HOUSE OF ASSEMBLY

Wednesday 7 February 2007

The SPEAKER (Hon. J.J. Snelling) took the chair at 2 p.m. and read prayers.

DeGARIS, Hon. R.C., DEATH

The Hon. M.D. RANN (Premier): I move:

That the House of Assembly expresses its deep regret at the death of the Hon. Ren DeGaris, a former minister and member of the Legislative Council, and places on record its appreciation of his long and meritorious service; and, as a mark of respect to his memory, that the sitting of the house be suspended until the ringing of the bells.

Yesterday I and, I am sure, all members of this house were saddened to hear of the passing of Ren DeGaris, who was surely one of the most substantial, influential and, of course, controversial figures from the conservative side of politics in post-war South Australian politics. Mr DeGaris enjoyed a 23-year career in the Legislative Council, during which time he conscientiously served the people of the South-East, was his party's leader in the upper house and held a number of ministerial portfolios, but he is best known for the pivotal part he played in debate about electoral reform in the 1960s and 1970s and for his role as a major figure within the South Australian Liberal Party. He will be long remembered for his loyalty to his state, for his firm convictions and for his lasting impact on the Liberal Party.

Mr DeGaris passed away on Monday 5 February at the age of 85. Renfrey Curgenven DeGaris was born in Millicent on 12 October 1921. The DeGaris family was of strong British stock (although I suspect, from the spelling of his middle name, that there may have been a Channel Island or Guernsey influence), and it had a rich history of farming and involvement in local government in the South-East. The young Renfrey was educated at Prince Alfred College here in Adelaide. He served for six years in the Royal Australian Air Force and married Norma Wilson in 1948, after the war.

His first foray into politics led to a 12-year period in local government, including five years as the Chairman of Millicent District Council. Legend has it—although prior to this condolence motion I have been unable to ascertain whether this is true—that he was even a member of the Labor Party for a very, very short period.

Mr Koutsantonis interjecting:

The Hon. M.D. RANN: That is right; the building burnt down and so did the records. That is right. Bigger things, of course, beckoned for a man of Ren DeGaris's ability, and he sought a place in the House of Assembly in March 1962. Contesting the seat of Millicent for the Liberals he lost by a mere 200 votes to the tough yet affable Des Corcoran who, of course, was also a son of a local member. Of course, there are other legends about Des—one in which he won an election by one vote. In fact, I think there was an argument about the fact that his campaign manager had forgotten to vote but so had his opponent's aunt. I think that is the story. Of course, Des went on to become premier in 1979. So, you have these big characters from the South-East.

Another opportunity arose for Mr DeGaris in December 1962, and he entered the Legislative Council as a representative of the now defunct southern district. His maiden speech hinted at just some of the issues that would concern him throughout his career, and these included the funding and construction of country roads, the cost of electricity and the role of local government. Ren's star rose during the 1960s and, as a result, he became the leader of the Liberals in the Legislative Council in 1967. I am not sure whether that was during the time of Frank Walsh as premier or after Don Dunstan had taken over from Frank Walsh as premier.

Ren held three ministerial portfolios in the government of Steele Hall from April 1968 to June 1970, one of which was chief secretary. Of course, that is a position or portfolio we no longer have, and many of us are disappointed about that. In fact, at one stage 'chief secretary' was one of the most important positions covering a range of areas, including police.

An honourable member: Also marine and harbours.

The Hon. M.D. RANN: Yes, marine and harbours, corrections and other areas. Mr DeGaris held pronounced views on various political issues, and he was never shy about expressing them. It would be absurd to give a condolence motion without recognising that Ren was a very controversial figure. One observer wrote:

Mr DeGaris consistently stood for what he believed in, even if it was crazy, even if it contradicted the policies of his party—the Liberal Party. He was outspoken about the quality of parliamentarians and also about how much they should be paid. He was deeply concerned about the rise of Executive Government and its dominance over parliament.

I think that, obviously, in that area we have some similarities. Ren DeGaris believed that legislative councillors should be more independent of party and that the council should become a more effective house of review. In 1970 he told the old Adelaide *News*:

. . . the upper house must be structured—

and I want to quote him exactly—

so that you can break the dominance of the party machine.

He went on to say:

I believe that the upper house must act in this way as some independent court of appeal where people can approach and put a view point and know that the party machine is not going to dictate how that amendment or that piece of legislation will go through the house.

As is well known in this place, Mr DeGaris strongly disagreed with Steele Hall and fellow moderate members of the Liberal Party about electoral reform in South Australia (and one must remember that electoral reform dominated the 1960s and, certainly, the first half of the 1970s), especially the scope of the franchise in relation to the upper house. There were vigorous debates about one vote, one value. There were vigorous debates about the results of the election in 1968; and also, of course, when Steele Hall reformed the electoral system to bring in one vote, one value.

There were huge, massive demonstrations in Adelaide, as well as debates through the media and in town halls around the state. These philosophical differences, along with some bitter and long-running personality clashes, led to a split on the conservative side of politics precipitating the formation of the Liberal Movement. Something similar had happened of course in the 1950s in the Labor Party with the formation of the DLP.

Depending on one's standpoint, Mr DeGaris was seen as an independent-minded representative of the people, a principled reformer and a thinking opponent of mindless dogma, or as a 'stirrer', or a 'reactionary', or as one of the 'ultras' of the Liberal Party. Of course Ren was able to mix it with anyone and so did not at any stage blanch from controversy. By the time Mr DeGaris announced his intention

to quit politics in 1983, he had served under seven different premiers while in parliament. Now, I did not have the privilege of actually being a member of parliament while Ren was still here—I came in at the election at which he retired. However, I did meet him on a number of occasions when I worked for both Don Dunstan and Des Corcoran, and also during the time I worked for John Bannon.

Ren DeGaris told Stephen Middleton of *The News*, at the time that the Playford and Dunstan eras had been the two most important periods in South Australian politics in the previous half century:

> Playford saw the growth of the state's industrial capacity as the single most important issue before him.

He went on to say:

> . . . while Dunstan concentrated on the areas of social reform that Playford shunned.

Ren eventually retired from parliament in 1985. But this, of course, did not mean that he fell silent or withdrew from politics—quite the opposite. Indeed, he remained a mentor to many. He was very close to the former member for Victoria and former leader of the opposition and former minister, Dale Baker, with some people believing that Ren had been a mastermind behind Mr Baker's rise to leadership. When one critic slammed Dale Baker for hiring Mr DeGaris, Mr Baker promptly shot back, 'I'll employ whoever I want to employ', which I thought showed some considerable confidence. Besides Mr Baker, we know that Ren DeGaris influenced later generations of parliamentarians, including South Australian Liberal senator, Jeannie Ferris and the federal member for Barker, Patrick Secker.

I understand that, in his so-called retirement, Ren DeGaris wrote his memoirs and a biweekly column for the local newspaper in the South-East. Of course, he retained an encyclopaedic knowledge of elections and voting systems and trends of what had actually happened in elections going way back. Quite extraordinary. He remained a very astute and insightful political observer. For example, he very accurately predicted the result of the 1997 state election a full two years before it was held. In fact, I was the leader of the opposition when he made his predictions and my reaction was in my dreams, but such was his insight. Also having a kind of accuracy at reading trends, as well as voting figures, he was virtually dead accurate in his prediction two years ahead of time.

Ren's great passions in his later years were reading and bird-watching in the South-East, with a special interest in the migrating waterbirds of the region. One of his most fascinating legacies to the South-East is his collection of home movies spanning 30 years. These were taken by his father, who owned an early version of a hand-held movie camera during the war years of the 1940s. I understand that the films included rare images of town life in Millicent in the 1940s during the war, including local weddings and farewells and welcome home celebrations for the soldiers returning from the war.

These films were transferred onto video by Ren and I am told that they are now held by the Wattle Range Council. I was delighted just a few years ago to receive a very friendly and gracious letter from Ren DeGaris, which I must say came as a surprise because I had not seen Ren for some years. In March 2004, he wrote to me in his own hand but still apologising for what he called his 'faulty' writing, warmly thanking me for quoting him in the condolence motion I moved in this place for the late Frank Kneebone. I will quote from his letter. He said:

> I was not well enough to travel to Adelaide to pay my respects to Frank Kneebone. . . but in the piece you quoted from. . . anyone would appreciate my appreciation of the political work of Frank Kneebone.

In that letter, Ren also warmly recalled ALP leaders and members in the Legislative Council with whom he had worked, and went on to state:

> There are many stories I could tell in relation to my contacts with the ALP leaders in the Legislative Council. These are relationships that I am proud to remember (and) come to my mind. I was very proud of my period as Liberal leader in the Legislative Council . . . and the friendships I achieved.

I replied to Ren's letter soon after, telling him that I was amazed that he still read *Hansard*. I told him that he was 'fondly remembered and respected by those who were lucky enough to serve with you or to know you'. I think one of the great things about this place, despite what we often see on the news or read in the newspapers, is that there are friendships that cross political boundaries, and that is the way it should be. One of the great things about ex-politicians is how so many of them want to put something back into the state in a bipartisan, non-partisan way. I think some of the friendships that occur across the chamber end up being equally as strong as those amongst colleagues on either side.

Clearly, Ren DeGaris remained a good-hearted and generous man to the end. In recognition of his outstanding service to South Australia, and in response to requests from his family and after consultation with the Leader of the Opposition, I was yesterday very pleased to agree to a state funeral for Mr DeGaris. Unfortunately, I will be unable to attend because of my involvement in a meeting of the Council of the Federation in Sydney, which I chair and which will involve the other Premiers, but I will make sure that I am represented at the funeral. I am sure it will be a farewell well attended by members opposite and, indeed, also by past members.

Ren DeGaris was a fine parliamentarian. He was a great character—and we have had some great characters here, such as the late Ted Chapman and the late Des Corcoran. He was a proud South Australian. He was a controversial figure—there is no doubt about that—but he was a man who stood firm on his beliefs and his conscience, and he single-mindedly pursued what he believed was best for the state. Thoughtful and likeable and generous, tough and tenacious and passionate, Ren DeGaris was a giant of South Australian politics; one of the big figures in the parliament of South Australia in the 1960s and 1970s. On behalf of all members on this side of the house, I extend my condolences to Ren DeGaris's family and friends, especially his wife, Norma, his daughters, Ruth and Louise, his sons, Bill and Richard, and his grandchildren and great grandchildren.

Honourable members: Hear, hear!

The Hon. I.F. EVANS (Leader of the Opposition): On behalf of Liberal Party members, it is an honour to second the condolence motion in the memory of Ren DeGaris and to note his contribution to South Australia and the parliament. As the Premier has outlined in his speech (and I will not cover everything that the Premier covered in his speech), Ren was born in October 1921 in Millicent, South Australia. He was educated at Prince Alfred College. He came from a grazing background, and he married Norma Wilson in

1948—and the member for Finniss just whispered 'of good Kangaroo Island stock'.

I think it was always destiny that Ren would end up serving somewhere in politics. Having come from a grazing background, there was often talk around the table about political matters of the day. He was the fourth member of his family to chair a local council. So, I think he just came from that particular stock that had an interest in local politics and in politics generally. As the Premier outlined, he lost to Des Corcoran in 1962 by 200 votes, but then went on to serve in the Legislative Council for something like 23 years, representing what was then known as the Southern district. He had the privilege of serving as the chief secretary, the minister for health and the minister for mines in the government, and I think he succeeded Sir Lyell McEwin as opposition leader in the upper house. He was also awarded an Order of Australia in 1981. As the Premier said, there are plenty of stories about Ren.

I spoke to my father who had the pleasure of serving with Ren in what were turbulent times over a whole range of issues, particularly electoral reform. He was well known as a power broker within the Liberal and Country League (or the Liberal Party). The Premier mentioned about his joining the Labor Party, and I understand that he joined the Labor Party for three weeks—

The Hon. M.D. Rann: That's longer than I thought.

The Hon. I.F. EVANS: My notes say three weeks. He wanted to hear Frank Walsh speak, and he was quoted as saying that it was the best two shillings and sixpence he had ever spent, adding 'I saw what rubbish it was.' Later in life he talked about his support for capital punishment. I am not sure whether the two were related but, as the Premier mentioned, he was always one to speak his mind. He was a fearlessly independent free thinker and he carried that badge right throughout his public life; he was always prepared to speak his mind and stand by what he believed in. If you go to the voting records, and if you look at the *Hansard*, the number of times he took a different position to the party in the upper house would indicate that he was a fairly free thinker and fiercely independent.

In 1975, he treasured his independence so much that he rejected a position in the Liberal shadow ministry because he felt he could not perform his duties in what he used to call the house of review if he were bound by party policy. In 1980, he surprised some of his colleagues by suggesting that ministers should not be appointed from the upper house because he wanted to leave party politics out of his house of review.

He was a member of the Land Settlement Committee. He was the parliamentary delegate to the commonwealth Constitutional Convention. He recognised the importance of the forestry industry as a growth industry in the South-East and he correctly predicted that industry's expansion. Coming from the South-East, he was a passionate supporter of everything from that area of the state. He supported an independent commission for local government and, although he saw some advantages in amalgamating small councils, he felt that that would be unacceptable to do so unless the local residents supported the move.

As the Premier mentioned, he is probably best remembered for his knowledge and approach to electoral reform. I will not go over the matters the Premier has raised, but I think history records his very strong views on the role of the upper house and the way the upper house should be constructed. Interestingly enough, Ren and Hugh Hudson used to have an ongoing friendly battle about who was the better at working out the numbers in the redistributions, calculating swings and working out the electoral system. It was one of those policy battles between two very strong personalities that went on over many years. One of the media articles mentions one of his ideas that the state would be better off if the lower house were abolished, retaining the upper house. Obviously, he was populist in that view; I think that some might see that as a popular view. He was very concerned about the extension of executive power, usurping the role of politicians in the parliament. He was also very concerned about the growth in bureaucracy; he came very much from the small government philosophy in politics.

When Ren first went into parliament, there were no electorate offices. When electorate offices were discussed, he warned that there was a danger that lower house members of parliament, in particular, would end up being nothing more than welfare officers because they would get every complaint through the door that government could not fix. Some would say that might have been a farsighted view given some of the issues that walk through the door on occasions. He had a particular view about reforms to the voting system and electoral matters, particularly in the 'one vote, one value' argument. My father tells me that Ren argued that the 'one vote, one value' argument would not necessarily deliver the government that won the majority vote, and he warned that it was not a perfect system.

He argued for what was, I think, the then West German 'top up' system which he believed would deliver a truer result to the parliament. He was one of the earliest and strongest critics of government advertising; again, far-sighted in his views. He argued that politicians were paid too much. He did not believe in the theory of 'pay too little and you get monkeys', and in one article he questioned whether they should be paid at all. So, you are getting a picture that he was a member of parliament who was prepared to express his view about a whole range of matters.

He was a very keen cricketer—something dear to my heart. My father tells me that you would not get in a car with Ren, because he used to drive like mad with only one foot on the accelerator and the other foot up near the gearbox. He had a fantastic recall of figures, swings, seats, votes and what happened in certain elections. His recall and knowledge about the electoral system on our side of politics was unparalleled. He has written books about it, and he used to write to members of parliament telling them what to be aware of and what to look out for—

Ms Chapman: Constantly.

The Hon. I.F. EVANS: Constantly, as the member for Bragg reminds me. He would always be available to offer advice to members if we requested it, and would often offer advice to members even though we did not request it. He was a long-time contributor to the Liberal Party. He was no doubt committed to Liberal principles wholeheartedly. He was an outstanding member of parliament, and he lived through very turbulent times. Our sincere condolences to the family.

The Hon. R.J. McEWEN (Minister for Agriculture, Food and Fisheries): I will speak briefly to add a South-East flavour to the condolence motion without stealing too much of the member for MacKillop's thunder. Renfrey C. DeGaris: married for 59 years to Norma, four children, 11 grandchildren, and two great-grandchildren. Ren would see in his family his epitaph. He would see in those living members so much of what he stood for, but the broader community would

see much more in Ren than that. The broader community over many years had the opportunity to explore Ren's wisdom and views. Ren wrote over 1 500 articles in *The South-East Times* in his little corner—'Ren's comments'. There were some remarkable stories in those articles. Interestingly, I just happened to grab one of them today. It is a little article about Ren's reflections on the death of the Don, and he included in it a little handwritten note from the Don with a puzzle on which he had mused. I will have that puzzle put into everybody's pigeonhole, and some people in this place will struggle to find a solution.

Ren lives on in my office, I might add, because Pat Dycer (then Pat Butler who ran Dale Baker's life) is now employed in my office. Of course, in his later years, Renfrey C. spent a lot of time in Dale Baker's back room, but I will come back to that. In those 1 500 articles, as I said, Ren wrote about so many different things from sport to politics, world events, local history, local identities, the constitutional monarchy, bird-watching—as the Premier and the Leader of the Opposition mentioned—and RSL matters. He reflected at one stage on the role of women in the services, because in Canberra there was to be a monument built to those women and he said it should also be done in Millicent, because the women in the district were not being appropriately honoured for their role in service during the wars.

Ren was often discussed, of course, in the front bar of Nicky's Hotel, and for very good reason. You must wonder what was in the water in Millicent where, at that time, you had not only Renfrey C. but Martin Cameron (the Liberal movement) and Des Corcoran. Here were three power-brokers of the three political factions within the state, all out of Millicent at that time—most interesting. Of course, the member for MacKillop may also reflect that in those times his own father was a member of a different political party.

Renfrey did explore, amongst other things, as the Leader of the Opposition said, amalgamations, and he certainly set the scene for the amalgamation of Millicent and Tontanoola. Later he talked to me about those amalgamations and he said he would have to wait until a Mr Williams, the chairman of Beachport, went before he could have a look at further extending his theory about amalgamations. He felt that that young buck had strong views. I think we agree with him on that. He would be most amused, I think, today to reflect on the fact that those amalgamations went beyond that. He did not even see in his vision the range, because he did not believe that those people at Penola had much to offer.

I used to call on Renfry C. It used to be interesting to go into the back room of Dale Baker's office and see all the stuff spread out on the table. He would be writing his article; he would have his bird photos there and he would be having about five conversations, three with himself and two with you. It used to be very difficult sometimes to follow where he was up to at any one time. But often he was vague; he was known around Millicent as being quite vague. He walked across roads without looking at traffic. He did that when he went across to Government House one day and got cleaned up on the way across. He just forgot to reflect on the fact that it was a road and there was probably traffic. He drove in the same style. Again, around Millicent, Mitch will tell you that people used to know the car and attempt to avoid it!

Above my television set is a book that was printed by the *South-East Times*, *Redressing the Imbalance*. My wife was most amazed this morning when I rang her and asked her to go into our sunroom and pull down a book from above the TV so I could check something in it. She was amazed that I have sat there and looked at that book above the television for many years. He wrote the book, he told us. That was around the time of Steele Hall's resignation, redistributions, 'Playmanders', of course, and the franchise in the Legislative Council—how dare we have everybody in South Australia voting for the Legislative Council.

In the book he says that the reason he wrote it was because of the poor coverage and the trivialising of those events by the media, and they were far deeper and far more fundamental than the daily media in Adelaide would ever understand. So, he had some very strong views about that. Equally, Ren explored in one of his little articles the inability of Rex Jory to count. Rex Jory—

The Hon. M.D. Rann: Unfair.

The Hon. R.J. McEWEN: Unfair? I would have to disagree with the Premier there because, unlike the Premier, Ren actually provides good evidence for his claim that Rex could not count. Rex happened to publish what he considered to be the top 20 politicians in South Australia, at which Ren ranked 14. There was one fundamental problem, because when Ren counted the list, there were 21 names on it. Ren himself did, from time to time, struggle with his ability to count. I promise the member for MacKillop I will not, in this place, tell the whole story of my failure to win Liberal Party pre-selection in 1997. Some 57 Liberals, tried and true, gathered that Saturday to choose the replacement for Harold Allison. Harold had served for 22 years, and I, of course, a very loyal Liberal had served in many branch positions over those 22 years and was considered in some quarters to be the obvious heir apparent. Certainly in Ren's mind I was the heir apparent—

An honourable member: And in Mount Gambier's.

The Hon. R.J. McEWEN: And Mount Gambier's; well, they proved that later, didn't they. Ren rang me on the Thursday evening to say, 'Look, you've definitely got between 32 and 34 of the 57 votes. You might not necessarily get them all in the first round. There is quite an attractive, stylish young man also running and he does appeal in some way to the older females who will be voting on the Saturday. But rest assured'—and these are Ren's words—'that if you don't win the ballot in the first round those votes will switch to you in the second round. So, keep it cool. Don't do one of those speeches from the South-East; keep it cool and you'll be fine.' The only problem was that I did not survive to the second round. I got seven votes in the first round and the rest is history.

In making the point that much of Ren lives on in his family, in closing I will just reflect briefly on a dinner party some two weeks ago, where his son, Bill, was one of the guests. He had the same problem with his father in terms of having three conversations at the one time, or up to five—somewhat lubricated, I might add—some with himself, some with his wife and some with the rest of us. But at some time during the night he obviously was not focusing on what he was saying because his wife, Lynn, pointed out to him just as I was leaving the dinner party that he would certainly be walking home that night and quite possibly sleeping in the spare bed. So, it tends to be a trend through the DeGaris families that they have many things going around in their minds at the one time. Certainly in terms of the South-East, we are much the richer for Ren exploring so many topics through the eyes of locals and being prepared to stand up for those views, put them in print and then debate them with anyone when they explored them further. Renfry has made

a great contribution and, as I say, through his family and his writings, will continue to do so.

Honourable members: Hear, hear!

The Hon. G.M. GUNN (Stuart): Mr Speaker, I wish to make a brief contribution because I think I am the only person left in this parliament who served with the Hon. Mr DeGaris.

Members interjecting:

The Hon. G.M. GUNN: I had a long association with him. Ren and I travelled together around many parts of the old electorate of Eyre, and he was always popular in my constituency. We shared many similar views, although he was somewhat more conservative than I, coming as I do from the centre. We participated in many debates within the organisation of the Liberal Party, and on most occasions I was on Ren's side—and I make no apology for that. He visited our home on Eyre Peninsula on many occasions, and my wife and I enjoyed his company. Ren had a great knowledge of the electoral system, and if a few more people had perhaps paid a little more attention to some of the views he expressed, we might have been better off today. I want to extend my sympathy to Ren's wife and family and conclude by saying that it was a pleasure to serve with him.

Mr WILLIAMS (MacKillop): Mr Speaker, it is with some sadness that I join in support of this condolence motion debate to the memory of the late Ren DeGaris. The DeGaris family are well known in the South-East, and I point out that Millicent was not their background. Ren's father Ralph DeGaris, was sent to Millicent from Naracoorte, the centre of the family, to look after the family business in Millicent, which I guess could be described as a stock agent's business. Ralph and his young wife at the time, Betha, managed the family business and raised their family in Millicent.

As a small boy, I remember the DeGarises—both Ralph and Betha—who were a little older than my parents but friends with my parents and, of course, Ren, Norma and their family. My father was a little older than Ren, but they were sparring partners and contemporaries. In fact, my father actually chaired the Beachport council many years before I did—between 1957 and 1961—at the same time when Ren was chairman of the Millicent council. The matter of council amalgamations was something that was even on Ren's mind even back then, and I think he had some difficulties in that respect with my father.

Ren was a man of action. One of my uncles served with Ren on the Millicent District Council—the forerunner to the now Wattle Range Council—and I remember him telling the story that Ren managed to get a certain motion through council. It would have been in that period, the late 50s, early 60s, Ren was an advocate of building an airstrip at Millicent, which I think he saw becoming the centre of South Australia. He got the motion through council, and after the council meeting some of the councillors were discussing the wisdom of what they had just done. My uncle, on reflection during the night, decided the next morning he would slip into town and talk to some of his fellow councillors about the possibility of doing something about rescinding the motion. As he drove from his farm into the town, he realised he was too late because the grader and the trucks and bulldozer were out there in the paddock building the airstrip the very next day.

I will not go over the details of Ren's political life—I think that has been well documented here today—but I will make a couple of comments. One day in an interview I remember him saying that he saw himself as a parliamentarian and a legislator over and above everything else, and I think that is borne out by some of the stories we have heard here today, that Ren's style, his beliefs and what he did in this place demonstrate that he possibly had a greater love for our parliamentary system than even for the Liberal Party. But I will talk a little more about his role in the Liberal Party.

In his maiden speech, coming immediately from a local government background, Ren talked about two things, one being local government and local government amalgamations. He talked at length about local government and about setting up a commission based on a system that was used in New Zealand. The other thing that he talked about was drainage and drainage rates, particularly in the Greenways area, and the drainage rates inflicted on the soldier/settlers who were still grappling with paying for their block. Over 40 years later, those issues have not disappeared in the South-East, and we are still talking about water, drains and such like today, even in this place.

His passion for elections, electoral reform and electoral systems has been noted. I suggest, although I am not absolutely certain of this, that the detail of the Electoral Act that we now have in South Australia, even though Ren had retired from parliament by the time of its enactment, probably had its genesis somewhere in the mind of Ren DeGaris. It is one of the things that I congratulated my predecessor, Dale Baker for: I think it was him and Martyn Evans who saw that the Electoral Act we now have got through this parliament back in the late 1980s or early 1990s. As I say, I suspect that Ren DeGaris had more than a passing interest in that matter at that time.

The member for Mount Gambier has already talked about the role that he played in mentoring and aiding Dale Baker. He spent many hours in the back office in Dale's electorate office in Millicent, doing all manner of things from helping out on electoral matters and, obviously, thinking about and writing papers about things pertaining to the state more than just to the local area, although he was passionate about his local area, as the member for Mount Gambier said. Reflecting back on his parents, I remember that his mother in particular had a wicked sense of humour, and I think Ren inherited many good qualities from both his parents but I suspect a lot of his sense of humour was inherited from his mother. He was a very active member of the local Rotary Club in Millicent and, even when he was away on parliamentary duties, he was made an honorary member of the club and he always made sure that he got back to the local club for the annual Christmas dinner, to which the ladies and families were invited.

I remember a number of times when I went along with my family, my parents and my brothers, to the annual Christmas dinner, and you always knew that Ren had a big part to play in it. The Rotarians always put on a skit, which was usually very lively and very topical, concerning some of the characters around the town. It was always very funny and involved a fair bit of singing, sometimes a bit risque, and we always knew that Ren DeGaris was the mainstay in putting the script together and composing the lyrics that lubricated Rotarians on the stage in the old St Alphonsus Hall would perform for the assembled guests.

The member for Mount Gambier alluded to Ren's work after politics in contributing to *The South Eastern Times*, the local paper in Millicent, and noted that he wrote over 1 500 articles. From his retirement in 1985, Ren was a regular contributor. I do not think he was on the paid staff but, if

Ren's article did not appear in one of the two issues per week, you knew that he was either a long way away on holiday, which did happen occasionally, or that he was seriously ill, and that happened occasionally, too. Whenever his article did not appear, the question went around town, 'What's wrong with Ren? Where is he and what's happening?'

His articles covered a huge range of issues. He was obviously still a very keen reader and often brought to the readers of the *SE Times* approaches to esoterical subjects that appeared in a range of magazines and journals that I do not think were generally read in the Millicent area. He was quite often quoting and dissertating on articles that appeared in the *Nature* journal or even the British *Lancet*.

More particularly, in his latter years he became a very keen amateur ornithologist. I think that it even got a bit much at some stage because his articles would detail the number of banded stilts on Lake McIntyre on the edge of town, or how many orange-bellied parrots had not been spotted in the past 12 months. He contributed greatly to his community not only as a political representative but also post-politics through those articles. Also, he contributed very greatly to the RSL, being a member of the Air Force as a radio operator in the Second World War. He had a very keen sense of the RSL, what it stood for and the service given by the men and women of Australia.

The member for Mount Gambier talked about his campaign to have recognised the efforts and the work done by women, particularly by the RSL. In fact, he ensured that a memorial was constructed in Millicent to the late nurse, Vivien Bullwinkel, recognising her as an icon of the work done by women during the war effort of this nation.

I have personally known one of his sons, Richard (or Rick, as he is known), for many years. Rick is my age. I know his older brother, Bill, who is a practising lawyer now in Mount Gambier. I express not only my condolences to Norma, Ruth, Louise, Bill and Rick and their children (Ren's and Norma's grandchildren and great-grandchildren) but also the condolences of my wife, Leonie, my family and the people of the Millicent district. He will be sadly missed.

The Hon. M.J. ATKINSON (Attorney-General): I rise to record my support and appreciation for the life and work of Ren DeGaris. I was sorry to learn of his death in Adelaide on Monday night at the age of 85. Although Ren DeGaris had retired from the Legislative Council four years before I was elected to the House of Assembly, I have fond memories of a trip with Ren (and Peter Arnold, the then Liberal member for Chaffey) organised by Tom Brinkworth to view some of the many waterways and lakes created by Tom in the Upper South-East.

The idea was to create habitats for ducks so that they might be killed and eaten by sporting shooters; and I joined an organisation called Ducks Unlimited to help finance this habitat. Ren and I were gliding along Jip Jip Lake side by side in two flat-bottomed boats when, owing to faulty sailing by my craft's skipper, my boat sank. I am sure that members opposite will be forever thankful for Ren's efforts in ensuring that I did not drown; and, owing to Jip Jip Lake being shallow, we were able to wade to shore albeit fully clothed, but I did not know it was so shallow at the time.

Like other political leaders from both sides of politics, such as the late Hon. Terry Roberts, Ren was born in Millicent. He was a grazier who was elected to the Legislative Council in 1962 after being the fourth DeGaris to chair a local council. In 1967, at the age of 46 (at a time when he was the youngest member of the Liberal and Country League in the upper house), Ren succeeded Sir Lyell McEwin as leader of the opposition in the Legislative Council. He held the portfolios of chief secretary, minister of health and minister of mines from 17 April 1968 to 2 June 1970.

A man of contrast, Ren DeGaris has been called both a reactionary and a free thinker. He was never afraid to listen to his conscience and to speak his mind. He was a staunch advocate of the independence of the upper house from the executive, and he was a thorn in the side of the Dunstan Labor government for years. He would scrutinise government bills most severely and amend them without mercy. When asked by a *News* journalist in 1970 to justify his blocking of Dunstan government policies that the voters of South Australia had endorsed at the ballot box, Mr DeGaris replied:

> We do generally accept the principle that there has been a fair mandate given, but if there is sufficient support of the individuals in the council that certain action should be taken, it will be taken.

When I was growing up in Adelaide and following politics, electoral reform was portrayed in very simplistic terms as light and dark, black and white, good and evil. So far as I was concerned, Don Dunstan was absolutely right and the electoral system needed to be reformed and there ought to be the same number of voters in each House of Assembly district and anything else was a perversion of the system.

Others took a different view. Frank Walsh was not so keen on Dunstan's reform plans, which he saw as almost impossible to achieve and, from Frank Walsh's point of view, the best thing was to keep the Playford malapportionment in place; that is, freeze the electoral boundaries, do not change them and let urban overspill from the Adelaide metropolitan area into nearby country electorates result in all these country electorates going Labor—and that is what happened in 1965. That is why Labor won the election: urban overspill from Tea Tree Gully into the Barossa electorate. I do not think that I can say that Frank Walsh was necessarily wrong in his tactic, but what Renfrey DeGaris understood from the Liberal point of view is that the Liberal Party ought not to surrender to Dunstan's reasoning because that would be political suicide for the Liberal Party.

The reason was this: that most of the Liberal vote was cooped up in the country areas and that the Liberal Party won massive majorities in most of the country areas, but in the city its support was spread unevenly and the likelihood is that, if there was an electoral redistribution with exactly equal numbers of voters in each House of Assembly district, then the Liberal Party would win nearly all the country districts with a massive majority, but even if the Liberal Party got more than 50 per cent of the two-party preferred vote, it would not win enough seats in Adelaide to govern. When his enemies in the Liberal Movement accepted Dunstan's argument and carried it out legislatively, DeGaris's warning came true in the 1989 general election (the one in which I was elected to parliament). The Liberal Party got a clear majority of the two-party preferred vote but failed to govern because of the distribution of their support.

I think the member for MacKillop is absolutely right to say that the 1991 referendum, which brought in the idea of the fairness principle (which Dean Jaensch so deplores) into our state electoral system was very much DeGaris's idea as carried out by Dale Baker. But I will just add one thing. Martyn Evans, who was an Independent Labor member at the time, is a good friend of mine. He is the secretary of my Labor Party sub-branch. He was threatening the Labor Party at that time with supporting a Liberal move for multimember

electorates and proportional representation. The Labor Party leadership at the time was greatly alarmed and agreed to the Dale Baker idea of the fairness principle in redistributions after every election to avoid multimember electorates. Of course, the thing that Bannon and Hopgood did not know is that Evans was just having a lend of them, he was not going to carry it out. So that is how we got the system we have currently, whether you think it is good or bad.

The Hon. G.M. Gunn: We do not want the New Zealand one though.

The Hon. M.J. ATKINSON: Quite so. Ren DeGaris was able to justify his vision of the Legislative Council as a house of review through saying that Liberal legislative councillors in 1970 did not meet in conclave with their House of Assembly colleagues and even had the odd approach from a few Labor members just on the side seeking amendments to the Dunstan government's legislation. Ren DeGaris had a principled, statesman-like approach to the role of the Legislative Council and said:

> Somehow in an upper house you must structure it so that you can break this growing dominance of the party machine. I don't care whether it's a party machine that's Liberal and Country League or whether it's a party machine of the Australian Labor Party, or any other party.
>
> I believe that the Upper House must act in this way as some independent court of appeal where people can approach and put a viewpoint and know that the party machine is not going to dictate how that amendment or that piece of legislation will go through the house.

Oh, how we vilified him at the time for his view of the upper house as the permanent will of the people; something that should not be overborne by the temporary circumstances of general elections.

Mr DeGaris often spoke about the decline in standards of parliamentary behaviour during his years in parliament, and was so passionate about the leadership of the Liberal Party that he mentored and guided the political careers of leaders of the Liberal Party—or their challengers—for decades, even after his retirement from political life. In the early 1990s he was an adviser to the then Liberal opposition leader, Dale Baker, and was instrumental in persuading John Olsen to return to state politics from the federal arena and joust for the leadership of the Liberal Party with Dean Brown. I extend my condolences to Ren's wife, Norma, and his children.

Mr VENNING (Schubert): I rise briefly to support this condolence motion honouring the late Ren DeGaris. I do so on my own behalf and also on behalf of my family. I support the sentiments expressed by the Premier, the Leader of the Opposition and the other speakers. Ren was a great mate of my father, Howard, and my mother, Shirley. Howard and Ren were colleagues in this place, and did a lot together. They shared a strong interest in farming, as well as billiards—and members will note from the honour board that Ren was a very good sportsperson and a champion of champions. His name will forever be up there on the honour board as being one of the best billiards players in this place. That was in the era before television, and after dinner most members would go upstairs for a game of billiards. I am told that Ren had no peer at the table.

As a member of a family long involved with the Liberal Party, it is well worth reflecting on this gentleman who was a giant in our party and, indeed, in politics in South Australia. He was a legendary powerbroker. To cross him was certainly a very dangerous thing to do, because not only was he big but he also had the facts and figures at his recall to knock one around, literally speaking. He gave very wise counsel and was a very astute number cruncher, as has already been indicated. His renowned expertise with respect to electoral reform knew no peer. He was a strong advocate of preferential voting (and over the years I have often said that we ought to look at changing, because we were not doing so well under the current system), and also proportional representation and voluntary voting. He wrote several papers (as has been intimated, in particular, by the member for MacKillop). He also wrote the book *Redressing the Imbalance* (to which the member for Mount Gambier referred), and that is one of half a dozen books that my mother has kept from all the books my dad had. He had hundreds of them, and that is one that still sits in mum's small library.

Ren DeGaris often gave me advice (and some would reflect on this), especially about my views in relation to retaining an upper house. I never changed my opinion about that matter, but I chose to be wise and not openly express it, because I knew that, as soon as the honourable Renfrey heard about it, I would receive either a visit or a telephone call. I chose to hold my point of view, but I listened to him, and he certainly was a very fierce advocate for retaining the upper house.

As I said, Ren was a very good sportsperson and he was also a very broad-minded man. I extend my sympathy and that of my family to Ren's wife and family and friends. As I said, he was a giant in this place and he will long be remembered as a great South Australian.

The Hon. J.D. HILL (Minister for Health): I would like to add a couple of comments to this debate about Renfrey DeGaris, whom I met, I think, on only one occasion, but I do remember the occasion very well. It was at a time after the legislation had been changed to introduce the new provision to the Electoral Act which allegedly ensured fairness, and the Electoral Boundaries Commission was considering how it should apply this particular provision. Mr DeGaris came to the commission and gave evidence, and it was part of my job to examine him—or cross-examine him, really, because he was presenting as a witness for the Liberal Party. I think the essence of his contribution was an examination in detail of what was known as the cube rule, which was a particular way of demonstrating that what would appear to be black was, in fact, white and why the propositions that the Liberal Party was putting were the correct propositions. I cannot say that I understood the maths of it, and I do not think anybody else in the court did, but he elaborated on it at great length and with great sophistication.

