HOUSE OF ASSEMBLY

Thursday 25 October 2007

The SPEAKER (Hon. J.J. Snelling) took the chair at 11:00 and read prayers.

CRIMINAL LAW (SENTENCING) (ABOLITION OF SUSPENDED SENTENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 September 2007. Page 936.)

The Hon. R.B. SUCH (Fisher) (10:30): I support this bill, which is a sensible proposal by the member for Mitchell. It does raise the issue of how our criminal justice system is functioning at present. I have to say that I do not believe it is functioning as well as it could or should. Obviously, it does not have much of a deterrent impact on would-be offenders.

I have said publicly on many occasions that nearly every night in Adelaide there are serious breaches of the criminal law. Last night or the night before, whether one is talking about arson, car chases, ramming police cars or whatever, Adelaide is not the place it should be. We have an ageing population, and we know from statistics and data analysis that, in general, breaches of the criminal law are more likely to be committed by the younger section of the population rather than the older section. In Adelaide there should be less crime than is currently the case.

Within the wider community—and I believe I am in touch with my electorate—the feeling is that we do not have a system of criminal justice operating in the state. The system favours the criminal. I do not support capital punishment and other drastic punishments. However, I do support genuine penalties for breaches of the law. I would be happy to see people who commit premeditated brutal killings stay in prison for the term of their natural life. I do not have any problem at all with detaining someone for the term of their natural life if they commit a brutal vicious killing, particularly if it is premeditated.

I saw a television program on Channel 9 on Tuesday night. The show is hosted by Steve Liebmann and it replays terrible crimes committed in Australia. The program on Tuesday night involved a Western Australia situation, where a guy, after consuming drugs and alcohol and being refused sex by a single mother at a party, at 2.30 in the morning brutally killed her teenage son with a tomahawk, then brutally killed her and raped her after he had killed her, and then killed the two daughters aged four and six.

That piece of whatever you want to call him will be eligible for parole in 2013. People will say, 'That is not South Australia.' I am not sure that Western Australia is much different from South Australia and the other states of Australia. We have a wishy-washy approach to people who commit horrendous crimes. In fact, the injuries inflicted by that particular individual were so severe that the Supreme Court judge put a permanent stay on any publication depicting the injuries—although I have a strong suspicion as to what he did with the tomahawk.

I do not believe in South Australia we have it right, either. I do not consider for a moment that someone who butchered four innocent people, simply because the mother refused sexual intercourse, should ever be released. I do not have any problem with that. That person should be detained behind bars for the term of his natural life. What needs to happen—and I keep coming back to this—is that we have to try to steer people away from getting into trouble in the first place; and there needs to be more emphasis on that. A lot of people who end up committing serious crimes have been subjected to horrendous personal incidents. That does not justify their behaviour, but serious rejection, for example, of a child by a parent or parents can have long-term consequences. Sadly, we live in a bizarre society.

Last night while travelling home on the train I talked to a psychologist who works for a commonwealth department. He is dealing with a situation where a family member has been having sexual intercourse with a wombat.

What sort of individuals do we have in our society? He is trying to sort out the problems associated with the family. We have some very sick people out there. I do not see any justification for that sort of behaviour. What we need is a lot more emphasis on keeping people out of the criminal justice system. We have heard a lot about the so-called gang of Aboriginal people getting around town. Not all the law-breakers are Aboriginal—most of them are not, but Aboriginal people

are overrepresented in the statistics. A lot of those people cannot read or write. They are unemployable; they have little or no chance of getting a job.

As I have said in this place, I try to keep in contact with what is happening around the whole state, and there are still Aboriginal kids in places such as Murray Bridge who do not go to school, because the system is weak. We do not want to intervene or get too tough on people whose children are not attending school. Why is it that we can go to any of these places on a school day and see kids not at school? They do not have a hope in hell of getting a decent career, getting employment, because essentially they are going to be illiterate and unable to do basic maths.

We need to intervene early. We know that from cases such as the one involving Martin Bryant, the Truro murderer, and others. All the warning signs are there early on in primary school and junior primary school. What does the system do about it? Very little, and some of those people go on to be vicious killers because the system does not deal with the issue. Then we get people released on bail or people out on parole committing serious offences. Our system is soft and ineffective. I do not like to criticise them, but I think that when the perpetrator fronts court with their rent-a-suit and their Sunday-school image, judges and magistrates tend to be more sympathetic to them than to the victim.

I know the present government is doing a lot to assist victims of crime, and I commend it for that. However, you have a system where people use every legal avenue to minimise the impact of a proper sentence upon them. I will keep saying it, but I think the government needs to get a handle on this issue, because if it does not it will bite it at the next state election. The present government used the situation skilfully in the lead-up to 2002, but the wheel will turn if it does not get a handle on what is happening in the wider community.

