Industry, Tourism and Resources and the South Australian Minister for Mineral Resources Development. Day to day administrative duties and regulatory functions are exercised by the designated authority, the state minister.

In response to the Piper Alpha disaster in the North Sea in 1988 lengthy deliberations throughout the industry have led to new regulatory regimes worldwide. In December 2003 the commonwealth parliament amended the commonwealth act to provide for the establishment of the National Offshore Petroleum Safety Authority (NOPSA) to commence operation on 1 January 2005. The report to the commonwealth preceding those amendments concluded that the current regulatory system was inadequate, including problems with inconsistencies between commonwealth and state jurisdictions. Bipartisan support from industry, government and unions has led to the establishment of NOPSA in order to maintain functional expertise.

It is important that we understand that if each state individually monitored occupational health and safety regimes within its territory and the adjacent commonwealth territories the limited expertise would be spread very thinly, and that is one of the main reasons behind this legislation. We need to provide a nationally consistent safety regulatory regime to provide enhanced occupational health and safety on all off-shore petroleum facilities.

A facility is defined in the bill as:

a vessel or structure located at a site being used for the recovery or processing of petroleum, or for drilling or servicing a well for petroleum.

Associated diving operations are included, but rigs en route to a site are exempted, as are seismic vessels.

NOPSA currently has no environmental powers but these may be considered by further commonwealth amendments as NOPSA replaces two former commonwealth teams with responsibility for occupational health and safety and environmental matters. Safety issues on off-shore petroleum facilities, state and commonwealth, are currently administered under the Occupational Health and Safety Act 1986 and other legislation dealing with dangerous substances. The commonwealth has promulgated regulations under its new act to disapply state acts in respect to occupational health and safety on petroleum facilities in commonwealth waters. It is proposed that similar action will be taken at the state level with regard to state waters.

In the knowledge that the commonwealth act is currently being rewritten, some pre-emptive amendments are being made to the state legislation. If the current drafts of the commonwealth legislation are reflected in the new legislation, the state legislation will need to recognise that the state minister will have authority under that commonwealth legislation. The amendments are designed to mirror the commonwealth act and utilise some changes to language and terminology to achieve that. Further matters of competition policy have also been included in the amending bill, and verbal advice from the South Australian Chamber of Mines and Energy is that industry has no concerns with this measure. I indicate that the Liberal Party supports the bill.

However, we seek a further explanation of the definition of a working group, and my only questions (and these were asked in the other place) are: is it an elected body? Does it apply to each shift? Does it apply simply to each mining authority on a particular rig? Is there any obligation for the working group to be presided over or controlled by union membership?

I ask those questions because, in his second reading speech, the Minister for Mineral Resources Development (Hon. Paul Holloway) gave my colleague the Hon. Caroline Schaefer an undertaking to respond in writing before the bill was debated in this chamber. My information is that, by 2 o'clock this afternoon, the response had not been forthcoming. I therefore ask those questions again of the minister. Notwithstanding that, I indicate that the opposition supports the bill.

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): This bill is very straightforward and relates only to an administrative manoeuvre in order to produce safety and the use of the same standards across the whole of our sea shelf and offshore areas. I understand that there has been broad agreement in the other place and, therefore, I suspect that there will be broad support in this house.

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

CRIMINAL LAW CONSOLIDATION (CHILD PORNOGRAPHY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 7 December. Page 1213.)

The DEPUTY SPEAKER: The member for Unley has partially completed his contribution.

Mr BRINDAL (Unley): I have about 15 minutes, sir.

Members interjecting:

Mr BRINDAL: I thank the member for Playford because, when I spoke yesterday about what a mess this bill is, I looked at the very valuable contribution of my colleague and friend the member for Newland. Indeed, she pointed out that we have an Attorney who has a penchant for pedantry but, as the member for Newland also pointed out, in the context of this bill he does not know the difference between pederasty and paedophilia. He had the temerity to argue with the member for Newland, so I went to every dictionary that our library possesses. The Attorney has introduced a bill that he does not understand, because pederasty is defined as an act of sexual activity between an adult male and a boy. 'Philia' in Greek means 'liking', but I am not aware that the Attorney is Greek. The member for West Torrens is Greek, but the Attorney is a very poor imitation of one. The dictionary defines paedophilia as a sexual liking of children.

This bill is not about the sodomy of boys: it is about pornographic material in relation to children. It is about paedophilia, not pederasty. If the Attorney wants to correct my colleagues on the use of the English language, I suggest he first consult the dictionary and be rather less pompous and rather more correct, because the words are clearly defined.

An honourable member interjecting:

Mr BRINDAL: I say to the member for West Torrens: that is exactly what is wrong with this bill—it is misconceived, mismatched and ill-advised, and it plays to the gallery and not sensible public opinion. Pornography is a difficult subject, and most members of the house know that it is fairly instantly recognisable by us all. If the member for Adelaide is running this bill on behalf of the Attorney, I suggest very politely that she listen—

An honourable member interjecting:

Mr BRINDAL: The Attorney was running it last night. I am not quite sure that the government knows who is running this place—it depends on the day. The fact is that this bill—

Members interjecting:

Mr BRINDAL: There is plenty of Christmas goodwill.

The DEPUTY SPEAKER: Order! The member for Playford seems to have drifted southwards.

Mr BRINDAL: The member for Fisher made a contribution on this bill, and he is quite right: Christmas goodwill does not extend to loading onto the people of South Australia a cobbled-up load of rubbish just to make the Premier look good.

Mr Snelling: Vote against the bill, Mark.

Mr BRINDAL: I am half minded to, because the more I read it the more ridiculous I see it is. What will it solve?

Mr Snelling: The member for Finniss is up in his office laughing his head off.

Mr BRINDAL: I do not care what the member for Finniss is doing in his office. He might be imbibing Christmas cheer for all we know, but we are in this house talking about a serious debate; and, if the member for Playford does not take it seriously—

Members interjecting:

The DEPUTY SPEAKER: Order! The house is becoming disorderly. I know that we have had a busy time, but the member for Playford should move northwards. The member for West Torrens has a point of order.

Mr KOUTSANTONIS: I rise on a point of order, sir. Given that the member for Unley's colleagues will not defend him, I will. The member for Playford is continually interjecting. I did not see the members for Bragg or Coles defend the member for Unley, so I will.

Mrs Hall: Morialta.

Mr KOUTSANTONIS: Yes, the member for Morialta.

The DEPUTY SPEAKER: No-one should be interjecting. The member for Unley has the call.

Mr BRINDAL: The member for Fisher rightly makes the point—and I will be very interested to hear the Attorney refute this—that the taking of photographs of certain parts of a child's body can constitute pornographic material. The member for Newland makes the same point. This act—and I am not one of the smart lawyers—actually states:

> . . . a person acting for a prurient purpose, taking a photographic or electronic or other record of a child engaged in a private activity—

and that includes stripping to the underclothes or less, using the toilet and doing many things—a shower and all the rest of it—

> may be guilty of an offence.

An honourable member interjecting:

Mr BRINDAL: I will ask the Attorney how Their Honours in the courts will determine whether or not at the time of taking the photo the person was acting for a prurient purpose. I do not think it is that easy.

Mr Snelling: They use their commonsense.

The DEPUTY SPEAKER: The member for Playford will come to order.

Mr BRINDAL: As I explained last night, for many years nudist people around the world have taken what they consider to be—

Mr Koutsantonis interjecting:

Mr BRINDAL: The member for West Torrens—who is still slightly wet behind the ears he is so young—would do better to listen because I am a bit older than he is.

Mr Koutsantonis: I know what is right and what is wrong.

Mr BRINDAL: We will talk about what the member for West Torrens' priest thinks is right and wrong, if he likes.

Mr Koutsantonis: At least I go to one.

Mr BRINDAL: Well, I have got one upstairs—so there! That is better than you at present. The fact is that should this bill just be about the purpose in taking the photo—

Mr Caica interjecting:

Mr BRINDAL: There are plenty of photos which the member for Colton could take. He could take a photo of a child which for the member for Colton is a shot, just a photo. He does not take it with prurient intent, and it is therefore not pornographic. However, that does not mean that, in the hands of someone else, it might not be a pornographic image. It is very difficult in this sort of area to define what is and is not pornography. Something that is found sexually stimulating or arousing to another person (which is part of the definition here) varies greatly between people. There may be images which I might find a turn-on but which another person would not consider a turn-on at all.

Mr Koutsantonis: Yes; you're right there. What turns you on does not turn us on.

Mr BRINDAL: I beg your pardon?

Mr Koutsantonis: You know what I'm talking about.

Mr BRINDAL: I beg your pardon?

The DEPUTY SPEAKER: The member for West Torrens will come to order.

Mr Koutsantonis: Don't beg my pardon.

Mr BRINDAL: If the honourable member would care to repeat that I would be interested, and if he would care to repeat that outside I would be even more interested.