The only other time I came across a member of the DeGaris family was when we were first elected to government and we had a community cabinet meeting in Mount Gambier. We were staying at one of the pubs and, late at night, my chief of staff and I decided to play a game of pool in the local pool hall and, when we turned up, two young gentlemen who were looking very sure of themselves with their very fancy pool cues were sitting at the table. When we went to play, they said, 'No, this is a challenge table,' even though they were not playing, and we played a game against one of Renfrey's grandsons and his mate. I am very pleased to say that we beat them. I would like to put on the record my sympathies for Mr DeGaris's family.

The SPEAKER: I thank honourable members for their contributions. Shortly after my election, I received a letter

and critique of my maiden speech from the Hon. Ren DeGaris in which he made his feelings quite clear on what I had to say, but he also sent me a signed copy of his book *Redressing the Imbalance*, which I commend to all members. I will forward a copy of today's proceedings to the DeGaris family. I ask members, in support of the motion, to do so in the customary fashion.

Motion carried by members standing in their places in silence.

[Sitting suspended from 3.03 to 3.14 p.m.]

LINCOLN HIGHWAY

A petition signed by 1 463 residents of South Australia, requesting the house to urge the Minister for Transport to allocate funds for the immediate sealing of the road from the Lincoln Highway to the ferry terminal at Lucky Bay, was presented by the Mrs Penfold.

Petition received.

PAPER TABLED

The following paper was laid on the table:

By the Premier (Hon. M.D. Rann)—

Summary of Revised Process for QC Award for England and Wales.

SEX OFFENCES, LEGISLATION

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

Leave granted.

The Hon. M.D. RANN: Today the Attorney-General and I announced the introduction of legislation to deliver a central election commitment by the government: to detain dangerous sexual and violent prisoners for life. The legislation, which will be introduced later this week, will also allow courts, on application of the Attorney-General, to remove the non-parole period of prisoners sentenced to life where there is little prospect of rehabilitation and where the community would be at risk if the prisoners were to be released.

I make no apology and neither does the government for taking this tough stance on locking up the state's most notorious criminals for good. There can surely not be a single person in South Australia who would relish the prospect of waking up each morning with a serial killer or an un-rehabilitated sex killer as their neighbour. The legislation will mean that such people will not leave prison while I am Premier of this state, and also beyond that time. I can promise the people of South Australia that the second this legislation comes into force the first case that the Attorney-General will be asked to consider will be that of Bevan Spencer von Einem.

The legislation will ensure the most serious offenders spend longer in prison. In our society, murder is considered the most serious offence, and for that there is a mandatory life sentence. We intend that, unless there are exceptional circumstances, convicted murderers will serve a minimum of 20 years in gaol. People will also appreciate that, since the toughening up of our laws in South Australia, our records show that sentences are increasing, which is having the desired effect. For other major indictable offences, where the victim has died or been left completely and permanently incapacitated, the law will require that the offender served at least four-fifths of the head sentence. That means a head sentence of 15 years will see such an offender serving at least 12 years in gaol. It could be as little as seven or eight years in gaol under current parole laws.

In passing the legislation, the parliament will send a clear message to the courts that a primary consideration in passing sentence will be the protection of the public. We went to the last election pledging to protect the public from dangerous offenders and to provide justice for victims. This legislation delivers those pledges. So, this government has a clear mandate to introduce this legislation, and I hope it proceeds through both houses of this parliament.

I think at the end of this year or next year von Einem becomes eligible to apply for parole, and obviously we would hope and expect that the Parole Board would not grant him parole. I also point out that we are the first government, in my recollection, to have refused the release of prisoners on parole as recommended by the Parole Board. We have, on a number of occasions (I think about six occasions), actually refused the release of prisoners recommended for release by the Parole Board in this state. I refer to people like Stephen McBride, and we make no apologies for that. I am told by the Attorney-General that the Liberals have pledged to repeal this legislation. Is that correct, Mr Attorney?

The Hon. M.J. Atkinson: The shadow attorney-general has undertaken to accept the Parole Board recommendation.

The Hon. M.D. RANN: I am told by the Attorney that if the opposition was elected it would actually accept Parole Board recommendations for the release of people like McBride. Of course, we also had opposition from the other side for even DNA testing von Einem. So, I ask the Attorney-General to consider some kind of 21st century version of a bill of attainder that would mean legislating to keep von Einem in gaol. The Attorney-General's advice to me was that that might not stand the test of the Constitution through the High Court and so this legislation would be a much more effective way of dealing with all serious and violent offenders and, of course, those sexual offenders who cannot be rehabilitated. I would be stunned if the opposition opposed this legislation. One, it is the right thing to do; and, secondly, we have a clear mandate to do it. Von Einem should never be released from gaol in this state. I do not think we would find anyone in South Australia who believes that von Einem should ever be paroled and released.

QUEEN'S COUNSEL

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

Leave granted.

The Hon. M.D. RANN: I refer to the process of apointment of Queen's Counsel in South Australia. This was the subject of some controversy over the Christmas break. In January, I announced that I had asked the Attorney-General to review the process for the appointment of Queen's Counsel and to report back to cabinet. The review arose out of the process that led to the appointment on the recommendation of the Chief Justice in late 2006 of a barrister who had been the subject of an adverse finding by the Legal Practitioners Conduct Board. The Attorney-General will consult with the Chief Justice, the Law Society, the Bar Association and other relevant and interested organisations in conducting the review.

Without pre-empting the findings of the review and decisions arising from it, an option that will inevitably be considered is an arrangement which takes the appointment

process completely out of the hands of the Governor in Executive Council. In other words—and I understand there is a bit of a view in the profession about this—there is the suggestion from elements of the legal community in South Australia that the government should not play a role in appointing QCs. And, of course, it was put to me that what the government should be doing under the current system is just automatically agreeing to the recommendation of the Chief Justice and putting it straight through Executive Council.

That was the same view that was put to me about automatically agreeing to the recommendations of the Parole Board; in other words, the government in Executive Council—the government, the cabinet, in association with the Governor—just being a rubber stamp for what the legal fraternity or the Parole Board want. We stopped the Parole Board in its tracks and made decisions not to release parolees on the basis of the public interest. But now there is a move that people from the legal community want us to take away the role of the government in making QCs. I must say, personally, I am relaxed about this, but, of course, a consequence of this would be that the term 'Queen's Counsel' would be replaced by the term 'Senior Counsel', to reflect the removal of the Crown from the process. Let me put that into perspective: if the Crown cannot make decisions, if the Crown itself does not make the appointment, then obviously it would not be a Queen's Counsel, it would be a Senior Counsel, as is the case in all of the other states of Australia. I do not believe there would be resistance from the legal community on that, and we certainly have not made a decision—that is why we are having a review—because I do not believe there is any snobbery involved in the title Queen's Counsel; far from it.

Members interjecting:

The Hon. K.O. Foley: Careful what you ask for.

The Hon. M.D. RANN: That's right. So, I am sure they will be careful what they are asking for, and I am sure they will not mind a change in the title, although I know that there are senior legal people on this bench in front of me who probably in the old days would have qualified as a Queen's Counsel, because there have been many attorneys-general around Australia who have appointed themselves as one from time to time.

An honourable member interjecting:

The Hon. M.D. RANN: No, I can't appoint the Deputy Premier a QC without having a law degree. In defence of their position in relation to the title 'Queen's Counsel', of course people keep referring back to the mother parliament and the system in Great Britain, so I think it would be useful to remind members of the legal community what has actually happened in England. Recently in the United Kingdom the legal profession approved reforms for the appointment of Queen's Counsel in England and Wales. That paper was released on 23 November 2006. It places the selection of future Queen's Counsel in the hands of an independent panel which includes judicial and lay—i.e. non-lawyers—membership, and the proposed process will contain 'no element of secret soundings', and I quote that directly. So in England and Wales they are reforming the system that people want to hang on to here, and they are having an independent panel, and they also have non-lawyers on that panel, and they are not going to have the secret soundings process that applies here in South Australia.

Candidates for the award of Queen's Counsel in England and Wales will be required to disclose criminal convictions or findings of professional misconduct, and rigorous professional conduct checks are to be incorporated into the new scheme. The scheme has been developed—wait for it—by the Bar Council of England and Wales, by the Law Society of England and Wales, with support from the Department of Constitutional Affairs, and I am advised by the Attorney-General that in the process of making these reforms, the consultation occurred with the Lord Chief Justice of England and, certainly to my great satisfaction and pleasure, the Master of the Rolls of England.

I believe that the UK proposal contains some important measures that can be adapted and adopted for our own purposes, and I now table a copy of the United Kingdom paper detailing the revised process for the selection and appointment of Queen's Counsel. We are not committed to it: I am putting it out there. I have sent a copy to the Chief Justice, to various people who have been making comments, to the Law Society and to the Bar Association, because I think that a sensible debate needs to occur about making sure that ethics and professional misconduct matters are taken into account. Whatever happens, let us have no more secret soundings.

LEGISLATIVE REVIEW COMMITTEE

Mrs GERAGHTY (Torrens): I bring up the 18th report of the committee.

Report received.

QUESTION TIME

WATER SUPPLY

The Hon. I.F. EVANS (Leader of the Opposition): My question is to the Premier. Since being elected in 2002, why has the government failed to provide any new water supply solutions for South Australia?

The Hon. M.D. RANN (Premier): That is clearly untrue.

NUCLEAR POWER, COST

Mr BIGNELL (Mawson): Will the Minister for Energy advise the house of the economics of nuclear power for South Australia?

The Hon. P.F. CONLON (Minister for Energy): I am more than happy to provide the information sought, because I was one of many people quite bemused in recent weeks to find that the member for Waite had gone out to the media calling for a summit on the introduction of nuclear power. I am well advised that one of the other people particularly bemused was the Leader of the Opposition, who did not know it was coming, but I was bemused perhaps for different reasons. No-one with a loose connection with reality could advocate the use of nuclear power in South Australia. Setting aside all the rest of it, no-one could do it for economic reasons. Let me explain why, for the member for Waite.

Members interjecting:

The Hon. P.F. CONLON: Sorry—I did say no-one with a loose grip on reality, but I am afraid that the grip over there is more than loose. It is very simple: it starts bad and gets worse.

Members interjecting:

The Hon. P.F. CONLON: They do not want to hear this, do they? That is all right, because I have all day and I will wait for them to be quiet so that I can inform them. The

opposition would need to give regard to the Electricity Planning Council of South Australia because it actually created it and it is very well regarded around Australia. The Electricity Planning Council of South Australia has estimated the cost of an efficient plant for nuclear power at $60 to $70 a megawatt hour. That is the wholesale price that a generator has to make it at. This is somewhat of a problem straight off for the advocates of nuclear power, because NEMMCO figures show that the average wholesale price in South Australia in 2006 was $37.76 a megawatt hour, so members can see the small problem that the advocates have straight away: you have to increase the wholesale price by a minimum of 50 per cent.

This is what they want a summit on. You have to increase the wholesale price of electricity by a minimum of 50 per cent. Members opposite do actually have a good track record on putting up the price of electricity, but that is beyond even them. What has to happen is that they need to do something to existing generators, perhaps a massive carbon tax, to drive the wholesale price of electricity up by a minimum of 50 per cent. But it gets worse because—

Members interjecting:

The Hon. P.F. CONLON: You really should listen to this, then you can decide whether you want to go to Marty's summit. You really should listen.

What is very obvious about nuclear power from any examination (including the planning council's) is that the smallest nuclear generator is 1 000 megawatts, but if you want one approaching any reasonable level of efficiency (that is, to achieve your $60 to $70 in megawatt hour price) it must be around 1 500 megawatts. The planning council's estimate is based on a 1 450 megawatt generator—1 450 megawatts is what you must build to get a 50 per cent increase in prices.

Perhaps Marty would like to have a guess at the average night-time load in South Australia. Does he want to guess? Well, it is 1 130 megawatts. It is smaller than the smallest efficient nuclear generator you can build. So, what does that mean? That means that it becomes less efficient. It becomes something like 30 per cent less efficient—so your 50 per cent increase in wholesale prices goes up further. But how do you achieve it? You can achieve it only by shutting down the existing generators and having no competition in South Australia. You must close them down. One nuclear generator is what you must have.

Your daytime demand is 1 725 megawatts, and that means that our existing generating plant—our coal generator, the northern power station—would close down. It cannot compete as a peaker, because that is all it would be. There would be no competition for base load in South Australia. Mr Speaker, add to this the fact that, within a couple of years, there will be 700 megawatts of wind power in South Australia, which will be dispatched at an average of 30 per cent. Even if we are very generous to the opposition, you must take 200 megs more off that overnight demand—bring it down to 900-odd megs. So, you have one nuclear generator running extremely inefficiently, and we are getting up to about a 100 per cent increase in the wholesale price.

But what does that mean for the existing generators, such as Pelican Point, the most modern, most efficient combined cycle gas plant? It would go from being a mid-merit generator to purely a peaker, and do members know what that means? That means that they must get more for their electricity, which means that, when demand does increase on those high-demand days, the price goes up again. That is why no-one with even a loose grip on reality can possibly advocate nuclear power. Can I save the member for Waite from the tedium of a summit, because any reasonably instructed person on 10 minutes perusal of the economics of it cannot support it.

There is only one way you can have nuclear power in South Australia, that is, if you mandate one single base load generator and you increase the wholesale price by about 100 per cent. It is not a bad idea, it is simply insane. I must say that, with those economics, you realise the only reason the member for Waite is talking about nuclear power—and it has nothing to do with our electricity system—is because he wanted a big stunt to get the Hon. Iain Evans' job. He has been after the Hon. Iain Evans' job for a year. What he tried first the last time he ran was the power of one. Now he is trying nuclear power, but I do not think he will do any better this way.

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order! The Leader of the Opposition.

DESALINATION PLANT

The Hon. I.F. EVANS (Leader of the Opposition): Again, my question is to the Premier. Given the water issues facing the state, will he now admit that Adelaide's future water needs require a desalination plant, and will he now support the Liberal Party's policy to build a desalination plant for Adelaide?

The Hon. M.D. RANN (Premier): Can I just say that, somehow in the election campaign, the leader missed the fact that we announced that, as a government, we were prepared to invest in the biggest desalination plant in the southern hemisphere—not some little desalination plant but the biggest. Also, part of my negotiations with the Hon. Malcolm Turnbull is to see whether we can leverage a major commitment for the federal government to invest in a desalination plant to serve the people of South Australia and to relieve pressure on the River Murray.

Let me explain it to the Leader of the Opposition, who does not seem to understand that the desalination plant on which we are working with BHP Billiton and the federal government—and I will be raising this with the Prime Minister tomorrow—is not only about supporting the boom that is coming with our mining industry but also about relieving pressure from the River Murray, because, at the moment, River Murray water is being reticulated at the high cost of both water and electricity to the Spencer Gulf cities and across to the West Coast of South Australia.

An honourable member interjecting:

The Hon. M.D. RANN: So, yes, amaze me. I know you got a front page and you are very proud of that, but obviously you have made the announcement before. Of course, one of the issues that we are discussing is also other options, including desalination. Yesterday we saw the display about the weir and apparently we saw the opposition to the weir. Let me refer to comments made by a former premier of South Australia, Dean Brown, on ABC Radio today. Bevan asked:

> And yet there is still strong opposition to this weir?

Dean Brown answered:

> There is opposition to the weir but the government has made sure that the weir option is the last of all and that is an option to secure water and here we are talking about domestic in-house water for people and that must be taken into consideration. . . an absolute must.

Then Bevan asked:

So are your former colleagues in the Liberal Party like Michael Pengilly, a good mate of yours who was in parliament yesterday wearing a 'No to Rann's weir' t-shirt, have they got it wrong?

Dean Brown answered:

I think they are responding to what they hear from the community, but I stress the fact that you must be able to secure water if we have another exceptional drought this coming year.

Later on, after explaining, he says:

They're going to lower those pumps that can be lowered at a cost of $5 million and that means that you can now pump at a lower level and help secure water for Adelaide. It also means that the weir is likely to be an entirely different sort of structure from what was originally proposed.

He then goes on to answer questions about whether people are unfairly scared and he goes on to say:

I think the minister has done a marvellous job. . . Karlene Maywald.

That is what Dean Brown said.

Honourable members: Hear! Hear!

The Hon. M.D. RANN: It says—wait for it—breaking news, Bevan asked:

Should Iain Evans be falling in behind the Premier on this one?

Dean Brown, former premier and your hero said:

Well I don't believe that you can outright dismiss the weir.

NUCLEAR POWER SUMMIT

The Hon. S.W. KEY (Ashford): My question is directed to the Premier. Has the Premier yet received—

Members interjecting:

The SPEAKER: Order!

The Hon. S.W. KEY: —an invitation to the opposition's summit on nuclear power?

The Hon. M.D. RANN (Premier): Thank you for that question. Can I just say that we have just heard from the Minister for Energy about a plan by the Liberal opposition. There is no way in the world that the shadow minister for energy would have announced nuclear power for South Australia and a nuclear power summit without the absolute endorsement of his leader because they are far too loyal to each other to go out and chance their arm. What we know—and the key point which will be made, let me tell members, at the next election as well—is that the member for Waite is strongly supported by the Leader of the Opposition, unless we hear otherwise, unless a journalist asks him whether he supports nuclear power for South Australia; where will those plants be built; which suburbs; how much will it cost; and who will pay for it?

Of course, we have already heard—and I have been told—that it will mean a massive 100 per cent increase in the wholesale price of power. They went to an election in 1997 saying that there would be no privatisation of ETSA and we saw the big boost in power prices then. Now we are being told that nuclear power stations are the answer for South Australia and it will not matter that there is a 100 per cent increase in the wholesale price of power. I want to know by the close of business today whether the Leader of the Opposition supports the plan by his shadow minister for energy to build nuclear power plants in South Australia. Where does he stand? Did he or did he not support the announcement?

I have to say that I have not received an invitation from the Leader of the Opposition to the Liberal Party's sponsored summit on nuclear power. Apparently the South Australian Liberals have become the party of nuclear reactors for Adelaide, and I suppose I should not be surprised because they are also the party that wanted a medium to high level nuclear waste dump in South Australia to take nuclear waste from the other states.

Mrs Redmond interjecting:

The Hon. M.D. RANN: Not true?

Mrs Redmond: We don't even have high level waste.

The Hon. M.D. RANN: Oh, you do not have high level waste? So, it was only for a low level waste dump. Here is an example.

Members interjecting:

The Hon. M.D. RANN: Okay, I stand corrected. They just wanted to have the radioactive waste dump for Australia based in our state. Tomorrow I am going in to bat for our state with the Prime Minister over the River Murray. Every time, according to my memory, there has been a choice between going for their party or their state, they go for their party. We remember what the Leader of the Opposition said when the federal government wanted to impose a nuclear waste dump on this state. He sided with the federal government, not with the people of this state. Now, apparently, they are going to have a nuclear power station as well. At least South Australians now know that the Liberals stand for something besides privatisation: they stand for a nuclear reactor for Adelaide.

In reports on 25 January, the opposition's energy spokesman, the member for Waite, is stated to have called for a summit on nuclear power conversion, enrichment and storage. He said (and let me quote directly):

The reality is that if Australia at a point in the future decides to build nuclear power plants and chooses to become involved in conversion, enrichment and/or waste storage, South Australia will need to decide whether it wants to be part of the action or not.

He continued:

SA will need to decide whether such an industry and the developments that flow from it are to occur in other states with no involvement from us.

This makes clear—

Mr Hamilton-Smith interjecting:

The Hon. M.D. RANN: So, he did have the support of the Leader of the Opposition? Did he discuss it with the Leader of the Opposition before he made his announcement? They will not say. Where does he envisage that a nuclear reactor and the storage facility should be built—which suburbs? Come on, tell the people of this state. Will it be in Mitcham; will it be the Blackwood reactor or the Belair reactor?

The member for Waite has written to the vice-chancellors of the three public universities, business groups, the South Australian Chamber of Mines and Energy and conservation groups to invite them to become involved. The opposition energy spokesman has been off hitting the airways to tell us that South Australians apparently should now consider embracing the nuclear power cycle, nuclear reactors and radioactive waste. However, I guess the question comes back to this: does the leader support the member for Waite's call for a summit on nuclear power? Does the leader support the idea that South Australia should become a producer of nuclear power and have a reactor in this state? Does the Leader of the Opposition support plans that will see a massive increase in the price of power? After all, he did before, with the privatisation of electricity. Does the leader support the idea that South Australia should store nuclear waste that remains hazardous for hundreds of thousands of years? The question is: will the real Leader of the Opposition please stand up if he is not prepared to own what his number

three minister, his most loyal retainer, has offered to the people of this state?

WATER SUPPLY

The Hon. I.F. EVANS (Leader of the Opposition): My question is again to the Premier. As he has not committed to a desalination plant for Adelaide and does not support waste water recycling, what is the Premier's plan to provide Adelaide with more water?

The Hon. M.D. RANN (Premier): The Leader of the Opposition has just misled this house, because he said that we do not support recycling. Does he not know, as a former minister for the environment, that we have been recycling water for years? We have been recycling water for Bolivar up the Virginia pipeline. What about the Willunga pipeline? We use it for irrigation. I am stunned that, after all the debate that has taken place, a former minister for the environment and a former senior cabinet minister does not even know that we lead Australia in recycling treated effluent water. The fact that he does not know about it and what is happening at Mawson Lakes, Bolivar and with the Virginia and Willunga pipelines means that he is simply out of touch with what is going on in this state.

Mr Hamilton-Smith interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order!

ELECTRICITY

Mr KOUTSANTONIS (West Torrens): Can the Minister for Energy advise the house whether South Australia has a competitive electricity market? If so, how was it achieved and will there be any warnings against reductions in competition?

The Hon. P.F. CONLON (Minister for Energy): I thank the member for West Torrens for his intelligent question on electricity. I will struggle to answer it as best I can; I am a bit unprepared, of course. It is true that South Australia now is recognised as one of the most competitive electricity markets in the world. This is, can I say—

Mr Williams: Thanks to the former Liberal government.

The Hon. P.F. CONLON: I just knew one of them would fall for it. Thank you to the former Liberal government. This is despite the fact that the former Liberal government, when it privatised the electricity market, sold electricity retail to one monopoly retailer. For the benefit of the member for MacKillop, who has very conveniently forgotten history, when his great leader John Olsen put out the information about the proposed privatisation, he said that they would do what Jeff Kennett did in Victoria, which was to sell to a number of retailers because that is what you do if you want competition. Jeff Kennett actually did that and, whatever his shortcomings in Victoria, at least Jeff Kennett had the sense to allow the basis for competition in a privatised market, but not the Liberals.

Despite telling people that was what they would do, they sold to a single monopoly retailer. The outcome of that for businesses was average increases in the price of electricity of about 35 to 45 per cent from their monopoly retailer and, for residential customers, it was an increase of nearly 24 per cent. Nothing happens by accident in this world. They did it; they vandalised it. They wrecked the system. They drove up the price of electricity—a matter of history.

In order to recover from this mess, one of the initiatives of this government (which is now also commented on around Australia and even around the world, as I understand it) was to offer a bonus payment to concession electricity users to move to a market contract. That drove competition enormously. It was a world-leading initiative by this Labor government that drove immense introduction of competition to what was a monopoly market. As a result of that—

Members interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON: —the latest information from the consumer council on electricity is that those people who have taken market contracts have now been restored to the position they were in before the Liberals' awful privatisation. They are now in the position they were in before, so we did recover the residential market for South Australians.

You can imagine my surprise last week to hear the shadow spokesperson for energy in the news. He was talking about AGL's attempts to buy into the market.

Mr Hamilton-Smith: Come on, let me have it. Come on, unleash—

The Hon. P.F. CONLON: Mr Speaker, can you protect me from these razor-like interjections?

Members interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON: What did he say? It is plain that the member for Waite does not want the chamber to know what he said in the media otherwise there would be—

Mr Hamilton-Smith interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order! I have called the member for Waite to order.

The Hon. P.F. CONLON: I want the chamber to have the benefit of your insight, Marty.

Mr Hamilton-Smith: Come on, unleash it.

The Hon. P.F. CONLON: Now, Marty, please, a little decorum. What he said to the media—unless, of course, it was someone impersonating him—was that no party should get a monopoly. At last, some insight from the Liberals on their privatisation. No party should get a monopoly. Wouldn't the people of South Australia have been well off if members opposite had thought of that five years ago when they sold a monopoly to a retailer and put up the price by 25 per cent! Would it not have been good if the member for Waite had thought of that five years ago, instead of seeing the electric light now!

I am not surprised that the member for Waite is, in a very embarrassed fashion, trying to avoid this being heard. But can I say this: the other thing the member for Waite said was that our competitive market proves privatisation was right. So, his insight is not quite there yet. What we have seen from him is that, having given a monopoly to a retailer all those years ago and having driven up the price of electricity, now he wants to give electricity's generation to a monopoly nuclear generator, because that is the only way you can have nuclear power in South Australia. He is not happy driving it up by 25 per cent. We have got it back down, and he wants to reach out from the political grave and drive it back up again.

If there is one area—and there is more than one—where history since the election in 2002 has shown that this government is infinitely superior—and there are very many of them—five balanced budgets, for example—

The Hon. K.O. Foley: Five coming up for six.

The Hon. P.F. CONLON: —five coming up for six—it is in the handling of electricity, vandalism, wrecking the state's interests, bringing it back under control by Labor.

Members interjecting:

The SPEAKER: I am waiting for the house to come to order. The Leader of the Opposition.

DESALINATION PLANT

The Hon. I.F. EVANS (Leader of the Opposition): My question is to the Premier. How does the government explain its claim of a cost blow-out in the opposition's estimate for a desalination plant for Adelaide when the government has already costed a bigger plant but at a lower cost? The opposition announced a 45 gigalitre desalination plant for Adelaide based on the Perth model, which cost $400 million. The Waterproofing Adelaide strategy includes an option of a 50-gigalitre desalination plant, which the government has costed at $339 million.

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order! That includes the minister. The Minister for Water Security.

The Hon. K.A. MAYWALD (Minister for Water Security): I thank the Leader of the Opposition for his question. A desalination plant is one of a number of options that will be considered by the government for future proofing South Australia's needs for water. The South Australian government has offered support for the BHP desalination plant, which is the largest desalination plant in the southern hemisphere. That plant will take up to 22 gigalitres of water pressure off the River Murray. Guess what? Adelaide's supply is connected to the River Murray. It is a revelation, I understand, that the opposition does not apprehend. Taking pressure off the River Murray takes pressure off Adelaide city's supply.

It makes sense to actually go in partnership with BHP to solve the problem of water supply for the largest mining expansion that this state has ever seen. South Australia has coupled these two projects, and we have sought funding from the federal government to support that project, which will save 22 gigalitres of water from the River Murray in the Upper Spencer Gulf. Now, what the Liberals have not considered very carefully in their back-of-envelope estimations on a desalination plant for Adelaide is the cost of materials to run and maintain the plant, the cost of piping for effluent discharge and the energy needs for a desalination plant. We would have to build the generation capacity to be able to run a desalination plant and, of course, that needs to be costed. Where will the energy come from otherwise? Most desalination plants of a realistic size require their own energy source. There will also be upwards of $50 million a year in ongoing operating costs to keep the plant running.

Members interjecting:

The SPEAKER: Order! I apologise to the Minister for Water Security. I cannot hear the minister's answer because of heckling from members on my left and a couple of members on my right as well. I ask the house to show some courtesy to the minister. She is offering a fairly straightforward answer to the question that has been asked. The Minister for Water Security.

The Hon. K.A. MAYWALD: The Waterproofing Adelaide strategy was unveiled in 2004, three years ago, since when material costs have increased substantially world wide. The cost of building a desalination plant has increased substantially. There is a 20-year strategy in respect of Waterproofing Adelaide which sets out the long-term cost-effective targets for securing Adelaide's urban water supply, and desalination will be one of the options that will be considered for long-term supply. In the short term, as a consequence of a drought, we need to look at the options that are available for securing Adelaide's water supply into the next year.

WATERPROOFING THE SOUTH

The Hon. I.F. EVANS (Leader of the Opposition): My question will have to go to the Minister for Water Security. Why has the state government still not agreed to fund the $23 million towards the Waterproofing the South projects?

The Hon. K.A. MAYWALD (Minister for Water Security): Waterproofing the South is a project that has been submitted for subsidy funding from the National Water Commission. The project partners include the City of Onkaparinga, SA Water, the Willunga Basin Water Company, Flinders University, Adelaide and Mount Lofty Ranges Natural Resources Management Board, the Environment Protection Authority, the Department of Water, Land and Biodiversity Conservation and the Department of Health. That submission is currently with the National Water Commission and a memorandum of understanding has been signed between the project proponents.

VIRGINIA PIPELINE

The Hon. I.F. EVANS (Leader of the Opposition): My question is again to the Minister for Water Security. Why has the government still failed to commit state funding for the Virginia pipeline extension project? The Bolivar pipeline is an extension of the Virginia pipeline in the Angle Vale region. This project will reduce the extraction of groundwater in the region by substituting three gigalitres of groundwater from the class A treated water from the Bolivar waste water treatment plant. The funding agreement for this was meant to be signed off in the first week of December last year, and the state government still has not committed to it.

The Hon. K.A. MAYWALD (Minister for Water Security): I thank the member for his question. I recognise that the Angle Vale extension is a project that is under consideration. I will bring a brief back for the member and the house.

DESALINATION PLANT

The Hon. I.F. EVANS (Leader of the Opposition): My question is to the Minister for Water Security. Given that the minister mentioned in her answer previously that the state government intends to put money into the desalination plant being proposed in conjunction with the Roxby Downs expansion, can she advise the house how much money the state government intends to put in? The state government has approached the federal government for $160 million towards the project. In February 2006, the media reported that the state government would not be paying any contribution towards the desalination project. More recent comments by the government in the media, and indeed the minister's answer today, indicate the government may now contribute.

The Hon. K.O. FOLEY (Treasurer): I will answer that question. The reason I will answer that question is that—

Members interjecting:

The Hon. K.O. FOLEY: Well, would you like an answer? The reason I am answering the question is that the BHP expansion of Olympic Dam comes under my responsibility. We have a BHP Billiton task force, chaired by Mr Bruce Carter, that is overseeing the expansion of Olympic Dam. The task force includes senior government public servants together with executives of BHP. Through this process, we are identifying the very large number of issues that government, for many years to come, will have to consider, one of which is the desalination plant, and I will come back to that in a moment. There is a multitude of issues that we have to deal with. The infrastructure requirements for the Roxby Downs township alone are quite extraordinary. There are transport issues from Port Augusta to Olympic Dam that have to be considered.

An honourable member interjecting:

The Hon. K.O. FOLEY: As my colleague said, the $1.5 billion worth of dump trucks that BHP Billiton will be purchasing are wider than the road, so we have a few logistical issues that we have to get over—

The Hon. G.M. Gunn interjecting:

The Hon. K.O. FOLEY: And they travel about 10 kilometres an hour, Gunny, so don't get stuck behind one, mate, it's a long haul to Roxby—as I should also say to my colleague the member for Giles. The desalination plant is one of the early projects that has been identified in this process, and the Department of Trade and Economic Development has been working through the options for the desalination plant. We have signed a memorandum of understanding with BHP Billiton—announced prior to the election. The expected cost of the project is we think around the $700 million mark. BHP itself is likely to build a desalination plant. The option for government is: do we want to take this as an opportunity to build a larger desalination plant than perhaps would be necessary for Olympic Dam to provide water for the Spencer Gulf and Eyre Peninsula regions? So what we are now working through is how would we do that? Would that require a capital contribution from state government; would it be an offtake contract for the water; how would we best do the deal, so to speak? We haven't decided that yet; we haven't finalised that.

Mr Williams interjecting:

The Hon. K.O. FOLEY: Because we are; we just haven't worked out—

Members interjecting:

The Hon. K.O. FOLEY: We haven't worked that out.

Members interjecting:

The Hon. K.O. FOLEY: Members opposite seem somewhat bemused that governments actually have to work projects through before governments decide what is their contribution.

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: And surprise, surprise, BHP hasn't worked out exactly what it wants yet. We are discussing and working the issue through with BHP Billiton. BHP Billiton is guilty of the same thing then, if that is the case and the charge that the opposition wishes to make. We are working that through. I have met with Malcolm Turnbull and we have presented an argument that a very strong case exists for substantial commonwealth funding for this project, and we think it meets the requirements of the federal government. There was a report in *The Advertiser* yesterday. My advice is that we have answered all the questions that the federal public servants have asked of us. I have asked for that to be rechecked and we are reworking our submission to provide the federal government with all it wants.

Malcolm Turnbull, from memory, together with his committee on water, flew to Adelaide for a very detailed briefing from government officials on this particular project. Work is progressing on it. But can I say on the issue of the cost of desalination—and again my colleague the Minister for Water Security, covered it very well—one thing: for certain when it comes to desalination plants the cost of construction of desalination plants has increased significantly. The advice I have been provided with is that the cost of the Perth plant has increased significantly since it was built. Well, the member for MacKillop shakes his head. I have actually had discussions with people who build these plants. I would take their advice well before I would take the advice of the member for MacKillop. I hope that comprehensive answer addresses the issues raised by the Leader of the Opposition.

PAYDAY LENDING

Mr RAU (Enfield): Will the Minister for Consumer Affairs inform the house of progress on providing protection for those accessing the services of fringe credit providers, including payday lending?

The Hon. J.M. RANKINE (Minister for Consumer Affairs): As members would know, I have raised concerns in relation to fringe credit providers, including payday lenders, on numerous occasions both publicly and in this house, along with concerns about the impact that they have on vulnerable people in our community. In September last year I issued a discussion paper on possible measures that we can put in place here in South Australia. I also established a working party to oversee a range of work, which the member for Torrens has been very ably chairing for me. This working party has met on a number of occasions and I am advised that, after considering the submissions that have come in and the contents of the paper, it expects to provide me with its advice later this month.

However, it is important to understand that, in the main, credit provision in Australia is regulated under the Consumer Credit Code, which is nationally legislated. Ministers for Consumer Affairs around the nation have been working collaboratively to address problems being identified as the business of fringe lending escalates. A range of measures that will amend the Consumer Credit Code have now been put to ministers for consideration. I have indicated support for progressing measures that will require credit providers to state annual percentage rates for all credit contracts. This means, for instance, that lenders who have been charging a flat fee only will now have to disclose this. Currently, these rates can be anywhere between 200, 300 and 1 900 per cent.

Members interjecting:

The Hon. J.M. RANKINE: There is a range. I also support closing loopholes in relation to splitting fees, which means that fees will be counted as the cost of the loan and no longer hidden; the inclusion of a general prohibition on unconscionable fees and charges that will help prevent excessive fees, charges and interest being imposed on these small loans; and allowing fees to be challenged in court by government consumer agencies. This will help those people who would probably find the process too daunting, or who would not have the resources to take action themselves, to have some redress. These proposals also include a provision

requiring credit providers to advise borrowers of their right to be able to cancel a direct debit authority. Many people appear to be unaware that, when they authorise lenders to take payment directly from their bank accounts, they can also cancel that authority.

Another important aspect of these proposals is to prevent lenders taking security over essential household items, such as refrigerators, if they were not the subject of that loan. Each of these is a significant reform and, if implemented, will provide further very important protection for vulnerable consumers seeking to access credit. As I have often said, the issues surrounding fringe credit providers and payday lenders is incredibly complex. I am looking for solutions that will provide appropriate protection for those who find themselves needing small loans quickly, often for emergency situations. If these proposals I have outlined receive national support, a draft bill will be provided for consultation.

E. COLI OUTBREAK

Ms CHAPMAN (Deputy Leader of the Opposition): My question is to the Minister for Health. What was the date on which the Rann government was first informed of the E. coli outbreak and, in particular, that one person had developed haemolytic uraemic syndrome, and by whom?

The Hon. J.D. HILL (Minister for Health): I am advised that the Department of Health was notified of three people with E. coli 0157 infection between 15 and 18 January. Subsequent genetic testing showed that the E. coli 0157 bug in the three people was similar and might be linked by a common source of infection. These results were reported to DH on 22 January and investigations, including full food histories, were conducted to look for any common source of infection. DH was further informed of a patient with hemolytic uremic syndrome, HUS, in an Adelaide hospital on the afternoon of 23 January—

Members interjecting:

The Hon. J.D. HILL: I like to give the technical explanation here! I will go through the derivation of all those words later on. No information on the cause of the HUS was available, but it is noted that E. coli 0157 can result in this illness. The Department of Health was concerned about a possible outbreak and it alerted the minister's office late on 23 January. The Department of Health issued a warning about E. coli 0157 to the public and a public health alert to doctors and hospitals on Thursday 24 January within 24 hours of being informed of the HUS patient. This allowed time to confirm the information collected and to inform affected people. I understand that the Deputy Leader of the Opposition criticised the acting minister—I was not around; I was on leave—for not making the statement herself.

This would have been contrary to all past practice because, as I understand it, in every one of these health issues the Public Health Department makes these announcements. Investigations continued during and since the long weekend but failed to find a common source of infection. There have been no further notifications of HUS. The Department of Health has advised that there is no evidence that a larger outbreak of E. coli 0157 is occurring. I could give the honourable member a lot more technical detail if she wished, but I think that will probably suffice.