This is a big sleeper issue out there, and the community is sick and tired of what is going on. Look at the vandalism occurring: beautiful statues were done of the work of Mem Fox (Possum Magic) in Thalassa Park, Aberfoyle Park. Other authors were commemorated in wonderful sculptures, and what has happened? A few weeks ago they were vandalised—smashed to bits already. Members of the community know what happens; they see this behaviour going on and they see no effective action and consequence for those who offend. The Coromandel railway station used to have glass panels—now all smashed; $11,000 worth smashed all in one night. Now we have mesh.

The system is not working the way it should. I do not say it is totally the fault of the state government, but what I do say is that it is totally the government's responsibility to do something about it and fix it. We do not have enough places in which to lock people up, and they should not be in a place where it is just a time out. I would put very tough conditions on people. If you do not want to learn, if you do not want to improve your literacy, you will not get the full benefits that accrue to the standard prisoner.

We need to get fair dinkum. I support this measure from the member for Mitchell as part of a package of trying to deal with a system that is very wobbly.

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs) (10:41): Sentencing is not a science: it is an art. It is not a mathematical exercise. The High Court has said that, although some general sentencing standards guide discretion, the human condition of offender and victim is so variable that the sentencing judge must resort ultimately to what has become known as instinctive synthesis, and I refer to Wong v The Queen (2001), AB v The Queen (1998) and Weininger v The Queen (2003). In making these judgments, judges require tools.

These tools may usefully be seen as a range of sentencing options escalating in severity. Section 38 of the Criminal Law (Sentencing) Act contains the option of the suspended sentence. The general nature of the option is common knowledge. The offender is sentenced solemnly to a term of imprisonment and that sentence is then suspended on imposition of a bond with variable conditions. There is a two-stage reasoning process: first, the decision to imprison must be made according to established principles; secondly, the decision must be made not to impose that sentence at once but to suspend it over the head of the offender like Damocles' sword. Suspended sentences were introduced by the Offenders Probation Act Amendment Act (No.2) 1969. It may come as no surprise to members that its introduction was controversial. A crusty conservative magistrate of the day did not like the innovation, and said:

I agree with the view currently prevailing in England that a suspended sentence is really no punishment at all.

We know, of course, that the member for Mitchell does not agree with these views. What the member for Mitchell hopes to achieve counter-intuitively by this bill is fewer people imprisoned in South Australia. The appellate courts did not agree with the magistrate and do not agree. At the time, Chief Justice Bray said:

So, far from being no punishment at all, a suspended sentence is a sentence of imprisonment with all the consequences such a sentence involves on the defendant's record and his future and it is one which can be called automatically into effect on the slightest breach of the bond during its currency. A liability over a period of years to serve an automatic term of imprisonment as a consequence of any proved misbehaviour in the legal sense, however slight, can hardly be described as no punishment.

Those words were uttered in the case of Elliott v Harris in 1976. As is wellknown, however, the mistaken view that a suspended sentence is really just a slap on the wrist has maintained currency and, in some places, suspended sentences have been repealed. But all is not what it seems.

For example, in New South Wales repeal of the section of the Crimes Act dealing with suspended sentences was recommended by the Criminal Law Committee in 1973. The committee expressed a preference for the common law bond system, which was seen as superior to suspended sentence orders in dealing with first time offenders. In 1974 an amended section 558 of the Crimes Act was intended to be a statutory form of the common law bond. Members should note that this bill does not replace suspended sentences with another alternative. But, in any event, New South Wales reintroduced suspended sentences in 2000, in line with the recommendations made by the New South Wales Law Reform Commission. We all know how the member for Mitchell nags me about what he thinks is the need for a law reform commission in South Australia.

Mr Hanna: Yes, a very good idea.

The Hon. M.J. ATKINSON: 'A very good idea,' he interjects: however, we have law reform commissions in other states and territories and, on this occasion, the member for Mitchell acts in contradiction of the recommendation of the New South Wales Law Reform Commission. He likes law reform commissions if they recommend what he wants.

More recently, New Zealand removed suspended sentences as a sentencing option with the introduction of the Sentencing Act 2002. Again, unlike the bill before the house, this change was made as part of broader reforms to sentencing and parole, including the replacement of periodic detention and community service with a community work order. Tellingly, though, since the abolition of the order and the introduction of the new sentencing legislation, New Zealand has experienced a gradual increase in the proportion of sentences that are custodial—from 8.2 per cent in 2001, to 8.4 per cent in 2002, and 8.6 per cent in 2003. The change from 2002 to 2003 alone represents about an 8 per cent increase in the number of offenders receiving a custodial sentence—from 7,930 in 2002 to 8,540 in 2003. This is a result we know the member for Mitchell does not want as a former member of the Greens party and a life-long left Liberal on criminal law sentencing.