Mr Koutsantonis: I am not defaming you.

Mr BRINDAL: I thought that you were.

Mr Koutsantonis: No, I would never.

Mr BRINDAL: Well, it sounded fairly close—

The DEPUTY SPEAKER: Order! The member for Unley will get back to the debate.

Mr Koutsantonis: I will apologise if you want.

Mr BRINDAL: No, I do not want you to.

Mr Koutsantonis: Okay.

Mr BRINDAL: The fact is that I do not think this bill serves any good purpose. The fact is that I have and will continue to defend young people against exploitation, especially sexual exploitation, but I do not see that this bill achieves this purpose. The bills that I have seen interstate are rather more broadly couched. The member for West Torrens or the member for Playford—and I am sorry if I attribute it to the wrong one of the pigeon pair—said 'commonsense', and I would put to the Attorney that this bill would serve the people of South Australia slightly better if it was framed slightly broader. I actually think that one of the problems here is the attempt at getting down to minute definition.

I would have enough faith in our courts, in our judicial system, and, indeed, in our peers in the community to recognise what pornography is and to say, 'This is pornographic; that is not pornographic.' I think that one of the limitations of this bill is that it tries to define rather too closely the definitions and, in doing so, I think that it makes some fatal mistakes. I would be interested if the Attorney can answer this in committee: how can a court establish what the intent was of a person when they committed an act? It is rather difficult from a person, say, shoplifting, stealing or even murdering a person because the intent in this case by definition must be mental, and then—

The Hon. M.J. Atkinson: That is right.

Mr Snelling: All intent is mental. I mean, what other intent can you have other than mental?

Mr BRINDAL: I think that the honourable member might have a point, so I will ponder and reflect on it and come back to him with a sensible answer. I think he got me there. I am sure that the member for Enfield, who is slightly more intelligent, knows what I am talking about or knows where I am going with this. It will be very difficult to establish, because with many other crimes there may be an intent but there are indicators to the intent in the way the action is taken out. In this instance, because it is the recording of something, I put to this house that it would be very difficult to prove intent.

If I say, 'Oh, look, that was just a photo of my grandson in the bath,', and that is what it looks like and that is what it is, who is to say whether or not I had prurient intent in taking that photo because, quite clearly, there would be in evidence a photo of a child in the bath. That would be the evidence. There would be whatever was in my mind and no-one to gainsay that matter, and I put to the house that that is a serious problem. The other serious problem is that any one of us could take a number of images—could do a number of things for pure purpose—and that in the mind of someone else could constitute pornography.

Again, in the minute available to me, I want vigorously to protest that something that is artistic cannot by definition be pornographic. This act says that you can do what you like with a person under 16, and provided it has artistic merit it does not count for the purposes of this act. Well, that is a farce.

Mr RAU (Enfield): I want to make a brief contribution because the member for Unley, as so often occurs in this place, has provided stimulating food for thought. This legislation is brought in for a particular purpose, and I have to say to the house that I find myself, when I try to balance this up, torn between a couple of conflicting points of view. On the one hand, as a parent with young children, I am keenly aware of the importance of protecting young children from the activities of people who are predators and the people who would exploit those children through means of photographic material being disseminated about the place and being sold for the profit. I am keenly aware of the demeaning quality of that material for the children involved. On the other hand, I am keenly of the view that we live in a society where our civil liberties are constantly being eroded, and, unfortunately, this has been accelerated since the time of 11 September 2001. I know there are good reasons for that, and I will not canvass all those points.

In relation to this particular piece of legislation, the one part to which the member for Unley was addressing himself was the point where you have a person who for a legitimate purpose takes a photograph which for that person's purposes is neither prurient nor pornographic, or any other description of that type. For example, it might be a parent's photograph of their children under the sprinkler in the backyard, or many such photographs, and I am sure any member here as a parent has seen those things in the backyard—and some members may have photographed them. I do not want members to incriminate themselves by answering yes. The fact is that these things do happen and there is nothing evil about that.

It is possible for things like that to fall into the hands of third parties. Again, that might occur quite innocently. Ultimately, these photographs might wind up in the hands of people who do not have innocent or legitimate purposes for either examining or keeping these photographs. That is where we get to the complexity of this matter; and it is a very difficult matter, in my opinion. It is an offence not only to possess these photographs for an improper purpose but also to have generated—

Mr Koutsantonis interjecting:

Mr RAU: I am getting to that. It is an offence to generate these photographs for an improper purpose. It occurs to me that, in a hypothetical example, where a parent takes an innocent photograph of children, it finds its way into the hands of uncle or aunt and, ultimately, winds up in the hands of paedophile X. It may be possible, if paedophile X is arrested, to determine that this photograph came from the parents' album at some point. The question then is what, if anything, happens to that parent? My understanding of the legislation is that there is a defence available to that parent, if they were to be questioned by the police, to the effect that they had no illegitimate purpose in taking the photograph. That is my understanding. In due course, if the Attorney-General wants to correct me on that, I am happy for him to do so.

In those circumstances, I find myself—not without some reluctance, I might add—ultimately coming to the conclusion that perhaps the member for Playford has a very important point; that is, we must have some confidence that members of the police force and the prosecuting authorities have some commonsense.

Mr Snelling: And juries!

Mr RAU: The member for Playford says, 'And juries.' I am afraid that is not good enough for me. If you are the innocent parent who has generated the photograph you should never wind up in front of a jury. To put you in that position will mean that you have gone through the humiliation of

being charged with one of these offences; you have gone through the humiliation of being put through a trial and being subjected to the microscopic attention of our friends in the media; and you would have spent considerable amounts of your own money defending yourself—and you might never get that back. It might be that ultimately you do not wind up being convicted of an offence, but it is one of my concerns with all these types of offences: it appears that the mere charging of an individual is taken by certain media outlets as being equivalent to that person's being found guilty. The consequences for people in those circumstances can be quite horrific.

I remind members that a few months ago the Victorian police did a bit of a swoop through Melbourne, and the result of that swoop was that a number of individuals were identified, and at least one, as I recall it, committed suicide. That person may have committed suicide because they were a guilty person or because they were humiliated beyond endurance. I do not know; that is not the point. The point I am trying to make is that we have to trust that the prosecuting authorities will not prosecute and will use considerable discretion in the application of these laws. I do not believe these laws will be misapplied. I share the member for Playford's confidence in this respect. We are placing a lot of trust in them, but I think it is probably justified.

I understand that the legislation does provide a protection in the form of a defence. That defence gives a clear direction to the prosecuting authorities that they should not be pursuing innocent parents who take snapshots of their children for the purposes of recording a family event. In those circumstances, it is legitimate for us to go forward with the bill.

I think we all need to take a deep breath and think about what has been going on in the media and through the parliaments around Australia in the last 12 months in relation to these issues. I come back to my starting point. I am very concerned about the exploitation and abuse of children and the predators out there doing these things. These people deserve no sympathy at all—none at all—but we need to be very mindful of the fact that a person wrongly accused of one of these offences suffers tremendous humiliation and ignominy in the eyes of their fellow citizens. I have yet to see a newspaper, or another media outlet, report as florid a description of an acquittal, withdrawal of a charge, a finding that a person is not guilty, or whatever the case might be, as they do when the initial flurry of activity occurs when they happen to be there with cameras' blazing when the police walk through the front door. As legislators we need to be mindful that we do not want to create an environment where people who should have nothing to fear because they are not doing anything wrong get to the point where they are starting to be concerned about what they are doing in their own homes. I do not think this legislation crosses that wire, but it gets as close to it as I am prepared to go.

I support this bill because I believe that we have to make a strong statement about these predators who are out there in the community. However, we need to be vigilant about the fact that we are casting a net, which is a very dangerous one for anybody to be accidentally caught up in.

I do not think I need to explain to this house that a person who is charged with a speeding offence does not necessarily become a pariah in the eyes of their family and friends; that a person who is charged with an offence of a breach of the peace or even an offence of violence probably does not become a pariah in the eyes of the community indefinitely; but that a person accused—I emphasise the word accused, not even convicted—of these types of offences is placed in an extremely invidious position. They need to be very carefully considered. I do not believe there is any reason to believe that the prosecuting authorities in South Australia are not responsible people. It is also possible for people to be framed in this way, as they could be with drugs or anything else.

Coming back to the point, I support the bill. However, we should all be very vigilant about this matter from here on in; we should keep our eyes on what the application of this legislation in the field turns out to be. If there are any signs of innocent people being caught up in the net, then we should be prepared to review this legislation and consider whether we have the exact formulation right. As best I can tell from my reading of it, this is a pretty good attempt. I am prepared to support the bill on the basis that it is put up with a genuine interest in addressing this serious problem of predators. I hope it receives a speedy passage.

Mrs HALL (Morialta): I am pleased to support the Criminal Law Consolidation (Child Pornography) Amendment Bill because I believe it has made a number of appropriate adjustments to the criminal law in the way it deals with child pornography. When one reads the bill and the material that has been circulated in support of its passage, there is no doubt in my mind that it is a punishment bill.