WORKFORCE DEVELOPMENT

The Hon. L. STEVENS (Little Para): My question is to the Minister for Employment, Training and Further Education. What assistance is the government providing to the development and planning of South Australia's workforce?

The Hon. P. CAICA (Minister for Employment, Training and Further Education): This government is committed to ensuring that South Australia has an efficient and highly-skilled workforce that supports a globally competitive economy and a socially inclusive community. The Workforce Development Directorate within the Department of Further Education, Employment, Science and Technology is the government's lead workforce development agency charged with leading this commitment. Workforce development is more than just training—it encompasses recruitment and employment practices, work organisation, career information and advancement, and workforce analysis and planning.

Mr Bignell interjecting:

The Hon. P. CAICA: We'll find one for you, Biggles! Workforce development is a shared responsibility of government, industry, community and educational institutions. DFEEST's Workforce Development Directorate understands this. Its vision is to see South Australia establish a strong workforce development and planning culture in its workplaces. The directorate's key role in the implementation of the government's workforce development agenda is exemplified by its activities. The directorate collects and holds essential data about employment and jobs growth and the occupations and qualifications required of the South Australian workforce.

At the same time, the directorate has a wider view of the impact of the ageing population and the pressure on all industry sectors as 30 per cent of the workforce approaches retirement age in the next 10 years. The collection analysis of this data is made possible by tools such as DFEEST's occupational matrix, which enables detailed occupational analysis of jobs in the South Australian labour market. The importance of this information cannot be overstated. This data has contributed significantly to the joint workforce planning with the Department of Trade and Economic Development and the Department of Primary Industries and Resources to identify the skills needed by the workforce to support, for instance, the expansion of the minerals and defence sectors in South Australia. The directorate has an excellent track record in workforce planning for areas of jobs growth in mining and defence.

Other activities include working directly with the Department of Health and PIRSA in assisting them with their workforce planning, and with DTED in linking industry development with workforce development. More generally, the directorate has established relationships with industry and government agencies as partners to develop workforce strategies so that South Australia can have the right people in the right jobs at the right time.

I must also say that I am pleased to assume responsibility for the science and information economy portfolio because this portfolio, too, has a key and significant role in supporting the development of our future industry and workforce in South Australia.

E. COLI OUTBREAK

Ms CHAPMAN (Deputy Leader of the Opposition: My question is again to the Minister for Health. Is the minister

satisfied that his health department has given notice to local councils pursuant to section 35 of the Public and Environmental Health Act 1987 of the notifiable diseases of food poisoning (or HUS), which is specifically provided for in the regulations?

The Hon. J.D. HILL (Minister for Health): I say to the Deputy Leader of the Opposition that I am very confident in the officials in the Public Health Department of the Department of Health. As I pointed out in my previous answer, there is no evidence—and this is the advice I have from the department—of a larger outbreak of E. coli 0157 occurring. There were three cases and, as I understand it, further research has shown that there is no broader outbreak of that. I am told that the laboratory of the IMVS analyses something like 90 to 120 faecal samples each day and all cases of STEC—STEC is a form of Shiga toxin producing Escherichia coli serotype 0157—

The Hon. K.O. Foley interjecting:

The Hon. J.D. HILL: I just thought you would need to know that. All cases of STEC are followed up by DH, with a short interview to find possible sources of infection if more than one case is identified and these can be plausibly linked by serotype or genetics. The department then collects full food histories and seeks to identify common contacts and sources of exposure. Recently, the department became concerned following notification of three genetically linked cases of E. coli 0157 on 22 January and one case of HUS on 23 January. It first notified my office late on 23 January and then a public alert on 24 January. This was a rapid and precautionary response, indicative of the concern that an outbreak could be starting.

While the department has not been able to identify the source of the infection in these cases, thankfully the evidence indicates that an outbreak is not occurring. The cause of illness for the patient with HUS remains uncertain as no STEC or E.coli was found in the faecal samples.

Ms CHAPMAN: I have a supplementary question. Which local councils received the notice?

The Hon. J.D. HILL: I am not aware in relation to notices that were sent to local councils. I am happy to get the information for the member.

HOMESTART BREAKTHROUGH LOAN

Ms PORTOLESI (Hartley): My question is to the Minister for Housing. What has been the response to the government's recently announced Breakthrough loan, and can I have one, minister?

The Hon. J.W. WEATHERILL (Minister for Housing): I thank the honourable member for her question. The answer is no, she earns too much money. The direct answer to her question is overwhelmingly positive, with one odd exception and I will—

Mr Koutsantonis interjecting:

The Hon. J.W. WEATHERILL: No, surprisingly not. Last week I announced this new initiative, the Breakthrough loan. It is an innovative product to help 500 households to buy their new home. The loan is really for people who have been priced out of the housing market, often younger people wanting to get a foothold in the market. It will increase their borrowing power by up to 35 per cent on the basis that they will share a portion of the home's capital gain with HomeStart when the property is sold. It is aimed at a range of people, including first home buyers on low to moderate incomes who are trapped in the rental cycle and who are struggling to pay rent and save for a deposit.

There has been a tremendous response from the community. Within 48 hours, 120 households contacted HomeStart to register their interest. At last count, there have been 350 telephone inquiries, with information packs sent out to those callers, and an additional 280 internet registrations. The broader community, in terms of the commentators, think that it is a very good idea. In fact the genesis or at least an early proposal of a very similar sort was made by the Prime Minister's task force on first home ownership in 2003. Who chaired that task force—Malcolm Turnbull. He recommended that shared appreciation contracts represent an important step in the right direction compared with current alternatives and that such arrangements would enhance ownership prospects, saying:

> If we take one step up the socioeconomic ladder and consider those searching for a 'fairer deal', roughly 80 per cent concurred that the probability of their purchasing a property would be improved as a result of the advent of equity finance.

Ms Chapman: They rejected it.

The Hon. J.W. WEATHERILL: No, they rejected it; that is right. I do not know what her point is. They thought that the banks should do it, and obviously the banks are chasing something else. We know why they did not suggest that a government-owned bank do it, because they are allergic to the public sector. Anything that would involve interference in the market would offend their ideology and therefore has to be ruled out on purely ideological grounds. However, some other well-known bleeding heart lefties also waded into the debate. Mark Sanderson from the Real Estate Institute commented in this way:

> . . . it's a way of young people, the battlers, getting into home ownership. Either going to be renting or in home ownership—far better that they're in home ownership.

Another person from the Real Estate Institute said:

> . . . it's fantastic because there's no doubt that it's getting harder to get that leg up into the real estate market and you know HomeStart and the government should be congratulated on it.

Professor Andrew Beer of AHURI congratulated the government on the approach saying:

> This will significantly increase the number of suburbs they can purchase in, which means they will be able to buy homes closer to their friends, family and workplace.

I think that probably the most important endorsement, at least from my perspective, was from the member for Finniss. The member for Finniss calling in on his mobile phone (which I appreciated) to talkback radio saying, 'I think it's a great idea and I am very comfortable with what Jay has put forward.' But, sadly, the odd person out, the opposition spokesperson for housing, does not like what she hears. She thinks it is 'totally inequitable'.

Mr Koutsantonis interjecting:

The Hon. J.W. WEATHERILL: That is right; we do not want people getting above their station, do we? The odd person out is the member for Bragg. We have been gratified by the broad support this initiative has received.

TRAMLINE EXTENSION

Mr HAMILTON-SMITH (Waite): I have a question for the Minister for Transport. Why did the government announce a $30 million tramline to North Adelaide prior to the last election without first having established whether the extension was practical, viable or of public benefit? The

government went to the election promising a fully costed $30 million tramline to North Adelaide which was subsequently abandoned. Justifying the decision to axe the North Adelaide extension, the minister stated publicly on 23 January 2007—just the other day—that when he looked at it 'the extension had not been practical' and 'the numbers simply did not add up either for patronage or benefit'. Why did he not get his sums right in the first place?

The Hon. P.F. CONLON (Minister for Transport): Don't you love the little bit at the end. The only small problem that the member for Waite has again is that he has not got it right. The Treasurer, as I understand it, would remember this. My understanding of the promise prior to the election was an investigation of an extension to North Adelaide, with provisioning being made for it in the budget if it was prudent; if, in fact, we were going to do it. It is not the first time that investigations have been carried out. Sometimes they are undertaken and the project stacks up, and sometimes they are undertaken and it does not stack up.

The member for Waite owes an apology to the house for getting up and misrepresenting the position of the government before the election. It is not the first time—it is not even the first time today—that the member for Waite has misrepresented things out there. I note that today he was in the Public Works Committee (and I understand his logic) talking about the Oaklands interchange. He said that if we had gone for a more expensive project it would have cost more. I thought that was good, even for the member for Waite! Then he put out a press release saying that, if we had gone for a more expensive project, it would have blown the budget.

An honourable member: Yes.

The Hon. P.F. CONLON: Yes! However, then he sat in there and said that what should have happened, what the government should have done, was to have a grade separation. Does he remember saying that today? He will not say. Sitting right next to him was the member for Morphett, who went to a public meeting with me to talk to the people at Oaklands Park. And do members know what he said? He ruled out the Liberal government's funding a grade separation before the election. Maybe the next time the member for Waite is in there misrepresenting things he can lean over and give the member for Morphett a tap on the shoulder and ask him what the truth is.

I am not surprised that the member for Waite once again has not quite got it right. I repeat my challenge to the member for Waite on another thing he got wrong, when he said that the South Road underpass would be a $140 million project, because we prudently provided for it. We told him, 'No, it will be $118 million.' He said, 'I don't accept that.' I put a challenge to him on air, in the media. I said, 'If you believe it, if you have the courage of your convictions, I will donate $100 for every million above 118 it is to charity if you will donate $100 for every million it is below 118.' So, less bull, more backbone. What did he say? I did this on the radio on the Leon Byner show. I waited for him to ring in, and he rang in and said, 'Look, sorry, I'm driving in the Barossa. I can't really debate the minister, it might fall out.' I said, 'Can I give you some advice: pull over.' As it was working then, what he could have done was pull over and debate it.

What we get from the member for Waite is all the rubbish out there. He never wants to talk about it in here. We have been chasing him up all week: he promised a no- confidence motion in me as soon as parliament resumed. Come on, Marty; where is it? I think that if people rely on the member for Waite's undertakings they might have a very sorry time of it. The Leader of the Opposition never seems to worry if the member for Waite is discomfited, does he? I look forward to seeing this nuclear summit and getting the cameras there to film the Leader of the Opposition walking in to Marty's nuclear summit. All I can say to the member for Waite is, if he is going to ask a question in here, he has to get the premise correct.

CANCER DEATHS

The Hon. P.L. WHITE (Taylor): My question is to the Minister for Health. What are the latest statistics on the incidence of cancer and rates of death from cancer in South Australia?

The Hon. J.D. HILL (Minister for Health): I thank the member for this very important question. Today I am releasing the latest update on cancer in our state: Cancer in South Australia 2004. The report contains a number of key points that chart the impact of cancer on South Australians. It finds that, in 2004, 8 190 new cases of cancer were diagnosed in South Australia, with 3 249 deaths from cancer. That is 415 more cases than were recorded in the previous year, but 33 fewer deaths. It also shows an increase in female breast and lung cancer and male prostate cancer. The mortality rate for female lung cancer is 23.9 women for every 100 000 women, which is the highest rate ever recorded. Once the mortality rate for lung cancer in women was one-seventh of male mortality rates; now it is half.

The report also showed that the most common cancers in South Australia are prostate, colorectal, breast, lung and melanoma. Some 61 per cent of cancers diagnosed in South Australia were in people aged 65 and over. Melanoma incidence and mortality has remained static for both women and men. The report indicates that mortality rates for some cancers—female breast cancer, prostate cancer and male colorectal cancer—have been marginally decreasing since 1990, when screening programs were first started.

Any death from cancer, of course, is one too many. It is a tragic, painful and devastating experience not only for the sufferer but also for their carers, their families and their friends. The state government last year launched South Australia's first state-wide cancer control plan, a big picture strategy designed to provide a framework for how we as a state tackle cancer. It is a four-year plan in cooperation with the Cancer Council of South Australia that will guide the services our public health system offers, treatment and, of course, prevention of cancer. South Australia is also rolling out a bowel-screening program as part of the national campaign. People turning 55 and 65, as I have already informed the house, will receive a free bowel-screening test in the mail as part of an early detection program.

Significant cancer research also is being conducted in South Australia with the Hanson Institute, and our own Flinders Medical Centre is establishing a centre for innovation in cancer care. Also, a number of dedicated researchers are involved in clinical trials for cancer research, and they are doing very important work that is critical to ongoing treatment of this disease. However, the message today is a very clear one. Our lifestyles, our behaviour and our habits contribute to our risk of developing cancer. The Cancer Council of South Australia reports that at least half of all cancers can be prevented.

I call on all South Australians to take up the challenge to change their lifestyles and reduce their risk of cancer. Smoking is a key cancer-causing activity, and yet so many of

us still rely on cigarettes. Diet and exercise are also keys to achieving good health and maintaining it. It is time that we take personal responsibility—that we eat well and exercise frequently; receive regular check-ups; avoid smoking; drink in moderation; and avoid sun damage. That will reduce pressure on our health system and on our community, and it will also reduce the terrible toll that this heartbreaking disease takes on us all.

GRIEVANCE DEBATE

FOOD SAFETY

Ms CHAPMAN (Deputy Leader of the Opposition): On 28 September 1995, Wayne Chivell, the then coroner, issued a coronial judgement in which he made a finding that a four year old girl had died on 1 February 1995 as a result of haemorrhagic infarction of the brain with associated side effects, consequent upon haemolytic uraemic syndrome, which is known as HUS, as a result of eating Garibaldi garlic mettwurst on 20 January 1995. Some will remember the circumstances at the time. A large number of people had contracted symptoms which indicated that they may have contracted the E. coli bacteria which had developed into HUS. A number of public statements were made and there was much media coverage about it because there had been a period during January 1995 in which the patients had been identified with this condition. Then came the tragedy of the death of this girl and the very serious surgical treatment that a number of others, particularly children, had to undertake, with long-term consequences involving health and disability.

It was not surprising that this matter had so much public attention. During that time, the Hon. Robert Lucas was the acting minister for health, as the then minister, Michael Armitage, was on leave. E. coli bacteria was identified on 17 January 1995. On 18 January, the acting minister was advised, and on 20 January the first official warning was issued by the health department with a particular warning to the public to cook all meat products before consumption as raw meat was seen as a major source of this bacteria/virus. On the day that the minister was advised that in this case there had been a connection with Garibaldi meat, namely 23 January 1995, acting minister Lucas made a public statement that afternoon.

I point that out in order to highlight that we have had three reported cases of E. coli that were brought to public attention, firstly, by the Channel 10 news on 25 January 2007 and then by a story in *The Advertiser* on the following day, 26 January, in which it was confirmed that there were four cases where infection had been detected. One person was in hospital with HUS, the syndrome that had been the subject of the coronial investigation to which I have just referred. The purpose of my raising this matter today is that one of the recommendations of the coroner was that certain notification procedures be undertaken and, secondly, that HUS, in particular, be specifically identified in the law as a notifiable disease. So, rather than just a reference to food poisoning, HUS had particular significance: it was clearly deadly; it was a dangerous condition if E. coli bacteria infection progressed to this stage; it had caused the death, disability and major surgical treatment of a number of South Australians, and the coroner suggested that this occur. Indeed, the then government amended the act to include a provision making it a notifiable disease and shortening the period during which it was mandatory for medical practitioners to report it, and the like.

The importance of a number of other procedures was also highlighted. I will not go through all of them today, but it is very important to note one in particular, namely, the requirement of the Health Commission to notify local councils in certain instances. Section 35 of the Public and Environmental Health Act provides that the department shall on a monthly basis provide each local council with a report on the occurrence of notifiable disease in its area and any problems caused by such disease. The only notification given this time was a media release on 25 January 2007.

Time expired.

EARTH HOUR

Mr O'BRIEN (Napier): Next month, on 31 March, a rather remarkable event will take place in Sydney. It is an event that I think will play a major role in this nation's (and possibly the globe's) attempt to rein in greenhouse gas emissions and limit the severity of climate change. On this day at 7.30 p.m. precisely, the lights will be dimmed in Sydney for one hour. Called Earth Hour, the hour of partial darkness is the brainchild of the World Wildlife Fund and it has the support of Fairfax Press through the pages of the *Sydney Morning Herald* and *The Financial Review*. It also has the support of the New South Wales government, the City of Sydney and the North Sydney and Parramatta councils. The three councils cover three separate CBDs which collectively contain 30 per cent of the nation's office space. Australia's office or commercial sector accounts for 10 per cent of national greenhouse emissions of which 27 per cent is attributable to lighting. The World Wildlife Fund claims that using a combination of turning off the lights when buildings are not occupied as well as currently available cost-effective technology, will reduce 70 per cent of greenhouse gas emissions, which is equivalent to taking 3 million cars off Australia's roads.

A large number of businesses in the three CBDs have committed to Earth Hour with a view to embarking on long-term energy savings initiatives. Businesses signing up include AGL, ANZ Banking Group, Coca-Cola, Fairfax Press, IAG and PricewaterhouseCoopers. Additional to businesses in the three CBDs, Earth Hour also embraces Sydney households. Sydneysiders are also invited to turn off unnecessary lighting and appliances on standby at the power point for one hour on 31 March. Households signing up to take part in Earth Hour will receive a pack with information and tools to cut their emissions and power bills. Participating commercial businesses will obviously receive similar but more comprehensive packs.

Earth Hour has several objectives; the most tangible is a measured 5 per cent reduction in Sydney's greenhouse gas emissions in the year following Earth Hour. The World Wildlife Fund also wants the event to be repeated each year and to be picked up by other Australian capital cities as well as smaller communities. I think this is a brilliant initiative as it clearly recognises the critical role played by the other side of the economic equation—the demand side—in determining energy consumption and, hence, greenhouse gas emissions.

A large part of the debate on climate change has focused on the supply side of the economic equation by way of discussion of the increased use of renewable energy such as wind and solar power and hot rocks, the sequestration of carbon dioxide and schemes of emission trading. The Earth Hour initiative recognises that the earliest and most significant reductions in greenhouse gas emissions will come about by widespread reductions in electricity consumption by Australian businesses (particularly the commercial sector) and Australian households. As the World Wildlife Fund seeks to support those cities and communities outside Sydney wishing to take up the Earth Hour initiative, I believe the passing by the parliament of the Climate Change and Greenhouse Emissions Reduction Bill 2006 could be an enabler for this event to occur in Adelaide and other South Australian regional cities. One of the objectives of this bill is the following:

> To promote business and community understanding about issues surrounding climate change, and to facilitate the early development of policies and programs to address climate change.

Asking South Australia to turn off unnecessary lighting and unplug appliances on standby for an hour in March next year would be a powerful way of educating businesses and households about their role in reducing greenhouse gas emissions. *The Advertiser* and the *Sunday Mail* could take on the role that Fairfax Press has taken in Sydney.

Time expired.

MARION/OAKLANDS PARK BUS/RAIL INTERCHANGE

Mr HAMILTON-SMITH (Waite): I rise to talk about the subject of the Marion/Oaklands Park bus/rail interchange. I want to bring to the attention of the house the fact that the government has finally signalled its intention to deliver something. I remind the house that the original promise that this would be built was made in April 2005 and the project was to be finished by the end of 2006. Here we are in 2007 and we are yet to turn the first sod, but there are more alarming facts and more concerning information of which the house needs to be aware.

In information made public today, it is apparent that the true cost of delivering a genuine bus/rail interchange at Marion/Oaklands Park was going to be $11 million to $12 million—more than likely, $12 million. That is well short of the $7 million provided by the government before the election when it thought it could deliver a proper bus/rail interchange at that lower figure. This is another example of a project that has run over time and that was going to run over budget. On this occasion, instead of bailing out the project, as it has had to do with so many of its other projects, the government has chosen to pare it back to the bone to retain it under the $7 million figure.

What does that mean? It means that the people of Marion and Oaklands Park and the people who use this area as a flow-through when commuting to and from the city will no longer get a genuine bus/rail interchange. They will not get a bus/rail interchange as we have, for example, at Mawson Lakes, where passengers move freely from the buses to the trains across the platform, and where movement is safe, quick and efficient for commuters to and from the various modes of transport. What we will get is a railway station built some metres west of the existing Oaklands Park railway station, closer to the already busy five-ways of Morphett Road, Diagonal Road, the spur north-east of Morphett Road—

The ACTING SPEAKER (Ms Ciccarello): Member for Waite, given that this is a project that is before the Public Works Committee, I would just like to indicate that the member needs to be very careful about what he quotes at the moment.

Mr HAMILTON-SMITH: Thank you, Madam Acting Speaker. I am aware of your guidance. I am not referring to the Public Works Committee or its work at all; I know that there will be a debate subsequently when the committee completes its report. I am simply dealing with facts and information that are out there in the public arena. That is a very busy congested five-ways: Railway Terrace, Diagonal Road, Morphett Road, the north-east spur of Morphett Road and the Murray Terrace intersection where there is a level crossing. It is one of Adelaide's biggest black-spots. It is already a crisis point for roads, trucks, cars, buses, trains and passengers. This will make it worse.

Of course, we will also get an upgraded bus stop. Well, what is unfortunately being delivered by the government is that passengers will need to flood across Diagonal Road through a myriad of intersections to get to and from the train and bus stations, respectively. Not only that, there are no new buses; in fact, buses will not be allowed to enter the interchange—and I am referring to the government's own website, which gives that information—and there are no new buses or bus routes delivered to the new location.

Not only that—again, this is revealed on the government's own website—there is no plan in place to connect the new bus station and railway station with the Marion Shopping Centre and the new aquatic centre at Marion. I would have thought that it would be fundamental to do the sums and have a shuttle bus process in place. After all, this is the biggest shopping centre in the southern hemisphere and it is not connected up to this supposed bus rail interchange. The local member made comment this morning—

The ACTING SPEAKER: Again, I ask the member for Waite—

Mr HAMILTON-SMITH: Yes; I take your point, Madam Acting Speaker. I heard the local member making a comment this morning that what is needed here is grade separation. On the government's own website, to which I refer, the government admits that this project does not address the real traffic needs of the intersection. I simply say to the house that this is another project that the government has delivered late; it is another project that has blown its budget. The government's response has been, effectively, to invest half of what is needed. It is not visionary; it does not address the needs of the intersection or the people of the precinct.

Time expired.

WINE GRAPE INDUSTRY

The Hon. K.A. MAYWALD (Minister for the River Murray): I rise to address a matter of concern to the majority of wine grape growers in the Riverland, and that is the apparent market failure in the wine grape industry. Let me paint the picture. As most people would know, the Riverland has been regarded as South Australia's fruit bowl for more than a century. It was opened up, built and developed successfully by pioneering families, soldier settlers and a large influx of migrants. In the last decade, the region has achieved world's best practice in relation to water management and viticultural practices. The preparedness of growers to invest heavily in the wine grape industry has enabled them

to consistently supply the quality popular premium product that has achieved phenomenal export performances for South Australia and the nation. Those facts are indisputable.

It is also well known that, as a result of excessive investor-driven plantings of vines in cooler climate districts, there has been an oversupply of wine in recent years. That supply has caused hardship. Growers in my electorate have borne the brunt of that hardship. But oversupply is no longer an issue. The Australian Wine and Brandy Corporation advised in November of last year that more than half the surplus wine stocks estimated at the beginning of 2006 had been sold.

Furthermore, as a result of the severe frosts and the lack of water, this year's national harvest estimate is 1.2 million tonnes, approximately 35 per cent or 700 000 tonnes less than last year's 1.9 million tonnes. Indications from growers in my district are that the Riverland harvest will reflect that dramatic decline in supply. The majority of wineries have been actively sourcing grapes on the spot market to meet their contractual wine supply obligations. In some cases, this purchasing activity has been occurring since October. There is a strong demand for grapes again. We have witnessed a dramatic turnaround in wine grape supply and demand.

I will come to my point. Several of the major wineries are offering growers less for grapes than they offered last year. In other words, growers are growing fewer tonnes and being offered less dollars, despite the very significant increase in demand for their product. Mr David Woods, Managing Director of Australia's largest wine producer, Hardy Wine Company, acknowledged this downward pressure on price when he recently commented that it was the spot buyers not the established producers that were driving down the market. I question that assertion. Spot buyers are offering substantially more for grapes. It is the established wine producers who are maintaining strong downward pressure on grape prices.

One of Australia's largest producers, McGuigan Simeon Wines Limited, owns and operates the second-largest winery in my district at Loxton. Established producers number among the winery's customers. McGuigan Simeon's Loxton winery crushed a record 90 000 tonnes last year. That is more than the entire crush for the Barossa Valley, so it is substantial. Many families depend on the winery. Astonishingly, that record crush occurred in a year when approximately 80 growers from the district had their supply contract suspended just prior to harvest. That is correct: just weeks prior to the 2006 vintage, more than 80 growers with McGuigan Simeon contracts were shocked to learn that those contracts were to be suspended indefinitely.

During a long year of uncertainty and colossal financial strain, some of these growers made the unprecedented decision to mothball their vines in an effort to survive financially. Then, just weeks before this vintage, some of these growers were advised that the winery would lift suspensions on a few varieties and they would be obliged to supply grape. On 17 January this year, more of the suspended growers were notified that if they had not disposed of their grapes they would be required to supply them to the winery. Late in January, McGuigan Simeon Wines released its vintage price advice in breach of its own contract inasmuch as this advice was released after the commencement of harvest. The vintage price advice notified growers that they would be paid $200 or less per tonne for the majority of fruit supplied. The spot buyers to whom Mr Woods referred had been offering between $350 and $460 per tonne. McGuigan Simeon Wines is not a spot buyer.

To put the $200 in perspective, the economic impact study into wine grapes, commissioned by this government in 2005, established very clearly the cost of growing a tonne of grapes in the Riverland is well in excess of $400. This year, many growers have written to the company, McGuigan Simeon, expressing their wish to be released from these dubious contracts. The winery has responded by sending letters from their lawyers, Johnson Winter and Slattery, threatening that it is preparing legal action against growers. Constituents are being obliged to sell grapes at well below the current market value when other wineries are prepared to pay more than double the price, albeit that these spot prices are still less than the cost of growing. This constitutes forced loss of income. These growers have an opportunity to mitigate losses, but they are being forced deeper into financial crisis by subsidising McGuigan Simeon Wines. Hence my question: is this a case of market failure?

One of my constituents was told before last year's harvest that his contract was suspended. In the middle of harvest, McGuigan Simeon Wines changed its mind and told him he was not suspended. Then, before harvest this year, he was notified that he was a suspended grower. Then, last week, on 23 January, after commencement of harvest, he was told he was not. On 30 January, McGuigan Simeon wrote saying that he could not terminate his contract and that the winery expected to take action against him if he did not supply his grapes to McGuigan Simeon. Where is the fairness and the reasonableness in that? Growers, of course, are in no financial position to go to court fighting a listed public company or strong private companies with substantial resources.

Time expired.

LUCKY BAY FERRY

Mrs PENFOLD (Flinders): Today a petition for the state government to help seal the Lucky Bay to Lincoln Highway Road that provides access to the Lucky Bay ferry terminal was presented to parliament. Late last year, on 8 December, I went to the official launch of the ferry service between Wallaroo and Lucky Bay. It reinforced my appreciation and admiration for the entrepreneurs of this world, those people who take the risks and, as someone once said, who dare to dream, dare to do, and dare to make their dreams come true—and, in my experience, while everyone around them is often telling them: 'It can't be done.'

In this case, I refer to Stuart Ballantyne and Stephanie Dawson. The ferry service is a private operation that has not cost the government and taxpayers of this state. In fact, it will save millions of dollars in the cost of repairs to 300 kilometres of road, make considerable savings in greenhouse gases, and prevent injuries and deaths. The ferry operators, who have experience in ferry services elsewhere in Australia, are currently leasing a vessel while a much larger capacity purpose-built ferry is being built. The ferry berths are being completed and millions of dollars are being spent. There is no doubt about Stuart and Stephanie's commitment to make the service a success.

The value of the service was proved dramatically late last month when torrential rain cut all road access to Eyre Peninsula from the east and the north. The ferry became the only vehicle link for the transport of perishables to Eyre Peninsula and for people going to and from Adelaide to fulfil their commitments. However, the ferry access road from the Lincoln Highway was badly affected by the rain, creating

problems for vehicles and passengers because of the muddy and slippery conditions.

A properly sealed road would have avoided these problems; a properly sealed road would have been safer. This government talks much about safety on the roads, so now is the time to put some action with the talk and seal this section of road over which hundreds of vehicles pass daily. The numbers will increase massively when the purpose-built ferries begin operation, one in March and another later in the year. There is now no doubt that the service will be a success, and even the most adamant of sceptics is now silent. Some doubters are now even singing the praises of the service. The ferry will significantly improve access to health, education, sporting and cultural activities which are only available in our capital city of Adelaide, so this is a matter of social justice for the people who live on Eyre Peninsula.

There have been major hurdles to starting the service. Government departments continually avoided looking at the big picture, and failed to look at the many benefits for the environment, for road safety, for tourism and business. Requirements by government departments and scrutiny of activities and developments are necessary. However, the requirements should take into account the advantages of the project, in this case principally to Yorke Peninsula and Eyre Peninsula, but also to the state as a whole. The ferry will be a boon for tourism, and traffic to and from the regions, and to a wide range of businesses and other developments. Return day-trips across the gulf with a bus tour of points of interest such as the world-class fish farming enterprise at Arno Bay have already begun.

Going back to the early part of the 20th century prior to World War I, exchanges between Wallaroo and Cowell by sailing boat were popular, especially those involving the brass bands. Around 1950, the legendary Sylvia Birdseye researched the use of a hovercraft for a gulf crossing, so the Lucky Bay-Wallaroo ferry service is scarcely a new idea. Stephanie Dawson and Stuart Ballantyne are two of the most recent pioneers in a long history of people who have come to Eyre Peninsula with dreams, and who have made those dreams come true.

Early settlers came in small sailing boats, in horse and cart—in some cases walking from the 'mainland', as the rest of the state was referred to in those times, and still is by some. Then they came in cars and trucks and coastal steamers: the *Minnipa*, *Morialta*, and *Moonta*. Sylvia Birdseye started her bus runs. Small aeroplanes provided local services. The self-contained Eyre Peninsula rail service carried people inland and to Ceduna. The *Troubridge* ferry service replaced earlier steamboats plying between Port Lincoln and Adelaide. The *Island Seaway* began. Many of the air, rail and bus services have gone, and the *Troubridge* was decommissioned decades ago. Now we have huge B-double and triple trucks, and Cape Bulker and Panamax ships take our produce around the world. Eyre Peninsula produces as much as 40 per cent of the state's grain and 65 per cent of the state's seafood. It can rightly be termed the treasury that helps supply South Australians with their quality of life.

Time expired.

COUNTRY FIRE SERVICE

Ms SIMMONS (Morialta): Many of my parliamentary colleagues and I have used their grievance time in the last sitting of parliament to commend the Country Fire Service for their outstanding work on our behalf in fighting bushfires. In my electorate of Morialta, I am particularly grateful to the volunteers in the CFS groups at Athelstone, Ashton, Montacute, Basket Range, and Norton Summit—who, incidentally, have made me an honorary member—all of whom have kept us safe this summer. During January I was privileged to visit the CFS training session at Athelstone, and would like to talk about incidents additional to fires that this group of noble volunteers responds to on a regular basis.

Athelstone CFS is the nearest response group to Gorge Road, from Athelstone to Cudlee Creek, where a large number of motor vehicle accidents happen every year. There were 47 in 2006 alone. This equated to 238 volunteer hours. They responded to 14 accidents with no injury, 24 accidents that required the rescue of travellers, and nine accidents where travellers were severely injured or were fatal in nature. Despite speed limits on this dangerous Hills road, drivers continue to choose to exceed the limits, putting their own lives and, more significantly, those of others at risk. These callouts are often traumatic for the volunteers and they live with some horrific visions which haunt them long after the incident is over.

The Athelstone CFS has two cutting implements known colloquially as the jaws of life. These cut through the metal of cars and release those trapped in them. These implements are so heavy that I humbly report that I could not even lift them off the ground. The teams from Athelstone are so well-trained and expert that they have personnel trained to a national competency level and have won the Chief Officer's Excellence in Training Award for the third consecutive year. More importantly, their training saves lives on a regular basis. Not only did I witness training with the jaws of life but also training in hazardous materials response.

The Athelstone CFS is also one of the highest-trained groups in anti-terrorism response in the state. I saw our volunteers perform tasks difficult in normal circumstances but certainly impossible without high-level training, dressed in huge reflective suits incorporating breathing apparatus which would be vital should hazardous gases, viruses, chemicals or other materials be present in the atmosphere. I have to commend Wayne Atkins, the senior training officer, Eero Haatainer, the group captain of the Athelstone branch, and Terry Beeston, the group officer for East Torrens, together with their brigade out at Athelstone, for the work they do. I was very, very impressed.

It is unfortunate that most South Australians think of the CFS as a bushfire-only organisation when it is a fully functional fire service that delivers exactly the same services as the South Australian Metropolitan Fire Service with its own legislative area. The Athelstone brigade is also known as the State Support Brigade and has the personnel with specialist training and equipment to provide support to other CFS brigades that have had a long-term incident occur and need support to stabilise and normalise the situation. I had a wonderful evening. I cannot thank this team of volunteers enough, and I commend this group to the house.

WORK-LIFE BALANCE

Ms PORTOLESI (Hartley): I move:

That a select committee be established to inquire into how South Australians can balance work and life responsibilities, in particular—

(a) to identify best practice employment standards, which enable public and private sector workers to balance work and life responsibilities, including the care of dependants;
(b) to identify economic development opportunities for South Australia as a result of flexible employment practices;
(c) to examine the impact of state and federal industrial relations systems for South Australians seeking to achieve an appropriate work and life balance; and to consider any other relevant matter.

I am very pleased to move this motion, which I first flagged when I was elected to parliament last year, an issue that I dubbed 'the struggle to juggle'. Essentially, this is an argument about the way our working, private and family lives are struggling to co-exist. What we know from our own experiences and from the research is that, in our attempt to secure economic security and progress, we have become caught in a vicious cycle of long and unpredictable working hours, leading to a growing alienation from social networks, family and those that we love, essentially the things in life that sustain us at a personal level. Although I love everyone in this chamber—

An honourable member: Me included?

Ms PORTOLESI: Nearly everyone. But for feminists like me who are also working mums, this is a terribly ironic situation, because we have been brought up to want it all and to expect it all and, while this is possible, it comes at a huge cost, because the scales are tipped in favour of working conditions that close their eyes to the obligations and responsibilities that employees bring with them: children, ageing parents, partners, hobbies and study. As a society, we are set on a trajectory that is unsustainable. In my view, we must recapture our personal and private lives and say that enough is enough. Considering how best to progress this matter at a public policy level, I tossed around a number of options in my mind, because I did not necessarily want to bog this issue down in parliament. With all due respect, parliament is not the most expeditious of workplaces. We need to look no further than the number of years it has taken even to think about modernising sitting hours.

I did a quick scan of the status of this issue in the state public sector and discovered that quite a level of activity is being generated in state agencies. For instance, Minister Caica has his department doing some work in this area. The Chair of the Premier's Council for Women, Suzy Roux, is also preoccupied by this issue, and an officer has just been appointed within the Department of the Premier and Cabinet to examine this matter. Although I do not have much detail at hand about these initiatives, I am sure that they are all worthwhile and there are probably many more that I am not aware of. Therein lies the problem. There may well be much activity, but what is the point if there are potentially 20 agencies going off in different directions or, worse still, all reinventing the same wheel?

Where is the whole-of-government drive on this matter? I do not believe that there is one, although there are promising signs with this issue now becoming a target in the state's Strategic Plan, and I congratulate the Premier on that. In my view, the solution to this issue does not rest with one particular portfolio. Industrial relations, economic development, families and communities, women: none of these agencies alone can find a solution. We need a multiagency approach. I am sure that the Attorney-General would be happy to play ball. I decided to go with the select committee model because I could not easily pinpoint a minister or one agency that I could lobby or try to engage with. Having said that, however, it became pretty obvious that this was not necessarily the best way to proceed, because it was necessary to engage all of them at the same time.

Parliament is the most appropriate place for this debate, because it sends a strong signal to the community, including working families, employer groups and small business, that this issue counts and that its time has arrived. What better place than the parliament to draw everyone together? The committee structure gives a voice to all those who want to shape this debate. If the committee gets up, and I hope that it does, I hope that we can take the committee on the road to rural and regional communities and engage with ethnic communities, so that they, too, can have an opportunity to be heard. But its time has arrived, because no-one can deny that the way we live is living.