The removal of suspended sentences as a sentencing option is believed to be one factor that may have contributed to this increase. The honourable member proposing this bill has not told us this, nor has he informed the house how he intends the government to pay for the expensive consequences of increased imprisonment. I know of no member of the assembly who is more ad hominem in his attacks on members than the member for Mitchell. England and Wales have introduced—

Mr HANNA: I object to that, Mr Speaker.

The SPEAKER: Order!

Mr HANNA: That is an absolutely false allegation, and the Attorney-General knows it. He should withdraw it.

The SPEAKER: Order! The member will take his seat when I am on my feet, or I will name him straight away. Does the member have a point of order?

Mr HANNA: Yes, my point of order is the insult just directed at me by the Attorney-General.

The SPEAKER: I do not know what the insult was. Are you saying that the member used unparliamentary language?

Mr HANNA: He is alleging that my preferred form of argument is an ad hominem argument.

The SPEAKER: There is no point of order. The member will have an opportunity to respond at the conclusion of the debate. The Attorney-General.

The Hon. M.J. ATKINSON: One thing I love about the member for Mitchell is that he can dish it out but he can never take it. England and Wales have introduced a new form of suspended sentence order under the Criminal Justice Act 2003. It is true that the Victorian Sentencing Advisory Council recommended the abolition of suspended sentences but required them to be phased in as part of a large reform of alternatives to imprisonment, unlike this bill. The council said:

> The council's recommendations were not, as many interpreted them, a call for all offenders on suspended sentences to be imprisoned, or an affirmative response to calls for more punitive sentencing. Rather, we sought to find a more creative solution to the problems our consultations uncovered, and to provide a new range of orders that would perform substantially the same function as a suspended sentence and other substitutional sanctions, but that would do so in a different form. We believed then, as we do now, that it is possible to create sentencing orders that 'mean what they say', while also providing courts with a flexible range of orders to enable sentences to be tailored to the offence, the offender, and the purposes of sentencing (whether these are considered to be punishment, deterrence, denunciation, rehabilitation, community protection, or a combination of these purposes).

All of this says that, even if one were to abolish suspended sentences (which I would not), the task is far more complicated and sensitive and thorough than the member for Mitchell's bill.

Time expired.

Mr HANNA (Mitchell) (10:52): The Attorney-General cheapens his argument with ridicule, personal attacks and false allegations. That is not uncommon in the Attorney-General's rebuttal of propositions put by Independent members or the opposition. Nonetheless, when I consider the substantial points that the Attorney-General has made, I appreciate that he has provided a useful survey of interstate jurisdictions. He has provided some additional statistics, but there is nothing there to rebut the points that I made when I proposed this bill.

The fact is that the reasoning process is faulty in general terms when it comes to the way suspended sentences are handed out: it does not satisfy the public. The perception of people walking away without effective punishment is a real one. The Attorney-General has done a good job of representing the views of judges generally, but it really does not address the concerns of the community. I trust that there will be at least substantial support for this proposition. We will test that now.

The house divided on the second reading:

AYES (2)

Hanna, K. (teller)	Such, R.B.

NOES (34)

Atkinson, M.J. (teller)	Bedford, F.E.	Breuer, L.R.
Caica, P.	Chapman, V.E.	Ciccarello, V.
Conlon, P.F.	Evans, I.F.	Foley, K.O.
Fox, C.C.	Geraghty, R.K.	Griffiths, S.P.
Gunn, G.M.	Hamilton-Smith, M.L.J.	Hill, J.D.
Kenyon, T.R.	Kerin, R.G.	Key, S.W.
Koutsantonis, T.	Lomax-Smith, J.D.	Maywald, K.A.
O'Brien, M.F.	Penfold, E.M.	Pengilly, M.
Piccolo, T.	Pisoni, D.G.	Portolesi, G.
Rau, J.R.	Simmons, L.A.	Stevens, L.
Venning, I.H.	Weatherill, J.W.	White, P.L.
Williams, M.R.		

PAIRS (8)

Goldsworthy, M.R.	Rann, M.D.
McFetridge, D.	Thompson, M.G.
Pederick, A.S.	Bignell, L.W.
Redmond, I.M.	Rankine, J.M.

Majority of 32 for the ayes.

Second reading thus negatived.

CONSTITUTION (NUMBER OF MINISTERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 September 2007. Page 940.)

Mr PISONI (Unley) (11:00): The bill before us is about reducing the number of ministers in the government. I refer to the remarks I made previously before the end of private members' time a couple of weeks ago. I support this bill, because the Liberal Party has a philosophy of having a smaller and more efficient government—

Mr Hanna: We should have smaller MPs, too!

Mr PISONI: The member for Mitchell suggests that we have smaller MPs. On our side of the house, as a result of the last election, we have four new MPs who are all more than six feet tall. I am not quite sure how we can deal with that. Perhaps we need a pro-discrimination policy for shorter people at the next election. The member for Mitchell's bill is a sensible one. I believe that the public expects governments to manage their business as efficiently and as effectively as possible.