A number of members have raised issues that I am sure will be pursued during the committee stage. Just listening to the member for Enfield, while we occasionally do agree on a few things, I have no sympathy whatsoever for the civil liberties of predators and paedophiles. I am not too fussed about their civil liberties, let me tell you.

Mr Rau interjecting:

Mrs HALL: I think this bill does go some way in dealing with those issues. A number of the issues raised by our colleagues during the second reading debate will be pursued during the committee stage. I certainly hope that the Attorney will give some additional explanation on a couple of areas that I want to raise.

The first concerns paragraph (b) under the definition of 'child pornography' in proposed section 62, the interpretation provision, which states:

> (b) that is intended or apparently intended—
> (i) to excite or gratify sexual interest; or
> (ii) to excite or gratify a sadistic or other perverted interest in violence or cruelty.

I would be interested if the Attorney would provide a little more explanation on the difference between 'intended or apparently intended' and how that is determined.

The second area in which I am interested is proposed section 63(c), which is on the pornographic nature of material, and in particular paragraphs (ii) and (iii) in relation to the differences between the South Australian legislation and the current legislation in Victoria. While I acknowledge the emphasis on all the good things that this bill does, I have some concern with the extraordinary latitude given under the guise of not wanting to be involved in censorship if some of this material is considered to be a work of artistic merit. I do not really care about artistic merit if it involves a child under the age of 16.

We know that this bill expands the scope of the term 'child pornography' as well as increasing the penalties. They have been well outlined in the debate so far. I am supportive of a bill that seeks to protect children from the horrific and bewildering subject of child pornography and that punishes those who participate in this extraordinarily horrible activity.

I believe that the strengthening of penalties is more than symbolic, because in my view it says to the community that the institution of parliament believes it is monstrous and will not let an offender get away with it. This legislation is an important deterrent to those who may choose to obtain pictures, videos or other material containing young children for the purposes of sexual gratification. I find this area impossible to comprehend.

It is particularly important for this parliament to keep pace with the developments in the global child pornography market because, as we all know, only too often we are debating subjects in this parliament that reflect the dramatic changes in society. In this case, things have changed dramatically since commercially produced child pornography was considered to fill a niche market and was sourced from a small northern European industry in the 1960s. And how things have changed!

Technological advances have bred what is a flourishing international industry, and I guess that is reflected by the changes that have been made by so many parliaments throughout the world. It is rather ironic that this situation has partly come about as a result of governments throughout the world cracking down on child pornography but with the black market created by this increased law enforcement activity then thriving with the advent of the worldwide web.

I believe is worth noting and putting on the record that the Howard government has demonstrated real leadership on this issue in making the necessary legislative changes. As we well know, a bill was passed in August amending the criminal law to deal with the use of the internet to access, transmit and make available child pornography and child abuse material and the possession or production of this kind of material for placement on the internet. I also note that federal laws cover the use of telecommunications to procure children for the purpose of that person or a third party engaging in sexual activity with a child.

The new federal provisions were intended to give federal police the means by which to pursue those involved in child pornography. So, too, will this bill before the house provide much firmer ground, as has already been said, for the police to catch and hopefully convict offenders and predators. I say 'firmer ground' because the difficulties in policing child pornography laws have been well known and well understood for some time. I believe this is a good start on trying to address the issues. My understanding is that the traditional difficulties have arisen when people have tried to define the term 'child pornography'. Many cases have been cited, but the one I choose is Grant, David and Grabosky in the publication *Transnational Organised Crime*, in which it is suggested:

> Public discourse on child pornography is afflicted by extreme definitional ambiguity. Precisely what child pornography is, and what it is not, may not be explicitly defined in a given jurisdiction. Moreover, definitional boundaries may expand or contract over time, depending upon evolving social and political values.

As I understand it, as it currently stands, the police have to distinguish between five categories of child pornography which were developed originally in the United Kingdom. I refer to a table in the Australian Institute of Criminology's publication of July 2004. This table is quite instructive. It gives a whole range of types of involvement classified as: browser, private fantasy, trawler, non-secure collector, secure collector, online groomer, physical abuser, producer and distributor. The features of each of those categories are quite amazing. Therefore, I think it is absolutely vital that we have a definitive explanation of the elements of child pornography. As I said earlier, I think this bill goes some way towards providing that.

This publication goes on to point out that there are numerous categories of pictures which may be sexualised by an adult with a sexual interest in children but which are not caught by the legal definition. The three examples cited are: non-erotic and non-sexualised pictures of children in underwear or swimming costumes from commercial or private sources; pictures of naked or semi-naked children in appropriate nudist settings; and photos of children in play areas or other safe environments showing underwear or varying degrees of nakedness. It seems to me that the fact that such material can be difficult to categorise explicitly as pornography yet can still be used for sexual gratification is one indication of the situation faced by legislators and police.

Other difficulties, as I understand it, stem from the cross-border nature of this activity accentuated by the widespread use in today's world of the internet. The most effective operations in recent times against child pornography have been both national and international. There are two to which I would like to refer. One is called Operation Auxin where the police at the Australian High Tech Crime Centre were provided with information about the use of credit cards by over 700 Australians to access overseas web sites. This information was provided by a company from Belarus and led to a national coordinated action by Australian police.

Some years ago, another operation called Operation Cathedral targeted the Wonderland Club, an international network with members located throughout the world. This particular operation was carried out by British police and involved cooperation with police from 13 other nations. I think that is most significant.

Despite the conflicting views of whether the internet has increased the demand for child pornography or whether it simply supplies an existing market, it is accepted that the internet allows massive and frightening proliferation of child pornography on a global scale. In this technological age, the tackling of a global crime requires multi-jurisdictional cooperation, and in many cases therein lies the problem, because around the world there are differing views on, among many other issues, what constitutes sexually explicit behaviour, or indeed what constitutes a child.

I was interested to read that in Canada the criminal code still defines a child for the purposes of pornography legislation as those under the age of 18, whereas here in Australia it is under the age of 16. Nonetheless, the threat posed by the internet remains clear. Recent research notes that the internet provides the social, individual and technological environment in which child pornography thrives. The stark reality is that it provides an environment for different online child pornography offences to be committed. As I said earlier, the tables in the Australian Institute of Criminology's publication are quite instructive when you read through them, because each category of offender carries different characteristics.

Technological innovations accommodate the rapid distribution of child pornography and the activity of offenders. Many offenders take advantage of the availability of Internet Relay Chat (IRC) technology, which facilitates chat rooms in which large numbers of internet users join in. These chat rooms allow group discussions with other users—or, as I would define them, like-minded perverts—plus the follow-on of the exchange of files such as pictures, video, text and sound. It has been found that chat rooms act as a virtual marketplace where pornography is bartered and shared.

Unfortunately, as it specifically relates to child pornography, access to these kinds of chat rooms is not a particularly difficult proposition. Other networking facilities carry greater security and take the form of more private chat rooms accessible only by passwords. Security conscious participants—and they would need to be security conscious—are more likely to adopt false identification through technologies allowing the adoption of false names. Therefore, the World Wide Web contains a great number of sites where people can download child pornography themselves, and often the offender pays money for such material. Sadly, the volume of available child pornography is vast and its movement around the world is facilitated at the click of a button.

Of real concern to me is the practice of online grooming. As has already been said, that is the practice of developing communications with a child over the internet for the purpose of making the child open to sexual activities. In my view, it is a disgusting and cowardly practice, often where pornography is shown to the child over the internet in the hope that the child would lower his or her inhibitions to sexual material and sexual activity. I am again, therefore, very supportive of provisions in this bill which follow the initiative of its federal counterpart in addressing this issue. I believe that this parliament has got to remain vigilant when it comes to the vulnerability of children, because our children use the internet for fun, they use it for entertainment or for educational purposes, and therefore that puts them constantly at risk of predators who roam the internet looking for victims. I am happy to support provisions that aim to keep pace with technological advances which lead to our children being at further risk, and I think that this is an issue that we should all be concerned about.

I want to make mention of some of the safeguards which are in the bill and which have been raised by other members. One, in particular, is that I believe there is a huge difference between possessing photos of your children naked in the bathtub and the possession of photos of a child for the use of sexual gratification. There is a distinction, and we have to rely somewhat on the courts. If we do not like what the courts are doing, we can always change the legislation. I also believe that this bill makes sufficient distinction in the area of those who innocently receive pornographic material and dispose of it immediately. I am absolutely sure that there are many members of this house who are well aware of the extraordinary material that comes into our electorate offices on a daily basis, and I know that it causes our PAs great distress. I understand that there are distinctions in this bill that allow, if they receive such material, that they will not be the sort of people who are targeted with the provisions in this bill.