On the one hand, we have Peter Costello urging us to have one for each parent and one for the country, but the legislative framework in which we all work encourages long hours, which in turn leads to high levels of childlessness. White collar, blue collar, self-employed or responsible for the working conditions of others, we need to reconfigure the way we work and play. We need to look no further than the significant body of research that backs up this statement. Some of these reports include:

- the ABS Pregnancy and Employment Transitions report, Australian, November 2005;
- the Parental Leave in Australia survey, November 2006, a report prepared by the universities of Queensland and Sydney and supported by HREOC, which I will refer to shortly. This study draws on the experiences of 3 500 families with children born between March 2003 and February 2004.
- HREOC 2002, A Time to Value, a proposal for a national paid maternity leave scheme;
- another report commissioned by HREOC, the WISER report, Women in Social and Economic Research, September 2006;
- Striking a Balance: Women, Men, Work and Family Discussions Paper, another report published by HREOC in 2005; and
- of course, the most recent one prepared by the House of Representatives Standing Committee on Family and Community Services, December 2006, Balancing Work and Family: Report on the Inquiry into Balancing Work and Family.

Discussion on this matter must acknowledge the fine research undertaken by Dr Barbara Pocock and her expanding team of researchers at the University of South Australia. I take this opportunity to congratulate the university for having the foresight to establish the Work-Life Balance Unit and giving it the home and status that it deserves. I met with Barbara last week and she advised me that she is working on an exciting project with a number of partners—in fact, the state government might be one of them—to develop and pilot an index to manage work/life balance. I look forward to that getting off the ground.

I turn now to the specific terms of reference, the first of which refers to 'identifying best practice employment standards which enable public and private sector workers to balance work and life responsibilities, including the care of dependants'. This is important because I believe that it is possible to create conditions for workers which assist them to strike a balance without its costing a fortune. I remember working in an office—a political office, of course—where there was an unofficial competition to be the first person to arrive at work in the morning and the last person to leave, as

if that was an indicator of your productivity and efficiency. I think those days are well and truly over, thank goodness.

The Hon. M.J. Atkinson interjecting:

Ms PORTOLESI: Yes; not for the Attorney. Here are some facts about what modern workplaces look like. The Parental Leave in Australia Survey of November 2006 (which, as I said, surveyed 3 500 families) states:

- close to 50 per cent of families surveyed identified better parental leave provisions as policies that would have improved things most for them in the period since the birth of their child;
- close to 50 per cent identified better child-care provisions, citing more affordable child care that would have improved things for them since the birth of their child;
- for parents in paid employment [and this is frightening] during the 12 months prior to the birth, around 30 per cent of mothers and 35 per cent of fathers were ineligible for the 52 weeks unpaid statutory leave;
- around one quarter of mothers thought that their career opportunities were worse on their return to work [that is hardly surprising];
- one quarter of respondents listed better workplace provisions on return to work as things that would have helped them most, including part-time hours [again, not a surprise]; and
- the average duration of leave among fathers was around 14 days.

By creating flexible workplaces that can accommodate people, in my view we will inevitably attract the best employees the labour market has to offer which gives that workplace a competitive advantage. In South Australia, particularly, workers need flexibility not just for children but for ageing parents or sick loved ones. Our obligations are different to what they used to be because families are not the same, thank goodness. The point is that there are so many things an employee can do—public or private—which cost very little but which make a massive difference. For instance, flexible working hours, job sharing, lactation breaks and nursing for mothers, access for children to the workplace, child-rearing leave, parental leave at half pay and communication during parental leave.

In fact, the Catholic education system has this one well and truly right—it has very generous leave provisions for mothers, which can run into years. The second term of reference is to identify economic development opportunities for South Australia as a result of flexible employment practices. It is important to me that this debate has a strong economic focus because it is more than just about maternity leave, although that is clearly important. Is it possible for the public sector and business to create economic opportunities for themselves by offering the most innovative, flexible and modern workplaces? Is there a niche here that could be exploited? I think there is.

For instance, I know that the South Australian public sector has no trouble recruiting graduates but it struggles to hold onto them down the track, which is a problem. Could we turn that around by offering the most modern working environments? If the state is struggling to attract planners, say from the private sector (as was the case a few years ago when I was working for the Hon. Jay Weatherill), is it possible to change that by offering superior working conditions even if we cannot compete on salaries? Research by people such as Bernard Salt tells us that this is a growing priority for generation Y, and that in fact it will be them who finally address this issue.

Flexible and family-friendly workplaces makes good economic sense. If a business develops a reputation for being responsive to employees, the best of those employees will be drawn to that business. Workers who feel valued can only lift productivity, and in our era of skills shortages is it not wiser to retain long-term staff by negotiating flexible conditions instead of facing expensive recruitment costs? Again, this is especially important in South Australia where we face a rapidly ageing population. I was in Queensland recently and met with its Minister for Industrial Relations, the Hon. John Mickel, as well as the head of the Work and Family Unit, which is located within the Department of Industrial Relations.

I was fascinated to discover that the unit's brief was the private sector only. Another section of that agency took responsibility for public sector workers, but what I was told was that business in Queensland—and Queensland is hardly a radical place—was keen to participate in research projects and pilots in this area of policy. It had no trouble attracting participants. Finally, the third term of reference is to examine the impact of state and federal IR systems for South Australians seeking to achieve an appropriate work-life balance. We cannot have this debate without considering the legislative framework in which employees and employers operate.

If it is possible to identify what employees need to tend to work and family and other responsibilities, how does the regulatory framework assist or hinder the employee? Again, Dr Pocock identified seven needs for working families, all of which are eminently sensible. This is all her research; I cannot take credit for any of it. Dr Pocock's seven needs for working families are:

- a living wage with some predictability and security and the opportunity to live free of financial stress;
- security of employment, which is vital to family formation [we would appreciate that in this place];
- adequate, predictable and common family time;
- flexible working conditions;
- the avoidance of excessive work hours;
- adequate paid and unpaid leave to deal with a number of obligations, not just parenting; and
- quality, accessible and affordable child care.

How does the legislation impact on those needs? This is what I want to know. I understand that, when I was away, Julia Gillard was reported as saying that she could not be in her current role and be a mother. I do appreciate her honesty. Certainly, as a general rule, if you have dependants (man or woman) politics and family do not mix well. Sadly, it is mostly the women who take responsibility for the dependants. However, the point I want to make about her comments is that so many women and men have no choice—perhaps for financial reasons or a commitment to career—and must juggle both. If they are like me they want both. I want both. I urge the house to support this motion.

Mrs REDMOND (Heysen): I was not going to speak on this motion, but I thought that I would make a couple of comments because next week it will be 35 years since I started work in the Crown Solicitor's Office. Back in those days it was a very different workplace to any of the workplaces that I would see today. Hours were very fixed. Indeed, I was a witness in a case wherein the employers were seeking to remove the bit of study leave we used to get. I studied at night, part-time, and I was running a house and doing all sorts of other things. It was a pretty busy life to say the least, but there was very little flexibility in employment.

However, I would just warn the honourable member about the notion of select committees actually achieving anything. I have served on two select committees in this place and I thoroughly enjoyed both of them. One was about the cemeteries and that was very interesting. We had far-reaching

information about cemeteries and all sorts of dispositions of deceased persons' remains. We put up a report which has been around for three or four years now and nothing has happened with it. We spent a year doing that.

The Hon. R.B. Such: A very good report.

Mrs REDMOND: A very good report, but nothing has happened with that. Then 18 months ago (or thereabouts), we finished the deliberations of the juvenile justice committee. We had 43 recommendations from that, but we have not had any response. I would not want the member to get her hopes up that anything will come from a select committee, and that is no disrespect to the select committee or its members, because I am sure that they will work very hard and conscientiously and do a very good job in trying to deal with the issues which the member is seeking to address. Of course, there are lots of issues about the balance, and the member is right in identifying the work-life balance as an issue which will be of major and increasing concern for people. When I think about the way workplaces have changed, it has clearly become much more of an issue for working women.

I am one of those who has been lucky enough to have it all. I have gone back to work literally taking a newborn baby back to the office and breastfeeding babies in the most unusual of places, but managing to combine both. Happily for me, I did not come into this particular job until my family was almost adult and therefore capable of managing their own dinners and so on. It is clear on any statistical evidence available that, in spite of many men being much better at assisting in the home than they ever were, women still do by far the bulk of the housework. I often say when I am at functions and so on, and particularly with my Rotary club at which I am one of very few women around, that I want a wife. I think a wife is a great invention. I think that every MP should be entitled to a wife because that would really make my life a lot more straightforward.

One of the other things I found in the course of my experiences over the years was that at one point I tried this idea of job sharing, but the nature of job sharing usually means that you get paid half the wage but, in reality, you still end up working full-time. That did not work. For my own part I have tried to be flexible as an employer. My PA came with me from my legal practice and she is still my PA. She has been working with me for about 15 years and she runs my life, and my life would fall apart if she was not organising it for me. However, from the outset, we had an arrangement that, as she was a mum, if her kids were sick, she did not need to ring up and pretend that she was sick to have a day off on sick leave. It was just part of our open and honest arrangement. Obviously she cannot put them into child care if they are sick because that would contaminate other children, she cannot send them to school because that would contaminate other children and the staff of these places—

The Hon. M.J. Atkinson: She can't bring them to the electorate office because that would contaminate you.

Mrs REDMOND: She cannot bring them to the electorate office; she cannot take them to her workplace. So, what does a mum do? At that stage—and this was 15 years ago—many women would have to ring up and pretend that they were sick, rather than be honest and say, 'Look, my kids are sick.' I said, 'Look, your sick leave is your sick leave, you can use it for yourself or for a family member, it does not matter to me.' Equally, she was a very conscientious PA and remains a very conscientious PA, but because of a young family she struggled to be at the office by 9 o'clock. If I had been one of those employers who required my staff to be absolutely on time, I probably would not have this very efficient PA. I never expected her to be there right on 9 o'clock. I knew that she would get there as soon as she could and as close to 9 o'clock as possible. Mostly she would get there pretty close to 9, but if something arose, if one of the kids forgot their homework and she had to zap back to get it, then those things happened. The need for flexibility and the need for allowing that balance in the workplace is important and increasingly so, and rightly so.

I know equally that, if I said to my PA, 'Sorry, but we will have to work all night,' she would down tools and work all night. I have believed for a long time that employers need to be aware that the best way to have loyal employees is to provide them with some loyalty in the first place; that is, to lead by example in that regard. I do think that we need to have flexible workplaces. These days we have far fewer people working permanent full-time jobs and far more of our workers in casual employment. One of the things that has come about from that I believe is not only longer hours but far less holidays. Because people are on casual employment—

The Hon. M.J. Atkinson: Fewer holidays.

Mrs REDMOND: Far fewer holidays, the Attorney corrects me correctly. I know that I have taken very few holidays when really I should have taken more. The fact is that we all get so bound up in our careers and employment that we forget that, at the end of the day, what is important is our lives. I was impressed by the opening statement of the member for Mount Gambier in his condolence motion on Ren DeGaris that Ren (who I only had the pleasure of meeting twice) would have said as his epitaph that it was having the wife, the children, the grandchildren and the great-grandchildren because, at the end of the day, no-one gets to their death bed and says, 'Gee, I wish I had spent more time at the office.' That just does not happen.

The Hon. M.J. Atkinson: I don't know.

Mrs REDMOND: Maybe with the exception of the Attorney when he gets there—and I do not know physically how it would be possible for anyone to spend more time at the office than the Attorney. One of my particular concerns, having come from the legal profession, is that it is a profession which is rife with the wrong attitude—and I know that the member for Enfield will have experienced time costing. To my mind, this idea that your life is judged according to how many six-minute units you have on your time cost sheet by the end of the day is appalling. We no longer have young lawyers entering the profession who get excited because they had a good win at their first little pretrial conference, bail application, or whatever. They are absolutely obsessed about how many points they have on their time sheet by the end of the day. When they start in that occupation, they are told that they have to accrue seven chargeable hours a day. Most people cannot do that unless they have a trial running, so they end up working, right from the outset, from about 8 a.m. until about 6 p.m. every day. They also go in to work on the weekends, and they very soon fall into the trap of not keeping any balance in their lives.

I think my generation was pretty good at being lazy at university (and sometimes I have felt that one or two of my children might have done the same thing). However, I believe that there are some youngsters who are chronic overachievers, and I worry that by the time they reach their mid-30s they will be burnt out, simply because they have failed to stop and smell the roses along the way. They have failed to recognise that, while it is important for someone to have

a job that they enjoy and find stimulating and in which they want to achieve something, it is equally important to recognise that there is a whole lot more to life than simply achieving in your job.

I endorse the comments made by the member for Hartley. I wish the select committee well, with the proviso that I would not pin my hopes on achieving an outcome. Whilst the select committee might do some wonderful work, I would not guarantee that the wonderful work will lead to any change. However, it certainly might make some people more alive to the issues that confront us today.

Ms THOMPSON (Reynell): I wish to very strongly commend the member for Hartley for bringing this important issue before us. I note that both she and the member for Heysen have concentrated on the issues facing parents of young children. I am of a different generation, and my friends are facing issues to do with caring for their parents. There are many people now in their 50s who are facing the issue of caring for ageing parents and, again, the women usually take the burden. My sister-in-law gave up work in order to care for her mother, her husband's mother and her husband's friend—

Mrs Redmond: It is the most stressful issue facing us, particularly in our age bracket.

Ms THOMPSON: The member for Heysen pointed out that this is one of the most stressful situations facing our nation. My sister-in-law is also gleefully anticipating the arrival of grandchildren, but not to the extent that she is prepared to care for them two days a week, as the other grandmother expected she would do—the other grandmother already has a roster. This issue is very widespread in our community. I think that, without doubt, the most confronting issues involve parents, and particularly mothers of young children. However, it is something that is felt in different ways at different times in our lives by just about every one of us. I thank the member for Hartley for bringing this matter to our attention.

Turning to the area where most of the issues are and where most of the research is, I want to support the committee by putting some of that on the record. The traditional role is that mothers now are expected to be the mothers of the past and the women of the present. They are expected to somehow maintain the traditional role that their mothers played and balance that with their careers. To borrow a phrase from the member for Hartley, the struggle to juggle is usually a female struggle. The questions that some pose about whether a mother is around enough for her children are not usually levelled at fathers. There are a few, though, who would argue that the role and influence of a father is not as important as that of the mother. It is a strange paradox indeed.

There is a small, but sometimes vocal, minority who argue that this tension between work and life was what I and many other feminists of my era were fighting for in the 1960s and 1970s. These people point out that we live in a world where we see female ministers, a female Speaker in the US Congress and women leading worldwide companies. They say that we have now achieved the equality for which I and my contemporaries fought. However, that is simply not the case. That is not what I fought for: it is not what I demonstrated for. I demonstrated and fought for child care, for flexible working hours, for flexibility in employment arrangements and for true participation in all the roles of our community.

Equality is not women undertaking 33 hours of household chores each week while men undertake an average of 17 hours—and this is whether the women are working or not. It is pretty well irrespective of the hours that both of them work. Equality is not women providing the majority of child-rearing responsibilities in two parent situations while often working as many hours as their male partners. We cannot argue that we have equality when women are expected to fit into models of work that have sustained the careers of full-time working fathers who have been able to be absent from their children's lives because their wives have been at home. The world is different now. Mum is at work and dad is at work, grandparents are caring for their grandchildren and aged parents are living longer. However, while home has changed, work has refused to.

Juanita Phillips, a columnist with *The Bulletin*, in an article entitled 'Mother of all truths', wrote the following:

> The consequences of our failure to address the work-life issue are devastating. Many couples end up divorced, depressed or both.

At present, about 62 per cent of 'couple households' with kids have two earners. Future projections suggest that this will rise to 75 per cent. This is not an issue that we can ignore in the hope that it sorts itself out. We need to address the work-life balance as a matter of urgency. At present, out of 20 OECD countries, Australia is ranked 17th in terms of public support for child care, paid leave for parents and child benefits. We share the honour with the United States of being the only two OECD countries without minimum child-care provisions legislation. I see this as being due to John Howard and his government and, to some extent, it goes back to Malcolm Fraser.

In the early 1970s commonwealth public servants had paid maternity leave. Fathers in the Commonwealth Public Service had four weeks paid paternity leave. This was intended by the Whitlam government to be a signal to the community of what was expected to enable families to meet that work-life balance. Unfortunately, one of the first acts of the Fraser government was to abolish that four weeks paid paternity leave, and I was involved in leading delegations back then to struggle against that decision. I remember being asked by the Hon. Mr McPhee—and I will think of his first name later—

The Hon. M.J. Atkinson: Ian McPhee.

Ms THOMPSON: Ian McPhee, thank you. He asked whether I would care to assist him in convincing his National Party colleagues about the importance of father-child bonding. I declined the offer. However, things have gone backwards; we were not at the bottom of the OECD table in the 1970s and early 1980s. The Hawke and Keating governments took a number of initiatives to try to advance the work-life balance. One of those was the affirmative action pilot program. I was one of the 21 or so people involved in that program during its early years. It was interesting then to hear many large businesses in Australia talking about how we did not need to legislate to support women and their role in the work force and the home, that now that some of the research that had been done in support of the affirmative action initiative had been given to them, they would obviously change their ways.

This research demonstrated very clearly the cost to their companies of the way they were operating, of not using the skills of women, not making it easier for women to participate in the full life of the community as well as in their family and the costs of turnover, depression, sickness, etc. These companies assured Prime Minister Hawke that they would change their ways. 'Please don't legislate', they urged. Of course, the Howard government changed that legislation and the companies did not really change their ways. We need to

have strong leadership within the community about addressing the work-life balance. This leadership needs to come at the federal level and the state level.

As the member for Heysen has pointed out, the action does not quickly flow from select committees. However, one of the important benefits of select committees is that, as Hillary Clinton says, the conversation begins. Some people readily supply information to select committees, others are invited to supply information, and my experience from select committees tells me that those people often change their views about the way the world is during the course of having to think through their submissions to the select committee. I know that that changes the way they act in agencies because I have had reports of the results. I personally look forward to some of the recommendations from the juvenile justice select committee being adopted but I also look forward to the important conversation that will be had as a result of this select committee that the member for Hartley has proposed.

Mr GRIFFITHS (Goyder): It is my pleasure to support the member for Hartley in her proposal for this select committee to be established. When she first announced it I expressed some interest and then, within opposition, an email was circulated inviting members to confirm whether or not they wanted to be considered, and I nominated straight away. It links with the fact that I have shadow portfolio responsibilities for youth and, obviously, this is a key area as it relates to youth and family relationships but, importantly, I also wanted to reflect my own personal attitude towards the fact that I believe that family is the most important thing. In my case, my parents divorced when I was quite young. My mother did not remarry, and I therefore had that additional challenge in life of being in a single-parent family, trying to become the best person I could be, but I think now the full family unit would have provided me with some greater opportunities. I think this is a great idea.

When I attended interviews for various positions, especially when my children were quite young, I said, 'I am very happy to take on this role and I know it is very challenging and it will keep me extremely busy. During the week I am yours but, on the weekends, it has to be a very good excuse to take me away from my family.' My employers accepted that because they offered me those roles, so I suppose I must have worked hard enough during the week to justify the role. It was critical to me that I could spend as much time as I could with my children because my son and daughter, who are now aged 17 and 15, are truly everything to me. When I contemplated nominating for a role within politics, my son was 15 and my daughter was 13. Given that the election was only last year, they turned 16 and 14—

The Hon. M.J. Atkinson: Old enough to letterbox.

Mr GRIFFITHS: True, and old enough to help fold envelopes.

Mr Venning interjecting:

Mr GRIFFITHS: No, they are not actually yet.

The Hon. M.J. Atkinson: Fold letters and put them in envelopes.

Mr GRIFFITHS: True, fold letters and put them in envelopes.

Mr Venning: Mine have never done it.

Mr GRIFFITHS: Yes, but I knew that I wanted to spend as much time with my kids as I could. If my children had been the age of some of the other members within this place, I probably would not have done it because, to me, my family is more important than my personal desire for my career may have been. I can relate to the fact, as can a lot of the women in this house and those in the other place, that when a newborn baby comes home your life changes completely. I know that when my son was born, instantly my work arrangements had to change so that I did not arrive at work until 8.30 a.m. and finished punctually at 5 p.m. and, as soon as I arrived home, I had a child put in my arms. That was something I did willingly, and I enjoyed that.

A few other members in this place are smiling now who can relate to that. It is an important part of a father's bonding with a child and it is important that we create opportunities for this to occur more than it does currently. In my working life I have always tried to encourage the staff that I have worked with to ensure that their family has precedence. Sometimes we try to find excuses to miss some commitments because we think that our work is too important, but I have told them that it is important that they attend events like sports days. It is important that you go to doctors' appointments with your children. Just the pleasure of seeing your child participate in sport—not necessarily being successful but participating—is a pleasure that will be with you for the rest of your life and, again, it builds that relationship you have with your child.

I truly believe that finding the balance between work and life creates healthy communities for us. We all want to make sure that South Australia and the nation grow into the greatest possible place that it can be, but finding a balance that allows families to connect with each other and then in turn connect with their community and make their communities a better place is an important part of that process. All families, no matter what their circumstances, seemingly have a certain degree of financial pressure upon them these days, and that creates the absolute need, in many cases, for families to have two working parents. In some ways it is driven by lifestyle choices. People want to live in nice homes and drive nice cars; they want to make sure that they have holidays. But you could debate whether that is truly worth it. Are the sacrifices that we are making to pay for these things worth what they will potentially do to our family?

Being a parliamentarian is a difficult life. Having been in this place for only 10 months, I know that my time here is much shorter than it is for many others. We enjoy quite good working conditions that many other people do not enjoy, but already I recognise that it is hard to find that balance. I am lucky that my children enjoy a healthy debate with me about what I do, and they want to know what goes on in my life. Equally so, my wife is very passionate about making sure that as soon as I am at home we talk about what I have been doing, and I want to find out what she and the children have been doing too because, even though I am not with them constantly, I want to make sure the communication lines are still open.

If South Australia wants to build a model economy it will demand the extension and the creation of flexible working arrangements. It is an absolute necessity for us. I believe that the member for Heysen—or it might have been the member for Hartley—referred to Bernard Salt, a well-known demographer. I have actually attended a few functions where he has been a guest speaker, and he is a very interesting man. He talks about the sea change phenomenon and the tree change phenomenon and what is occurring there. But it is really being driven by the fact that people want to find a balance in their life. Many people are working in pressured situations, but they want to make sure that when they are out of those situations they are in an enjoyable climate and love living

where they do. That is why they move to these areas that provide them with those opportunities.

Workplaces are creating flexible work arrangements—I believe that—but it is important that we ensure that the legislation is reviewed, and that we create greater support for other opportunities to be developed. My intention in nominating for involvement in this select committee is to take a very bipartisan approach. I want to take politics out of it, but I do want to make sure that we achieve results. I am prepared to take as long as necessary to ensure that we get some positive outcomes from this measure. I certainly support the motion from the member for Hartley. Again, I just want to reinforce the fact that finding that work-life balance will build better communities, which will make Australia a better place in which to live.

Mr RAU (Enfield): I join with other members in, obviously, supporting the member for Hartley's motion, and in congratulating her on bringing it forward—

The Hon. M.J. Atkinson: Are you still getting home in time for *The Bold and the Beautiful*?

Mr RAU: —and, if the Attorney would shut up for a minute, he might learn something. The important thing, though, for the member for Hartley and other members on the committee is to enter this experience with their eyes open and with the appropriate warning signs somewhere in their rear vision mirrors. I would just like to point out a couple of things that perhaps the members of the committee could usefully bear in mind to get the most out of it. The first one is a matter that was raised by the member for Heysen, namely, that like her, I have the experience of being on these committees. The glacial process of recommendations from committee to translation into reality is something that even in my relatively short period here I have seen very few times.

The second thing that I would like to say is that the wording of the honourable member's motion is commendable in that it is gender neutral and talks about work-life balance for families, all of which is gender neutral, and I commend that. I am, however, concerned that some of the contributions so far reveal some sense in which this is a vehicle for expounding a particular gender perspective on this problem, and I would urge the member for Hartley to make sure that, in the way in which this matter progresses, it genuinely retains the spirit of the wording of her motion and does not become in some way cuckolded into a different vehicle altogether.

The third thing I would like to mention is that cross-jurisdictional issues are very significant and, unfortunately for the member for Hartley and other members on this committee, issues such as federal income tax policy, which compels a number of families to have two people in the work force, or federal child-care subsidies, tax deductions or facilitation arrangements, or federal labour laws, or the federal social security system, will all have a great deal more influence on any of the desires that members of the committee might have for resolving these problems than anything that is unfortunately within the purview of this committee.

I take up the point made by the last speaker in terms of, in effect, the financial compulsion felt in many families to have two people in the work force. I do not care whether it is the male or the female working; that is not my point. The fact is that many families do not have the choice of having one person at home or two people doing half time; they are compelled to go on. That issue is something that I would suggest you can look at from this perspective; that is, the state education system, it would appear, is perceived by some as not offering what it might and they are wasting money in the private education system. There is a way of freeing up some money that goes back into their pockets; they do not have to work to earn it. They have more time for the family; everybody is happy. End of contribution.

The Hon. R.B. SUCH (Fisher): I will be very brief because we want to expedite this matter. I strongly support the member for Hartley in what she is trying to do. I think it is a huge task. Members should not be discouraged because select committees take a while to conduct and for their results or recommendations to be adopted. We live in a democracy and we have to expect that.

I will just make a few points. The member for Enfield mentioned the school system. I think one of the critical issues we need to look at—and I raised this recently—is how the school holidays are spread through the year. Contrary to what Nicole Cornes said in the *Sunday Mail*, I am not saying the Christmas holidays are too long; I am saying we should look at the spread of them. We should also look at the length of the school day. I am not suggesting school is just a child-minding activity; I have never suggested anything of the kind.

What is important in this focus by the committee is obviously the welfare of children, and I am sure that the member for Hartley had that in mind. My view is that contented and happy workers are better and more productive workers. I have five women who work for me, and I have always had the situation of trust. If they need time because a child is sick then they take time and make it up later in the day, in the next week, or whatever. I think it ultimately comes down to trust, having faith in your staff and managing them, not trying to control their lives.

We need to look at things such as rostered days off, flexitime, time in lieu and, certainly, paid maternity leave, which should be paid for by the federal government. It is the only body that has the resources to do it. I do not believe it should be imposed on small business. Likewise—and this is even more radical—one day we might even allow some paid paternity leave like they do in some Scandinavian countries.

I think this motion is a very good initiative. I have been there and done that. I have done it the hard way, trying to study and earn a living. I have been through the process, and I would argue that being able to study to improve yourself should be very much a part of the focus of this committee. I commend the motion to the house.

Mr PISONI (Unley): I, too, was very excited about the invitation issued by the member for Hartley seeking two members from the opposition to nominate for the committee. I think there was a race between the member for Goyder and me to see who could be the first to nominate, and I think it was a photo finish. I would like to see a very broad committee, a committee that does not start with an ideological base.

My wife and I have been very fortunate in that we have been able to live fairly flexible lives when our children came onto the scene. My wife began a hairdressing apprenticeship at the age of 15. I did a trade, as well, and started my own business. When we decided to have children, Michelle wanted to keep her toes in the water. She wanted to have a client base still but she could not really do that while working for the employer whom she had been with for the past 10 to 12 odd years.

We were living in Nailsworth at the time and, because we had had our shop in Unley for quite some years, we decided

to use the opportunity to move closer to the shop when purchasing a new house and to find a house that was suitable for us. It meant that we could move into the Unley community. When Michelle was several months pregnant with our first child, Lily, one of our requirements was a house with an attached shopfront. Unley was renowned for houses with attached shopfronts but very few were used as shopfronts. We identified some properties and wrote to the owners. We wrote to the owner of one particular property in Hyde Park—just a stone's throw from some very good friends of ours who lived around the corner—but we did not get a reply.

When we were doing a home show in Melbourne, flogging our wares interstate, we got a phone call from our neighbour up the road who said, 'You wouldn't believe it; the house that you didn't get a reply about is up for sale.' Apparently, the owner was an old Polish spinster who had died, and that is probably why she did not reply to our letter. The house did come up for sale and my wife went along to the first inspection. She is the decision maker in our house. At that time it was divided into two flats. I asked her what it was like and she said, 'Well, I think at a pinch we could live in it.' So, consequently, we put our home at Nailsworth on the market and we sold it. The interesting statistic for members is that we were able to sell at Nailsworth and purchase in Hyde Park for the same money. Try doing that today! It would be very difficult to do that today. It was a stroke of luck for us.

When our first child was born, it allowed Michelle to set up the salon in a professional manner. Michelle is not the sort of person who wanted to do home hairdressing. She wanted to have a professional salon. We ended up with a lovely flame mahogany pedestal basin and lovely mahogany furniture. Consequently, that enabled her to work from home. In between clients, she could breast feed and attend to our children. We had our second child 21 months after the first one. Being in the flexible position that I had, when the business was big enough to have employees, I was able to leave the business and come home for any family emergencies or for any other matter.

One important thing that I would like to see is for it to be made easier for people who have skills to sell themselves so that they do not have to rely on an employer or anybody else, and for it to be made easier for them to work with their established clientele and the contacts that they have achieved over the years in their careers. Many people are now starting parenthood at a much older age.

Many of us in this chamber would have parents who were only 19 or 20 when the first of their siblings was born, whereas my wife and I were in our mid-twenties and the new age now for the first child is over the age of 30. In the early days, people were starting out on their lives and had a lot less to sacrifice for parenthood. These days, of course, people have careers that they have built up over many years. In some instances, they have spent 15 or 20 years building up those careers, consequently they have to make a big sacrifice to be parents, and that does make it more difficult for people. I want to pick up a couple of the points made by other speakers. One was the member for Reynell, who was very quick to bag the Howard government and the Fraser government, but I would like to remind this house that it was the Keating/Hawke government that actually introduced a fringe benefits tax on childcare.

Who would have thought? Back in those days, childcare was obviously seen as being a luxury item, but I think it is a necessity and I would like to see this committee look at ways to make childcare more available, more affordable and more secure. Childcare is a very difficult thing for a working mother who is working on a casual basis, for example, perhaps turning up for work on a day or two's notice. It is very difficult to hold on to a permanent position in a childcare centre on a casual basis, consequently, we see situations where mothers who send their children to childcare pay for the space for that day when they are not actually working. That is something that we need to address, but I would not like to see the 80 per cent of small to medium size businesses carrying an unfair burden of what is, in fact, a community responsibility.

Rearing children is a community responsibility, not the responsibility just of employers. It is obviously a parental responsibility, but there is a broader community benefit. Nothing annoys me more than the childless couples who whinge about the benefits and the welfare that is there for parents. When they are dribbling in their nursing homes and needing toilet assistance, it will be other people's children who will be wiping their arses. They are the ones who will be benefiting from children born today.

Members interjecting:

Mr PISONI: It is a very practical way of describing it, and it illustrates the need for strong, supportive childcare in South Australia.

Ms PORTOLESI (Hartley): I would like to thank all those who made a contribution and shared their personal stories, and I thank members for the warnings about the powers or otherwise of the select committee. I take everyone's point on board. I would particularly like to thank everyone for crunching the debate through.

Motion carried.

The house appointed a select committee consisting of Messrs Griffiths, O'Brien and Pisoni, Ms Portolesi and Ms Thompson; the committee to have power to send for persons, papers and records, and to adjourn from place to place; the committee to report on 28 March 2007.

Ms PORTOLESI (Hartley): 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 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:

Motion carried.

EVIDENCE (MISCELLANEOUS) AMENDMENT BILL

The Hon. M.J. ATKINSON (Attorney-General) obtained leave and introduced a bill for an act to amend the Evidence Act 1929; and to make related amendments to certain other acts. Read a first time.

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

That this bill be now read a second time.

The bill achieves two kinds of evidentiary law reform. In amendments to the Evidence Act 1929 it reforms laws about the way evidence is taken in sexual offence proceedings as part of larger reforms arising from the government's extensive review of the South Australian rape and sexual assault

laws in 2006. The legislation is one part of the government's rape and sexual assault law reform, the other part being the Criminal Law Consolidation (Rape and Sexual Offences) Amendment Bill 2007, a bill that amends the sexual offence provisions in the Criminal Law Consolidation Act 1935.

It is the fruit of consultation on independent reform options suggested for discussion in early 2006 by Liesl Chapman, an experienced prosecutor now at Edmund Barton Chambers. Those options—

Mrs Redmond: A very good chamber.

The Hon. M.J. ATKINSON: Yes, I agree. They were the Solicitor-General's old chambers. These options covered five areas:

- reforms to reduce the impact on children of delay in giving evidence of sexual abuse;
- reform of the offence of persistent sexual abuse;
- reform of the offence of rape;
- reform of the law on whether juries can hear about other sexual offending by an accused; and
- reform of the law on complaint evidence in sexual assault cases.

The other main focus of the Evidence (Miscellaneous) Amendment Bill is on the way evidence is taken from vulnerable witnesses in court and the way witnesses may be questioned and on restricting access to sensitive material that is to be used as evidence in proceedings. This group of amendments is designed to shield vulnerable witnesses (particularly children), disabled people and alleged victims of crime from undue stress when they give evidence in court. The changes deal with recommendations of the Child Protection Review (that is, the Layton report) about children and the courts, and also aim to remove impediments to the reporting and prosecution of serious crime.

The amendments are to the Evidence Act with related amendments to the Summary Procedure Act, the Criminal Law (Legal Representation) Act 2001, the Supreme Court Act 1935, the District Court Act 1991 and the Magistrates Court Act 1991. The bill also makes an unrelated statute revision to section 71B (repositioning the penalty clause) and updates section 59IQ so that it uses the same terminology as that used in the Statutes Amendment (Domestic Partners) Act 2006. The bills amending the Evidence Act 1929 and the Criminal Law Consolidation Act 1935 are consultative bills that are being introduced as early as we can in the session this year so that they can be left to lie on the table to allow for consultation before the debate begins.

We intend to seek comment on the bills from as many people as are interested, including those who responded to the discussion paper on rape and sexual reform options that the government issued last year. We have already consulted the writer of that paper (Liesl Chapman) about the bill, and will continue to consult her about it. We also invited comment from members of the public and from relevant interest groups, including the judges, the Courts Administration Authority, the Director of Public Prosecutions, the ODPP Witness Assistance Officers, SAPOL, the Law Society of South Australia, the South Australian Bar Association, defence counsel in particular who we value so much, the Aboriginal Family Violence Legal Service, the Aboriginal Legal Rights Movement, the Legal Services Commission, community legal centres, the Commissioner for Victims' Rights, the Victim Support Service Incorporated, Business and Professional Women SA, Children in Crisis, the Department for Families and Communities (including the Office for Women and the Child; in fact, I think that office may have come over to the Justice Department in the interim), Youth and Women's Health Service, the schools of law at both Flinders and Adelaide universities, the Migrant Resource Centre of SA, the Premier's Council for Women, Uniting Care Wesley, the Women's Legal Service SA, Relationships Australia (SA), Stop Rape Now and Yarrow Place. I seek leave to have the remainder of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Vulnerable witnesses

Section 13 of the Act allows a court to make special arrangements for the taking of any witness's evidence, but gives additional protection and support to a category of witness called vulnerable witnesses. These are witnesses, other than the defendant in a criminal trial, for whom giving evidence in court is likely to be especially difficult, and who for this reason may be deterred from giving evidence at all or may give evidence that is of a lesser quality unless special arrangements are made for it to be taken.

Most people would find it stressful to give evidence in a formal courtroom and might find being cross-examined confronting and frustrating. But for some people, giving evidence carries a significantly higher level of stress, because of the circumstances of the case or their own circumstances. The complainant in a sexual case, for example, may spend many hours under cross-examination and may feel that he or she, and not the defendant, is on trial. For an alleged victim of stalking, giving evidence under the gaze of the alleged stalker may be so frightening that it inhibits his or her ability to understand and respond to questions.

The Act identifies witnesses who are likely to find giving evidence particularly frightening, humiliating or stressful and calls them vulnerable witnesses.

By various means it encourages courts to put these witnesses at ease so that their evidence is not contaminated by fear or distress. It does so because it is in the public interest for the evidence of all witnesses to be of the highest possible quality and for the prospect of giving evidence not to be so daunting that people are deterred from reporting serious crimes or from assisting in the prosecution of crime.

Under the Act, a vulnerable witness includes a witness who is under the age of 16 years, a witness who suffers from an intellectual disability, a witness who is the alleged victim of a sexual offence to which the proceedings relate and witnesses who are, in the opinion of the court, at a special disadvantage because of their circumstances or the circumstances of the case.

The Bill expands the class of vulnerable witness and its entitlements.

In the definition of a vulnerable witness, the offences to which the proceedings relate, and of which, to be a vulnerable witness, a person must be the alleged victim, will no longer be confined to sexual offences. These offences will now be called 'serious offences' and will include offences of abduction, stalking, unlawful threats to kill or endanger life, causing serious harm, and attempted murder or attempted manslaughter. A victim of a serious offence will be considered a vulnerable witness in civil as well as criminal proceedings relating to that offence.

A witness who has been subjected to threats of violence or retribution in connection with the proceedings (whether civil or criminal) or who has reasonable grounds to fear violence or retribution in connection with the proceedings will also now be classified as a vulnerable witness, as will a witness who, in the opinion of the court, is at a special disadvantage because of their circumstances or the circumstances of the case, other than those already described.