I refer to my small business experience. When someone is growing a business, they need extra staff, but they do not usually need extra managers. However, with this government, we have seen an increase in managers in the ministry: we have gone from 13 to 15 ministers. One could only think that that may have something to do with the arrangement that the government made with Independent members prior to the last election, for purely political reasons. Each one of these ministers is costing about $2 million a year. They have eight to 10 political staff, who are there purely for the minister's political use, as well as access to public servants in government departments. The Liberal Party has announced a policy that it will have a ministry of only 12, because we believe that governments should be efficient and effective.

One of the striking things that we have seen is a budget that took 170 years to reach $8 billion, yet it took only five years to reach $12 billion after that. The government's reaction to that has been to increase the size of the government, whereas a business that had an increase in revenue of that size in such a short time would have increased its income using other methods and efficiencies in its management and service delivery to achieve that. This government has loosened its belt and fed on the buffet, if you like, of government revenue that has been coming in, and one of its highest priorities has been to increase the number of ministers and the number of jobs, not only for its own members but also for Independent members of the parliament.

I suppose that the increase in the ministry was much easier to manage than the factional deals that are worked out in the back room about which faction gets which ministry. The government was committed to the deal that it made prior to the election and, consequently, it had to make some pretty touch decisions. We know that this government is not good at making tough decisions: it has already backflipped about nine times, I think, this year on some decisions it has made—not necessarily tough decisions; some of them were pretty stupid decisions. It has backflipped on them because it did not have the stomach to go out there and publicly argue for them—just like it could not control its factions to keep its ministry at 13 so that it could cater for the Independent members, because deals had already been done with the different factions for the different ministries.

This goes back to the entire set-up of the Labor Party's structure and system—the Amway system of party politics where, the more you have at the bottom, the more votes you control at the national convention and the better chance you have of getting preselection in a safe Labor seat. Just because someone has preselection in a safe Labor seat does not mean that they need to live in that seat or be out there visiting on a regular basis. We certainly see plenty of examples of that on the Labor Party side of the house. I support this bill. I think it is a good, commonsense bill. It is a good bill for the people of South Australia, because they want efficient and effective government. If 12 or 13 people can do the job, why do you need 15 people? The only reason this government needs 15 people is to placate its factions and the Independent members of parliament it has done deals with.

Mr HANNA (Mitchell) (11:07): This proposal to cut the number of ministers has been dealt with quite comprehensively by the speakers to the debate. I will recapitulate some of the reasons for bringing this in and this will deal with some of the points that have been raised during the debate. First, some of the ministries which have been created under the Rann Labor

government have been gimmicky, having particular ministries for topics which become the flavour of the day, whether it be road safety or mental health. Those issues are important and quite crucial to the wellbeing of South Australians—no question about that. There is no reason why road safety cannot be dealt with within the transport portfolio, just as there is no reason why mental health cannot be dealt with within the health portfolio.

Secondly, there is a considerable cost saving of millions of dollars a year by cutting the number of departments and ministers. Thirdly, it is a really important feature of our democracy that the parliament is in some balance with the executive and, if you have a ministry of 15 or larger in our relatively small parliament of a total of 69 members of whom up to half at any one time are likely to be of one particular party, it is almost impossible for members of parliament other than those in the executive to challenge what the executive decides to do.

When you include other paid positions—and, while I will not say hangers on, I do refer to people paid for example as Deputy Speaker, Parliamentary Secretary, Government Whip and so on—you have other people with a vested interest in maintaining the interests and decisions of the executive, so it makes it very hard to challenge the decisions of the executive. Very often, the decisions of the executive are driven by three or four key players. To me, as a democrat, it is disturbing to think that the South Australian parliament is really run by three or four people. Fourthly, there is a question of—

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order!

Mr HANNA: —the talent pool available. I am suggesting something closer to a cricket team, and I think we probably do have enough talent to fill a cricket team with ministers. Some would say we only have the talent to fill a basketball team, but I do not think we have the talent to fill a rugby union team. You are not going to get 15 top players on the field in our parliament of 69.

The points I have made cover those which have been raised during the debate. I am pleased to have the support of the Liberal opposition and I will be pleased to see this proposal tested.

Second reading negatived.

INDEPENDENT COMMISSION AGAINST CRIME AND CORRUPTION BILL

Adjourned debate on second reading.

(Continued from 18 October 2007. Page 1143.)

Mr RAU (Enfield) (11:11): I am pleased to see that this matter has been brought forward for discussion in the parliament because I think it is an important issue. Whilst at the end of the day I find myself not necessarily in agreement with the specifics that are provided in the proposal, I think the issue is one that needs to be debated publicly, and it is an issue which has several important strands to it and, for what it is worth, I want to make a few remarks about that.