Credit for this legislation, despite the chest beating and spin of the Premier, is part of a well supported national initiative, and it should be commended. I understand that it is pretty well consistent with the federal measures and most of the interstate measures. However, I hope that, when we go into committee, the Attorney will give us a little more detail on some of the things that are missing in the bill. As I said earlier, I have absolutely no concern whatsoever about the civil liberties of predators and those who disseminate this material.

I am, however, a little interested in one of the points that the member for Fisher raised about what sort of treatment/therapy/rehabilitation is available for someone who is convicted of any of these crimes and who ends up for five or 10 years in gaol—then we have to cop them back in the community. I would not mind if the Attorney gave us some of his views on that—whether that might be the subject of another bill or whether any of the other states or the federal jurisdictions are looking at that issue. As I say, I do not have a lot of sympathy for them but, if they are going to come back into the community five or 10 years down the track, I would not mind getting some sense of where we go on those issues.

The other area that I want the Attorney to address is this issue of artistic merit because, when I read the bill, I had no sympathy with the censorship argument. If a child is under the age of 16 and is used in some wonderful artistic film, I do not believe that that should be allowed to be distinguished from the rest of the provisions—

The Hon. M.J. Atkinson: What about the film *Birth* with Nicole Kidman?

Mrs HALL: I am just asking the Attorney why some of the states have a different provision in that area regarding the issues that have been raised here. All I am seeking is further information on how he, personally, and how this government distinguishes a child under the age of 16 being used in a film and, therefore, not being subject to the provisions of this act. I think that is a reasonable question and, if it is not covered in any of these area, it needs to be pursued. As I said earlier, this is a reasonable attempt to start making progress on the issue.

I refer members to the material that is contained in *Trends and Issues in Crime and Criminal Justice*, Australian Government publication, Australian Institute of Criminology, July 2002. This is an issue that I have taken a vague interest in over the years but, when I read this material—which coincidentally happened to be distributed about the same time as this bill—I was absolutely aghast but equally impressed that there had been an Australia-wide initiative to try to do something about it. I have those concerns on which I hope the Attorney will provide some more information as we proceed through committee, but I am delighted to support the bill at this stage.

Mr KOUTSANTONIS (West Torrens): I support the bill completely. I do not accept the argument the member for Enfield put forward about people's career and reputation being ruined. In any legal system, without goodwill and commonsense, none of them would work at all. It is one thing to have photographs in your wallet of your children playing under the sprinkler, but it is another thing for them to be posted on an internet web site for sexual gratification. I cannot see how anyone who takes a photograph of their children playing under the sprinkler can be charged under the act if someone else uses that photograph for sexual gratification. It is an argument that lawyers often make. I do not doubt the member for Enfield's sincerity in this matter. He has young children: I do not. However, I have nieces and nephews whom I care a great deal about. The member for Enfield has his children and, not doubt, like every other parent and every other member in this place, he wants to see protections put in place to make sure that anyone who attempts to harm his children or use their images for some sort of deviant gratification is punished with the full force of the law.

The argument that an innocent person may some day be accused of this offence and commit suicide may well be true, but you could say the same for murder. If a man is accused of murdering his wife, that may happen. If someone is accused of stealing or some other crime, often depression can set in and things can happen. That does not mean we do not legislate to stop these things. However, with paedophilia

being the last great taboo that modern society has latched onto, I can understand the member for Enfield's fear of a witch-hunt.

I have examples in my own constituency of a gentleman who has been accused of paedophilia by a person who is quite obviously not mentally well and who has since been committed. However, before they were committed, they decided to photocopy 5 000 pamphlets saying that my constituent was a paedophile and had molested them, and they distributed that pamphlet around the neighbourhood. My constituent can do nothing—he cannot sue, and he cannot regain his credibility in any way. Basically, he feels he has no recourse. I know and he knows that he is not a paedophile. I have arranged for him to write to everyone who we think received these letters. However, in the end, we have to make a judgment about what is more important. Who do we protect and why are we here? We are here to protect those who cannot protect themselves, and children are the most vulnerable in our community. So, I have no problem whatsoever with these penalties for the possession of child pornography.

There is no reason why someone would have pornography sent to their computer from an internet web site without their downloading it themselves. It is impossible for you to download something you do not want to download. Only a complete idiot would download pornography not knowing that it was pornography. However, that is the type of excuse you hear from people who are obviously trying to hide something—that they inadvertently downloaded something. It is not the case; it is just not possible.

If things such as adverts flash up on your screen, that does not mean your computer has downloaded them and it is stored in your computer. The idea that, if you visit a web site by accident, you are somehow committing a crime is just not right. That is not how the internet works. Some of the people who speak on this type of motion should probably gain a greater understanding of how the World Wide Web works, how it downloads, and how their personal home computer works.

Ms Chapman interjecting:

Mr KOUTSANTONIS: Someone sending you an email is unsolicited mail; it is the same as receiving it in the letterbox. Does your computer store it; do you download it; have you gone about the action of downloading that email? Well, I point out to the member for Bragg that you do not download emails: you receive them, and you can delete them. If they are stored on the server because you tried to delete them, you can quite easily show that. You may be sent a link by someone who is friendly; for example, anyone in this place who has a Hotmail account is often sent SPAM. The member for Bragg knows what SPAM is. People are sent all sorts of emails by those claiming to be their friend and wanting them to send money, and they may be pornographic sites. Clicking onto that web site is not downloading material: it is simply opening the web site. That is not the same as receiving emails. Downloading and keeping them for sexual gratification is completely different from receiving them anonymously.

Ms Chapman interjecting:

Mr KOUTSANTONIS: I am not a lawyer. The member for Bragg is obviously a very successful lawyer; that is why she is in here and not out practising law.

An honourable member: Oh, don't be like that.

Mr KOUTSANTONIS: I'm serious. That is obviously why they gave her preselection for Bragg—because of her great talent.

The DEPUTY SPEAKER: Order! The member for West Torrens has little to do with the area of Burnside; I think he is in the area of West Torrens.

Mr KOUTSANTONIS: That's right, sir—God's own country. If pornographic emails are sent to people and they keep them, they can probably make a very good argument to the police and say, 'Someone sent it to me. I haven't opened it. I don't know what it is, but I have kept it.' However, if you know what it is and you keep it, you have committed an offence. The purpose of the legislation is to tighten up the area, so that is good.

Ms Chapman interjecting:

Mr KOUTSANTONIS: I think the member for Bragg misunderstands the intent of the bill. If you have a dormant email account that you have not checked for six months and someone is spamming pornographic material to you, no court in the world would convict you of pornography. If that was the case, the parliament and PNSG would be guilty of that offence, because they scan for SPAM mail and keep it on their servers. Does that mean that the parliament is guilty of child pornography? Of course not; they are just doing their job. The member for Bragg obviously has a fundamental misunderstanding of how the internet works. Perhaps one day I will pull her aside and give her a brief lesson, even though my knowledge is limited.

I congratulate the Attorney-General on this bill, which is long overdue. I certainly do not want to see photographs of my nieces and nephews on web sites as display items for predators. I understand that in the United States recently one consortium of paedophiles or pederasts scanned primary school year books and put them onto a web site. The member for Enfield would have us believe that the people who took those photographs and put them into the year book are guilty of child pornography, but of course they are not. The people who are guilty are those who posted it on the child pornography web site. So, not being a lawyer, I believe that 'intent' is the important word here. I would have thought that it would be obvious and a matter of commonsense. With those few words, I humbly submit my support for the Attorney-General, the Labor government and this bill.

The Hon. M.J. ATKINSON (Attorney-General): I thank members for their contributions and interest in the bill, and I shall take the opportunity, in summing up, to clarify and answer some questions members have raised.

Sir, in your concluding comments you raised some specific points that summarised your concerns, and I will deal with each in turn. Your first point was about consistency across jurisdictions. There is a move towards a consistent approach towards child pornography offences across all jurisdictions by SCAG (that is, the Standing Committee of Attorneys General)—

Members interjecting:

The Hon. M.J. ATKINSON: —no, SCEGGS is the Sydney Church Of England Girls Grammar School—by SCAG, COAG (the Council of Australian Governments), and the APMC (the Australian Police Ministers Council). My officers are currently working on this matter, and it is possible that the outcome of this process may result in some further amendment to our child pornography legislation.

Sir, your second and third points were about less subjectivity and lessening any misunderstanding about what constitutes child pornography. The new definition of child pornography includes an intention, or apparent intention, to excite or gratify sexual interest. If the finder of fact finds that

the intention to excite or gratify a sexual or other specified interest is apparent on the face of the material presented to it, the behaviour will be caught. The bill does allow for works of artistic merit:

> . . . if, having regard to the artistic nature and purposes of the work as a whole, there is no undue emphasis on aspects of the work that might otherwise be considered pornographic.

In cases where the material is clearly child pornography the defence of artistic merit would not be available to an accused because the material itself would emphasise the pornographic elements of the image. Now that the offences are indictable, we think it will be obvious to the trier of fact that the material is child pornography. And that last comment is a reference to juries being empanelled for these offences now that they are indictable.