The Bill provides that if a witness is vulnerable:

- a defendant in a criminal trial may not cross-examine that witness in person;
- a criminal court may hear expert evidence about any physical or mental disability of the witness if it thinks this necessary for a proper assessment of that witness's evidence;
- a criminal court may take an audio-visual record of the evidence of the witness; and
- a civil or criminal court may admit an official record of the evidence of that witness given in an earlier criminal proceeding and may relieve that witness of an obligation to give oral evidence in the current one.

Warnings about the uncorroborated evidence of children

The Layton Report made several recommendations about judicial warnings about the uncorroborated evidence of children.

At present, the Act does not prohibit warnings about lack of corroboration. Instead it says that except where an Act requires it, the judge is not obliged to warn the jury that is it unsafe to convict the accused on the uncorroborated evidence of the complainant, and that a judge in a criminal trial is not obliged to warn the jury that it is unsafe to convict on the uncorroborated evidence of a child if the child gave sworn evidence.

One recommendation was for the law to be changed to say that corroboration is never to be required of the evidence of a child witness, whether sworn or unsworn. But that would produce an unacceptable result; it would give greater credibility to the sworn or unsworn evidence of children than to the sworn or unsworn evidence of adults, for which corroboration may sometimes be required.

Instead, the Bill amends the Act to stop judges warning juries that it is unsafe to convict upon the uncorroborated sworn evidence of a child unless the warning is warranted in the particular case and a party has asked for the warning to be given.

The Layton Report also suggested that judicial warnings about the reliability of the evidence of a particular child be permitted only under strict conditions, along the lines of a recommendation of the Australian Law Reform Commission Report (No. 84).

The Bill takes this up by providing that if a judge does warn a jury about the risks of convicting on the uncorroborated evidence of a child, or otherwise comments on the evidence, that warning must be the same as if for evidence given by an adult; that is, the judge must not say or imply that the evidence of the child is inherently less reliable than the evidence of an adult.

Together, these amendments will prevent juries from being warned to scrutinise the evidence of young children generally with special care or from being told that young children generally have tendencies to invention or distortion. The Bill will permit a judge to warn about the reliability of the uncorroborated sworn evidence of a child only where the defendant requests the warning and can show good reason, other than that the witness is a child, why the warning is needed.

Protection of witnesses

Section 13(1) of the Act allows a court to order that the evidence of any witness in any proceedings be taken using special arrangements, 'to protect the witness from embarrassment or distress, or from being intimidated by the atmosphere of a courtroom, or for any other proper reason'. Such an order may be made as long as it will not prejudice any party to the proceedings or have the effect of relieving a witness from the obligation to give sworn evidence or to submit to cross-examination or of preventing the judge or jury from seeing and hearing the witness while giving evidence.

Subsection (2) sets out a non-exhaustive list of examples of special arrangements.

This Bill adds two examples of special arrangements to the non-exhaustive list in section 13(2) and allows the court to order any combination of special arrangements.

One of the examples is the taking of an electronic recording of evidence outside the courtroom and its replay in the courtroom. The Layton Report recommended that it be possible for all or some evidence of a child witness to be electronically recorded outside of the courtroom before the trial proceeds and for it to be replayed to the court during the trial in place of the child giving evidence in court, an arrangement that is especially useful in cases where the trial takes place several years after the alleged offence. The new example of a special arrangement added by this Bill will allow this to happen.

The other example, also recommended by the Layton Report, will allow disabled witnesses to give evidence by unconventional means if that would facilitate the taking of that evidence or minimise the witness's embarrassment or distress. Although a court could already use its inherent powers to do this, conferring authority by statute will encourage disabled witnesses to give evidence by removing any doubt about the court's ability to accommodate the disability.

Both these kinds of arrangements, and the taking of evidence in a remote room by closed circuit television (C.C.T.V.), could be made under section 13 of the Act. Arrangements for the pre-recording of children's evidence and using unconventional means to take the evidence of disabled witnesses have to date not been made routinely because not all courts have the necessary facilities. That is not a defect in the legislation but a matter of court resources. The cost of adding C.C.T.V., remote rooms, separate access and waiting rooms for vulnerable witnesses, and audio visual recording and playback facilities to all courts, is high and, in some courts, is not cost-effective.

The Government has taken the sensible approach of installing these facilities in courts where they are most in demand, with a view to extending them to other courts if it becomes impracticable to list cases that need these facilities in those courts, or if the demand for those facilities becomes too great.

The problem with the current legislation is not so much a lack of authority to make these special arrangements but that they may be made at the discretion of the judge even when the witness is a vulnerable witness in a criminal proceeding, albeit that for such a witness the court is obliged to determine whether an order for special arrangements should be made before the evidence is taken. In reaching that determination, the judge may examine the vulnerable witness about the disadvantage asserted in giving evidence in open court and allow argument about whether special arrangements will unduly prejudice the defendant's case.

It is possible, therefore, under current section 13, for a judge to deny a child victim in a criminal trial the opportunity to give evidence using special arrangements even though the facilities are available. A case in point occurred in Victoria in May 2005. *The Age* reported that a child who was the alleged victim of incest tried to commit suicide after a Victorian county court judge, acting under laws similar to those in South Australia, ordered her to appear in open court in front of the defendant, her father, to explain why she did not want to give evidence in his presence and would prefer to testify using C.C.T.V. The judge questioned the child in detail in front of her father, despite her obvious distress and even though he had accepted expert evidence that she was especially vulnerable and potentially suicidal.

There is nothing to stop this happening in South Australia. Indeed, our law technically requires it. The South Australian Court of Criminal Appeal, in the case of *Question of Law Reserved (No 2 of 1997)* has said of section 13:

. . . the court is not to order that special arrangements be made simply because a request is made, even if such a request is made on behalf of a vulnerable witness. If Parliament had intended to give to a witness the right to have special arrangements made, Parliament could easily have said so. It has not said that.

If a request for special arrangements is made, the court must consider the request and any arguments put in opposition to the request. It must consider whether any supporting material should be required and if necessary require it, and must consider whether any enquiry should be made of the witness in question by the court, and if necessary, make such enquiries. Granting a request for special arrangements is by no means automatic.

In passing this Bill, Parliament will show that it means to give vulnerable witnesses in criminal proceedings an entitlement to have their evidence taken using a special arrangement or combination of special arrangements unless they don't want to, or unless the court decides to dispense with special arrangements because the necessary facilities are not readily available and it is not in the interests of the administration of justice to make the special arrangements.

In deciding to dispense with special arrangements, the court must look at how necessary or desirable they are for the witness to give evidence effectively or to minimise harm or distress to the witness. It must look at the cost, inconvenience and delay in procuring the necessary facilities or in adjourning the case to another court with those facilities. It must look at the urgency of the proceedings and any other factor relevant to the circumstances of the particular case.

The Act does not permit an order for special arrangement to be made if this would be to relieve a witness from the obligation to give sworn evidence or to submit to cross-examination, or to prevent a judge or jury from seeing or hearing the witness while giving evidence. The Bill retains these safeguards but provides that such sight or hearing of a witness giving evidence may be indirect—for example, by live television transmission or replay of a recording of the witness's voice and image—as long as the indirect method of transmission also shows any person accompanying the witness for emotional support. It provides further that a special arrangement must not be made if it would prevent a defendant from seeing or hearing the witness while giving evidence.

The Bill also retains the requirement for judges to warn juries not to draw adverse inferences from the fact that special arrangements have been made or to allow those arrangements to influence the weight to be given to the evidence.

The Layton Report recommended that the law:

allow the court to permit expert opinion evidence to be given in any civil or criminal proceeding in which abuse or neglect of a child is alleged . . . That such amendment specifically permits evidence to

be given regarding any capacity or behavioural characteristics of a child with a mental disability or impairment.

The Bill makes an amendment to this effect that has a slightly wider application than contemplated by the Layton Report. It provides that in a civil or criminal case (including, but not confined to, cases of child abuse and neglect), where a vulnerable witness (whether a child or an adult) suffers from a disability and the court thinks it necessary or desirable to help the court to assess the witness's evidence, it may admit expert evidence explaining the nature of the disability, any behavioural characteristics associated with it and any aspects of the disability that are relevant to a proper assessment of the witness's evidence.

This amendment is not designed to allow the admission of expert evidence to challenge the credibility of the witness or to change the law on this topic as expressed by Chief Justice King in the case of *R v C* in 1993. Nor is it designed to allow or facilitate the admission of expert evidence as to the ultimate issue (for example, of whether a child has been abused or not). It is aimed at making it easier for the judge and jury to interpret a disabled witness's evidence.

The Bill also provides that where the native language of a witness is not English and the witness is not reasonably fluent in English, the court may receive expert evidence about any difficulty that may be caused by the witness giving evidence through an interpreter. Some Aboriginal languages, for example, do not translate easily into English, and vice versa, because one language does not describe a concept familiar to the other. It is important that the court and the jury appreciate this when listening to the witness giving evidence and when evaluating that evidence.

Cross-examination of victims of certain offences

A defendant to criminal charges may choose to represent himself or herself at trial, and will then question witnesses in person instead of through counsel. Sometimes unrepresented defendants cross-examine their alleged victims with personal animosity and in a confrontational manner that would not be acceptable if adopted by counsel. Indeed, the opportunity to intimidate a witness may sometimes be the reason for a defendant choosing not to be represented at trial.

In such cases, the court, in allowing cross-examination in person, can appear to be giving the defendant free rein to settle a grudge or gratify a desire to cause or prolong distress, and can seem itself to be an instrument of injustice. Often a defendant will see a judge's attempts to constrain his or her efforts at cross-examination as compromising judicial neutrality and may appeal the verdict on this ground.

A notorious Australian example is the *Skaf* case in New South Wales where the defendants in a rape trial discarded counsel so that they could cross-examine the complainant personally, with the aim of humiliating and intimidating her. This resulted in the enactment of laws preventing the cross-examination in person of complainants in sexual cases (section 294A of the New South Wales *Criminal Procedure Act 1986*, as amended by the *Criminal Procedure Amendment (Sexual Offence Evidence) Act 2003*).

Since then, Victoria has enacted special rules for the cross-examination of complainants in sexual cases and members of their families or the family of the accused in such cases (section 37CA *Evidence Act 1958* (Vic), inserted by the *Crimes (Sexual Offences) Act 2006*).

Laws in Australia, New Zealand and the United Kingdom restricting or prohibiting the rights of unrepresented defendants to cross-examine in person share many features but are not identical. In the U.K., the court must first determine whether denying the right to cross-examination in person will affect the quality of the witness's evidence, while the Australian and New Zealand models assume a positive effect on quality.

This Bill takes the best features of comparable laws elsewhere, conforming with the Australian and New Zealand approaches. In doing so, the Government endorses the reasoning of the Victorian Law Reform Commission, that:

. . . provided there are other ways in which the complainant's evidence can effectively be tested (as the Commission believes there are), there can be no justifiable reason for subjecting the complainant to cross-examination by the accused. Confrontation with the accused and cross-examination are distressful enough without adding the element of direct personal (verbal) attack. Judicial control of cross-examination cannot provide systematic protection because of the inherent nature of the proceedings and the need for judges to remain neutral. And, even where judicial discretion is exercised to prevent abusive or improper questioning, it cannot protect the complainant from the effects of direct confrontation with the alleged offender who wishes to cross-examine personally.

The Bill takes an approach that is similar to the Victorian legislation, although it has a wider application. It will prohibit a defendant from questioning in person a victim or alleged victim of an offence to which the proceedings relate. An offence to which the proceedings relate is an offence of contravening or failing to comply with a restraining order or a domestic violence restraining order, or a serious offence against the person. A serious offence against the person is defined as an offence of attempted murder or attempted manslaughter, a sexual offence, an offence of causing serious harm, an offence involving an unlawful threat to kill or endanger life, an offence involving abduction, an offence of stalking, or an attempt to commit, or assault with intent to commit any of these offences.

The prohibition on cross-examination in person will apply, therefore, not only in criminal cases but in civil cases related to the offence of which the witness is the victim or alleged victim. Without this extended application, a defendant who has been prevented from cross-examining the victim in person in a criminal trial may cross-examine the victim in person in later civil proceedings, such as criminal injuries compensation proceedings.

An unrepresented defendant who wishes to cross-examine a vulnerable witness must do so through counsel. The court must warn the defendant of this limitation on his or her trial entitlements and ensure that he or she has had a reasonable opportunity to engage counsel before the evidence is taken.

If a self-representing defendant engages counsel solely for cross-examination, the court must warn the jury that this is routine practice under this provision and that no adverse inference should be drawn against the defendant for not conducting the cross-examination personally.

The Schedule to the Bill amends the *Criminal Law (Legal Representation) Act 2001* so that an unrepresented accused who wishes to cross-examine an alleged victim is entitled to legal assistance for counsel, subject to the same conditions and cost-recovery procedures as a person granted assistance under that Act. Importantly, the amendment will ensure that an unrepresented defendant who refuses or declines legal assistance to cross-examine a vulnerable witness cannot later challenge the fairness of the trial for lack of legal representation.

These provisions will not remove a defendant's right to represent himself or herself nor remove a defendant's right that prosecution witnesses be cross-examined. They simply stop the accused person from conducting such cross-examination in person.

Court's power to make an audio visual record of the evidence of vulnerable witnesses

In South Australia, written transcripts are the only record of a person's evidence in a trial. Vulnerable witnesses may give evidence remotely by C.C.T.V., but no audio visual record is kept.

A written transcript is not generally as effective a representation of a witness's evidence as an audio visual record. In cases where the witness has given evidence for many days or weeks, the written transcript will run to many hundreds of pages and be difficult for a jury in a later proceedings to which that transcript is admitted as evidence to read and assimilate.

Written transcripts can rarely capture a witness's demeanour, and demeanour can be a good indicator of credibility. A court that admits a written transcript as evidence of what a witness said in a previous proceeding may be more inclined to do so if it can also hear some oral evidence from the witness. In the *Skaf* case, where the witness was not prepared to give oral evidence in the retrial, a refusal to admit the written transcript would have destroyed the prosecution case.

Criminal courts need authority to take an audio visual record of evidence in appropriate cases so that this record can form part of the official record, along with the written transcript, that a later court can admit as the evidence of that witness in its proceedings.

The Bill allows a court in the original criminal proceeding, on the application of the prosecutor, to order that an audio visual record be taken of a vulnerable witness's evidence, as well as a written transcript, if it has the facilities available to do so and it is otherwise practicable to do so. The aim is for this contemporaneous record to be available to be used as the witness's evidence in a later related proceeding.

The Bill also obliges a court to take a contemporaneous audio visual or audio record of the evidence of a vulnerable witness if that witness is a child complainant in a sexual offence proceeding and is of or under the age of 16 years, if that child's evidence has not already been pre-recorded before trial by special arrangement. This

means that there will always be an audio visual or audio record of the evidence of an alleged child victim, whether he or she gives that evidence to the court in a separate hearing before the trial began or whether he or she gives it during the trial itself.

This part of this provision aims to minimise the impact of trial delay on children who are the alleged victims of sexual offences. It is part of a Government initiative under which courts will have two options for managing sexual offence proceedings when the alleged victim is a child: either to fast-track the trial or to pre-record the child's evidence. The Government will be working with the courts to trial a fast-tracking system. The Bill provides the necessary legislation.

It is expected that courts will deal with applications for taking audio visual records to be made at the same time as applications for special arrangements.

The Government intends to equip selected courts with an audio visual recording capacity both for use during a trial and for pre-recording, depending on demand.

The audio visual record is to be kept in the custody of the court and access to it restricted to the court officials responsible for its custody. Otherwise, the court may authorise a person to take custody of it or have some other form of access to it if they need to use it in a related proceeding that has commenced or is in contemplation.

Access to an audio visual record taken under this section is to be governed by this section alone. The accessibility of evidence provisions in the *Supreme Court Act 1935*, the *District Court Act 1991* and the *Magistrates Court Act 1991* do not apply.

Court's power to admit evidence taken in earlier proceedings

The Bill allows a court to admit as evidence an official record of a witness's evidence that has been given in an earlier criminal trial and to allow the court to relieve that witness from the obligation to give evidence in person in the later proceedings. The provision applies only to witnesses who have died, or who have become too ill or infirm to give evidence, or have not, after diligent search, been found, or who are vulnerable witnesses.

This amendment will ensure, among other things, that prosecutions do not fail and that people who have committed crimes do not escape liability because a key witness is not available or prepared to give evidence again at a re-trial.

The example of a vulnerable witness was given publicity in the *Skaf* case in New South Wales. Two brothers successfully appealed a rape conviction on the ground that jurors had acted improperly by independently investigating the scene of the alleged crime. The complainant declined to give evidence again because she had suffered such distress giving it in the original trial. She had every right and reason to decline but, without her evidence, the case against the accused would have collapsed. The New South Wales Parliament enacted legislation to allow a record of the victim's evidence at the original trial to be substituted for her oral evidence at the re-trial. The legislation applied retrospectively to prevent these particular accused from escaping prosecution.

This Bill will let a later court, if the evidence is relevant to its proceedings, admit as evidence in those proceedings an official record of evidence given in a criminal trial by a vulnerable witness or by a witness who, by the time of the later proceedings, has died or become too ill or infirm to give evidence or cannot, after diligent search, be found.

When the later court admits an official record, it may relieve the witness, wholly or in part, of the obligation to give oral evidence.

The later court may be a civil or criminal court; it may be conducting a retrial or proceedings that have no such link to the original proceedings, as long as the evidence constituting the official record is relevant to those proceedings.

Before admitting that record, the later court must have it edited to exclude material that is irrelevant to or is inadmissible in the proceedings before it for some other reason.

These provisions are not restricted to proceedings for sexual offences because a vulnerable witness to other kinds of proceedings may be under extraordinary stress giving evidence at that trial and as disinclined to give that evidence again at a re-trial as the victim in the *Skaf* rape trial. Examples are children who give evidence of witnessing a traumatic event such as a murder or suicide, or adults who fear violent retribution if they give evidence once, let alone twice.

Disallowance of improper questions

The Bill also changes the way courts can protect witnesses from inappropriate questioning by counsel.

At present, a court may disallow or forbid in cross-examination questions that are irrelevant, vexatious and not relevant to the proceeding, or are scandalous or insulting, even though the question may have some bearing on the case before the court. Such questions may not be disallowed or forbidden if they are about facts in issue, or about matters necessary to be known in order to determine whether or not the facts in issue existed. The court may also disallow or forbid questions that are indecent; and questions that are intended to insult or annoy, or are needlessly offensive in form, notwithstanding that the question may be proper in itself. These laws apply to civil and criminal proceedings.

There is evidence that these laws are not working to protect children and vulnerable witnesses. The *Skaf* case, in New South Wales, which, at that time, had similar laws to those in South Australia, highlighted this. The Layton Report noted that many of the submissions to it about child witnesses in criminal trials:

. . . referred to the trauma of cross-examination by defence counsel and made the point that such court processes can result in further abuse, betrayal and powerlessness.

The Layton Report referred to examples in South Australian courts of very young children being cross-examined for up to five hours, and to bullying tactics, trick questions and the deliberate use of legal jargon or language that is too sophisticated for children to understand.

The Attorney-General's Department and the judiciary are working on a program of judicial education about children in court. That, however, is not enough. It is defence counsel, not prosecutors and judges, who use these tactics. They do so under an all-too-clear appreciation of the difficulties children experience in giving evidence. The problem for judges is not so much a lack of appreciation of the difficulties children experience in giving evidence but a concern that judicial intervention can so easily be the ground for a successful appeal, leading to a mistrial or retrial, which may have even worse consequences for the child than a failure to intervene.

New laws about the kinds of questions counsel may ask in a criminal trial came into effect in New South Wales in June 2005 (in the *Criminal Procedure Further Amendment (Evidence) Act 2005*). These laws let criminal courts disallow as improper questions that are (among other things) misleading, unduly offensive, racially stereotypical or put in a belittling, insulting or inappropriate tone, and oblige the court to disallow an improper question or inform the witness that it need not be answered whether or not an objection has been taken to the question. The imposition of this obligation meets observations by advocates for child witnesses and alleged victims that judges are too often loath to check wayward counsel, and that prosecuting counsel may sometimes decline to object to improper questions for fear that it may, wrongly, give the jury the impression that the prosecution is trying to hide something.

In July 2005, the Australian Law Reform Commission (***A.L.R.C.***) and the Law Reform Commissions in New South Wales and Victoria jointly recommended that the uniform Evidence Acts should set out, as in the New South Wales legislation, a more comprehensive and detailed list of questions that are inappropriate; and that the laws should apply not only to criminal but to civil proceedings; maintain the court's discretion to disallow improper questions when they are asked of ordinary witnesses; and oblige the court to disallow such questions when asked of child witnesses and witnesses with a cognitive impairment and, further, disallow confusing or repetitive questions and questions structured in a misleading or confusing way.

In early 2006, the Victorian Parliament passed legislation requiring a court to disallow or warn a witness that he or she is not oblige to answer improper questions in cross-examination if the witness is under the age of 18 years or cognitively impaired. The new section 41F *Evidence Act 1958* (Victoria) is in addition to its traditional provisions forbidding scandalous or indecent questions, questions intended to insult or annoy, and needlessly offensive questions.

This Bill replaces current section 25 of the Act with a provision that, like the Victorian legislation, will apply to any court proceeding. It requires a court to disallow an improper question put to a witness in cross-examination and to inform the witness that the question need not be answered. Unlike the Victorian legislation, however, it does not leave a discretion in the court to disallow improper questions asked of witnesses who are not children or cognitively impaired. As a matter of principle, a question that is improper should be disallowed, whatever the characteristics of the person being questioned.

The Bill defines an improper question along the lines of the New South Wales legislation, just described, and includes safeguards against the inhibition of rigorous and relevant cross-examination carried out properly. It provides that a question is not disallowable

through impropriety simply because it challenges the truthfulness of the witness or the consistency or accuracy of any statements made by the witness, or because it requires the witness to discuss a subject that could be considered to be distasteful or private.

When determining whether a question is improper, the court is to have regard to a range of relevant factors: the age, personality and education level of the witness; any mental or physical disability to which the witness is subject (mental disability being defined to include intellectual disability); the witness's ethnic and cultural background; any other relevant characteristics of the witness; the context in which the question is put, including the nature of the proceedings and, if they are criminal proceedings, the nature of the offence to which they relate; and any relationship between the witness and a party to the proceedings.

Statement of protected witness

A court will not usually admit evidence from a person of what another person has said out of court as the evidence of that other person if it is possible for that other person to give oral evidence about it directly to the court. What person A says to person B, out of court, is hearsay if the court hears it from person B. A person charged with an offence is entitled to have the charge proved by the best evidence available, and the direct evidence of person A is better than person B's recollection of what person A said.

If a court makes an exception to this rule and allows A's evidence to be given by means of B telling the court what A said to B, it will usually require A to be available to be cross-examined on that statement. The principle is that a defendant should be able to test a witness's evidence through cross-examination, however that evidence may have been given.

Some time ago, the Act was amended to codify that exception for complaints of young children about alleged sexual offences. The aim was to facilitate the proof of sexual offences against children. Section 34CA allows a court hearing a charge of a sexual offence against a young child to admit a record of the child's complaint about the alleged offence to another person, out of court, to prove the truth of the facts stated in the complaint, without the child having to give that evidence at trial, as long as the child is available for cross-examination.

Unfortunately, section 34CA is rarely used. The courts have held that if a young child 'cannot remember making [the complaint] or is inarticulate in the witness box', he or she is not, for the purpose of this section, available for cross-examination, and the complaint can't be admitted into evidence. Without that child's evidence, the charge may be impossible or difficult to prove. By the time of trial, a very young child may have forgotten the incident or, if it was traumatic, therapeutically encouraged to forget it. In these cases, although the child's out-of-court statement immediately after the event will be the best record of the child's memory of it, that statement cannot be admitted into evidence, and the very inability to remember the events that prevents the child's out-of-court statement being admitted into evidence will also prevent the child giving evidence directly. In these circumstances a court determining a charge of abuse of a young child may never hear the child's account of it. Indeed, these cases may not even come to court.

The Bill deletes section 34CA and replaces it with a provision that allows a court to admit hearsay evidence about a protected witness's out-of-court statement from the person to whom it was given, to prove the truth of the fact contained in the statement or to support the credibility of the protected witness, and to allow the court to exempt a protected witness from the requirement to be available to be questioned about that statement in certain circumstances, that I will discuss later in this report. The provision does not derogate from any discretion the court may have to exclude evidence that is admissible in this way.

A protected witness is a young child (already defined by the Act as a child of or under the age of 12) or someone who suffers a mental disability that adversely affects his or her capacity to give a coherent account of his or her experiences or to respond rationally to questions. For these purposes 'mental disability' includes an intellectual disability.

It does not matter whether the out-of-court statement is a complaint of an offence or any other kind of statement.

It does not matter whether the person who gave the out-of-court statement is the victim of an offence to which the proceedings relate or any other kind of witness, as long as he or she is a young child or suffers a mental disability of the kind described. It does not matter whether the proceedings are criminal or civil, albeit that this provision will mostly be used in criminal cases.

Before allowing an out-of-court statement to be admitted in this way, the court must satisfy itself, having regard to the circumstances in which the statement was made, that the statement has sufficient probative value to justify its admission, and that the protected witness has been called, or is available to be called, to give evidence, unless the court has exempted him or her from giving evidence before the court.

There is no such exemption under the current Act. The proposed exemption is designed to make section 34CA work as originally intended, so that the court has the best possible available evidence before it, even if that is hearsay evidence, when there are good reasons for a young child or mentally-disabled witness not to have to give evidence directly to the court.

Under the Bill, a court may exempt a protected witness from giving evidence on any of these grounds: that the court is satisfied that cross-examining the witness is unlikely to elicit material of substantial probative value or material that would substantially reduce the credibility of the hearsay evidence; that the court is satisfied that the protected witness is unlikely to be able to give a coherent account before the court of the matters to which the hearsay evidence relates; or that the court is satisfied that there is a substantial risk that the protected witness would suffer mental or emotional harm if called to give evidence before the court.

In a jury trial where a court has exempted a protected witness from giving evidence in court, the judge must warn the jury that evidence of this kind (that is, hearsay evidence) may not be as reliable as original evidence.

These amendments are needed to ensure that people who commit crime do not escape liability simply because of the youth or mental disability of the victim or a key witness. The A.L.R.C. recently identified this topic as needing uniform treatment in Australia. It pointed out that:

. . . the admission of a child's out-of-court statement can preserve the child's account at an early stage, making it a reliable form of evidence, and could reduce the stress and trauma on the child of testifying in court.

In section 34CA, South Australia had attempted to achieve this. The Bill should remedy the defects in that section. I note that the provision enacted by Victoria in 2006 allowing a court to admit evidence of previous representations of child complainants of sexual offences (section 41D *Evidence Act 1958* (Victoria)) still requires the child to be available to give evidence. That law may encounter the same difficulties that have beset section 34CA in South Australia.

Evidence in sexual cases generally

The Bill renames section 34I of the Act, renumbers it to become section 34L, and makes minor revisions to its language. It also deletes subsection (6a) from that section and includes it, in a slightly different form, in the new section 34M (Evidence relating to complaint in sexual cases).

Evidence relating to complaint in sexual cases

The hearsay rule is that a court may not admit, as evidence of the truth of what a person said, evidence from someone else about what that person said to them out of court.

For sexual offences, however, a court may admit evidence of a person's report of the offence to someone else that was made out of court if that report was made at the first possible opportunity after the alleged offence occurred. This is called evidence of 'recent complaint'.

If admitted, the judge must tell the jury that it may not treat this evidence as bearing on the truth of the matter, but rather as going to the credibility or consistency of conduct of the complainant. This is known as a *Crofts* direction.

If there was some delay between the alleged offence and when the complainant reported it, and the court may not admit evidence of the complainant's out-of-court report of the offence because it was not sufficiently 'recent', the judge must direct the jury that the delay must be taken into account when they assess the alleged victim's credibility and consistency of conduct. This is known as a *Kilby* direction.

Also, if there is a long delay in reporting the offence and giving notice of that report to the accused, the judge must warn the jury that is it dangerous to convict the accused on the evidence of the complainant because the delay has put the accused at a forensic disadvantage. This is known as a *Longman* warning. It is dealt with in another part of this Bill.

The law of recent complaint, with its implications for a victim's credibility, is based on outdated notions of the behaviour of victims of sexual assault, particularly child victims. The directions that a court is required to give the jury, of themselves and together, can be

confusing, may be unrealistic because juries may still treat the evidence as going to the truth of the matter, are applied inconsistently because judges identify delay in different ways, and may encourage juries to acquit.

South Australia tried to overcome problems with warnings about the significance of a delay in reporting a sexual offence by legislating (in section 34I of the Act) that if, in a trial of a sexual offence, there is a suggestion that the alleged victim failed to report it or delayed reporting it, the judge must warn the jury that that failure or delay does not necessarily mean the allegation is false, and tell the jury that the alleged victim could have valid reasons for failing to report the offence or delaying reporting it.

Section 34I does not stop a judge making a *Kilby* direction when an alleged victim does not make what is regarded as a 'recent' complaint of a sexual offence. In such cases, the judge must tell the jury that the delay in reporting the offence is a matter to which they can have regard when assessing the alleged victim's credibility.

Because section 34I(6a) of the Act confines the admissibility of out-of-court reports of sexual offences to 'recent' reports, *Kilby/Crofts* directions are too often given without the jury having heard evidence from the complainant as to why and to whom he or she reported the offence and why he or she reported it at that particular time and not earlier.

The defence can make a tactical decision to ask the complainant when he or she reported the offence but not to ask questions about it, so that the complainant has no opportunity to explain any delay. That leaves the jury wondering why the prosecution has offered no evidence to explain it when it hears the defence address on delay followed by a warning from the judge that the delay has a significance to the complainant's credibility. The effect must be to encourage a belief that that the prosecution has something to hide and that the complainant should not be believed.

As Ms Chapman pointed out in her discussion paper, section 34I(6a) of the Act does not 'challenge the underlying rationale for the common law approach to complaint evidence in sexual assault cases. Many people, including members of the judiciary, have expressed disquiet about that rationale.' There is a need for reform of this law.

In October, 2006, the Tasmania Law Reform Institute recommended that the law prohibit trial judges from giving a direction that a delay in complaint 'may be indicative of fabrication'. In doing so it referred to a similar approach adopted by the Australian, Victorian, New South Wales Law Reform Commissions, and cited the New South Wales Legislative Council Standing Committee on Law and Justice's criticism of the *Crofts* direction as encouraging 'a stereotypical view that delay is invariably a sign of the falsity of the complaint.'

Australian States and Territories and law reform commissions have recommended various ways of replacing these warnings because, taken one by one or together, they are not achieving their aims. The principle behind those reforms is clear—that it should not be assumed or suggested to a jury that a delay in reporting a sexual offence necessarily means that the complainant is lying, and that, indeed, juries should understand that there are often legitimate reasons for not reporting a sexual offence for some time.

This Bill deletes section 34I of the Act and replaces it with a new provision (section 34M) that:

- expressly abolishes the common law on the admissibility of recent complaint in sexual cases, including the *Kilby/Crofts* directions;
- forbids any suggestion or statement to a jury that the timing of the reporting of a sexual offence has an inherent significance for the complainant's credibility or consistency of conduct; and
- allows the admission of evidence of a complainant's initial report of a sexual offence, if relevant, whenever that occurred. That evidence may include evidence about when the report was made and to whom, its content, how the complaint was solicited, why the complainant reported the alleged offence to that person at that time and why the complainant did not report the alleged offence to someone else at an earlier time (if relevant).

When admitting such evidence in a trial before a jury, the judge must give the jury specific directions about how to treat the evidence, but is not bound to use a particular form of words in doing so. The judge must direct the jury that this is hearsay evidence that may not be used as evidence of the truth of what was alleged; that the reason it is admitted is to show how the allegation first came to light; that there may be any number of reasons for the alleged victim of a sexual offence reporting the allegation to a particular person at a particular time; and that it is the jury's job to determine what significance, if any, should be given to the evidence of that report in the circumstances of the particular case.

Direction relating to delay where defendant forensically disadvantaged

When there is a long delay in reporting a sexual offence, and that delay has caused a forensic disadvantage to the defendant, that fact should be pointed out to the jury. However, the current law goes further than that. Under the *Longman* principle, the court must warn the jury to treat the evidence of the complainant with caution when there has been a long delay in reporting a sexual offence, regardless of whether that long delay has caused a forensic disadvantage to the defendant, and regardless of whether in every other respect the evidence of the complainant requires no special scrutiny. In effect, the law assumes that a long delay in reporting a sexual offence will have an adverse forensic effect in every case and indicated some unreliability on the part of the complainant.

Whenever a *Longman* warning is given, the jury hears that it would be unsafe or dangerous to convict the defendant. If a jury hears a warning in those terms it is highly likely to acquit, especially if it follows a *Kilby/Crofts* warning in a case where no evidence has been given to explain the delay.

There is no settled judicial authority about what constitutes a delay long enough to invoke a *Longman* warning about the dangers of conviction in a sexual assault trial, because each case is different, but the average threshold appears to be about four years.

This Bill abolishes the *Longman* warning as it applies to sexual cases. It inserts a new requirement for a jury direction in such cases that takes the approach that a judge considering whether to give a *Longman* warning in a sexual case should examine the delay, however long, in the light of any asserted forensic disadvantage to the defendant, and determine whether the delay (again, however long) caused the defendant that disadvantage.

It requires a trial judge, if of the opinion that the period of time that has elapsed between the date of the alleged offending and the date of trial has caused the defendant a forensic disadvantage, to explain to the jury the nature or likely nature of that disadvantage and direct the jury to take that disadvantage into account when scrutinising the evidence.

In giving this direction, the trial judge may caution the jury about the specific effects the disadvantage had on the ability of the defendant to mount a defence in this case but must avoid generalised and non-specific warnings and, in particular, must not use the phrase 'dangerous or unsafe to convict'.

The provision does not refer to a delay in complaint, because that is not the proper focus of the jury in these cases. This amendment, together with the amendments as to evidence relating to complaint in sexual cases, will stop the jury being warned that a delay between the offending and trial makes the complainant's evidence inherently unreliable.

Directions relating to consent in certain sexual cases

The *Criminal Law Consolidation (Rape and Sexual Offences) Amendment Bill 2007* introduces a definition of consent to sexual activity that applies to any sexual offence of which consent is in issue. The definition includes a non-exhaustive list of examples of circumstances in which a person is to be taken not to freely and voluntarily agree to sexual activity; in other words, circumstances in which the victim has apparently consented but the consent is not a proper or real consent.

This Bill complements those provisions by requiring a judge in a jury trial of a sexual offence in which consent is an element, and to the extent that it is relevant to the circumstances of the case, to direct the jury that a person is not to be regarded as having consented to a sexual act just because the person did not say or do anything to indicate that the person did not consent; or the person did not protest or physically resist; or the person did not sustain a physical injury; or on that occasion or an earlier one, the person had consented to engage in a sexual act (whether or not of the same kind) with the accused person or someone else.

By defining consent in this way, and requiring the judge to direct the jury so that it cannot misinterpret evidence about the conduct of the alleged victim to infer consent when there was none, the amendments to the *Criminal Law Consolidation Act 1935* and the *Evidence Act 1929* send a clear message about the limits of lawful sexual conduct.

Sensitive material

As a general rule, a defendant is entitled to see and have a copy of any material that the prosecution will adduce as evidence in his

or her trial, unless the material is pornographic, in which case the defendant may inspect it but may not have a copy of it. In this way defendants can be fully informed of the case against them and in a position to defend it.

Some images that are used as evidence in criminal proceedings, although not pornographic, are highly sensitive, in the sense that their subjects might feel distressed if anyone other than those investigating, prosecuting or trying the case had uncontrolled access to them. An example is a photograph of a sexual assault victim's genitals taken by the sexual assault unit of a hospital for use as prosecution evidence. That is not a pornographic image, but the victim may not want the system to allow or require the prosecuting authority to give the alleged offender a copy of it: that would be to add insult to injury. Other examples are a photograph of a person taken after the person's death, an innocent image of a young child that has been displayed on a pornographic website to lure other pornographers to the site, or a facial photograph of an alleged victim of a stalking or sexual offence.

None of the images described in these examples is pornographic. Under the current law, there is nothing to stop the defendant from obtaining and keeping a copy of that material, from displaying it in his prison cell, from taking further copies or from sending it or showing it to others. Requiring the prosecuting authority to give unrestricted access to this material is a perverse outcome of rules that were designed for fair play.

This Bill applies to any criminal proceeding, not just proceedings for sexual offences, and to all stages of such a proceeding. It restricts access by a defendant, or anyone else, to sensitive material created or obtained as part of a criminal investigation or prosecution. Anything that contains or displays an image of a person is sensitive material if the image is of a person engaged or apparently engaged in a private act, or is of the victim or alleged victim of a sexual offence or an offence of stalking, or the image is taken after the person's death.

A 'private act' means a sexual act or one involving an intimate bodily function, or an activity involving nudity or exposure of sexual organs, pubic area, buttocks or female breasts.

The decision about whether something is sensitive material is made by the prosecuting authority. In criminal proceedings, the prosecuting authority is the Director of Public Prosecutions or delegate, a police officer or anyone acting in a public official capacity who is responsible for commencing and conducting the proceedings. In criminal investigations, the prosecuting authority is a police officer or any other person acting in a public official capacity who is responsible for conducting a criminal investigation.