Before doing that, I have to say to the member for Unley that his dissertation on the internal mechanics of the ALP was similar to the sort of contribution I would make on quantum mechanics; anyway, that is by the by. It always must be more mysterious from the outside than it is from the inside.

Mr Hanna: Very tawdry and mundane on the inside.

Mr RAU: Yes; I might invite him to come along as a visiting fellow or something for a while so that he can get a feel for it.

Mr Hanna interjecting:

Mr RAU: Indeed; it might actually make him feel less threatened by the whole thing. In terms of the issue about the independent commission, I think a number of areas in the administration of the state necessarily require oversight, and I would like to touch on a couple. The first one, and in my mind the one which is the gaping hole in administration at the moment, is local government because local government is basically a law unto itself. The LGA is nothing more than a lobby group for the administrations of councils and, occasionally, they put a mascot up at the front who happens to be an elected person and they are at the head of the Mardi Gras when they go off to their conferences but, in fact, the whole of the LGA's agenda is driven by the needs, wants and requirements of the administrations of councils.

Of course, they do not want other people looking over their shoulder and seeing what they are doing. We heard the great cacophony of complaint from local government at apparently this preposterous suggestion by the Auditor-General in his last report that he should have the right, if necessary, to have a look at them.

The Hon. M.J. Atkinson: Paul Perry is on his way to the Local Government Association as we speak.

Mr RAU: Yes, and I am reminded that Mr Paul Perry, formerly an officer of some note in the City of Charles Sturt, is moving to the LGA to assist it in understanding governance, and that is the most eloquent statement I can imagine about the direction the LGA is taking because anything he might have to say about governance is going to be a problem. Anyway, let me move on.

I do want to pay tribute where it is due in the local government sector to Councillor Joanna McCluskey and her colleagues of the City of Port Adelaide Enfield, because they have actually moved to have some sort of oversight of local government. Indeed, I think at their recent conference it was decided that some oversight is needed. Whether that turns out to be a genuine recommendation or a figleaf remains to be seen, but at least there appears to be some movement.

The second area of interest, of course, is the police. The police do need to be overseen, for obvious reasons, and there is legitimate debate about whether the Police Complaints Authority is adequately discharging that function. I do not have a firm view about that one way or the other, but there is a debate and possibly it is a debate that needs to occur.

The state Public Service obviously needs to be subject to scrutiny, as does the executive arm of government. These things are important, and I think it is important periodically for us to have a debate about these issues and work out how we are going to deal with them. In recognising the problem that the member for Mitchell has identified, and in acknowledging—as I happily do—that he makes a very good point that these things need to be looked at and examined, I find myself having a problem with the ICAC proposal, and I would like to explain why. I have a number of reasons. The first is that, in setting up some sort of overarching, all-powerful body, one creates the inevitable problem of who watches the watchers. Who is keeping an eye on those who are keeping an eye on everybody else? How far back do we remove that? Who watches the watchers of the watchers of the watchers? It gets to the point—

The Hon. R.B. Such: You're in parliament and you don't know.

Mr RAU: Possibly. It gets to the point where layer upon layer of bureaucracy is intruding upon the layer below and, at the end of the day, if we do not have it right at any one of those points, the whole system fails. In my mind, an ICAC proposal carries the very real risk that, if the wrong person is put in charge of it, we risk either having some person who sees himself as some sort of potentate who can run the whole show and go around pushing people around, or having somebody who plays to the theatre all the time in order to get the public acclamation that they might receive.

The Hon. M.J. Atkinson: Can you think of a statutory official who does that?

Mr RAU: I can't, but maybe others can. We risk finding somebody who has a tendency to justify their own existence and to justify budget claims by finding new witch-hunts to explore and develop as and when budgetary requirements dictate, and so on. So, we could actually have a budget and empire-building driven management of this very powerful and potentially very damaging institution. I remind members of the parliament that institutions such as the NKVD (later the KGB), the CIA and the FBI all began, basically within the context of their own systems, with an intention to do this sort of thing. I will not pick the extreme of the NKVD, but let us have a look at the FBI. Anybody who is interested in how these things can go off the rails should read about J. Edgar Hoover, who was the unchallenged leader of that outfit for many years and who died in the position. He was able to extract an enormous amount of political influence out of that outfit because of the way it conducted itself.

Mr Hanna interjecting:

Mr RAU: That is not a reason not to have somebody looking over people's shoulders. I agree with the member for Mitchell: there is a need for oversight. I absolutely agree with that, but I am very concerned that, if such an oversight is to be established, improved or developed, it has to be in a way which is not going to create a monster that is bigger than the one we are trying to defeat. That is really the core issue here.