Your final point was about the title of the bill and your preference for the inclusion of the words, 'child abuse'. Not all child pornography involves the abuse of an actual child: some material is computer generated by morphing images. Secondly, our legislation is specifically aimed at the offence of child pornography, and our definition of child pornography is comprehensive and directly addresses what child pornography actually is. We have recognised the seriousness of these offences by moving them into the Criminal Law Consolidation Act and increasing the penalties fivefold. However, I do accept your point that, unlike other pornography, in most cases of child pornography the act has been captured by photography and is itself child abuse, a criminal offence. That is not so with other forms of pornography.

Similarly, the question posed by the member for Newland about baby photographs is an important one. The government has no intention of criminalising the photo of a baby in the bath. But look to section 63(B): the person making the film or photograph has to be acting 'for a prurient purpose' (see clause 7, page 5, line 10). The honourable member for Unley raised similar concerns, and the answer is the same. This is very much the same question as posed by you, sir. It is a common worry. The government is confident that it has taken great care not to make a serious criminal offence of this—of course, we do not want to do so. Honourable members such as yourself, sir, and the member for Newland will understand that drawing lines is hard, but we are confident that we have a stringent core definition and good defences.

The member for Newland also raised an issue about the defences contained in sections 63(C)(1), as follows:

> . . . but the following provision refers to the production, dissemination or possession of material that constitutes, or forms part of, a work of artistic merit if, having regard to the artistic nature and purposes of the work as a whole, there is no undue emphasis on aspects of the work that might otherwise be considered pornographic. I do have a concern about that. It means that we are identifying an area where work of artistic merit will be considered differently because there will be no undue emphasis on aspects of the work that might otherwise be considered pornographic.

This is a re-enactment of the current provision of section 33 of the Summary Offences Act. So is the other provision referred to, the defence of artistic merit. It re-enacts section 33(5)(b) of the Summary Offences Act. It has caused no problems in this state in living memory. The qualification referred to is well understood, and we have dealt with it by the enactment of artistic merit. At this stage the government is not minded to revisit the debates of the 1970s about the legality of Vladimir Nabokov's Lolita and similar disputes.

The member for Bragg raised concerns about one of the government's proposed amendments, and said:

> . . . I am concerned to note that the government has provided to the opposition in the last hour two further amendments which propose to amend the Summary Procedure Act to the extent of the rules that will apply in relation to the preliminary examination of charges of indictable offences. . . but it is a matter which does seriously change the position, as far as the defendant is concerned, and the very finely balanced obligations, responsibilities and rights in relation to having a fair trial may be interfered with. Therefore, it is proper that the opposition has an opportunity to carefully look at these amendments. We would certainly wish to obtain the advice of the Law Society on this matter. . . I note that this amendment appears to have been drafted on 29 November and it is now 7 December;

I am advised that the amendments about discovery were placed on file on the date they have on them, namely, 24 November. There has been no formal consultation with the Law Society on these procedural matters. It is not thought necessary. There is an existing regime of the kind contemplated dealing with sensitive material. It has caused no problem and no injustice, nor will it. It is simply not an injustice issue. The defendant can have access to the material. The defendant may not possess an actual copy of it. That is all.

The member for Heysen questioned the need for the second part of the definition of child pornography. When I first read the bill, I had the same thought. She said:

> I do have a little bit of a question about the fact that, under the new definition, material which describes or depicts a child engaging in sexual activity or which contains the image of a child or bodily parts of a child or in the production of which a child has been or appears to have been involved is not of itself an offence.

To make this offence stick, it has to be established that this production was intended, or apparently intended, to excite or gratify sexual interest, or some other perverted interest. I have a bit of concern about the added implication of having to have that second part in the proof. As it currently stands, the definition will cap situations where children are depicted in sexually explicit positions or have a focus on the genitalia of the child. There is no way a court could view such material and find that it was not intended to excite or gratify sexual interest. The DPP is satisfied that a court would find that such material was intended to excite or gratify sexual interest.

The definition allows material that is not pornographic per se to become pornographic because of the intention with which it is made. Taking a photograph of a baby in a bath is not pornographic. However, if a person had a collection of naked babies and there was evidence that they were intended to excite or gratify sexual interest, they would become pornographic. Having them arranged in photo albums, or catalogued on a computer, etc., all would be evidence of intention, or apparent intention, to excite or gratify a sexual interest. The honourable member also said:

> I only have one other comment in relation to this matter, and that is the definition of 'child', as follows:
>
> '''Child' means a person under or apparently under the age of 16 years."
>
> I cannot quite comprehend why we have 'apparently under' in the definition. I do not understand why we do not simply say that a child means a person under the age of 16 years.

This definition is consistent with the current provision in section 33 of the Summary Offences Act. If the definition did not include 'apparently under', an accused could raise the point is that the child was not under 16, thereby requiring the prosecution to prove the age of the child. It is very rare for the victims of child pornography (the children involved in the photographs) to be traced. Often, these images originate overseas. It would defeat the purposes of the legislation if the

prosecution had to prove the age of every child depicted in every image to prosecute these cases successfully.

The member for Enfield had it right to a great extent with his hypothetical. The parent is not guilty, because there is no intent. If the image ends up with a pederast, it may become child pornography in those hands, but not the hands of the parents, because they had no intent. It is the intent that counts in every individual case.

Bill read a second time.

In committee.

Clauses 1 to 6 passed.

Clause 7.

Ms CHAPMAN: This is the definitions clause. Considerable comment has been made in debate on the new definition of child pornography. My first question relates to paragraph (b) in the definition of child pornography, which provides that the offender had intended, or 'apparently intended' to excite or gratify sexual interest, etc. I seek some clarification on the need for the words 'apparently intended'.

The Hon. M.J. ATKINSON: Intent will be obvious with hardcore child pornography, but there is a second category of pornography, where the intention will not be immediately obvious and will be proved only by the circumstances or inferences but, nevertheless, proved beyond reasonable doubt. In the case of Phillips, there were hours of video of young boys urinating. A court will be able to draw inferences from the size of the collection of the pornographic material—often scrapbooks are catalogued, computer catalogues are carefully arranged and labelled and text accompanies the images. I saw that myself when I had a briefing at police headquarters about this matter. There are other facts that will put the intention plainly. We put our faith in the trier of fact, whether that is a judge or a jury.

Ms CHAPMAN: I think that the example given would be sufficient evidence to make a finding—

The Hon. M.J. Atkinson: Urinating?

Ms CHAPMAN: The size of the collection, etc., is sufficient to form the intent. If the prosecution is relying on approving 'apparently intended', is the minister saying that the extent of material is sufficient to prove beyond a reasonable doubt the intention of the accused? Is there some lesser qualification to the extent that it is apparent to the juror that intention ought to have been able to be found, in which case is that not a lesser degree of intent?

The Hon. M.J. ATKINSON: Yes.

Ms CHAPMAN: I understand that this is a completely new provision. How is apparent intention then able to be established beyond reasonable doubt if that is actually in the mind of the juror rather than their subjectively making that assessment in relation to the accused?

The Hon. M.J. ATKINSON: Yes, it is a new way of approaching the crime, and it is needed to take account of cases such as Phillips, because the intent will not be obvious on the face of the material. I do not want to talk about a misspent youth, but when I was at a university college from time to time photographs or videos were taken of the lads urinating in the fountain at our hall of residence. Some of them would have been teenagers. That would not have been pornography on the face of it, but—

The CHAIRMAN: Pollution.

The Hon. M.J. ATKINSON: Yes, quite, pollution.

Mr Koutsantonis: Embarrassing for some.

The Hon. M.J. ATKINSON: Indeed, embarrassing for some—or urinating in the street after a heavy night out. But to have a catalogue of such material that was overwhelmingly of boys under the age of 16 would be apparently intended to gratify prurient interest.

Ms CHAPMAN: With respect to the university example to which the Attorney refers, if someone did retain those photographs they could be prosecuted under this section. Is that what the Attorney is saying?

The Hon. M.J. ATKINSON: No, I am not saying that. Perhaps it was not an ideal example because the youngest of those who were participating would be 16 or 17. Let us just say that if someone retained six of those photographs from the aftermath of the Valete Ball at the university college, I do not think they would be prosecuted under this section. However, if they retained many photographs of boys under 16 urinating in public, or just urinating, that would be apparently intended to excite a prurient interest, and that is why we need the apparently intended provision.

The CHAIRMAN: Attorney, I know that it comes down to the intent, but how would you distinguish where someone has a fixation and an obsession? I do not know why someone would be obsessed with people urinating, but you could argue that their obsession is with that process and not with the sexual aspect. Likewise, there are people who have a fetish, and so on. I am not sure why; they must be lacking in other—

Ms Chapman interjecting:

The CHAIRMAN: Toe sucking, even in royal circles, has been noted. How would you distinguish between fixation and obsession in the case before the court? How would that be distinguished?