The prosecuting authority may restrict access to sensitive material. It cannot, however, restrict access to sensitive material by a court or by a public official who reasonably requires access to it for purposes connected with his or her official functions, or by the person whose image is contained or displayed in the material. A public official may be a judge, magistrate, or other person with power to act judicially, a coroner, a police officer, a public servant or a person classified by regulation as a public official.

When restricting access to sensitive material, the prosecuting authority may set conditions of access. These conditions will let the material be examined under supervision. The Bill establishes notice procedures similar to those in the New South Wales Act.

It is an offence to fail to meet those conditions of access.

It is also an offence for anyone who creates sensitive material for a prosecuting authority (such as a forensic photographer) or who obtains possession of sensitive evidence from a prosecuting authority in connection with a criminal investigation or criminal or civil proceedings to allow access to the evidence, unless for the legitimate purposes of the investigation or proceedings, or by permission of prosecuting authority. A public official who has created or has access to sensitive evidence for official purposes who allows access outside those purposes will also be guilty of an offence. These offences carry maximum penalties of $8000 or two years imprisonment or both.

The Bill provides that the court's decision about access to sensitive material that is in its custody is administrative and final and not subject to any form of review. The court may also charge a fee, fixed by regulation, for inspection or copying of sensitive material. These provisions are identical to those in the *Supreme Court Act 1935* regulating public access to evidence.

The Schedule to the Bill contains consequential amendments to the provisions dealing with access to documents that are in the custody of the court (section 131 *Supreme Court Act 1935* and its equivalents in the *District Court Act 1991* (section 54) and the *Magistrate Court Act 1991* (section 51)) so that there can be no public access to sensitive material under these sections.

The Schedule also contains further consequential amendments to the provisions in the *Summary Procedure Act 1921* that make an exception to the requirement for full disclosure of material that the prosecution intends to adduce as evidence in cases where that material is pornographic. These amendments replace the references to pornographic material with references to sensitive material, and refer to the sensitive material notice procedures to be established by the insertion of Part 7, Division 10 of the *Evidence Act 1929*.

IN SUMMARY

This Bill reforms the way judges warn and direct juries in sexual offence proceedings, reforms criminal procedures to reduce the impact upon children of delay in giving evidence of sexual abuse, and substantively reforms the law of recent complaint and of the effect of delay in sexual offence cases.

This Bill will also protect witnesses, especially children and alleged victims of sexual offences of serious offences of violence, from undue distress when giving evidence in court, and so improve the quality of their evidence. It puts into place some important recommendations about children and the courts by the Layton Child Protection Review. It will ensure that appropriate special arrangements for taking evidence can be made when a witness is vulnerable. It will ensure that evidence is not treated dismissively or differently simply because it comes from a child. It will make it easier for a disabled witness to give evidence and ensure judges and juries understand how the disability affects the way this witness communicates with the court. It will let courts hear evidence that is of the best possible quality because it is not contaminated by fear or distress, and, when this is the best evidence available, admit hearsay evidence of what a young child or mentally-disabled person has said about an alleged offence and allow them to be exempted from having to give evidence in person. The Bill will shield alleged victims from pernicious personal cross-examination by unrepresented defendants and give greater authority to the court to protect witnesses from improper questions by counsel. It will let a court admit as the evidence of a vulnerable witness, without that witness having to give the evidence in person, an official record of the evidence given by that witness in an earlier criminal proceeding in some circumstances. It will let a criminal court take an audio visual record of a vulnerable witness's evidence so that it can be used in later proceedings as an official record of that witness's evidence. It will ensure that access to sensitive prosecution material is restricted to protect the privacy and dignity of the subject of that evidence.

The Bill will also preserve the accused person's right to a fair trial and ensure that these provisions work in a way that will not prejudice a jury against an accused.

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 *Evidence Act 1929*

4—Amendment of section 4—Interpretation

The proposed amendments to this section insert the following definitions:

- mental disability;
- serious offence against the person;
- vulnerable witness.

5—Substitution of sections 12A and 13

12A—Warning relating to uncorroborated evidence of child

The substance of current section 12A is restated in new section 12A with a number of additions. The new section provides that, if, in a criminal trial, a child gives sworn evidence that is not corroborated, the judge must not warn the jury that it is unsafe to convict on the child's uncorroborated evidence unless—

(a) the warning is warranted because there are, in the circumstances of the particular case, cogent reasons, apart from the fact that the witness is a child, to doubt the reliability of the child's evidence; and

(b) a party asks that the warning be given.

In giving any such warning, nothing may be said that suggests that the evidence of children is inherently less credible or reliable, or requires more careful scrutiny, than the evidence of adults.

13—Protection of witnesses

New section 13 provides courts with powers to make special arrangements for the taking of evidence of a witness to protect the witness from embarrassment or distress, from being intimidated by courtroom atmosphere or for any other proper reason. The arrangements can be ordered if the necessary resources are readily available and if the arrangements would not cause prejudice to any party to the proceedings.

Subsection (2) lists the sorts of orders that may be made, subsection (3) provides that special arrangements may relate to the whole of the witness's evidence or only to particular aspects of the witness's evidence (such as, cross-examination or re-examination) and subsection (4) sets out when such orders may not be made. They may not be made if the effect of the order would be—

- to relieve a witness from the obligation to give sworn evidence; or
- to relieve a witness from the obligation to submit to cross-examination; or
- to prevent the judge, jury or defendant from observing the witness's demeanour in giving evidence.

If, in a trial by jury, a court makes special arrangements for taking the evidence of a witness, the judge must warn the jury not to draw from that fact any inference adverse to the defendant, and not to allow the special arrangements to influence the weight to be given to the evidence.

The section then proceeds to provide for the protection of vulnerable witnesses (as defined in section 4 of the Act). If a vulnerable witness is to give evidence in criminal proceedings, appropriate special arrangements for taking the evidence must, on application by the witness or the party calling the witness, be made under this section.

The court may dispense with special arrangements on the grounds that—

- the facilities necessary for the special arrangements are not readily available to the court; or
- it is not in the interests of the administration of justice to make the special arrangements.

13A—Cross-examination of victims of certain offences

New section 13A provides that a defendant is not to be permitted to cross-examine a witness who is the alleged victim of an offence to which this section applies in proceedings relating to the offence unless the cross-examination is by counsel. A defendant who is unrepresented in proceedings must be warned of this limitation and be given a reasonable opportunity to obtain the assistance of counsel for the purpose. The section applies to—

- a serious offence against the person; or
- an offence of contravening or failing to comply with a domestic violence restraining order under the *Domestic Violence Act 1994*; or
- an offence of contravening or failing to comply with a restraining order under the *Summary Procedure Act 1921*.

13B—Court's power to make audio visual record of evidence of vulnerable witnesses

New section 13B provides that if a vulnerable witness who is a child of or under the age of 16 years and who is the alleged victim of a sexual offence is to give evidence in criminal proceedings, the court must order that an audio visual record be made of the witness's evidence before the court (unless an order has already been made in respect of the witness's evidence under section 13(2)(b)).

For any other vulnerable witness giving evidence in criminal proceedings, the court may, on application by the prosecution, order that an audio visual record be made of the witness's evidence before the court if the facilities necessary for making an audio visual record of the evidence are readily available to the court and it is otherwise practicable to make such a record.

The record is to be kept in the custody of the court and may only be used and accessed as authorised by the court.

13C—Court's power to admit evidence taken in earlier proceedings

New section 13C provides that, on application by a party to civil or criminal proceedings before a court, the court has discretion to admit an official record of evidence given by a witness in earlier criminal proceedings if satisfied that the witness—

- has died; or
- has become too ill or infirm to give evidence; or
- has not, after diligent search, been found; or
- is a vulnerable witness.

If the court admits an official record into evidence, it may relieve the witness, wholly or in part, from an obligation to give evidence in the later proceedings.

6—Substitution of section 25

25—Disallowance of improper questions

Proposed substituted section 25 provides that if an improper question is put to a witness in cross-examination, the court must disallow the question and inform the witness that the question need not be answered. A question is improper if—

- it is misleading or confusing; or
- it is apparently based on a sexual, racial, ethnic or cultural stereotype; or
- it is unnecessarily repetitive, offensive or oppressive, or is 1 of a series of questions that is unnecessarily repetitive, offensive or oppressive; or
- it is put in a humiliating, insulting or otherwise inappropriate manner or tone.

7—Insertion of heading to Part 3 Division 1

It is proposed to divide Part 3 into 2 Divisions, the first being headed "Miscellaneous rules of evidence in general cases".

8—Substitution of section 34CA

Section 34CA is to be repealed and a new section 34CA substituted.

34CA—Statement of protected witness

New section 34CA provides that a court may admit hearsay evidence of the nature and contents of a statement made outside the court by a protected witness from the person to whom the statement was made if—

- the court, having regard to the circumstances in which the statement was made, is satisfied that the statement has sufficient probative value to justify its admission; and
- either—
- the protected witness has been called, or is available to be called, as a witness in the proceedings; or
- the court exempts the protected witness from giving evidence.

The section sets out the circumstances in which a court may exempt a protected witness from giving evidence and defines a protected witness as a young child or a person who suffers from a mental disability that adversely affects the person's capacity to give a coherent account of his or her experiences or to respond rationally to questions. If, in a trial by jury, a protected witness is exempt from giving evidence, the judge must warn the jury that hearsay evidence should be scrutinised with particular care because it has not been tested in the usual way.

9—Repeal of section 34I

Section 34I is to be repealed (but see new section 34L).

10—Insertion of Part 3 Division 2

This Division deals with miscellaneous rules of evidence particular to proceedings in which a person is charged with a sexual offence.

Division 2—Miscellaneous rules of evidence in sexual cases

34L—Evidence in sexual cases generally

New section 34L is, in essence, the current section 34I relocated and renumbered and with current subsection (6a) repealed. The proposed section also makes some minor changes to the language used in the section to reflect current drafting practice.

34M—Evidence relating to complaint in sexual cases

New section 34M abolishes the common law relating to recent complaint in sexual cases; that is, the rule that currently applies in relation to the giving of a *Kilby* or *Crofts* direction, and substitutes a statutory scheme in its place. The new section forbids the making of a suggestion or statement to the jury that a delay in making a complaint etc is of itself of probative value in relation to the alleged victim's credibility or consistency of conduct. This reflects modern perceptions related to the reasons a complainant may choose not to make a complaint at the earliest opportunity. Consequently,

the section provides that evidence related to the making of a complaint is admissible in certain trials. However, certain directions and warnings must be given to juries in relation to such evidence of the kind set out in the provision.

34N—Warning relating to delay where defendant forensically disadvantaged

New section 34N abolishes the rule that currently applies in relation to the giving of a *Longman* warning, and substitutes a statutory scheme in its place. The scheme effectively modifies the *Longman* warning as it relates to sexual offences, and replaces it with a requirement that, if a forensic disadvantage caused by a delay in the defendant becoming aware of the charges he or she faces has occurred, the trial judge must give the explanations and directions set out in the provision to the jury. Previously, a *Longman* warning was required to be in the form of a warning to the jury, warning them of the fact that a conviction based on the relevant evidence alone may be dangerous or unsafe. Those (or similar) words or phrases are no longer to be used in the giving of an explanation or direction under the proposed section, reflecting the fact that those explanations and directions may no longer take the form of a warning.

34O—Directions relating to consent in certain sexual cases

New section 34Q reflects proposed amendments to the *Criminal Law Consolidation Act 1935* to the rape and sexual assault laws and, in particular, those amendments relating to the issue of consent.

Consequent to those amendments, this proposed section makes provisions related to the type of direction the trial judge must give to the jury in relation to the consent given or not given by the victim of the offence. In particular, the judge must direct the jury that a victim is not to be regarded as having consented to the sexual activity the subject of the charge merely because the victim did, or did not do, the things set out in the provision.

11—Amendment of section 59IQ—Appearance etc by audio visual link or audio link

The amendments proposed to this section are consequential on the enactment of the *Statutes Amendment (Domestic Partners) Act 2006*.

12—Insertion of Part 7 Division 10

It is proposed to insert a new Division after section 67F of the Act. This new Division will make provision for the manner in which defendants and other persons will have access to sensitive material.

Division 10—Sensitive material

1—Interpretation and application

New section 67G contains definitions of words and phrases used in this new Division, including the definition of a private act. A ***private act*** is defined to mean a sexual act, an act involving an intimate bodily function (such as using a toilet) or an activity involving nudity or exposure or partial exposure of sexual organs, pubic area, buttocks or female breasts.

2—Meaning of sensitive material

New section 67H provides that, for the purposes of this new Division, anything that contains or displays an image of a person is ***sensitive material*** if—

- the image is of the person engaged or apparently engaged in a private act; or
- the image is an image of the victim, or alleged victim, of a sexual offence or the offence of stalking; or
- the image was taken after the person's death.

A reference to ***sensitive material*** extends to anything in a prosecuting authority's possession that the prosecuting authority reasonably considers to be sensitive material.

3—Procedures for giving restricted access to sensitive material

New section 67I provides that if, but for new Division 10, a prosecuting authority would be required to give unrestricted access to sensitive material, the prosecuting authority has a discretion to give either unrestricted or restricted access to the material.

A prosecuting authority cannot, however, restrict access to sensitive material by—

- a court; or
- a public official who reasonably requires access to the sensitive material for purposes connected with his or her official functions; or
- the person whose image is contained or displayed in the sensitive material.

It is an offence for a person who is given restricted access to sensitive material by a prosecuting authority under this proposed section to contravene a condition of access with a penalty of $8 000 or 2 years imprisonment.

4—Improper dissemination of sensitive material

New section 67J(1) provides that it is an offence for a person who creates sensitive material for a prosecuting authority, or obtains possession of sensitive material from a prosecuting authority, in connection with a criminal investigation, or criminal or civil proceedings, to allow access to the evidence except—

- for the legitimate purposes of the investigation or proceedings; or
- as may be authorised by the prosecuting authority.

Proposed subsection (2) provides that it is an offence if a public official who creates, or obtains possession of, sensitive material in connection with official functions, to allow access to the evidence otherwise than in the course of official functions.

The penalty for an offence against this proposed section is a fine of $8 000 or imprisonment for 2 years or both.

13—Amendment of section 71B—Publishers required to report result of certain proceedings

This proposed amendment moves the penalty provision from subsection (2) to subsection (1) where it rightly belongs.

14—Transitional provision

This clause provides that the amendments made by Part 2 of this measure to the *Evidence Act 1929* apply to proceedings commenced after the commencement of that Part.

Schedule 1—Related amendments

The Schedule contains related amendments to the following Acts:

- *Criminal Law (Legal Representation) Act 2001*;
- *District Court Act 1991*;
- *Magistrates Court Act 1991*;
- *Summary Procedure Act 1921*;
- *Supreme Court Act 1935*.

Mrs REDMOND secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION (RAPE AND SEXUAL OFFENCES) AMENDMENT BILL

The Hon. M.J. ATKINSON (Attorney-General) obtained leave and introduced a bill for an act to amend the Criminal Law Consolidation Act 1935; and to make a related amendment to the Child Sex Offenders Registration Act 2006. Read a first time.

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

That this bill be now read a second time.

The bill is a result of the government's review of South Australia's rape and sexual assault laws in 2006. The bill amends the Criminal Law Consolidation Act 1935 and makes related amendments to the Child Sex Offenders Registration Act 2006 to deal with three of the topics raised by Liesl Chapman: reform of the offence of persistent sexual abuse; reform of the offence of rape; and reform of the law on severance of trials for sexual offence proceedings. It also defines sexual penetration to refer to both natural and surgically constructed female genitalia. The bill also makes a minor statutory revision to section 76 of the act by deleting its reference to section 64 of the act now repealed. I seek leave to insert the remainder of the second reading explanation in *Hansard* without my reading it.

Leave granted.

This Bill is a result of the Government's review of South Australia's rape and sexual assault laws in 2006. It is part of a package of reforms that includes procedural amendments in the

Evidence (Miscellaneous) Amendment Bill 2007, also introduced in this sitting.

The Government wishes to expedite the passage of this package of reforms. These are consultative Bills that are being introduced early in the session so that they can be left to lie on the table to allow for consultation before debate begins.

We intend to seek comment on the Bills from a wide group of people, including those who responded to the discussion paper on rape and sexual reform options that the Government issued last year. We have already consulted the writer of that paper, Ms Liesl Chapman, about this Bill and will continue to consult her about it. We also invite comment from members of the public and from relevant interest groups including the judiciary, the Courts Administration Authority, the Director of Public Prosecutions, O.D.P.P. Witness Assistance Officers, SAPOL, the Law Society of South Australia, the South Australian Bar Association, the Aboriginal Family Violence Legal Service, the Aboriginal Legal Rights Movement, the Legal Services Commission, community legal centres, the Victims of Crime Co-ordinator, the Victim Support Service Inc., Business & Professional Women S.A., Children in Crisis, the Department for Families and Communities including the Office for Women and the Child, Youth & Women's Health Service, the Schools of Law at both Adelaide and Flinders Universities, the Migrant Resource Centre of S.A., the Premier's Council for Women, Uniting Care Wesley, the Women's Legal Service S.A., Relationships Australia (S.A.), Stop Rape Now and Yarrow Place.

BACKGROUND TO THE BILL

In early 2006, the Government asked Ms Liesl Chapman, an experienced prosecutor now at the independent bar, to develop options for discussion on topics for reform of South Australia's rape and sexual assault laws.

Ms Chapman prepared independent reform options for discussion in five broad areas:

- reforms to reduce the impact upon children of delay in giving evidence of sexual abuse;
- reform of the offence of persistent sexual abuse;
- reform of the offence of rape;
- reform of the law on whether juries can hear about sexual offending by an accused upon other complainants; and
- reform of the law on complaint evidence in sexual-assault cases.

Her discussion paper was published in March 2006, and the Government invited comment from interest groups and the public. This legislation and the related amendments to the *Evidence Act 1929* to which I have previously referred are the product of that consultation.

This Bill amends the *Criminal Law Consolidation Act 1935* and makes related amendments to the *Child Sex Offenders Registration Act 2006* to deal with three of the topics raised by Ms Chapman: reform of the offence of persistent sexual abuse, reform of the offence of rape and reform of the law on severance of trials, for sexual-offence proceedings. It also defines sexual penetration to refer to both natural and surgically-constructed female genitalia.

The Bill also makes a minor statutory revision to s76 of the Act by deleting its reference to s64 of the Act, now repealed.

AMENDMENTS TO THE CRIMINAL LAW CONSOLIDATION ACT 1935

Definition of sexual penetration

Under the current definition of sexual intercourse, which includes the sexual penetration of a person's anus or labia majora, people who have had surgery to construct or enhance a vagina or labia majora (for example, victims of female genital mutilation or transsexuals), will not be considered to have been raped if someone has vaginal sexual intercourse with them against their will.

The Bill redresses this anomaly by making it clear that sexual penetration of a person will include penetration of a surgically-constructed or enhanced vagina or labia majora.

Substantive reform of the offence of rape

The Bill defines consent to sexual activity, redefines sexual intercourse and reconstructs the offence of rape to refer to a legislated definition of reckless indifference.

What constitutes consent

The Bill provides that a person is not to be taken to have consented to sexual activity (which includes but is not confined to sexual intercourse) unless he or she has freely and voluntarily agreed to the sexual activity.

The Bill sets out some circumstances where, although a person may have agreed to sexual activity, that agreement was not free and voluntary and the court will not consider it to be consent. A person's apparent agreement will not be taken to be consent to sexual activity if the person agreed only because force was applied to him or her or some other person; or because there was an express or implied threat of such force, or because he or she feared the application of such force, or because there was a threat to humiliate, disgrace or physically or mentally harass him or her or some other person.

The Bill also gives a non-exhaustive list of circumstances in which a person will be taken not to have freely or voluntarily agreed to sexual activity, and has therefore not consented to it.

All these circumstances have been identified in court decisions in rape cases as vitiating consent. They include when the person is unlawfully detained at the time of the activity, or if the activity occurs while he or she is asleep or unconscious, or if the activity occurs while he or she is so intoxicated (whether by alcohol or any other substance or combination of substances) that he or she is incapable of freely and voluntarily agreeing, or if the activity occurs while he or she is affected by an intellectual, mental or physical condition or impairment of such a nature and degree that he or she is incapable of freely agreeing. A person who is unable to understand the nature of the act or who is mistaken as to the nature of the act will also be taken not to have freely or voluntarily agree to it.

Other Australian jurisdictions, the U.K., Canada and New Zealand have used similar provisions to clarify the bounds of sexual conduct under the law. The approach taken in this Bill, like other recent Australian legislation, is based on a model proposed by the Model Criminal Code Officers Committee.

The other Bill amending the *Evidence Act 1929* will set out the kinds of directions a judge must give a jury about consent in sexual offence proceedings.

Belief in consent

The common law on belief in consent in rape is that a person believes another to have consented to sexual intercourse if that belief was held honestly. It does not matter that the belief was mistaken or unreasonable. This is so because serious criminal offences are generally for intentional wrongdoing. Guilt depends on proof of what the person actually believed.

In some rape cases, however, it is clear that although the accused person honestly (albeit mistakenly) believed that the alleged victim consented to the sexual act, the accused's mistaken but honest belief was quite unreasonable in the circumstances. Also, a belief in consent may be held honestly without the accused having so much as turned his or her mind to whether the other person consented or having taken any reasonable steps towards ascertaining consent.

Many say this subjective approach is based on outdated and now inappropriate concepts of acceptable sexual behaviour, and should be changed either by:

- abandoning the subjective approach in favour of an entirely objective one, or
- retaining the subjective approach but allowing a defence of honest and reasonable mistake that must be disproved by the prosecution, or
- allowing a defence of honest mistake that is not allowed in certain circumstances, and must be disproved by the prosecution, or
- retaining the subjective approach and, rather than retaining a defence of mistake, expanding the meaning of reckless indifference to reflect contemporary standards of acceptable sexual behaviour.

In its decision in *Banditt v The Queen* [2005] HCA 80, the High Court examined the meaning of the expression 'reckless as to whether the other person consents to the sexual intercourse', acknowledging the uncertainty of the law in this area. Callinan J summarised Australian and U.K. authorities thus:

105 . . . Western Australia, Queensland and Tasmania impose objective tests, so that an honest belief in consent will not negate criminal responsibility unless it be reasonably held. Victoria adopts a statutory test of awareness that the other person "is not consenting or might not be consenting". South Australia has enacted a statutory formulation as to the mental element of rape similar to [the N.S.W.] s 61R(1). Section 48 of the Criminal Law Consolidation Act 1935 (S.A.) as amended by Act No 83 of 1976, provides that the offence is made out by establishing knowledge of absence of consent, or reckless indifference as to whether the other person consents to sexual intercourse with him. In Egan, White J (with whom Zelling and Mohr JJ agreed) said :

> "Once it is clearly proved that she might not be consenting, then the man is recklessly indifferent if he presses on with intercourse without clearing up that difficulty of possible non-consent. . . .

Upon receiving notice of the possibility of her non-consent, he is put upon inquiry before he proceeds to intercourse."

The High Court unanimously dismissed the accused's appeal against conviction, holding that the accused was reckless in proceeding to intercourse because he was aware, from the complainant's previous rebuff of his advances, that there was a risk of non-consent. It held that it was not necessary for the prosecution also to establish a determination to proceed with intercourse regardless of lack of consent.

The court disagreed, however, on how the judge should explain 'recklessness to consent' to the jury. The majority thought that:

It may well be said that "reckless" is an ordinary term and one the meaning of which is not necessarily controlled by particular legal doctrines. However, in its ordinary use, "reckless" may indicate conduct which is negligent or careless, as well as that which is rash or incautious as to consequences; the former has an "objective", the latter a "subjective", hue. These considerations make it inappropriate for charges to juries to do no more than invite the application of an ordinary understanding of "reckless" . . . .

. . . . In the present case, the trial judge properly emphasised that it was not the reaction of some notional reasonable man but the state of mind of the appellant which the jury was obliged to consider and that this was to be undertaken with regard to the surrounding circumstances, including the past relationship of the parties.

The South Australian law on rape requires proof of the accused's knowledge of lack of consent or reckless indifference as to consent. There is nothing wrong with that formulation other than that it leaves unstated the meaning of reckless indifference, which can cause uncertainty.

Although respondents to the discussion paper were divided on some aspects of consent reform, the majority thought a subjective approach acceptable if reckless indifference were defined more broadly to capture situations where person is aware that the other person might not consent but goes ahead anyway, or does not give any thought to whether the other person consents (for any reason, including self-induced intoxication), or does not take reasonable steps, in the circumstances, to ascertain whether the other person was consenting.

This Bill takes this approach. It requires the prosecution to prove that there was an act of sexual intercourse, that the complainant did not consent to that act, and either that the accused knew the complainant was not consenting or was recklessly indifferent as to whether the complainant was consenting to that act of sexual intercourse or failed to take reasonable steps, in the circumstances, to ascertain whether the other person consented to the sexual intercourse.

It then defines reckless indifference to sexual intercourse in a way that indicates more than mere negligence or carelessness and conforms with judicial interpretation of this concept.

Reckless indifference as to consent to sexual intercourse is defined to mean either that the accused realised the possibility that the other person might not be consenting or that the accused did not give any thought as to whether or not the other person was consenting but proceeded to have sexual intercourse with the other person regardless.

Substantive reform of the offence of persistent sexual abuse

The Bill repeals the offence of persistent sexual abuse of a child in s74 *Criminal Law Consolidation Act 1935* and replaces it with a new offence of 'persistent sexual exploitation of a child'.

The current offence of persistent sexual abuse was enacted to overcome problems such as those identified by the High Court in the case of *S v the Queen* and by the South Australian Court of Criminal Appeal in *R v S*. In that case multiple offences against the same child were charged as having occurred between two specified dates, each one being part of an alleged continuous course of conduct. Because the evidence given of the alleged course of conduct was not sufficiently related to the particular charges, in that the child could not identify particular occasions and link them with particular counts, an appeal against conviction was allowed and an acquittal entered.

The offence of persistent sexual abuse is rarely charged because it fails to overcome the very problem of particularity that it tried to remedy. Children are still unable to identify precisely when the three separate incidents of abuse occurred.

This Bill takes a similar approach to the one taken in the Queensland Criminal Code.

The new offence of persistent sexual exploitation of a child is to engage in more than one unlawful sexual act with the child over a period of more than 24 hours.

An unlawful sexual act is an act that constitutes an offence of rape, unlawful sexual intercourse, indecent assault, gross indecency, procuring a child to commit an indecent act, use of children in commercial sexual services, incest, or an attempt to commit any of these offences.

The new offence allows a course of conduct consisting of several unlawful sexual acts to be charged and proved without the high degree of particularity required if each act were charged as a separate offence (for example, unlawful sexual intercourse). It also allows a particular unlawful sexual act that took place in that course of conduct to be charged in the same indictment as a separate sexual offence, but only as long as it is alleged with the usual particularity.

The defendant cannot be punished for the same conduct twice when convicted on the same indictment of the offence of persistent sexual exploitation of a child and also of a separate sexual offence against that child occurring as part of the offence of persistent sexual exploitation of a child.

In reaching its verdict, the jury need not be satisfied of precisely when and where an unlawful sexual act occurred if it is satisfied beyond reasonable doubt that the act did occur at some time during the persistent sexual exploitation of that child by the defendant. Also, all members of the jury need not be satisfied about the same unlawful sexual acts by the defendant, as long as they are satisfied that more than one occurred in the relevant time.

Like the repealed offence, the new offence applies when the child is under the age of 17 years, or, if the adult is the guardian, schoolmaster, school mistress or teacher of the child, under the age of 18 years. This is called the prescribed age. If the child was at least 16 years of age when the offence was alleged to have been committed, it is a defence to prove that the defendant believed on reasonable grounds that the child was at least the prescribed age. This is the same defence that applies to the charge of unlawful sexual intercourse.

The new offence retains the maximum penalty of life imprisonment.

In focussing on a course of conduct, the offence strikes a balance between fairness to the accused and an acknowledgement that the problems of describing with sufficient particularity events alleged to have occurred over long periods are as insurmountable a barrier to the successful prosecution of an offence of persistent sexual abuse as they are to the successful prosecution of a series of offences charged separately.

Joinder of charges against a person accused of sexual offences against more than one alleged victim

Section 278(2) *Criminal Law Consolidation Act 1935* permits a judge to order a separate trial on of any count or counts on an information if of the opinion that the accused person may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same information or that, for any other reason, it is desirable to direct that an accused person should be tried separately for any one or more offences charged in an information.

This provision applies to all kinds of criminal proceedings.

In prosecutions for sexual offences allegedly committed against several different people, courts will often order separate trials even if there is some cross-admissibility of evidence. This means that there will be a different jury hearing the allegations against the defendant that concern each separate alleged victim. None of these juries will hear anything about the allegations against the defendant in respect of the other alleged victims.

Judges make these rulings to prevent unfairness to a defendant when they think there is a risk that, if evidence of the defendant's similar conduct towards people other than the complainant in this case is admitted, the jury will use evidence of that conduct to sustain a finding of guilt on the charge before them even though there is not enough evidence before them to sustain such a finding beyond reasonable doubt.

Some say this demonstrates a lack of faith in the jury. Others say it is reasonable for the court to anticipate and prevent prejudice to a defendant in a system of justice that is based on a presumption of innocence. In sexual cases, however, and particularly those where a person is charged with offences against different children, it often means that a jury may not hear evidence about an alleged offence in its full context.

This Bill makes an exception to the rules of joinder and severance of counts for sexual-offence cases, for which it creates a presumption that counts charging sexual offences by the same person against different alleged victims that are joined in the same information are triable together.

The presumption may be rebutted, so that a separate trial may be ordered for a count relating to a particular alleged victim, only if evidence relating to that count is not admissible in relation to any other count relating to any of the other alleged victims.

In determining the relative admissibility of evidence of a count relating to one victim as to counts relating to another for the purposes of ordering separate trials, the Bill provides that evidence relevant to that count is admissible only if it has a relevance beyond mere propensity.

The Bill also provides that in determining whether to exclude evidence relating to a count on the grounds that its probative value is outweighed by its prejudicial effect (a standard test for admissibility) the judge may not have regard to whether or not there is a reasonable explanation in relation to the evidence that is consistent with the innocence of the defendant or whether or not the evidence may be the result of collusion or concoction. Both these matters are for the jury to decide; the judge may not prevent the jury hearing evidence for these reasons alone. Even if the judge thinks there is a possibility that the evidence is, for example, the result of collusion or concoction, he or she may not, all other things being equal, exclude this evidence from the trial. The jury will hear it and, subject to all the other evidence it hears, and appropriate direction from the judge, decide what weight to give it.

The effect of this amendment will be to limit the circumstances in which the court may sever counts of sexual offences so that they are heard by different juries.

AMENDMENTS TO THE CHILD SEX OFFENDERS REGISTRATION ACT 2006

The Bill amends the *Child Sex Offenders Registration Act 2006* so that the repealed offence of persistent sexual abuse of a child, as in force until its repeal, and its replacement (the new offence of persistent sexual exploitation of a child) are each offences for which an offender is liable to registration under that Act.

In conclusion

This Bill declares and clarifies the legal boundaries of sexual behaviour that were until now to be found in the case law only, reforms the offence of persistent sexual abuse, and introduces a presumption that counts of sexual offences in the same information that involve several alleged victims should be heard together in the same trial.

It will be complemented by procedural amendments in the *Evidence (Miscellaneous) Amendment Bill* that amend the *Evidence Act 1929* to reform the way judges warn and direct juries in sexual offence proceedings, reform criminal procedures to reduce the impact upon children of delay in giving evidence of sexual abuse, and reform the law on complaint evidence in sexual-assault cases.

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 *Criminal Law Consolidation Act 1935*

4—Amendment of section 5—Interpretation

This clause amends the definition of ***sexual intercourse*** in section 5 of the Act to ensure that it includes penetration of the vagina and includes surgically constructed or enhanced female genitalia.

5—Substitution of section 48

This clause repeals the existing provision on rape and substitutes new provisions as follows:

47—Consent to sexual activity

This clause provides that a person consents to sexual activity (which expressly includes sexual intercourse) if the person freely and voluntarily agrees to the sexual activity. The provision then gives a list of situations in which a person is taken not to freely and voluntarily agree to sexual activity (although this list does not limit the circumstances in which a person may be found to not freely and voluntarily agree to sexual activity).

48—Rape

This clause enacts an offence of rape under which a person who has sexual intercourse with another person without consent, knowing that the other person does not consent to the sexual intercourse, being recklessly indifferent as to whether that other person consents to the sexual intercourse or having failed to take reasonable steps to ascertain whether the other person consents, is guilty of an offence and liable to life imprisonment. Proposed subsection (2) defines the concept of ***reckless indifference*** for the purposes of the provision.

6—Amendment of section 73—Proof of certain matters

This clause is consequential to proposed new section 47 (dealing with consent).

7—Substitution of section 74

This clause repeals section 74 and substitutes a new provision as follows:

74—Persistent sexual exploitation of a child

Under this provision, an adult who engages in persistent sexual exploitation of a child (defined as consisting of more than 1 unlawful sexual act with the child over a period of more than 24 hours) under the prescribed age is guilty of an offence punishable by life imprisonment. An ***unlawful sexual act*** is an act that constitutes or would, if sufficiently particularised, constitute an offence against section 48, 49, 56, 58, 63B, 68 or 72, or an attempt or assault with intent to commit, any of those offences. The ***prescribed age*** is generally 17, but is 18 if the adult is the guardian, schoolmaster, schoolmistress or teacher of the child.

Where the child was at least 16 years of age when the offence was alleged to have been committed, it is a defence to prove that the defendant believed on reasonable grounds the child was at least the prescribed age.

The prosecution is not required to allege the particulars of the alleged unlawful sexual acts that would be necessary if the acts were charged as separate offences and the jury is not required to be satisfied of the particulars of the alleged unlawful sexual acts that it would have to be satisfied of if the acts were charged as separate offences. In addition, all the members of the jury are not required to be satisfied about the same unlawful sexual acts.

The provision also provides for the charging in 1 information of an offence against the provision and 1 or more other sexual offences alleged to have been committed by the defendant in relation to the child in the course of the persistent sexual exploitation of the child. In such a case the defendant may be convicted of all or any of the offences so charged. If the person is convicted of both persistent sexual exploitation and 1 or more of the other offences, the sentences cannot be cumulative.

8—Amendment of section 76—Corroborative evidence in certain cases

This clause deletes an obsolete reference.

9—Amendment of section 278—Joinder of charges

This clause amends section 278 to provide a presumption that different counts of sexual offences involving different victims that are joined in the 1 information are triable together and to specify the circumstances in which a count may be severed. The proposed amendment also makes provision with respect to the exercise of the discretion to exclude evidence in such a case.

Schedule 1—Related amendment to *Child Sex Offenders Registration Act 2006*

1—Amendment of Schedule 1—Class 1 and 2 offences

This amendment is consequential to clause 7.

Mrs REDMOND secured the adjournment of the debate.

EQUAL OPPORTUNITY (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 October. Page 1165.)

Mrs REDMOND (Heysen): First, I indicate that I will be the lead speaker for the opposition on this bill, although I expect that a number of other members will wish to address the issues raised by this bill. I say at the outset that I am a little puzzled by a comment that the Attorney made today on radio when we were having a bit of a debate about this. He said, 'This will take months, if not years, to get through'. I thought that was rather odd because, according to my list, the

debate is listed for completion tonight. I do not think that that is likely to happen, given the number of speakers and the number of matters that I wish to raise as the lead speaker with no time limit.

I wonder whether the government would like to indicate what its intentions are in respect of this bill, because clearly there is considerable community agitation about it. At the outset, I note a couple of things. First, while we have a party position on most of the bill and that party position is to oppose the second reading, in accordance with our Liberal tradition we will have a conscience vote on matters pertaining to religion. Potentially, there will be a conscience vote on that one issue but, other than that, it will be a party position, and the party position is to oppose the second reading. I also at the outset thank the officers, particularly the Equal Opportunity Commissioner. Some briefings were provided to us last year, and I do thank Linda Matthews and other people from her office for the time they gave us.

I know that I attended three briefings. Whilst those briefings did serve to clarify some of the issues—and members will see that I have a fair pile of paperwork relating to this bill—even the commissioner could not answer all the questions which arose in the course of the briefings that we had towards the end of last year. I am glad that the debate on this was adjourned until at least this year so that we have had a little more time to get through some of the issues. I thank the officers involved for those briefings. It would have to be said that it is conceded that large parts of this bill simply repeat what already binds people in this state by virtue of commonwealth legislation, in particular the following commonwealth legislation (and I will put them in the date order in which they occurred): the Racial Discrimination Act 1975; the Sex Discrimination Act 1984; the Disability Discrimination Act 1992; the Age Discrimination Act 2004; and overarching all those as the mechanism by which those acts are then managed and with which complaints under them are dealt is the Human Rights and Equal Opportunity Act 1986.