In summary, I say this: by all means, let us review all these issues, such as government corruption, of which there is plenty, in my opinion. I could give examples here for a couple of hours, which would make people's hair stand on end but, luckily, Mr Perry will be able to explain those things to people in local government.

An honourable member: The police.

Mr RAU: The police—obviously there are problems with the police, the Public Service and the executive. All those things are admitted—they are known problems—but, in order to solve a problem, it is dangerous to jump in a reactive way into a solution which may actually make the problem you are trying to solve worse and create a completely new layer of problems over and above that problem.

So, I commend the member for Mitchell for bringing this forward. I genuinely support the idea of a reasoned, well thought out, well-considered review of the ways in which all of these government agencies are overseen. That review might mean that there will need to be changes to the Auditor-General's and the Ombudsman's powers. There could be any number of reasons why a different solution is appropriate. I do not want to close off those options by zeroing in on a particular formula which has been tried elsewhere and which, in varying degrees, has or has not worked. We need to look at New South Wales and Western Australia to see contrasts in the way these things function.

As I said, I commend the member for Mitchell for what he has brought forward. I think it is excellent that the parliament is debating this; but, unfortunately, I think it is too early yet to be prescriptive about a solution in the way in which this proposal has been brought forward.

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (11:21): I rise to indicate my support for the bill. The disappointing aspect about the debate in this matter to date, and in particular the government's position—

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order!

Ms CHAPMAN: —is that we hear submissions put to the parliament about how this bill contains merit and some good features and yet no-one in the government is prepared to stand up and actually support it. The Attorney-General has repeatedly made public that South Australia does not need an ICAC. Notwithstanding that, yesterday we heard Premier Iemma announce at the major ICAC conference that anyone in Australia who does not have an ICAC is, to use his specific quote, 'crazy', and if they do not think they need one they are kidding themselves. He made it absolutely clear, as other premiers have around the country in their adoption of ICACs, of the importance of having one. So, for South Australia to sit out on its own, with its lurid history, as a government, and not address this issue I think is quite scandalous.

The opposition has considered what form an ICAC could take, who should be on it, how it should be reviewed, what powers it should have, and in doing so has carefully examined who they are and how it operates in other states. There is one aspect that the government has raised, and that is an important one; namely—you have to answer the question positive if you are going to support this initiative—is it going to be money well spent? Are you going to get some return for the investment? Because these things are not cheap, they are expensive, no matter what model you use.

The experience interstate is: New South Sales Independent Commission Against Corruption established in 1988. It has a staff of 110 and a budget of $15.6 million. The Queensland Crime and Misconduct Commission (replacing the Criminal Justice Commission) was formed as a result of the Fitzgerald royal commission. It has a staff of 300 and a budget of $35 million per annum. WA's Corruption and Crime Commission grew out of the aftermath of the WA Inc. and Kennedy royal commissions, and it has a staff of 150 and a budget of $25.5 million. In Victoria, the then Bracks government, under strong pressure from the police union, refused to establish a royal commission into corruption; rather, the Victorian government gave additional, but limited, powers to the Ombudsman to investigate police corruption.

So, they have considered it and many have made the decision that it is money well spent and it is necessary to ensure that we do maintain a standard in public office at all levels of government and public service. The history in South Australia is well known. We have had the Premier's senior adviser (Randall Ashbourne) charged with corruption in relation to an incident involving the Attorney-General. We have had two protracted investigations by the police

anti-corruption squad on the unsavoury activities in Veale Gardens. We have had the alleged police incompetence or corruption in the McGee hit and run investigation, necessitating the establishment of a royal commission. We have had the 'stashed cash' affair involving—

The Hon. M.J. ATKINSON: I rise on a point of order. I have a twofold point of order. The first is that the matter of the Veale Gardens allegations is currently before the criminal courts and we have a strict sub judice rule in this house. The second thing is that under the Evidence Act there is a provision that, where publicity is given to a person being charged, as the member for Bragg just did, it is an offence not to mention that they were acquitted.

The SPEAKER: I do caution the Deputy Leader of the Opposition about mentioning matters that are sub judice in the course of her speech. Regarding the Evidence Act, that does not apply, to my knowledge, to parliament because of parliamentary privilege, unless it specifically mentions the parliament, and I do not think it does. I do, nonetheless, caution the deputy leader about mentioning matters in her speech that are before the courts.

Ms CHAPMAN: Thank you, Mr Speaker. I am mindful of that advice, and I have taken it. I am not only mindful of it but careful to ensure that there is not a breach. Nick Niarchos comes to mind, as a person named in this house. Mr Speaker, you would well know of the determinations that were made in the Supreme Court on that matter, which involved the Attorney-General and questions of parliamentary privilege.