The Hon. M.J. ATKINSON: If it were knees or toes it would not be pornography, I am sorry to say.

The CHAIRMAN: I am thinking more of urinating. I am not sure why anyone would have a fascination with it. Could it not be argued that the person had an obsession or fixation which was not necessarily sexual, just as some disturbed criminals have a fixation with faeces?

The Hon. M.J. ATKINSON: It would be caught in the case of urinating because the organs necessary for urination would be exposed. I cite the case of Phillips as the one that motivates this provision. I can recall when Phillips case was before the courts. There was a great deal of public indignation that this person could possibly escape for what he had done.

Ms CHAPMAN: If we take the Phillips example in relation to urination, they are caught under paragraph (a)(ii). I am still at a loss to understand why there could not be a finding on intention. Even if they did not qualify under paragraph (b)(i) for the sexual interest, surely they could be caught under (b)(ii) to excite or gratify a sadistic or other perverted interest in violence or cruelty.

The Hon. M.J. ATKINSON: That is why the second subparagraph is in there.

Ms CHAPMAN: I appreciate the Attorney-General's attempt to explain why it is still necessary to have apparent intent. On the circumstances that have been presented, even in the Phillips case, surely it is still open to the jury and/or judge, if there is an election to have a judge even though it is an indictable offence, on the circumstances surrounding, particularly, the multiple pieces of material, to support a finding beyond reasonable doubt that the offender had formed the intention to have it for that purpose.

The Hon. M.J. ATKINSON: I am afraid the member for Bragg would have to recast the problem for us, so we understand it.

Ms CHAPMAN: If we have a situation where the circumstances are such that there are multiple photographs of persons under the age of 16 years, in which a part of their

body is exposed—which is covered under (a)(ii)—and they may be urinating, maybe a portion of their genitalia is photographed, it would be sufficient, would it not, to find the second component (that is, the forming of the intention to excite or gratify) by the very extent of the number of photographs that are retained in their possession? One would not need to have apparent intention. One could make that finding based on the evidence of the explicitness and, in this case, multiple copies.

The Hon. M.J. ATKINSON: Maybe the member for Bragg is right.

Mrs REDMOND: I want to clarify one aspect which I raised in my second reading contribution and which involves the terminology used in the definitions of child and child pornography. I know we are dealing with child pornography in that interpretation section. I want to confirm that my understanding is correct.

When one looks at the definition of child being a person under the age of 16, when that definition is read into the definition of child pornography it means that if a person happens to create images using people who are over the age of 16—even adults but who look under the age of 16—that is intended to be caught and is, indeed, caught by this section. Is that the case?

The Hon. M.J. ATKINSON: Yes.

The CHAIRMAN: Why did you select the age of 16? We have inconsistency in terms of minors and the definition of age. Why was the age of 16 selected? Was it a national thing? Was an arbitrary age selected? Is it part of a national approach?

The Hon. M.J. ATKINSON: It is the current age in the child pornography legislation, but, also, although 17 is the age of consent in South Australia, as I understand it, under a sliding scale there is a provision for 16 year olds to have consensual sex and for that to be lawful. I seem to recall that was introduced by Peter Duncan when I was about that age.

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: I thought it was unnecessarily controversial and was losing the party votes at the time; I was a nerd, even then. If 16 year olds can have consensual sex in South Australia and that is lawful, it would seem wrong to prohibit their taking photographs of themselves in the act.

The CHAIRMAN: Nationally, will that be the likely age; or is it too early to say?

The Hon. M.J. ATKINSON: That is still up for discussion.

Ms CHAPMAN: If I can clarify a couple of other matters, the first of which concerns proposed section 63C where we have the defences which are expressed as being no offence if in certain circumstances. One defence is if the accused is in possession of, has produced or has disseminated material 'in good faith and for the advancement or dissemination of legal, medical or scientific knowledge'. There can, of course, be circumstances where professional persons involved in the medical and science world or in legal or teaching arenas would use this type of material for an instructive purpose, which would cover this provision.

However, I would ask: is there any intention of having a restriction on this? For example, it would seem that, on the face of this qualification that provides this defence, if a scientist had all this material in their possession they could argue this to receive exemption and yet they could have multiple copies of material and claim that it is for some instructive or academic purpose or for medical or scientific knowledge. It is a fairly general clause. I wonder whether any consideration has been given to the extent of the library of material that might be retained using that defence. Logically, in the international criminal rings for child pornography the simple answer would be to have someone with a scientific qualification being the holder of all the offending material and rely on this defence.

The Hon. M.J. ATKINSON: The key expression is 'in good faith'. I am sure we can rely on the commonsense of our police, our prosecution services and in the last resort our juries.

Ms CHAPMAN: The other area of absolute defence is if there is a determination that the offending material forms part of some work of artistic merit. How is it proposed that that will be determined? Will it be simply left to the jury to make a decision as to what they consider to be artistic merit? Is it proposed that some experts would be called from the National Gallery? How is it proposed to make some determination of whether something qualifies for this pretty broad qualification that would give them the entitlement to that defence?

The Hon. M.J. ATKINSON: My answer to the member for Bragg is that it is the same provision we have had for a long time. It would be determined in the same way as the jury dealt with *Lady Chatterley's Lover*, the novel by D.H. Lawrence. Juries may not know very much about art but they know what they do not like.

Ms CHAPMAN: Can the Attorney identify any cases in which this has been successfully used as a defence currently under the Summary Offences Act?

The Hon. M.J. ATKINSON: I think the *Adventures of 'Bazza' McKenzie* (maybe the first R-rated movie I ever saw) was banned for a period in South Australia and was eventually permitted to be screened because of artistic merit.

Ms CHAPMAN: I am not sure what really answered the question because that may relate to the question of the classification and then allowing a publication, as distinct from whether the producers of the *Adventures of Barry McKenzie* were facing prosecution for the production of the material. I would appreciate the Attorney making an inquiry as to whether that defence has been used successfully. Perhaps the Attorney could also inquire as to whether we have had any cases of successful prosecution under the Summary Offences Act in the lifetime of this government, which is in the last 2½ years.

The CHAIRMAN: There has been a recent case in relation to child pornography where two brothers from Thebarton claimed artistic merit as a defence, and the magistrate rejected that. I am pretty sure that, in the last three months or so, two brothers tried the artistic merit defence and it was rejected by the magistrate.

The Hon. M.J. ATKINSON: I am told that at an Adelaide Festival of Arts some French artists stripped naked and painted themselves blue and were able to escape prosecution or conviction on the grounds of artistic merit.

Ms CHAPMAN: To prosecute for indecent exposure or pornography? It is my understanding that the Attorney is indicating that he thinks pornography offences come under the Summary Offences Act.

The Hon. M.J. ATKINSON: Section 33 of the Summary Offences Act deals with all pornography.

Ms CHAPMAN: Are there any cases in the last three years where there has been a successful prosecution for child pornography?

The Hon. M.J. ATKINSON: Not that we know of.

Clause passed.

New clause 7A.

The Hon. M.J. ATKINSON: I move:

Page 6, after line 14—Insert:

Part 2A—Amendment of the Criminal Law (Forensic Procedures) Act 1998

7A—Amendment of Schedule—Serious offences

Schedule, offences against the Summary Offences Act 1953, entry relating to section 33—delete the entry

This amendment will remove section 33 of the Summary Offences Act from the operation of the Criminal Law (Forensic Procedures) Act. The bill will remove the child pornography offences from section 33 of the Summary Offences Act, and the offences will become indictable. A consequential amendment to the Criminal Law (Forensic Procedures) Act 1998 is required to remove section 33 of the Summary Offences Act from the schedule to the Criminal Law (Forensic Procedures) Act.

A serious offence for the purposes of the Criminal Law (Forensic Procedures) Act, in particular section 14, allows for the taking of a DNA sample from a suspect. The net effect is that the police have authority to take DNA samples from people under suspicion of child pornography offences. The amendment would result in no net changes to the intention behind the Criminal Law (Forensic Procedures) Act 1998. Under the Criminal Law (Forensic Procedures) Act, all indictable offences are serious offences, and therefore the existing power to take DNA samples from people suspected of child pornography offences will continue. To leave the Criminal Law (Forensic Procedures) Act 1998 as it is would create the unintended situation where police would have the power to take DNA samples when investigating the residual summary offence of publishing indecent or offensive material.

Ms CHAPMAN: The opposition supports the amendment.

Amendment carried; new clause inserted.

Clause 8 passed.

New clause 9.