I have confirmed with the federal Human Rights and Equal Opportunities Commission that, indeed, everyone in this state—not just commonwealth employees or anyone such as that—is already bound by the provisions of those acts. The only minor exception is that apparently public servants in this state who wish to make a complaint of sexual harassment within the Public Service are bound to do so under the state system but, other than that, everyone is bound by the commonwealth legislation.

It might be reasonable to ask: why has the Liberal Party decided to oppose the second reading of this bill if, in fact, it merely reflects what binds us already? And, indeed, large parts of this bill reflect what the Liberal Party had in a bill which was not finalised but which was introduced during the final stages of the last Liberal government. I will detail our reasons for that possibly at some length.

However, in summary, the fact is that there are not just one or two areas where we feel this bill goes too far, but a whole raft of areas. They could generally be divided into areas where this law goes further than existing commonwealth law—it canvasses the same issues across the same area, but goes further than the commonwealth law; areas where the government has decided to introduce brand new grounds of discrimination; and areas where certain what I have classified as administrative changes are being made that we believe are so unfairly prejudicial to the ordinary person who is not a complainant—the shop proprietor, or the person in the street—that they should never be allowed to become law.

My approach will be, firstly, to go through what the bill says and then to go back and highlight those areas where we think that what the government is trying to do is objectionable. As I said, we believe that there are so many. It is not just a case of one or two issues where we disagree; there are so many issues where we think this bill goes too far that it is necessary for us to oppose the whole of the bill. Clearly, it is not just the Liberal Party; there is a lot of community disquiet about this bill. I had a brief conversation with Dennis Hood and Andrew Evans from Family First at lunch time, and they said that they have already received in excess of 6 000 letters and emails of concern regarding this bill.

I just want to give a bit of flavour about what some of the concerns are. I will refer firstly to a couple of things that have reached my desk this week marked 'urgent'. Some people's concerns, I think, are probably misconceiving what the bill is about, but this is typical. The following is a letter from Patricia Buchiw, who wrote:

> Dear Madam,
>
> It has been brought to my attention that there is a bill, the Equal Opportunities (Miscellaneous) Amendment Bill 2006, that is in fact in breach of our nation's standards and no doubt our constitution. This bill gives:
>
> · No place for truth
> · Disallows freedom of speech.
> · Disallows religious freedom.
> · Disallows moral standards to be voiced.
> · It takes away the right of the individual to live free from fear, (if one speaks the truth he will be under this fear of retribution to the tribunal constantly).
> · It takes away the right of the individual to be considered innocent until proven guilty. It takes away the right of the poor to defend themselves—for the tribunal must be paid for out of one's own pocket, and the poor would be unable to do this.
> · This bill takes away religious exemptions.
> · The commissioner will have broad powers to investigate possible breaches of the Equal Opportunity Act without cause and without government oversight.
>
> The Rann Government considered introducing religious discrimination laws here in 2002, but these laws were then overwhelmingly rejected due to major concerns raised by the public. What has changed since then, why have these laws been resubmitted under a different guise? Laws are aready in place protect folk in all the areas necessary for harmony in our society.
>
> Does the S.A. government want a similar situation to occur as has in Victoria where the Victorian Supreme Court in December 2006, upheld an apeal by pastors Danny Nalliah and Danny Scot against their conviction for breaching Victorian religious vilification laws after the tribunal, under Justice Higgins found them guilty.
>
> I beseech you to vote against this Bil and do everything possible to maintain the freedoms we have in our great country.
>
> Yours faithfully
> Patricia Buchiw.

The letter continues in a similar vein. I do not know about other members but, certainly, members on this side of the house have received literally hundreds of letters from people in that vein. Also this week I received an open letter signed by a number of barristers and solicitors. The letter stated:

> As lawyers, we are deeply concerned about the effect of clause 61 of the Equal Opportunity (Miscellaneous) Amendment Bill, currently before the SA parliament.
>
> Clause 61 expands the definition of victimisation significantly. It is quite different to the current definition. It would make it unlawful by a public act to incite 'hatred, serious contempt or severe ridicule' of a person or group of persons on a ground of discrimination under the Equal Opportunity Act. Such grounds include race, nationality, lawful occupation, sex, marital status, pregnancy, potential pregnancy, age, disability, sexuality, chosen gender and religious appearance or dress.
>
> There is no definition of 'hatred, serious contempt or severe ridicule'. It is quite foreseeable that religious bodies proclaiming the

moral tenets of the religion, or social commentators expressing their opinions on the broad range of matters which are caught up in the definition of victimisation or even talk back hosts involved in legitimate robust discussion may be open to a claim being made against them, if clause 61 were enacted.

While 'inciting of hatred etc' is to be rejected, churches and other religious bodies and social commentators at all levels should be free to fearlessly and openly debate the issues that confront us as a community. If that offends some that is merely a result of living in a free society. The effect of clause 61 could well be to stifle such debate.

There is no demonstrated need for such legislation in South Australia, and the clause should not be enacted.

I will come later to the letter that I received from the Children and the Law Committee, which has responded on a specific issue that arises under the act. However, generally, I have received literally hundreds of letters (as have, no doubt, other people), a lot of them concerned with freedom of speech, freedom to preach according to the tenets of one's religion and a range of other issues that they perceive under the legislation.

I think it needs to be said at the outset that, whilst I have already conceded that some of these people may misconceive some of the implementation and the likely effects of the bill, nevertheless, some of the concerns raised are quite legitimate and, at the very least, the spectre of potential ongoing problems is there and plainly in sight on any reasonable reading of what is being put into this bill. As I said, 6 000 people have already contacted Family First and gone to the bother of writing or emailing with respect to the issues concerning them—and I am reminded of that wonderful saying: 'I may not agree, sir, with what you say, but I will defend to the death your right to say it.' That is at the very heart of some of the provisions in this bill.

We need to be careful that we do not stifle reasonable debate and discussion, because in that way we lead our society into far more problems. No-one is suggesting that it is all right to vilify; no-one is suggesting that it is a good thing to incite hatred. However, to legislate in the way in which this legislation attempts to do, I think, will be quite a mistaken notion.

I will move on to what this bill states because even that will take a fair while; it is a complex bill. First, I will deal with a couple of the related amendments to other acts which come as part of the package because they are actually quite simple and, I think, completely non-controversial. They are the related amendments to the Civil Liability Act 1936 and the Racial Vilification Act 1996.

In the case of the Civil Liability Act, the bill simply prevents double dipping so that a person cannot make a claim for compensation under section 73 (that is the racial vilification clause) and also a claim for compensation for racial vilification under the Equal Opportunity Act, and that is a standard thing to do so that people are not allowed to bring both an unjust dismissal claim and a sexual harassment claim, for instance. We do not allow people to double dip into two separate systems and get compensation for the same act from each system.

In the case of the Racial Vilification Act, the court must consider any award of damages made under the Equal Opportunity Act in determining what damages it should give under the Racial Vilification Act. A person can still make an application and, clearly, there could be circumstances where someone gets little or no compensation under the Equal Opportunity Act and, if they can then make out a claim for the same act under the Racial Vilification Act, that amendment simply provides that they have to take into account what they have already received for their earlier compensation claim. That, of itself, is relatively unobjectionable.

I turn to the actual contents of what this bill seeks to do and, as I said, I will outline firstly what it seeks to do and then I will come back to what we are objecting to. First, the bill amends the definition of disability to reflect the definition in the commonwealth Disability Discrimination Act. As I have already indicated, people in South Australia are already bound by the terms of that act, so the effect of the bill is essentially to make a remedy available in the South Australian commission and, at the moment, they would be required to go to the federal Human Rights and Equal Opportunity Commission. As far as that goes, it is probably not objectionable and, indeed, that will mean that this act will now cover mental illness.

The minister said—and I have no dispute with him over this—in his second reading speech:

Mental illness is not the sufferer's fault, it is not shameful and there is no justification for treating sufferers unfavourably.

I agree that it is not the sufferer's fault and it is not shameful; however, if I were employing someone, I have some doubt about whether or not it is all right to prefer someone who does not suffer from psychosis, for instance. If a person has a drug-induced psychosis and if they are suffering a mental illness as a result of that, I agree wholeheartedly that it should be treated as just another illness by society at large but, if the effect of the act is to say that an employer cannot decline to employ someone on that basis, I think that is going too far.

On the issue of HIV, the act also prohibits discrimination on the ground that a person is infected with a virus such as HIV, and I note that it does not specify HIV. It provides that it is a defence to say that the refusal was a reasonable measure to prevent the spread of an infectious disease and, as far as that exemption goes, that is sensible. In my view, that exemption does not go far enough because, if I were, for instance, a cafe proprietor—and even though I know that HIV is not spread by someone simply preparing sandwiches, serving food or washing dishes or whatever—I would not necessarily want to take the risk of my business being damaged by having someone who is known to be HIV positive engaged in serving in my business.

The act also extends the idea of disability to not just traceable intellectual disabilities but also to learning disabilities. The Attorney did not give any examples in his second reading speech, but I can only presume that one can no longer discriminate against a person because they have dyslexia if you are employing someone to do your secretarial work, for instance. I spend a lot of time making sure that documents that leave my office are, as far as I can ensure it, accurate and perfectly correct in grammar and spelling and, even though dyslexia is not an insurmountable problem, to extend it to learning disabilities is so broad as to be a real difficulty.

The next area under this heading of disability is that access to premises must be provided. Most commercial and retail premises in the state already provide access for disabled people, particularly those in wheelchairs or with walking difficulties, so the effect of this amendment is not to impose any new burden—they are already entitled to those things and they already exist largely. All that amendment does is to bring us in line with the commonwealth legislation and provide an alternative mechanism for the bringing of complaints so that you can bring your complaint in the local jurisdiction—the local tribunal or commission, for example—and not necessarily have to go to the federal Human Rights

and Equal Opportunities Commission. Bringing it there has the advantage not just of being local but more likely to be a conciliated outcome than is likely to be the case if it goes to the federal jurisdiction.

As to carers, the bill extends the coverage of the act to carers by providing that it is unlawful to discriminate against someone on the ground of their caring responsibilities. That is the same as in the commonwealth except that this bill takes the definition wider than the commonwealth legislation. So, it is not limited, for instance, simply to caring for people who live in the same house, and it is broad enough to, in theory, encompass issues of Aboriginal kinship.

A lot of the time when I am assessing the issues in these bills—and I recognise that it is always a balancing act—I am trying to find the reasonable balance between the small business proprietor. There are 85 000 small businesses in this state. They are the backbone of the economy, and the vast majority of them are very small—mum and dad businesses with maybe one or two employees, but they are not big corporations; they are quite small. Members may have heard me before the break talking about the work/life balance select committee that is being proposed by the member for Hartley. I absolutely accept that people have caring responsibilities but, in my view, it is not appropriate to try to legislate to deal with how those relationships between employer and employee should be managed, and it is not reasonable to say to an employer, 'You cannot discriminate against someone on the basis of their caring responsibilities.'

So, even if it is self-evident that someone with five preschool and early school-age children is unlikely to be able to hold down a full-time job and work the hours without having in place all sorts of care, it will not be lawful for someone to say, 'Well, I will prefer someone who hasn't got those responsibilities'. I think that that is an important distinction to make. We need to think about what constitutes discrimination and what constitutes mere preference, because we all have preferences in life. We prefer things, one against another, every day of the week.

In the early 1990s, Brian Martin QC, as he then was, was commissioned to review this act. He made a recommendation that the coverage for carers should be limited to direct discrimination, but this bill actually extends it to indirect discrimination. It is a little complicated to explain what is direct and what is indirect, but perhaps I could give an example. If I simply said to someone, 'Well, I don't want to employ you because you have caring responsibilities', that is clearly direct discrimination. I am simply stating the reason. But, if I said to someone, 'I don't want to employ you because I'm going to make the hours such that it becomes impossible for you to get there', that then becomes indirect discrimination. Or, if I said to someone, 'I don't employ women', that is direct discrimination against the female gender. But, if I said to someone, 'I don't employ anyone who is under the height of 5 feet 10 inches', then it is indirect discrimination, because although there might occasionally be someone who is 5 feet 10 inches and who is female, most females are under 5 feet 10 inches, and so it is indirect discrimination. Perhaps those couple of examples give enough of a flavour of what is meant by indirect discrimination.

Brian Martin QC's view was that coverage for carers should be limited to direct discrimination; that is, declining to hire or promote because of someone's caring responsibilities. However, the bill proposes to cover both direct and indirect discrimination, so that would cover the setting of requirements that are especially difficult for someone with a carer's responsibilities to meet. Bear in mind, as I said, that the definition of 'carer' is extended so far that it will be inclusive of notions of kinship in Aboriginal communities or in other communities where, clearly, people have caring responsibilities.

The second reading speech on that issue suggests that the bill does not entitle carers to special treatment, but it nevertheless leaves open the possibility that employers potentially will have to prove that the requirements that they have imposed were reasonable in the circumstances. As soon as you get to that point, I have a difficulty, because it means that the small business proprietor can be hauled in before the tribunal and forced to explain himself or herself, and there is a range of things that flow from that which I will come to later.

The issue of nursing mothers is also extended. It will be unlawful to discriminate, in the provision of education services or in the provision of goods and services, against a breast-feeding mother. I was a nursing mother for many years. I extensively breast-fed my children, and I fed them in all sorts of peculiar situations. It seems that this particular provision will simply lead to trouble, because there will always be someone who wants to push the envelope and test the boundaries. I do not know of any cafe or anything like that that I have ever been into where a proprietor or manager has been prepared to say, 'No, madam, you can't breast-feed your baby in here'. But, first, I think it should be their right to say that if they want to. Secondly—more importantly—they will not even be allowed to say, 'I think you should sit in a quiet corner and breast-feed discreetly.'

As I think I said on the radio this morning, any breast-feeding mother knows that if you are feeding your infant you want a quiet corner where you can feed discreetly, because babies, particularly the ones that are not brand new, are easily distracted from the task. It is not because it is offensive to see someone sitting out in the middle of the cafe or out on the street. I do not have any problem at all with seeing breast-feeding mothers exposing their breasts when feeding their baby. It is the most natural thing in the world; I have no objection to it whatsoever. But I do think that the cafe proprietor, or whatever the business is, should have the right to say, 'Could you please sit somewhere where it is a little bit discreet because it may upset other customers.' I have no difficulty with trying to balance those instances in a sensible way. This bill, I think, goes too far in that regard.

Significantly, on this issue of indirect discrimination, the bill reverses the onus of proof. At present, the complainant has to prove that the other party acted unreasonably. That will now change so that the respondent will have to show that he acted reasonably, although, to be fair to the Attorney, that is actually the case under the commonwealth legislation.

I will comment briefly on racial victimisation. Racial vilification is already unlawful under a specific act that we passed in this state, the Racial Vilification Act 1996. Racial victimisation means a public act that incites hatred, serious contempt or severe ridicule for a person or group on the ground of race. The amendment basically has the effect of adding a new remedy or a new potential remedy to what is already unlawful under the existing legislation.

In the government's view, the equal opportunity path of conciliation is more likely to lead to a better outcome. There may be some merit in that argument. Certainly, the remedies available in the equal opportunities legislation and under the Equal Opportunities Commission are broader, such as an

apology or an order to perform a particular service, or something like that. So, there may be some merit in the government's argument on racial victimisation.

Then we come to the idea of fomenting public hatred. It will be an offence to foment public hatred against anyone or against any group on the ground of race, age, sexuality or disability. The offence will require a public act which, on an objective assessment, incites hatred, serious contempt or severe ridicule. There is no definition of what those things mean, how one incites those things, or how you prove that hatred, serious contempt or severe ridicule have indeed been incited by an act. There is a defence of what you have done being a reasonable act or a fair report in good faith in the public interest.

However, as I already indicated, part of the problem is that as soon as these sorts of provisions are created in legislation, there will always be someone who wants to test the water and there will therefore be situations where people who are really doing nothing more than expressing an opinion face the potential of being dragged in and having to justify themselves. I will come back to that in a good deal more detail later. As I said, I am just going through to explain what is in this legislation at the present time. That provision, by the way, reflects the existing commonwealth legislation.

The bill also deals with independent contractors. It provides that it will be unlawful to discriminate against independent contractors in a workplace, wherever discrimination against an employee would be unlawful. Of course, this is a result of the fact that so many people now are engaged not as employees but as independent contractors, particularly in the trades. People set up their own business and become independent contractors in building, or whatever organisation or whatever type of employment. They are engaged on a contract of service as an independent contractor rather than becoming an employee who has entitlements to regular wages, holiday pay, long service leave, superannuation, and so on. Mostly, it is now the burden of the independent contractor. They are now very common and what this does is to make it unlawful to discriminate against someone in the workplace who is an independent contractor, just as it is already unlawful to discriminate in the workplace against someone who is an employee. So, there will be no distinction between an employer's obligations with regard to independent contractors compared to their obligations with regard to their own employees.

The existing exemption for employing people or engaging independent contractors in one's own home will be continued, although the mechanism by which that is achieved is slightly different. But if you engage people to work in your own home through an employment agency, the exemption will not apply and the discrimination provisions will apply.

As I indicated earlier, there are several new grounds of discrimination. The first of these is the identity of your spouse. Brian Martin, the QC who made recommendations in the 1990s about the revision of this act, recommended that it should be unlawful that anyone be treated unfavourably because of the identity of their spouse, although he did recognise that there may be circumstances where the identity of a person's spouse was a reasonable basis for discrimination. It is easy to imagine that if any of our spouses applied for a job in the office of a member on the opposite side of the chamber, then there would probably be grounds to say that it is reasonable to discriminate.

I have not seen any evidence as to this being a problem, so that is my first issue with that particular aspect. It is a new ground of discrimination, but I have not actually come across anyone having a problem with spouses and people being denied employment because of one's spouse. Although, if there were such a problem, apart from in a public institution, I cannot see that it should be a ground of discrimination. For instance, if my spouse applied for a job and the employer said, 'You're married to Isobel Redmond. I hate her; I'm not going to employ you,' why shouldn't they be allowed to say and do that? That should be their right. So, I have some little difficulty with the concept of extending to the identity of one's spouse, although I accept that there is a provision for discriminating where there is a reasonable basis for discrimination.

The next new ground for discrimination is that based on a person's profession, trade or other lawful occupation. It is all right to discriminate against someone on the basis of an occupation which is not lawful, so presumably one can discriminate against prostitutes. So, it will be lawful to discriminate against people, such as criminals, who have an unlawful occupation, but not otherwise lawful to discriminate against someone whose job may attract hostility, for instance.

That was the essence of what the government referred to in the second reading explanation, I believe. It argued that there are many necessary and lawful jobs which, by their very nature, may attract hostility. That is true, but it seems to me that it should be lawful to discriminate if one chooses to. By way of example, I suggest that if I were running a cafe and someone like an overly officious parking inspector was pinging my customers as soon as they were one minute past the expiry time on their meters outside my cafe, then I should be allowed to say, 'I'm sorry, I don't want to serve you. You are destroying my business because you're being such an overbearing so and so and I don't want to serve you because of that.'

I do not have a problem with anyone being allowed to do that, nor do I have a problem if someone says, 'I hate politicians: I'm not going to serve you.' Why should they not be allowed to say that? It seems to me that we are legislating to a point of political correctness that is just going mad. Another new ground of discrimination is that of one's area of residence. This new ground is limited to the field of work, so it is only in the case of employment, but an employer cannot refuse to hire a worker or subject him to any detriment because of where he lives or has lived. I presume that it would nevertheless be lawful for an employer to say, for instance, 'I'm a bit doubtful about whether you can get from the far southern suburbs to my factory at the other side of the city and north of Elizabeth by 6 o'clock in the morning when I need to start', although that could be deemed to be indirect discrimination.

So, I have a number of questions about this. First, why is it necessary? I have not come across it being a problem. I actually want to be able to prefer local people in employment. Indeed, I have had several trainees in my office since I have been in this parliament, and I always try to give the job to a local kid. I would continue to do that were it not to become unlawful for me to do so because it is an objectionable act under the proposed area of residence provision. It seems to me that there are problems with that and, again, there is no justification for it. There is no evidence that this is actually a problem. Why should an employer not be free to choose who they want for whatever reasons they want to employ them?

The next point is probably one of the most contentious items and, indeed, one on which I will make comments but

these comments are very much my own comments, because we have a party decision that this will be a conscience vote. This is the idea of not being able to discriminate against someone on the basis of their dress, adornment or appearance if that dress, adornment or appearance is because of religious reasons, such as a nun's habit, a hijab worn by Muslim women or, indeed, a crucifix or whatever it is. It will be unlawful to discriminate for the purposes of education or employment because of anyone's religious dress or appearance. There are some exceptions for genuine safety reasons so, presumably, if you were wearing full flowing robes or something like that, that might be a problem for safety reasons in an area where you have to wear a hard hat and steel-capped boots.

Nevertheless, that is the nature of the exemption. I have really significant difficulties with this. I note that the member for Mitchell is here, and he is proposing an amendment that would at least make the provision consistent, but the effect of this is that it would be lawful for me to say to someone, 'I'm not going to employ you, because you're a Muslim and I hate Muslims', but it will be unlawful for me to say to someone, 'I'm not going to employ you because you are dressed in Muslim dress.' That is just such a huge inconsistency. I cannot understand how the government can possibly mount an argument to say that you can discriminate on the basis of someone's religion but you cannot discriminate on the basis of their religious attire. That is just inconsistent.

My view is that you should either go the whole way, which the member for Mitchell is proposing—that is, that it becomes unlawful to discriminate against someone because of their religion or because of their religious appearance—or you do neither. This crazy halfway house where I can discriminate against someone on the basis of their religion, by saying, 'I hate Catholics', or whatever it is, but I cannot discriminate against someone on the basis of their wearing a religious outfit makes no sense at all to me. It strikes me as being totally inconsistent. As I said, it will be a conscience vote and, no doubt, we will deal with it when the member for Mitchell's amendment is being debated.

It also becomes unlawful to discriminate on the basis of past or presumed characteristics. The law currently makes it unlawful to discriminate on the ground of a characteristic that a person now has but it will also be unlawful to discriminate because a person had a characteristic in the past or may have it in the future. The only example I can think of—because none is mentioned in the second reading explanation—would be a pregnancy of a female, but that is dealt with under another specific piece of the legislation. The essence of it, if you apply this to a pregnancy, would be that not only is it illegal to discriminate on the grounds of a current pregnancy but it would be illegal to discriminate on the ground that a female has already had one or more children and may be likely to have children in the future.

As I said, I am a bit puzzled as to exactly what the government is trying to get at. It did not explain this in the second reading explanation and, with the only example I can think of being a female's pregnancy being dealt with in a separate section, I am a little bit puzzled as to actually what it is trying to get at.

Another extension is in the area of characteristics of associates, and this refers to discrimination on the ground of associating with persons who have any of the characteristics protected by the act. So it is unlawful to discriminate against someone because they are in the company of someone who, for instance, has a disability or (and more likely, I suspect) if someone decided they were not going to allow Aboriginals into a pub—and it is not so many years ago that that was probably quite common. I find that objectionable. This particular measure provides that a person accompanied by an Aboriginal who is refused entry cannot be refused entry because they are in the company of that person who is being refused entry.

Again, there are some exemptions pointed out in the act so there are certain characteristics of associates which may be lawful considerations in some circumstances—for example, if someone was applying for a security licence and they were a known associate of bikie gangs then that becomes lawful. Now, whilst I agree with the thrust of that it is very difficult to understand how it will be policed, how we can say we will not give a licence to this person, who has an otherwise unblemished record, because we believe they associate with someone else. Again, 'associate' is an ill-defined term.

That really covers the new areas of discrimination. The next area I want to canvass under the bill is that of sex discrimination, and there are a number of aspects of this which I believe are highly objectionable. Replacing references to 'trans-gender' and instead referring to 'chosen gender' is consistent with other legislation and not objectionable. As I indicated earlier, the coverage of the act is extended to potential pregnancy—that comes in under this sex discrimination area—so it will be illegal to discriminate in employment on the basis that a woman may become pregnant. That is where the specific provision now appears about pregnancy. The provisions relating to marital status are also moved in here, although they are the same as they appear in the current act.

Most importantly, the bill does a couple of things. It changes the present law about the rights of religious institutions to discriminate on the ground of sexuality. At the moment there is an exemption for any institution that is run in accordance with the precepts of a particular religion; such an institution comes under the exemption so they can discriminate in their administration on the ground of sexuality, provided that the discrimination is based on the precepts of the religion. So religious schools can use the exemption to avoid hiring homosexual staff if they say that, as part of their religion, they are against homosexuality.

The government says it consulted with the Independent Schools Board and also says that to date the exemption has only been used for that purpose—that is, of discriminating against the employment of a homosexual staff member in a religious school. The government wants to narrow the operation so that that is all that the exemption can be used for; if, for instance, the same religious institution ran a hospital they would not be allowed to use that same exemption to avoid employing a homosexual doctor. That makes no sense. It seems to me that the government is creating an inconsistency if it restricts the exemption so that it can only be used to avoid the hiring of homosexual teachers. It also goes on to make some obligations about publicly disclosing that policy and allowing the Commissioner to put that onto the web.

The Association of Independent Schools has written me a comprehensive letter. I will not go through all the details of it, but it is interesting that the government says it consulted with the Independent Schools Board yet the letter from the Association of Independent Schools of South Australia states, in part, that:

> Many of the amendments proposed by the government will directly impinge on the ability of independent schools to operate within their religious faith. . . other amendments will generate

complex administrative procedures that we consider will be detrimental to the management of schools.

The letter goes on to make a number of suggestions regarding what the association would like to see.

The narrowing of that exemption is unnecessary, and it creates an illogical divide between the way religious institutions can deal with their employees, volunteers and everyone else on the one hand and the way they can deal with hiring staff of a school on the other. It seems to me that there is no basis upon which to change the existing exemption.

A further narrowing of the exemption will prevent associations such as clubs and charities—service clubs and sporting clubs and so on—from discriminating on the ground of sexuality. The only exemption now will be a limited exception for associations administered in accordance with the precepts of religion. Now, talking to people who have been in footy clubs and the like, the reality is that they do not really care what anyone's sexuality is, they just want the best football players (or whatever) in their club. It is not an issue, it is not a problem that is actually rearing its head and needing to be addressed. The government is taking this political correctness way out there for no apparent reason, saying that it is going to narrow the exemptions and when they apply.

There are a couple of other areas which I will cover briefly before I get on to the issue of sexual harassment, which is probably the main provision of this particular section. Section 33(2) of the Equal Opportunity Act currently provides that a partnership of up to five people can refuse a person partnership on the ground of sexuality. That exemption is peculiar to this state; it is not the same in commonwealth legislation and not is not the same in any other state.

I have not had time to look up the debate that led to that being in there, but it is a little odd to find that if you have up to five people in the partnership you can decide that you will not have a partner because they are gay. Again, in other places there is no restriction. If you have a partnership you cannot exclude someone on the basis of their sexuality. However, it seems to me to be a bit of a nonsense to be legislating about it. People go into partnerships for all sorts of reasons, and people are hardly likely to sit there and say, 'Well, we didn't engage him as a partner because he is gay.'

The fact is that partners must get on with each other. They must work in a combined joint effort to achieve a concerted outcome for the good of them all. Unless they get on really well, they will not operate successfully in a partnership. It seems to me that, in any partnership of whatever size, it should be up to the partners to decide who they want to have as a partner for whatever reasons they want to. Nevertheless, at least that provision where the government is proposing to remove that limit would bring us into line with the other states and the commonwealth.

A further amendment makes it clear that the existing exemption, which allows discrimination and the taking in of lodgers if it is where your own family resides, will now be limited to lodging in one's own home. I do not understand the difference between lodging in one's own home and lodging where your own family resides. Indeed, at one of the three briefings I attended last year, an officer of the department said that they would get clarification on how the proposed clause differs from the current situation, because they were not able to explain it. This is one of the issues they could not explain at the briefings, and they have not got back to me to explain the difference. I still await further information.

The issue of sexual harassment is one where I have particular difficulty with what the government proposes. Some bits of it I do not have a problem with. First, it makes the language consistent with what appears in the commonwealth legislation so that everyone is using the same language, and that is almost always a helpful thing. It then extends the existing coverage to include not only harassment by providers of goods, services, lodgings and so on but also harassment against them. That gives rise to some interesting possibilities. For example, if someone who is selling things in a shop, or whatever, feels they have been sexually harassed by a customer they can bring a complaint against the customer. Mind you, there might be difficulties with identifying who it is, and so on. The third principle, involving vicarious liability, that is, where an employer is liable for the acts of their employee, is extended to sexual harassment under the state law—

The Hon. M.J. Atkinson interjecting:

Mrs REDMOND: I prefer my pronunciation of harassment.

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

Mrs REDMOND: I married an American. It is already the case under the federal law and, indeed, it is a provision with which I do not have a particular problem. It does not make any sense to me that employers can avoid being vicariously liable for harassment by their employee for the most part, unless they can show that they have taken reasonable steps to prevent the harassment from occurring. The bill then goes a little further and compels an employer to have in place an appropriate policy to prevent harassment and to take reasonable steps to carry out that policy, including reasonable steps to make the policy known to the staff.

I know that this is an issue of particular concern to the member for Unley, who wants to keep more of a tab on the extent to which this government is imposing red tape on businesses. Insisting that every business write a policy about sexual harassment is a nonsense. However, in order to access that defence—that they have taken reasonable steps to prevent anything occurring in the way of harassment—they will have had to develop the policy, had it published in some way to their staff and taken reasonable steps to carry it out, which presupposes that the policy will involve some sort of investigation and conciliation procedure, and so on.

Most importantly, though, this bill extends these sexual harassment provisions to schools and, in particular, to all secondary students. That goes way too far, in my view. In his report, Brian Martin QC did recommend that the provisions with respect to sexual harassment be extended to school students, in particular those over the age of 16. However, this bill imposes these obligations on all secondary students. One can imagine what imposing a legislative framework to try to control the relationships among 12 year olds does, because that is how young our high school students generally are when they start. I was still 11, I think, when I started high school.

It is way too young to be imposing a legislative framework on these students. The bill says that there will be a requirement for it to be dealt with in-house (within the school), that (I forget the exact wording) reasonable steps will be taken to deal with it in-house and that there cannot be an award of monetary compensation for this sort of situation. However, that does not mean that there will not be people who, again, push the envelope, test the water. I am aware that young women are around who will make outrageous allegations

about the behaviour of people, particularly young boys, that could land them in tribunal proceedings.

It could incur significant costs for their parents. It could result in significant emotional distress for all the parties concerned. It is simply, in my view, inappropriate to try to create a legislative framework to govern kids growing up and going through all the sorts of things that we all went through when we were growing up. I am aware that state schools already have harassment policies and so do independent schools. I am absolutely fine about having that, but to then extend it and say, 'We will involve the possibility of tribunal hearings' and the whole thing getting blown way out of the level with which it should be dealt is inappropriate to me.

Lastly, I come to the areas which I would classify as the administrative provisions. The administrative provisions basically change some of the basic mechanisms and the ways in which this act deals with complaints. The first one is that the present six month limit to bring a complaint will be extended to 12 months. No evidence was given, or a statement made, or anything else as to why it was considered that such an extension of time would be necessary.

The Hon. M.J. Atkinson: It's in the second reading.

Mrs REDMOND: The Attorney refers to the second reading, but there was not any justification in his second reading for why we have to move suddenly to having 12 months to bring a complaint. For instance, when you think that, under our unfair dismissal laws at the state level, it is three weeks to bring a complaint of unfair dismissal. However, this legislation seeks to extend the limit from six months to 12 months for no reason. It also allows a representative complaint to be made; that is, a union can become involved in bringing a complaint. Indeed, the bill will allow a non-aggrieved party to bring a complaint. So, a trade union could bring a complaint and, what is more, they can bring that representative complaint as a non-aggrieved party without there even being someone complaining about the act in question.

It will bind whoever consents to be represented, but for no reason that just hands power to unions. I can only guess that the government wants to be a sop to the unions and to try to get the unions a little more power than they have been enjoying for the last few years as their membership has dropped off. Certainly, if they can come into a workplace and institute proceedings in the tribunal without anyone even bringing a complaint, then they have considerable power, which is unnecessary and unwarranted and which will be detrimental to the management of business in this state.

I would have to agree with the government in terms of the role of the commissioner. At the moment, the commissioner basically has two roles and there is a conflict between those two roles. In the first instance, the commissioner has to investigate the complaint and then try to conciliate it but, if the conciliation does not work and it goes on to a hearing, then the commissioner becomes the advocate for the complainant in the proceedings. Even those without a legal background readily see that there is a conflict of interest in the commissioner's role: on the one hand, to be the investigator and conciliator and, on the other hand, then to go to the tribunal as the advocate for the complainant. No respondent in those proceedings, in my view, would feel confident that the commissioner was even-handed when the commissioner then turns around and acts for one party to the detriment of the other. Certainly as a legal practitioner you would never have been allowed to.

I am all in favour of that change. It was recommended by Martin and I am quite comfortable with that particular change. However, one of the consequences which the government says flows from that is something with which I do not agree. At the moment, the complainant is then represented by the commissioner. This bill will take away the ability of the commissioner to represent the complainant and the government will fund the complainant. The government will ensure that the complainant gets legal services funding. As I have already mentioned, many respondents in these claims will be some of the 85 000 small businesses in this state. They do not receive a guarantee of funding.

No doubt they could apply for legal aid funding but, given the restrictions on legal aid funding, I suggest it would be extremely difficult for them to succeed in getting any. So, we end up with a situation where the complainant gets automatic entitlement to legal funding, regardless of merit, if it is referred off by the commissioner, but the respondent gets no equivalent right. That, in my view, is unfair and an unreasonable imposition on the respondent who, as I said, will largely be the people running small businesses.

The bill also takes up the recommendation of Brian Martin that the commissioner's role will be limited to deciding whether a complaint should be accepted in the first instance and, if it is accepted, then conciliating it. If the conciliation is not successful, then any further task of fact finding is to be left to the tribunal. This again relates to this issue of the conflict of interest which currently exists in the commissioner's powers. The commissioner will still have powers to make submissions to the tribunal—not as a representative of either party or any party, but rather to assist the tribunal. The commissioner will also be able to intervene, if given leave, in industrial proceedings under the Fair Work Act.

The bill also authorises the commissioner to investigate suspected unlawful conduct even if there is no complaint. Whilst I have every confidence (as does the Attorney) in the current commissioner, there is no guarantee about how one appointed in the future might behave.

In line with what the federal legislation does, it is important to understand that, with respect to the grounds of discrimination that are set out in this legislation, consistently, through all the different grounds of legislation, the bill provides that, if someone makes a decision and the decision is based on two or more reasons, one of which happens to be something that is objectionable under the act—so, they might have all sorts of other reasons; they might have a dozen different reasons for not employing someone, but if one of the reasons for not employing someone is a ground of discrimination under the act—this will deem that they have discriminated. It would not matter if there were 100 different reasons why they did not employ someone: if one reason was a ground of discrimination under the act, then they are deemed to have discriminated. That basically outlines where this act is heading and what the government is doing.

Interestingly, it did not adopt the recommendation of Brian Martin to replace the Equal Opportunity Tribunal with a division of the District Court and it did not propose other new grounds of discrimination, such as political activity, industrial activity and physical features. I have seen situations where people who are perfectly competent in their job and who are perfectly clean and tidy, have been asked to leave a firm because they did not fit the image that that firm wanted to promote of being young and gorgeous, and so on—not even fat or ugly; just an ordinary looking person who did not fit the young, trendy image.

It certainly does happen, but I do not think it is up to us to legislate to stop people from doing that. If that is what they want, then let them go. They will soon learn that looking young and trendy is not the be-all and end-all of running a successful business. If they want to discriminate or prefer on that ground, I do not think it is up to governments to try to stop them and to try to be so politically correct that we hogtie everyone who is trying to run a business. People running businesses are interested in having good employees and good relationships with employees and, for the most part, that is what happens. However, there will always be—

The Hon. M.J. Atkinson: So in Belfast where they have signs saying, 'No Catholics welcome', you are happy with that? They are running a shipbuilding business and they don't need papists on their staff.

Mr Hanna interjecting:

Mrs REDMOND: As the member for Mitchell said, so is the Attorney-General. I will now return to the issues about which the Liberal Party is particularly disquieted by what the government is seeking to do in this legislation. As I said (although I think the Attorney was not here when I mentioned it), I was a little puzzled by his comment this morning—

The Hon. M.J. Atkinson: All members are always in the chamber. Ask Gunny.

Mrs REDMOND: I am glad that the Attorney has reminded me that all members are always in the chamber. Therefore, no doubt, he did earlier hear me say that I was puzzled by his comment on the radio this morning that this will take months, if not years, to progress—

The Hon. M.J. Atkinson: That's right.

Mrs REDMOND: —given that it is listed for completion tonight.

The Hon. M.J. Atkinson: Yes—fat chance! They didn't ask me. I could have told them.

The ACTING SPEAKER (Mr Kenyon): Order, Attorney!