We had, of course, the former speaker demanding a royal commission into alleged public and judicial malfeasance on issues that never saw the light of day. We had the long saga concerning the sexual abuse of wards of the state, with the government eventually establishing the Mullighan inquiry. The Premier and ministers regularly attacked and sought to undermine the independence of the Director of Public Prosecutions, and, most recently, the questions of conflict of interest of one of the ministers of this government have been brushed aside by the Premier. So, anyone who purports to suggest that we do not need an ICAC in this state is, as Premier Iemma says, crazy. We certainly need it.

This government has brushed aside criticism. It has placed things under the carpet. It has refused to establish an ICAC to deal with this matter. When we view collectively the sorts of issues that have arisen just in the brief five years of this government, we understand why it is so important that we have an ICAC, and the case for it is compelling.

We announced, as an opposition, that if elected in 2006 that we would investigate the establishment of a commission, and we have done so, and our shadow attorney-general, the member for Heysen, and her predecessor representing legal matters for the opposition in another place, the Hon. Rob Lawson, have done an immense amount of work on this and have, I think, had an opportunity to properly advise our party and have received endorsement of the need for it. It is only the Premier and his Attorney-General who seem to be so hell bent on hiding from it.

Some of the features in this bill are ones which we think perhaps could go a little further or be a little different, but on balance we support the bill and we would seek its passage. It is important that there is clear identification of functions and that the jurisdiction of an ICAC has clear limits. If one has committed a criminal offence, there are processes for it to go to the DPP for prosecution—and we are mindful of that. It must have powers of examination, otherwise there is the capacity for it to be impotent.

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order!

Ms CHAPMAN: In my view, there must be no publication of very high-level offences. The way to manage and operate an ICAC is to have high penalties for anyone who discloses information and, in order to be genuinely successful, we must have a high standards for personnel appointed to it.

Debate adjourned.

MEN'S HEALTH

The Hon. R.B. SUCH (Fisher) (11:31): I move:

That this house urges the Minister for Health to release the government's men's health policy as soon as possible.

As members know, I have had a longstanding interest in both men's and women's health. Fortunately, we have moved from the unproductive era when some people felt that if they

supported men's health they were against women's health. Nothing could be further from the truth. In fact, if one looks thoroughly at both aspects, one sees the two are intertwined. A lot of women who are living alone wish their husband or partner was still with them, their partner having died as a result of illness or disease.

In 1992, when I was a member of the Liberal Party and a shadow minister, I argued for the incorporation in the 1993 election policy material for a commitment by the Liberal Party on men's health. The then shadow minister for health (Dr Michael Armitage) would not agree to it on the grounds that 'people will laugh'. Well, people do not laugh when they get a serious illness, particularly if it is a cancer.

I commend the Minister for Health (who is very supportive) and the former minister for health (Hon. Lea Stevens), who was an excellent minister—they are very progressive in relation to men's health—and also, the Hon. Dean Brown who preceded the Hon. Lea Stevens. Recently, there has been a change in attitude amongst ministers for health; and I am pleased to see that.

People might ask why we need to focus on men's health and have a health policy. It gives a focus to government and the community and shows that governments are taking this issue seriously. Recently, I was having a tidy-up in the office and I found a copy of a women's health policy released in 1988 by Dr Neal Blewett, a member of the House of Representatives and a federal minister at the time. It shows the length of time we have been focused on women's health—and so we should.

The case for a men's health policy is very compelling if one looks at the statistics. Recently, I had the privilege of attending the launch of the Freemasons Foundation Centre for Men's Health, based at the University of Adelaide. It is supported by a range of organisations, including Andrology Australia, Australian Prostate Cancer Collaboration, Flinders University of South Australia, Hansen Institute, Institute for Medical and Veterinary Science, Research Centre for Reproductive Health, Royal Adelaide Hospital, SA Department of Health and University of South Australia. It is a wonderful initiative by the Freemasons and they should be commended for their generous support.

Information obtained from the Florey Centre (supported by a grant from the Australian Prostate Cancer Collaboration) found that amongst men aged 35 to 80 years, 47 per cent were overweight; 31.5 per cent were obese; 61 per cent did not get sufficient exercise; 44 per cent were sedentary; 33 per cent have been diagnosed with high cholesterol and a further 14 per cent qualified for diagnosis upon clinical examination; 9.5 per cent have been diagnosed with diabetes and a further 4.4 per cent qualified for diagnosis at clinical examination; 30.2 per cent have been diagnosed with high blood pressure and a further 29 per cent qualified for diagnosis at clinical examination; 12.5 per cent have been diagnosed with depression and a further 6 per cent met the criteria for diagnosis upon response to the depression inventory; 9.3 per cent have been diagnosed with anxiety; 11 per cent have been diagnosed with insomnia; and 57.2 per cent reported at least some degree of erectile dysfunction. They are concerning statistics.