The Hon. M.J. ATKINSON: I move:

Page 6—After part 3 insert:

Part 4—Amendment of Summary Procedure Act 1921

9—Amendment of section 104—Preliminary examination of charges of indictable offences

(1) Section 104(1)(a)(ii)—Delete subparagraph (ii) and substitute:

(ii) copies of any documents on which the prosecutor relies as tending to establish the guilt of the defendant (other than documents that are, in the opinion of the prosecutor, of a pornographic nature or of only peripheral relevance to the subject matter of the charge);

(2) Section 104(1)(a)(ii)—Delete '(including documents of peripheral relevance that have not been filed in the court)' and substitute '(including documents that have not been filed in the court because of their pornographic nature or their peripheral relevance to the subject matter of the charge)'.

(3) Section 104—After subsection (4) insert:

(5) If the prosecutor relies on pornographic material as tending to establish the guilt of the defendant—

(a) the prosecutor must, at least 14 days before the date appointed for the defendant's appearance to answer the charge, inform the defendant of the nature of the material and appoint a time and place for inspection of the material by the defendant, the defendant's legal representative and any person who may be called to give expert evidence for the defendant; and

(b) ensure that the material is available for inspection at the appointed time and place (but the time and place of inspection may be modified by agreement).

To prevent an obligation being placed on the prosecution to supply child pornography to an accused where child pornography or alleged child pornography that may be encrypted or not forms the basis of the charge under these new offences, changes would be needed to current rules that require copies of that material to be filed in court and given to the defendant. That would obviously be undesirable. The amendment states that disclosure is to be done by making material available for viewing by the defendant, his or her legal representative and a proposed expert witness. I refer honourable members to R. v Cassidy, a Canadian decision in which prosecution for possession of child pornography was stayed indefinitely on the grounds that disclosure had not been made to the accused. (See Court of Appeal of Ontario, 182 Canadian Criminal Cases, 3d). The government does not believe that it should be placed in the position of purveying child pornography to those accused of possessing or producing it.

Ms CHAPMAN: The Attorney suggests that, although it is the practice to provide a copy of this sort of material to any other defendant for any other indictable offence, it is undesirable in this case. I ask the Attorney to explain that, because this material can be confiscated. Statements that can be made in words let alone pictures could be offensive or rude or sexually explicit, yet defendants are able to have copies of that sort of material. Why is it that defendants in these circumstances ought not have a copy? Under this proposal, a burden is placed on them of having to inspect that material. In any other case, they may have access to this material at the local police station or wherever the material is being held by the prosecution with their legal counsel or other persons who might be giving expert evidence. This material may be extensive and may need to be carefully analysed by experts for the defendant.

The Hon. M.J. ATKINSON: It is available to defence counsel. We want to take the material out of circulation. The member's argument is a bit like saying that in a drugs trial we should give the drugs back to the defence counsel for the accused.

Ms CHAPMAN: Has the Attorney received any advice on this amendment from the Law Society?

The Hon. M.J. ATKINSON: No, we have not consulted with the Law Society but, in section 104—Preliminary examination of charges of indictable offences—subsection (4), paragraph (b), subparagraph (ii) of the Summary Procedure Act 1921, there is a precedent: it states:

However, if the witness is a child under the age of 12 years or a person who is illiterate or suffers from an intellectual handicap, the following provisions apply. . .

(b) if a videotape or audiotape is filed in the court. . . the prosecutor must. . . inform the defendant that the defendant is entitled to have the tape played over to the defendant or his or her legal representative (or both) and propose a time and place for the playing over of the tape. . .

Ms CHAPMAN: I note that, but that is not a precedent for what is currently before it. It identifies a circumstance where the victim is under the age of 12 years. Is there some reason why this matter has not been put to the Law Society, when it is my understanding that the bill itself had been presented to the Law Society for consideration?

The Hon. M.J. ATKINSON: We thought that this provision was desirable. We brought it in comparatively recently and we did not have time to consult with the Law Society.

Ms CHAPMAN: In the time before this matter is dealt with in the other place, perhaps that can be remedied. It may

well be that it finds that the Ontario case of R v Cassidy, in which a prosecution had not been proceeded with, there having been a failure to disclose material, was for good legal reason. There is to be a substantial change in the process that is to apply, given that this is moving from a summary offence to the Criminal Law Consolidation Act, leading to an indictable offence which carries much higher penalties for the accused. Perhaps it needs to be attended to.

I remind the Attorney that in this case we may not necessarily be considering young victims who are portrayed in pornographic material by a predatory person of a much older age: we may, in fact, be considering a situation where the offender or the accused is quite a young person. While sometimes in pornography cases we have this view that the predator is a late middle aged male who has no happy sexual life, etc., in fact we may find, as clearly occurs, that this is an offence that crosses gender and age. We should bear in mind, as I think the member for Enfield pointed out, the importance of balancing the rights of the accused with the undertaking of a proper legal process. We must make sure, when amendments are thrown in at the last minute, that proper account is taken and inquiry is made to ensure that there are no unforseen consequences which could seriously prejudice the judicial process and, in particular, justice for all those concerned. I have no other questions.

The Hon. M.J. ATKINSON: These amendments have been on file since 24 November, and we do not want this type of material filed in a court registry where anyone can go and have a look at it. I do not think that people looking through files in a court registry should be subjected to this material.

Amendment carried; new clause inserted.

Title.

The Hon. M.J. ATKINSON: I move:

Long title, page 1—
Before '*Summary Offences Act 1953*'—insert:
Criminal Law (Forensic Procedures) Act 1998 and the
After '*Summary Offences Act 1953*'—insert:
and the *Summary Procedure Act 1921*

Amendments carried; title as amended passed.

Bill reported with amendments.

The Hon. M.J. ATKINSON (Attorney-General): I move:

That this bill be now read a third time.

I thank all the members who have participated in the second reading debate. In particular, I thank the member for Bragg for her detailed and probing analysis of the bill in the committee stage. Without the efforts of opposition members such as the member for Bragg, law-making would be a poorer process in this state, so I thank her for the research that she has put into her contribution. I also thank the officers from the policy and legislation section of my department who are outstanding and beat a Law Reform Commission any day.

Bill read a third time and passed.

Ms CHAPMAN: Mr Speaker, I draw your attention to the state of the house.

A quorum having been formed:

MOTOR VEHICLES (FEES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 November. Page 1058.)

Mr BROKENSHIRE (Mawson): As you would know, Mr Deputy Speaker, the opposition is very bipartisan with respect to matters where we can afford to be in the state's interests. However, where it is not in the state's interest, we have to do our job as an opposition, namely, to correct matters so that we can get good legislation through this parliament. However, on this occasion, we understand why the minister has introduced this bill. In fact, it is simply what we would describe around here as a 'nuts and bolts' bill to correct an anomaly picked up by the Auditor-General.

We appreciate the points raised by the Auditor-General with respect to this matter. Therefore, I advise the house that we will be supporting this bill, which would be no surprise to you, Mr Deputy Speaker, particularly because you know how bipartisan I am. The opposition will move an amendment, and there is an amendment further to that to be moved by the minister, and we will briefly discuss those with the minister in the committee stage. I advise the house that the opposition will be supporting this bill.

The Hon. P.L. WHITE (Minister for Transport): I thank the honourable member representing the opposition for the bipartisan way in which the opposition has supported this proposed government amendment to the act. It is, as he rightly pointed out, something that the Auditor-General highlighted as an anomaly, and the passage of this legislation will provide for more appropriate administration of the act with regard to fees in this portfolio. I thank the member and the opposition for their cooperation in this matter.

Bill read a second time.

In committee.

Clauses 1 and 2 passed.

New clause 2A.

The Hon. P.L. WHITE: I move:

Page 2, after line 7—
Before clause 3 insert:
2A—Amendment of section 5—Interpretation
(1) Section 5(1)—after the definition of 'court' insert:
'CPI' means the Consumer Price Index (All Groups) for the City of Adelaide.
(2) Section 5—after subsection (6) insert:
(7) In this Act, if a monetary amount is followed by the word '(indexed)', the amount is to be adjusted on 1 January each year, beginning in 2006, by multiplying the stated amount by a multiplier obtained by dividing the CPI for the quarter ending 30 June in the previous year by the CPI for the quarter ending 30 June 2004.

New clause inserted.

Clause 3.

Mr BROKENSHIRE: I move:

Page 2, line 12—
Delete 'the prescribed amount' and substitute:
$3

Very simply, the reason for this is that we believe, when having a look at the bill, that there should be some amount, because any government of the future could otherwise use some licence to perhaps decide they are not going to refund amounts of money back to the community of, say, up to $300. We obviously would not want that to occur, so we believe that there needs to be a figure in there. I will just pre-empt further to save speaking any longer into the night that that is the reason why we are moving the $3 amount. However, I also understand the minister's wanting to make a further amendment to that to deal with indexation. This is why we have moved this amendment.

The Hon. P.L. WHITE: The government supports the opposition's amendment.

Amendment carried; clause as amended passed.

Clause 4.

The CHAIRMAN: The minister's amendment No. 3 should read 'clause 4', and amendment No. 4 should also read 'clause 4'.