Mrs REDMOND: I want to canvass, for my own benefit as much as anyone else's, the issue of religious dress versus religion. As I have already pointed out, the member for Mitchell's amendment, whichever way people vote on it, would at least make things consistent. Either it becomes illegal to discriminate on both the ground of religious dress and the ground of religion or it is neither. To have this straight halfway house is just a little bit odd. By way of background, the current Equal Opportunity Act in this state does not prohibit discrimination on the grounds of religion. It currently prohibits discrimination on the grounds of race (and there may sometimes be an overlap), disability, sex, sexuality, marital status, age or pregnancy. Those grounds of discrimination are restricted to the areas of employment, education, superannuation, the supply of goods and services and accommodation. In other words, there is no blanket prohibition on those forms of discrimination; they are simply forms of discrimination that are objectionable in employment, and so on.

There is a common assumption that a prohibition against religious discrimination was in the legislation that was passed all that time ago, but that is not so. It has been banned in a number of other jurisdictions—although, notably, not here or in New South Wales. What happened was that, in 1994, Brian Martin was commissioned by the Liberal government to report on the operation of our existing act. However, he did not have religion included in his terms of reference, so nothing happened then. He recommended a number of amendments, but nothing much changed in terms of religion. Then this government put its toe in the water on the issue of religion some time ago, but took it out very quickly.

In 1996, the Liberal government passed the Racial Vilification Act. That act creates an offence of committing a public act which incites hatred, serious contempt or severe ridicule (so, the same terminology) on the ground of race. As I said, a lot of people confuse race and religion, and sometimes there will be an overlap. It said that it is an offence to commit a public act which incites hatred, serious contempt or severe ridicule of a person or a group on the ground of race by threatening physical harm to person or property. The offence is contained in our Criminal Law Consolidation Act as well as being a civil remedy available under the Racial Discrimination Act. So, it is aimed at racial discrimination and there can be a perception that people of a particular religion will also be people of a particular race and, therefore, people often assume that there is already legislation in place about religious vilification. For instance, Jews or Sikhs or so on may be perceived as being covered by the racial vilification act when, in fact, they may not be.

At the 2002 election, the ALP had a policy which, no doubt, the member for Mitchell remembers, if no other Labor member. That policy was that Labor would make it illegal to discriminate against someone on the basis of their religion. The Liberal opposition opposed the government on this issue both as to discrimination and vilification, and the leaders of churches—not just Christian churches but also Muslim and other churches—agreed with us and, in fact, the government abandoned that proposal. Interestingly, the government has chosen to put such victimisation into the act now and to do so it is using an existing clause, which is quite narrow in its scope, to expand it in an extraordinary way.

The existing provision for victimisation in the Equal Opportunity Act only relates to victimising someone because they have brought a claim under that act, or they are involved in a claim or the giving of evidence in a claim, or in some way they are victimised because of their association with a claim under the act for all the other sorts of discrimination that already exist. However, the proposal in this bill—and this is probably the clause which is of most concern in most of the hundreds of letters—expands that enormously to say that, 'We will include in the idea of victimisation a public act inciting hatred, serious contempt or severe ridicule of a person or group of persons on the ground of discrimination that is unlawful by virtue of the act.'

A lot of people have been very concerned. No doubt the Attorney will go into some detail about this in his response. Quite famously, a lot of people would be aware of what is known as the Catch the Fire case in Victoria where section 8 of the Victorian Racial and Religious Tolerance Act 2001—

The Hon. M.J. Atkinson: Something like that will happen in South Australia over my dead body. Is that clear enough for you?

Mrs REDMOND: In 2002, two Assemblies of God pastors spoke at a seminar on Islam and holy jihad. They quoted the Koran and they made disparaging comments on aspects of Islam. For example, the Koran teaches that women are of little value and so on, and you and I and everyone here knows that you can selectively cite scripture from any book and make it sound as though it is preposterous, and I would hate to think that, as a Christian, my religious beliefs are identified with some of the Deep South of America.

The Hon. M.J. Atkinson: What an appalling reflection on Southern Baptists! They're fine people. I was in South Carolina last week.

Mrs REDMOND: Not necessarily the Southern Baptists but, you know, some of the very fundamentalist religions.

Ms Fox interjecting:

Mrs REDMOND: Okay, back to the Assemblies of God pastors. They gave this seminar and—

The Hon. M.J. Atkinson: No, Catch the Fire Ministries. Could you get it right, please?

Mr Hanna: She did get it right.

The ACTING SPEAKER: Order!

Mrs REDMOND: The seminar—

The Hon. M.J. Atkinson: We know you hate the Assemblies of God.

The ACTING SPEAKER: Order!

Mrs REDMOND: The seminar was advertised and some people came along from the Islamic Council of Victoria and they recorded those proceedings. They complained.

Ms Fox: Rightly so.

Mrs REDMOND: When the pastors refused to apologise, the Islamic Council of Victoria instituted proceedings against the pastors. I note that the member for Bright is saying 'And rightly so.' It is interesting then that the member for Bright does not agree with her government's position on this, and I would be interested to hear her second reading contribution extolling the virtues which are in direct opposition to what her government is proposing to do because I can only assume—

Ms Fox: It was racial vilification.

The ACTING SPEAKER: Order!

Mrs REDMOND: —that the member for Bright is intending to cross the floor and vote against the party. It has been nice knowing you, member for Bright.

Ms Fox interjecting:

The ACTING SPEAKER: Order! Comments will be directed through the chair.

Mrs REDMOND: Thank you, Mr Acting Speaker. After a very long hearing the Victorian tribunal ruled against the pastors and ordered them to publish detailed apologies and, yes—

The Hon. M.J. Atkinson: It is awful what they went through and it won't happen in South Australia on my watch. It will not happen.

Mrs REDMOND: They then ended up in the Supreme Court of Victoria and, on 14 December 2006, very recently, the Victorian Supreme Court upheld the appeal on the ground that many errors were made in the tribunal which originally heard the case. Having won at that level, it has been referred back to another judge of the tribunal for proper orders to be made.

The Hon. M.J. Atkinson: That's Victoria, but it won't be happening here unless you bring it in.

Mrs REDMOND: The Festival of Light, for instance, raised the issue in their letter about the fact that the Racial and Religious Tolerance Act sounds quite similar in its terms—namely section 8(1), which was the section under which the complaint was made in Victoria—to what is proposed here. That is as follows:

> a person must not, on the ground of the religious belief or activity of another person or class of persons, engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.

I note that the Attorney has been interjecting that not under his watch would any such law be brought in here in South Australia.

In fact, the Festival of Light is correct. It is not often that I agree with the Festival of Light, but it is correct in saying, 'Well, that sounds pretty much like what is in the proposed clause that is being introduced in South Australia.' Given that, as I have already indicated, the matter is not actually completely resolved inasmuch as the pastors have been absolved at the Supreme Court, but the matter has actually been referred back for reconsideration in the tribunal where it was originally heard.

The government has consistently said that this cannot happen in South Australia on the basis that the inclusion of 'on a ground of discrimination that is unlawful by virtue of this act' makes it clear that victimisation is prohibited only if it is based on the particular forms of discrimination that are made unlawful under the act. Those existing grounds include: race, sex, sexuality, disability, marital status, age, pregnancy, identity of a spouse, association with a child, caring responsibilities, and so on. Religious discrimination per se will not be unlawful under the act, but I think that the public concern that has been loudly and strongly voiced is legitimate. No matter what guarantee the Attorney gives, there can be no guarantee that a complaint will even get off the ground, because the Attorney is not the decision-maker on whether or not a complaint has legs.

Even if ultimately there is no substance in the complaint and it is not upheld, it nevertheless exposes people to the possibility of having to face a tribunal and then possibly, as in Victoria, appeal to a higher court to absolve themselves of having done wrong. There is a significant concern which is, in my view, quite soundly based. I want to make it very clear that I do not approve of racial or any other form of vilification. But, as I said earlier, I may not agree, sir, with what you say, but I will defend to the death your right to say it. This is about freedom of speech; this is about engaging and encouraging open public debate. We do not want to create a society where people are afraid to voice their opinions, because in my view that, in fact, allows hatred to fester more than if you have proper debate.

Maybe the answer in the 'Catch the Fire' case would have been for the Islamic Council of Victoria to be invited to speak at the same seminar and say, 'Well, no; you are misrepresenting what we believe.' I am not suggesting that that has to occur; I am merely saying that, as a society, we hold very dear—it is not enshrined in our Constitution—the idea that people should be allowed to speak their mind. I have considerable difficulty with the idea that we will now put in this section 61. It is illogical, in the first place, because it only prohibits vilification on the ground of religious appearance or dress. It would be lawful to incite contempt for Muslims or Christians generally, but unlawful to incite contempt for people who wear Muslim headdress or a crucifix, or whatever, and it will give a forum for zealots on either side of this debate.

I think, in fact, that the Attorney and I are at one about the idea that it is impossible to try to legislate for some of these issues. But trying to control and inhibit reasonable discussion and the ability of any person to get up and say what they think seems to be a vast backward step.

As members may be aware, I grew up in Sydney where the Domain was famous for providing soap boxes. People used to just go to the Domain on a Sunday morning and get up and spruik whatever their views might be. The more people expose their views to the public, the more likely we are, in my view, to have a settled society which is tolerant and accepting, and people who have what I would consider to be crazy views will soon be identified as being a bit loopy. I do not particularly have a problem with the issues that have been

raised by all of these people. I think that they are actual issues of concern, and they are, indeed, part of the fundamental reason why we will be opposing the second reading of this bill.

We are also opposed to the new grounds of discrimination of the identity of the spouse, the issue of a lawful occupation, or the area of residence. As I think I have already explained, each of these do not suggest themselves as obvious areas where people are concerned about having been discriminated against. I have not seen anything to suggest that there has been a rash of complaints because people feel that they have been discriminated against because of where they live or because of the identity of their spouse.

Mr Pisoni: The Premier should live up north in his electorate instead of in Norwood.

Mrs REDMOND: Well said. As the member for Unley commented, perhaps the Premier should live up north in his electorate instead of in Norwood. I do not have any difficulty with the idea that we should be able to prefer or not prefer or to discriminate or not discriminate against people on the basis of their occupation. As I said, if I went into a cafe in the proprietor said, 'Well, I'm not going to serve you because you're a politician, and I hate politicians', that is, in my view, a perfectly good entitlement of the proprietor of any business to say that. I do not think it is particularly sensible for proprietors of businesses to go around doing that.

The Hon. M.J. Atkinson: What if he says he is not going to serve you because you are an Aboriginal? What about that? Do you support that too?

Mrs REDMOND: That is already illegal under the Racial Discrimination Act.

The Hon. M.J. Atkinson: Yes; but what is your view? Don't try to escape it that way; tell us what your view is.

Mrs REDMOND: I am not trying to escape it; I am not answering it. The opposition believes that those new grounds of discrimination are unnecessary. They represent an unnecessary infringement on the freedom of individuals to address a problem that has not been shown to exist. As for the administrative changes, as I termed them, we oppose—

The Hon. M.J. Atkinson: And you are voting against the mental illness provisions.

Mrs REDMOND: Well, we are voting against the whole of the second reading, but we oppose the majority of the administrative changes. There is no basis for an extension of the time limit from six months to 12 months. There is no basis for allowing a trade union to initiate a complaint and bring a representative complaint without there even being a person wanting to complain. There is certainly no basis for providing preferential treatment to the complainant in guaranteeing legal aid funding as against the respondent who will not have a guarantee of any such funding. We also oppose the idea that the onus of proof in cases of indirect discrimination will be reversed. So, there are various things.

We do not actually have a problem with the extension of vicarious liability to employers for sexual harassment, and we do not have particular difficulty with the removal of the threshold for partnerships. It does not make much sense that partnerships of less than six people should have different rules to partnerships of more than six people. We completely understand and support the nature of the change of the role of the commissioner so that, if a complaint proceeds beyond the conciliation stage, the commissioner is not then the advocate for the complainant. So, on those administrative type things, with a couple of exceptions, we oppose them, but where they are quite sensible, we are prepared to indicate that they are not problems to us. Although, as I said, we will be opposing the whole of the bill because there are so many areas. I explained at the beginning of my remarks in the Attorney's very quiet presence in the chamber—since he was present at all times—that in circumstances where there were less things to complain about, we might have been minded to—

The Hon. M.J. Atkinson: Fewer things to complain about.

Mrs REDMOND: That is twice today you have picked me up on 'less' instead of 'fewer'.

The Hon. M.J. Atkinson: Would you correct yourself, please?

Mrs REDMOND: And it is correct. There are fewer things to complain about.

The Hon. M.J. Atkinson: Thank you.

The ACTING SPEAKER: Don't let him get away with that.

Mrs REDMOND: But he is correct. If there were fewer matters on which we disagreed, we might have been minded to support this legislation because, as I indicated, a large majority of it is simply reflecting what already binds everyone in this state under the commonwealth legislation. A large part of it is what, indeed, a previous Liberal government introduced.

The Hon. M.J. Atkinson: Yes, 80 per cent.

Mrs REDMOND: Well, I have not actually calculated the exact percentage. I must say that I attempted to calculate it with some exactness, and approximately 80 per cent would probably be about right. Approximately 80 per cent of this bill is not objectionable, but the other 20 per cent is so objectionable that we feel bound to oppose the whole of the second reading and to try to put the brakes on the government, because we believe very strongly that they are heading down the wrong path.

The idea of extending sexual harassment legislation to cover students as young as 12 is preposterous. It is a step backwards. It is the wrong way to go. I do not know how many ways I can say it. The idea of potentially exposing 12-year-olds to proceedings in a tribunal is a nonsense and should not be indulged. We will continue to oppose that. The idea of narrowing the exemption that currently exists in relation to religious institutions creates an unnecessary and silly inconsistency. The idea that you will be allowed to discriminate on the ground of sexuality if you are a religious institution and you are employing staff in an education institution, but you cannot discriminate in the case of other religious institutions—so, the same religious institution running a hospital or anything else cannot use the same basis for the employment of its staff. It makes no sense to create a dividing line where there should not be a dividing line and to make a distinction where there is no distinction at the moment is unnecessary.

The idea of the broader definition of caring responsibilities is also problematic to us. The idea that caring responsibilities will be so broad as to not just include making it unlawful to discriminate on the basis of caring responsibilities because you have someone in your household, or a relative, but someone who is not even necessarily in the household or an actual relative is, in our view, taking it too far. It certainly goes beyond what the commonwealth legislation does.

In essence, what we are trying to say to the government is: stop and think again. There is too much inconsistency. There is too much at stake here in terms of freedom of speech. There is too much agitation in the community. The

community is concerned. Tonight is one of the few nights that we actually have an audience up in the gallery listening to the debate, because people are concerned enough to be sitting here at this hour of the night listening to the debate on this topic, simply because they are concerned about what this bill has the potential to do to the freedoms that we normally enjoy.

If there was some great problem being addressed then maybe we would be prepared to move a bit, but the fact is that the government has not indicated or demonstrated that there is a problem that needs to be addressed. We think that the government should just put the brakes on this, take it away and think again. I was very interested that the Attorney said that this will take months, if not years, to get through. I am hopeful that that is the case, simply because I do not believe that it is necessary for us to move further down. If all this bill did was simply reflect what already binds us, then what objection could be made? But it does not.

The Hon. M.J. Atkinson: Then we wouldn't need a bill.

Mrs REDMOND: Exactly, so if you do not need a bill to reflect what is already binding us and you do not actually have a problem to address to justify the extensions, in my view we do not need a bill. I commend to the Attorney the idea that it would be appropriate to reconsider these matters. He may have some time to do that, because I suspect that there will be, at least on this side, a number of people who want to speak to the bill. I know that on his side the member for Bright is intending to cross the floor and vote against what the government suggests, because she has indicated her liking for what the member for Mitchell is going to recommend in his amendment so, no doubt, she will be indicating her support for the position of the member for Mitchell, as she has already done during my comments on the clause. I look forward to that contribution and to a number of other contributions from members on this side of the house.

Mr HANNA (Mitchell): I support this bill, which contains many good provisions. It has a history going right back to the review conducted by Mr Martin QC, as he then was. His review of the equal opportunity legislation was comprehensive and produced many positive recommendations. The next step, in a sense, was the legislation brought in by the Liberal Party in 2001, where many of the Martin recommendations were brought into the parliament. Of course, there was not time to complete that legislation prior to the 2002 election and now, 4½ years later, the Labor government has finally managed to bring in this legislation, which is in accordance, by and large, with Labor Party policy.

This legislation has some special significance for me because I can remember many years ago, perhaps more than 10 years ago, sitting down with fine Labor Party members such as the current member for Ashford and Senator Wong, as she then was not, discussing the ideas that are reflected in this legislation. I am unashamedly a supporter of it, because it does many good things. I refer particularly to its consideration of people with mental illness, people with the HIV virus, for example, people with learning disabilities, people with caring responsibilities and nursing mothers. I think it is appropriate to have grounds of discrimination made unlawful when people discriminate on the ground of people's spouses rather than the characteristics or behaviour of the person concerned.

Also, let us not forget that with the equal opportunity legislation we are generally talking about the nuts and bolts of goods and services provision and accommodation. These are the most important aspects of life given protection by this bill. Essentially, the equal opportunity legislation is about a fair go. It is about giving people a fair go despite whatever innate attributes they might have, whether it be a disability or their racial or sexual characteristics. When we talk about Australian values, one of the most important of those values is a fair go: the fact that, no matter what innate characteristics a person has, they are going to be treated equally according to law; and I am glad that we have legislation that has an educative role to say that it is wrong to exclude people from things like goods and services or accommodation on the basis of those characteristics.

By all means, we should discriminate on the basis of people's behaviour. If people are not behaving well they should be excluded from shops, nightclubs or premises as people wish, but not because of their innate physical or even mental characteristics. The legislation also makes some changes to the law concerning sexual harassment and brings it into line with commonwealth legislation. That just makes sense. The law in relation to vicarious liability is changed for the better. It is important to make employers vicariously liable so that people in positions of authority ensure that those working for them are playing the game the right way and complying with the law. The legislation also brings in some useful provisions concerning the procedure and the role of the Equal Opportunity Commission. I will not deal with those in detail now. I was content with the Attorney-General's explanation of those matters.

Perhaps the most controversial issues that have been raised relate to religion, or at least those who speak in the name of religion. Before I turn to that point, I should say that, compared to some members in this place, I am relatively conservative in relation to equal opportunity legislation. Some Labor members would go so far as to outlaw discrimination on the basis of stature, on the basis of one's appearance (whether beautiful or otherwise) and even on the basis of merit.

In case members think that I am being too far-fetched in suggesting that members of the ALP would wish to outlaw discrimination on the basis of merit, I can assure the house that very principle operates in the ALP factions. The contentious issue to which I referred was that of religion. It is important to note in this regard that the Attorney-General had published a discussion paper which particularly referred to the prospect of religious discrimination being the subject of further legislation. The Attorney-General honestly reported back to the house in April 2003. In referring to some of the responses, the Attorney said:

> Some of these, such as the Buddhists, Baha'is, Beit Shalom Synagogue, Church of the Jesus Christ of Latter-Day Saints, Greek Orthodox Community, Hindu Society, the Church of Scientology, Islamic Society and the Seventh Day Adventist Church supported the proposal or supported it with qualifications, sometimes heavy qualifications.

The Attorney went on to say that all the main western Christian denominations opposed it, that is, the coverage of religion as an unlawful ground of discrimination. I will come back to that point in a moment. The Attorney further said:

> Secular commentators, such as the Commissioner for Equal Opportunity, the Aboriginal Legal Rights Movement, the Bar Association and the South Australian Multicultural and Ethnic Affairs Commission supported the proposal.

Those bodies to whom the Attorney referred on 2 April 2003, I think, know something about people's rights and how to protect them. In relation to, shall I say, mainstream Christian

denominations, in the time since this legislation was introduced, to some extent I have been able to consult with the mainstream Christian organisations around town. I honestly can say only to a limited extent, because with the intervening Christmas and January period it has not been that easy. However, I received a letter from His Grace Archbishop Philip Wilson, the substance of which states:

> The Catholic Church strongly supports the view that freedom of religious faith and expression are fundamentally important for a just and decent society which respects and upholds human rights. Church teaching recognises that every human being has the right to honour God according to the dictates of an upright conscience, and therefore the right to profess their religion in private and public. Indeed, the Second Vatican Council's *Declaration on Religious Liberty* insists that the human person not only has a right to religious freedom but also a duty to follow conscience in the search for truth. Religious groups and communities must be afforded the same rights that are valid always, every where and for everyone. We see ourselves as called to respect human dignity and rights, and to conform our lives to the demands of Christian love.
>
> I note that your amendments are being proposed in the context of a range of measures being put forward in the government's Equal Opportunity (Miscellaneous) Amendment Bill, which is their legislative response to the recommendations of a comprehensive report by Mr Brian Martin QC and also to recent changes to the corresponding commonwealth legislation. This is quite a different context to that in 2002, when we were invited to comment on the discussion paper issued through the justice portfolio. That discussion paper proposed a new stand-alone law against religious discrimination and vilification. After making clear our support for the intent of that proposal, we expressed a number of reservations about the necessity, effectiveness and practical implementation of the measure as outlined in the discussion paper. At that time, we were not convinced that the need for specific new legislation outweighed the practical problems and difficulties which might have been posed by enacting such a law and creating a new crime.
>
> Your currently proposed amendments to the Equal Opportunity (Miscellaneous) Amendment Bill 2006 would add an extra dimension to the government's attempts to modernise the Equal Opportunity Act and would ensure more comprehensive protection of South Australians against unjust discrimination, including on the basis of religion or religious belief.
>
> I commend you for the care you have taken in drafting your amendments to strike a balance between, on the one hand, protecting individuals and groups against unjustified discrimination on the basis of their religious beliefs, and, on the other, the genuine requirements of individuals and institutions operating in good faith under the auspices of, or in accordance with, the precepts of a particular religion.
>
> In particular, I appreciate the way your amendment 9 (inserting a new section 86(5)(ba)) would protect 'a reasonable act done in good faith in the course of religious preaching in a place of worship' from the scope of the victimisation provisions, along with your proposed addition of the phrase 'religious or other' to the list of purposes in the public interest in section 86(5)(c).

I leave the quotation there. During committee I will introduce religion as a ground for discrimination, which should be unlawful.

I have taken care to add those precautions which I think should satisfy the many representations members have received in relation to this legislation from religious groups, and specifically I repeat: I have included an exemption for preaching in good faith in a place of worship. That would pretty well exclude the Catch the Fire Ministries sort of case. After all, we should continue to live in a society where, whether in churches or in the street, people can openly debate religious views and even disapprove of the lifestyle or the beliefs of others, as they see fit.

Much of the heat that has been generated by some religious quarters, particularly the Festival of Light, in relation to this proposed legislation I think derives from a confusion between vilification, on the one hand, and disapproval, on the other hand. There is a vast difference between the two. When it comes to debate or disapproval, everyone in this chamber is agreed that people should have freedom of speech. When it comes to inciting hatred, that is another matter, and I am one of those who believe that the state should intervene on behalf of society to discourage the preaching of hatred. As a believer, I cannot contemplate in any fashion how a Christian or a spiritual leader of any domination could possibly wish to preach hatred or incite hatred of other groups, whether they be homosexuals or those who follow a different religion. It is absolutely inconceivable to me.

I am ready to condemn as hypocritical those who call themselves Christian yet are willing to preach hatred of other religious groups. The response to some of Sheikh Al-Hilaly's comments, the Muslim leader in Sydney, has indicated the strong displeasure in the community when other religious groups are attacked by a religious leader. I think this is a case where the commandment should apply that where we do not wish others to do that in relation to the Christian religion, then it should also apply to Christian religious leaders in respect of those who follow other religions. Once again I repeat that it is not a matter of avoiding disapproval or debate—that will always be part of our society for as long as we have a free society—but there is a difference between that and inciting hatred, and I think it is entirely appropriate that parliament discourages, even with the force of the law, that sort of behaviour. I humbly dare to say that it is not Christian behaviour.

I close my remarks there. As I have said, there is much good in the bill and I am happy to support the bill. It will be a long and contentious consideration of the clauses in detail when we get to that. I see that the government is in no hurry to proceed with the bill, nonetheless I am glad to have had the opportunity this evening to have put my position on the record.

Mr RAU (Enfield): I want to say very briefly that I commend the Attorney-General for bringing this matter before the parliament in the manner that he has. As far as I am concerned, the only way in which this bill could be improved beyond its present excellent form would be perhaps to include a reference to stature or merit as grounds of unlawful discrimination.

The ACTING SPEAKER: The member for Unley.

Mr PISONI (Unley): Thank you, Mr Acting Speaker. May I commend you on your sense of fairness and your control of the chamber which we are experiencing tonight. Our lead speaker has already indicated that we will be opposing this bill due to a number of extensions of what we describe as freedoms and the introduction of more red tape. I wonder whether the Attorney-General has actually run this legislation through his red tape-o-meter. I notice that an aim of the Strategic Plan (which has been reviewed recently) is to reduce business red tape by I think 25 per cent. Perhaps the Attorney-General could use his reply to explain whether this will increase or decrease red tape for small business. If this does increase red tape for business, then perhaps the Attorney-General might be able to tell us from where he has taken it to at least keep that line straight on the red tape-o-meter.

At the moment, the red tape-o-meter has a blue line running through it which tells us where the red tape is. We have a green line underneath showing where the Strategic Plan says it will go, but then there is a red line going north. The Strategic Plan is aiming for a 25 per cent decrease in red

tape, but the legislation coming through this parliament over the past few months is sending that red tape-o-meter north. Another area that I find a little difficult to understand is racial vilification. There is an exemption for comedians. I wonder whether there is a qualification as to whether that comedian needs to be funny, and if they are not funny, are they a comedian or are they just telling a story? I always thought that a joke was supposed to be funny. If it was not funny, it was a story. I think that an exemption for comedians is a very interesting line, and I can see it being used to bend the rules or stretch the bow to get a particular message across. I am not sure that some of the clauses in this bill have been terribly well thought of—

The Hon. M.J. Atkinson: You mean 'thought through'.

Mr PISONI: I apologise to the Attorney-General if he has trouble dealing with those who grew up in working-class areas. If he is having difficulty with that and with those in his electorate, that is something he will have to deal with. I do not have any problem with it at all; I am very comfortable, thank you very much, Attorney-General. Perhaps the Premier has trouble with that as well; perhaps that is why he lives in Norwood when his electorate is Salisbury. And the member for Napier is another: Urrbrae is a lovely suburb, but it is a very long way from Napier.

The Hon. M.J. Atkinson: I just wish you had paid attention in English class.

Mr PISONI: Unfortunately, I went through the public education system when Don Dunstan was running it. I think that is the problem I have, Attorney-General: I am an innocent victim of circumstance. Let me just raise what some might describe as a hypothetical situation but, given our growing multicultural society, this could very well be an example of where no thought, or very little thought—or lack of experience—has been given to identify a problem which might occur which could make the situation worse for a victim of racial hatred or racial discrimination. What about my mate Abu Mohammed in the QuickEMart? He has the seven-day—

The ACTING SPEAKER: Apoo.

Mr PISONI: Obviously, the Acting Speaker has children and watches *The Simpsons*. I believe that we may very well have a situation where Apoo might like to refuse service to a group of men he knows who come into his shop and pickpocket and steal things. They may very well decide, 'We can put in a complaint. We are from Elizabeth. He is not serving us because of where we come from. That is why he is not serving us.' Not only that, but they will also have the case paid for, and poor Abu will, in fact, have to cover his own expenses. That is a situation that could very well occur. These are some examples of political correctness gone too far that have not been thoroughly thought through. Consequently, we have the situation of political correctness gone mad.

Mr HAMILTON-SMITH (Waite): In the nearly 10 years that I have been here, this is probably one of the most stupid pieces of legislation that I have seen any minister present to the house. It is an unnecessary bill; no-one in the community seems to be screaming for it. It seems to be an invention of the Attorney and, somehow or other, he has managed to convince some sensible members of cabinet and the caucus that it should be introduced in the face of considerable public opposition. As my friend the member for Unley mentioned, it is a case of political correctness gone mad. There are so many illogical provisions in the bill that it simply beggars belief. As I said, it is not wanted.

A number of provisions in the bill are, frankly, stupid. It is an effort, in many cases, to legislate commonsense and good manners. In fact, if one believes in freedom as a general principle that should guide our democracy, this bill is an affront because, although it purports to protect people's freedoms, it has the effect of doing precisely the opposite. In effect, it seeks to gaol, fine or punish people for expressing their opinion, by and large even when no offence is given or taken. It is a licence for a myriad array of idiots, crackpots, nuts and point makers to sue, prevaricate, complain, write letters, commence legislation or offend others using the bill as their crutch.

One only needs to read the bill to fully understand its absolute stupidity. If anyone on the benches opposite has been an employer, for example, they should just think about some of the implications involved in this bill, many of which would ordinarily be quite beyond the means of a small business employer to control. I know that a lot of members opposite came from the union movement, or were drawn into politics through the union movement or industries linked to the union movement. Some of this might seem quite manageable for big business, and it might seem quite sensible from the point of view of a union that seeks to litigate on behalf of members against a big business proprietor.

However, I ask members to think about the implications of it for small to medium enterprises (the hairdressing salon, the deli, the small retail outlet or the restaurant) and associations (the sporting club, the Sunday school or the church community group). Some of the provisions this bill seeks to foist upon small people—ordinary South Australians, like many of us—who just want to get on with their day-to-day life really are staggering. I think it strikes at the question of whether or not there is an ounce of commonsense in this government in bringing this matter forward.

Both cabinet and caucus should have simply told the Attorney to take this nonsense away. It is not wanted; it is not serving any purpose and it should not be brought forward. It will hurt the government, and I think it is already hurting the government, if the number of letters, telephone calls, emails and contacts that we are having over this side is anything like the number that members opposite are having. It is a bit like when the minister for transport talks about 70 per cent of people supporting the tramline down King William Street. He does not provide any statistics to support it but he says these ridiculous things. People have been ringing up talkback radio all week ridiculing him over it and here is another example. Where is the polling that shows this bill is so urgently needed? For a start, so many of the provisions in the bill are already provided for in the commonwealth act and this bill simply seeks to give some new impetus to them.

The Hon. M.J. Atkinson: So, the Liberal Party brought these to the federal level. You support that.

Mr HAMILTON-SMITH: They are already in the law. If they are already in the law, why do we need to reiterate them? Of course, that is not enough for the Attorney. He has to go further; he has to take those provisions and those in the existing state act and go further into terrain like Star Trek Voyager. He wants to go bravely and fearlessly where no man has ever gone before. No-one has ever been stupid enough to venture into those terrestrial regions except for the Attorney. Not only that, he has dragged his caucus and his cabinet with him. There are new grounds for discrimination in producing this bill which simply just strike at the commonsense of ordinary South Australians. Many of the most difficult and objectionable provisions, which according to the

Attorney if this bill became law will now be binding on all South Australians, are either already covered by other acts or they are simply commonsense and good manners. That is what they are. Far be it for the Labor Party to feel a need to leave people—families, associations and small businesses—with the freedom to apply their own commonsense and good manners.

Let's have a law for it. Let's legislate it and make sure that nothing is left to doubt. Of course, that raises the obvious question: what is not included? If we are going to legislate everything, what is not in there that needs to be in there? It has similar leanings to debate about whether or not one needs to specify all of the powers of the sovereign and the Governor-General, whether or not we need to have a bill of rights and whether we need to legislate this or that and specify this or that, so that we can have lawyers' picnics day after day while we argue what is legitimate and what is not. Thank our lucky stars that we do not at the moment live in a community like this.

This bill contains all sorts of wonderful things. We cannot discriminate on a whole range of new provisions: viruses, AIDS, learning disabilities, ADHD or dyslexia, sex, gender, sexuality—

Mr Bignell: Army service?

Mr HAMILTON-SMITH: I take it that this is another swipe from the member for Mawson at people who have served in the military. This is a common theme from members opposite. They want to have a swipe at servicemen and servicewomen and their families.

Mr Bignell interjecting:

Mr HAMILTON-SMITH: Here we go. We have the member for Mawson now getting into it because puppy dog, the minister for transport of whom he is a clone, does it so he has to do it.

The Hon. M.J. ATKINSON: A point of order.

Mr HAMILTON-SMITH: I just say—

The DEPUTY SPEAKER: Order! The member for Waite, resume your seat. You have a point of order, Attorney.

The Hon. M.J. ATKINSON: Yes, the member for Waite referred to a member of the house as a puppy dog, to wit an animal. Erskine May contains dozens of precedents which show that, when it is drawn to the attention of the chair that one member has referred to another as an animal, that is unparliamentary and it must be withdrawn.

The DEPUTY SPEAKER: Member for Waite, the reference to another member as an animal is impolite at the very least and in many cases unparliamentary, and I invite you to withdraw.

Mr HAMILTON-SMITH: Madam Deputy Speaker, I will not have a fight with you over this. I am happy to withdraw but I say that I have heard members opposite call people over here galahs and all sorts of references to animals—

The DEPUTY SPEAKER: Member for Waite, please address—

Mr HAMILTON-SMITH: I just will not waste time arguing with you, Madam Deputy Speaker. I am quite happy to withdraw it. Let's just get on with the issue.

The DEPUTY SPEAKER: Please address the bill.

Mr HAMILTON-SMITH: Some of the silly provisions in this bill provide that we are not allowed to discriminate against people. We are going to have a raft of laws about identity of spouse, occupational trade, religious dress, etc. There are all sorts of twists and shakes here. It is all right to discriminate against someone because of religious dress but not all right because of their religion. There are all sorts of twists and shakes with this—

The Hon. M.J. Atkinson: No, the other way around actually.

Mr HAMILTON-SMITH: Is it the other way around? Okay, I will quickly reread the multiple pages of the bill and maybe make some sense of it.

Mrs Redmond interjecting:

Mr HAMILTON-SMITH: Okay. We can discriminate on religion but not on religious dress and, of course, there are all sorts of exemptions. If you are a religious school, that is okay but, if you are somebody else, that is not okay. It is a dog's breakfast. The public know it; the government knows it; we know it. Everybody knows it. The bill is never going to proceed. You know it, Attorney. I cannot believe that your party has let you bring it in here. However, there is one particular issue that I found particularly interesting—and I hope I can find the relevant page.

It deals with the provision in the bill whereby employers will be responsible for sexual discrimination by employees when they have no knowledge whatsoever that it has even occurred. They are not complicit; they are not involved; they had nothing to do with it. They just find out one day that, of their 30 employees, Nos 28 and 29 have been in some sort of a situation where there has been sexual discrimination, and all of a sudden the employer has breached the law. Lock them up, handcuff them, take them to gaol, pillory them, throw away the key!

In a large business this all sounds fine. You have policies for this, you have policies for that; you have a hundred different rules and regulations. Try it at the hairdressing salon, try it at the restaurant, try it at the small business. Do members think that mum and dad employers, small partnerships and farmers have a policies and procedures book this thick that they give all their employees? Where does commonsense come into it? It is like the classic case of the employer who says to his or her employee a hundred times, 'Wear your goggles, or you will hurt your eyes on the lathe.' After a hundred warnings the employee does not wear his glasses, hurts his eyes, and all of a sudden the employer is in trouble.

Members interjecting:

Mr HAMILTON-SMITH: Oh yes; here come all the union officials. Oh yes; but if they have done it in writing and got it signed in triplicate, and logged it in their diary, all of that is fine. I know all that. I know all the union rules, but there is another rule called the rule of commonsense. It is the rule of commonsense that was completely forgotten when this bill was drafted, when this bill was considered in cabinet, when this bill was considered in the Labor Party caucus, and when the decision was made to bring this bill to us.

I will not repeat the detail covered by my friend the member for Heysen when she ran through many of the faults with this bill. I will not read out to the house, although I could, some of the letters that I have received from members of the public. I will not repeat the information that has already been given to the house on behalf of various church organisations and religious bodies about the doors that this bill will open for the very thing that it seeks to prevent—religious discrimination and attempts by the legislature to interfere with the way people worship, with the way they express their opinions, with the way they exercise their very freedom of speech. I think that any application of commonsense will show members that this bill should not be passed.

I just say to members opposite that this bill is awash with contradictions; it is awash with provisions that are unfair. It introduces the very discrimination it purports to prevent in one way or another. Religious schools are exempt from certain provisions of the bill, but other employers are not. Is that not discrimination? If I am the baker, can I not get up and say, 'I'm being discriminated against because the church school opposite me in the street is exempt from these laws and I'm not. I'm going to be fined or sent to gaol because I breached them.' You are introducing a raft of discriminations in the bill—the very thing the bill purports to prevent.

I say to members opposite, look, you won the election—congratulations. You won it convincingly. I say one thing: I do not want to discourage you too much from going ahead with this sort of legislation, although it is stupid. Please keep it coming, because if you do the people of South Australia will get a feel for just how silly and disconnected from reality so many of the members of the government are. This is a stupid bill. No-one wants its. It is unnecessary. It seeks to legislate political correctness as only the Labor Party can. It should be thrown in the rubbish bin. I hope it proceeds no further, and that the government comes to its senses and postpones it out into the never-never. Feel free to raise it again in the six months leading up to the next election, because I would really love to see it back on the *Notice Paper* at that time.

The Hon. L. STEVENS secured the adjournment of the debate.

ADJOURNMENT

At 9.58 p.m. the house adjourned until Thursday 8 February at 10.30 a.m.