Mr BROKENSHIRE: I move:

Page 2, line 19—Delete 'the prescribed amount' and substitute: $3

This amendment relates to the prescribed amount being $3.

Amendment carried.

The Hon. P.L. WHITE: I move:

Page 2, line 19—After '$3' insert: (indexed)

Amendment carried.

Mr BROKENSHIRE: I move:

Page 2, line 21—Delete 'the prescribed amount' and substitute: $3

Amendment carried.

The Hon. P.L. WHITE: I move:

Page 2, line 21—After $3' insert: (indexed)

Amendment carried; clause as amended passed.

Title passed.

Bil reported with amendments.

Bill read a third time and passed.

CRIMINAL LAW CONSOLIDATION (CRIMINAL NEGLECT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 October. Page 336.)

Mrs REDMOND (Heysen): It is my pleasure to lead the debate on this bill on behalf of the opposition. At the outset, I indicate that the opposition favours the intention of the bill, although it expresses some concern and will seek to address those concerns in terms of the wording. The intent is quite clear. As it exists today, there is a problem in the law inasmuch as there are circumstances (and they have arisen with all too tragic regularity in our legal system) in which sometimes a baby, an infant, or a child dies whilst in someone's care. If that happens whilst the child is the care of more than one person, unless those people tell the same story sometimes it is not possible to decide who was responsible. Although it is clear that a death has occurred, and that perhaps even a murder charge should be brought, if the parties present tell different stories—for example, each accuses the other, or they say nothing—it becomes almost impossible to mount a prosecution successfully.

This is a definite problem in our law and, from my recollection, on more than one occasion a situation has arisen where either the two natural parents or a natural parent and that parent's current partner have the care of a very young person who either dies or is seriously injured as a result of treatment. In those circumstances, it is clear that the treatment was at the hands of one of those people, but it cannot be satisfactorily determined who was responsible for the injuries.

The intention of the bill is to address what amounts, in those circumstances, to a loophole. It creates a new criminal offence of criminal neglect resulting in death or serious harm. The offence must have, as its victim, either a child—that is, a person defined at law as a child—or a vulnerable adult—that is, a person who may be over the age of majority but who is significantly mentally or physically impaired and, therefore, unable to care for themselves. In order to constitute the offence, certain elements must be present, and the first element (taken from the ordinary law of negligence) is that first there must exist a duty of care by the person for the victim.

Sometimes that will be very obvious; for instance, where a natural parent has the charge of a child, clearly there is a duty of care. In due course I would like the Attorney to answer the question about the vulnerable adult. Often those vulnerable adults will be in the care of a parent but technically they are of adult age; and, in my experience (and I have had a fair bit of experience in dealing with these situations over many years in practice), most times parents simply continue to care for their impaired son or daughter well beyond the age of majority and sometimes for their entire lives but without ever seeking formal order for guardianship.

I do wonder whether the terms of the legislation address that issue. I have had several instances in practice where, in fact, there was no formal guardianship, and that created certain impediments in the way in which things were dealt with. It is common to seek guardianship only in circumstances where one needs it. However, I move on to the rest of the offence. If that duty of care is owed and that is coupled with a failure by the person to take the necessary steps to protect the victim from harm in circumstances where the accused was aware, or reasonably to have been aware, that there was a risk of harm, the offence is committed.

The bill introduces quite significant penalties. If the victim suffers serious harm, the maximum penalty is to be five years; and if the victim suffers death, the maximum penalty will be 15 years. As I said, the bill seeks to address the issue where two or more people have the care of a child at the time that it suffers injury. If they cannot be charged with the actual offence that has led to the death, the killing or seriously harming the person, they can be charged under this bill on the basis that, although it cannot be shown necessarily that they committed the actual assault on the victim, nevertheless they had a responsibility as the parent or guardian or with some other duty of care to protect that person, and essentially they failed to do that.

That is the basis of the bill put before us. As I said, the opposition supports that intention and recognises that, at the moment, there is a shortcoming in our law that we need to address. The opposition, however, does have some appreciable difficulties. Indeed, probably the best way for me to address those without wanting to repeat things is to draw to the attention of the house the comments made by the Law Society about this bill. The Law Society wrote to the Attorney on 27 August this year. The bill as introduced in August although substantially the same does have some differences.

However, to all intents and purposes, for the purposes of these comments the bill before us is pretty much the same as that to which the Law Society responded in August. The Law Society had various committees look at it: the Criminal Law Committee, the Family Law Committee and the Children and Law Committee, and it forwarded copies of the comments of those committees. The letter from the Law Society states:

> It is disappointing to note that the bill was provided to the Law Society for comment after the bill was introduced into the House of Assembly on 28 June 2004.

That is on the basis, it says, that it normally would expect to see things before they were actually introduced. The letter continues:

We are concerned that there has not been sufficient analysis of the issues and broader consideration throughout the community. Whilst the society supports the objectives of the bill in principle, there is overwhelming disquiet and concern about the provisions, the wording of the legislation, its application and other effects.

The Law Society is expressing an 'overwhelming disquiet', which is probably the strongest indication I have ever heard it give, except where it has said, 'Look, we just disapprove of it.' The Law Society is basically saying, 'Look, we recognise the need for this [as does the opposition], but we have an overwhelming disquiet about the way it has been worded.'

The Hon. M.J. ATKINSON (Attorney-General): I move:

The time for moving the adjournment of the house be extended beyond 10 p.m.

Motion carried.

Mrs REDMOND: The letter from the Law Society further states:

The stated purpose of obtaining the conviction of persons who did not commit the unlawful act which causes the death or serious harm of a 'protected person' is a matter of significant concern. The society is concerned that this legislation could encourage inadequate investigation by police and forensic experts; the presentation of weak prosecution cases; the criminalisation of innocent people and the failure properly to prosecute an offender for the substantive offence for which they are truly guilty.

The Law Society is expressing a concern that a child or a vulnerable person has suffered serious injury or death and that there is a perpetrator of the offence who caused that. The introduction of this new offence could, in the Law Society's view, lead to prosecutors taking, as it were, the easy option; that is, not actually trying to go full throttle on finding the actual perpetrator and prosecuting the real offence but, rather, taking the other option of laying the charge of criminal neglect against both parties. I will use the term 'both' on the assumption that most cases have had two persons present. The Law Society is worried that there might not be proper prosecutions of the actual serious offence and that people might fall into the habit of going onto this offence instead. The letter continues:

One of the stated purposes of the bill is to get one or other of the parents of a child, for example, who did not commit the unlawful act occasioning death or serious harm to have an incentive 'to say what really happened'. However, it is considered equally likely that the legislation will create incentive to fabricate, to shift blame and to make false accusations.

They see a difficulty in that this act could be used as a leverage tool rather than for the proper prosecution of the offence. The letter continues:

We envisage a likely consequence of the legislation is that persons potentially liable will seek to cast blame upon each other, leaving both liable to conviction for criminal neglect and potentially resulting in an innocent party suffering conviction on that charge while the perpetrator avoids conviction for the substantive offence.

In other words, if a child has died, the mother and her boyfriend may cast blame upon each other. The mother who did not commit the offence could be found guilty of the offence of criminal neglect—which she probably may not deserve—but, on the other hand, the perpetrator, who may indeed be guilty of murder, may get off with simply being found guilty of the criminal neglect offence. The letter continues:

Specific concerns and criticisms are:

1. 'Guardian' is not defined in the legislation. 'Guardian' has numerous meanings in the community, has different meanings in different communities, particularly the Aboriginal community, has specific legal meanings in different contexts whether at common law or under various legislative schemes, and being undefined gives rise to uncertainty in the application of this legislation.

That is probably where it needs to be addressed in terms of my earlier comment about those who are vulnerable and their guardians, because, clearly, to all intents and purposes, the parents of disabled children who become adults, and who are simply continuing in their parenting role but without any formal appointment as the guardian once that child with the disability reaches the age of majority, is where that issue needs to be addressed. The letter continues:

2. 'Serious harm' is not defined. Whilst this has a meaning in other contexts such as serious assaults at common law, the meaning of serious harm may be different in this context and may have different meanings for different communities or different juries. The phrase ought to be specifically defined.
3. The concept of 'serious' harm should ordinarily mean physical harm. Serious harm can include psychological harm. The purpose of the legislation seems to be directed at physical harm. This legislation probably ought to be confined to that.

I would agree quite strongly with the submission in that regard. I think the Attorney-General would agree that the intention of this legislation is to address the issue of physical harm to a person rather than psychological harm; and this would be becoming far broader than the Attorney-General's intention if this were to be interpreted to incorporate psychological harm when what we are about is baby bashing. I seek leave to continue my remarks.

Leave granted; debate adjourned.

PITJANTJATJARA LAND RIGHTS (REGULATED SUBSTANCES) AMENDMENT BILL

Received from the Legislative Council and read a first time.

ADJOURNMENT

At 10.07 p.m. the house adjourned until Thursday 9 December at 10.30 a.m.