Better Health, a publication of the Victorian government, took some statistics from the Australian Bureau of Statistics—Mortality Atlas December 2002 that show the death rate from many illnesses and diseases is generally higher for men than women. It published the average death rate per 100,000 persons, comparing males and females, as follows: malignant tumours (cancerous) 237.8 males compared to 146.7 females; ischemic heart disease, 190 males compared to 119.9 females; cerebrovascular disease (strokes), 65.9 males compared to 65.8 females; chronic lower respiratory diseases (lung problems), 46.6 per cent for males compared to 23.2 per cent for females; accidents, 35.6 per cent for males compared to 17.7 per cent for females; suicide, 21.9 per cent for males compared to 5.5 per cent for females; diabetes mellitus, 18.8 per cent for males compared to 13.6 per cent for females; influenza and pneumonia, 13.6 per cent for males compared to 11.4 per cent for females; motor vehicle traffic accidents, 13.1 per cent for males compared to 5.5 per cent for females; and mental disorders, including dementia, 9.3 per cent for males compared to 10.8 per cent for females.

If you look at the statistics, men are not travelling well in terms of their health, and it is therefore important that we focus on some of those issues. If you look specifically at prostate cancer (of which I have had some involvement—involuntary), each year in Australia more than 3,000 men die of prostate cancer, which is equal to the number of women who die from breast cancer annually. Also, 18,700 new cases of prostate cancer are diagnosed in Australia every year. Each day 32 men will be told that they have prostate cancer and one every three hours will die from that insidious disease.

The ratio is that in your lifetime one in nine men will develop prostate cancer. It is the most common cancer in men and the second most common cause of cancer deaths in men. One could go on in terms of the statistics. One statistic which I think is particularly revealing (and it does not diminish the significance of violence against women) appears in an article by Michael Woods, a senior lecturer at the School of Biomedical and Health Sciences at the University of Western Sydney. Writing in the magazine *Foundation 49* (the '49' referring to the men who make up 49 per cent of the population), he said:

> In 2005 more than twice the number of adult victims of physical or threatened violence were men rather than women, and over a third of all victims of sexual assault were males.

He goes on to point out that (and this is based on statistics from the New South Wales Bureau of Crime) 28.9 per cent of victims of domestic violence in New South Wales are male. He makes the case that the rape of an 18 year old man should be no less a tragedy than the rape of an 18 year old woman. His article states:

> The bashing of a young man walking home from work should be as much anathema as the bashing of a young woman in a nightclub. It is time that services recognised the extent of the problem and their obligation to assist male victims of violence.

Of course, in the main, that violence is caused by other men, so that needs to be borne in mind. However, it does not negate the basic thrust of the issue that we have a very serious problem in relation to men's health in Australia and, obviously, that includes South Australia. Sadly a few years ago, someone who lived not that far away from me took his own life when he was diagnosed with prostate cancer. He took his own life on the road by deliberately driving into an oncoming truck, which is sad, and sad for truck driver as well.

He had been going to his local GP for years, getting his blood pressure checked and supposedly having check-ups, but not once did the GP ever check for prostate issues. After he took his life, the widow of that chap really gave that doctor a blast and said, 'You were supposed to be checking my husband's health. Never once did you check for prostate problems.' By the time he was diagnosed it was basically too late. The point is that many men do not go to their doctor for a prostate check or other checks.

An interesting study based in the UK (the details of which were released recently) asked men, 'Why don't you go to the doctor?' The answer was, 'Well, I don't want to go to the doctor for a check-up because I'm not really crook. I might be getting in the way of someone who really needs that help.' That is a bit of a different spin to the usual one that men are stupid, stubborn and do not want to see the doctor. The general male view has been, 'I don't need to go to the doctor because there's nothing wrong with me, and I don't want to take the place of someone who is really sick.' That is not very helpful in terms of early diagnosis and screening, because the lesson is that as soon as you get onto some of these major issues and deal with them the better.

Probably the only reason I am still around is that I have taken an interest in these issues for a long time. My GP is of a similar mindset and was quite keen that I be regularly checked. The issue in terms of having a men's health policy is not simply to have a piece of paper—a lot of issues need to be addressed. Men living in rural Australia are the people suffering the most because they have little access to services, especially specialist services. They lack awareness. The macho-type culture, which is even stronger in the country than the city, does not help; and men generally do not go to doctors because, as far as I know, not many of them have babies and not many of them want to.

They do not have the same physiological conditions that women have to deal with, such as menopause, menstruation and so forth. Men generally do not front the doctor as often as women do. We need to change that mindset and get men to have regular check-ups, and not just for prostate cancer. Many men do not like the idea of a digital rectal examination, but my argument is that it would be preferable to have that rather than to have prostate cancer. That in itself is a very basic test. You can then have the blood test (the prostate specific antigen test), which is an indicator, a snapshot in time. If you really want to know you then have a biopsy, which nowadays, fortunately, is painless.

There is a long way to go. We have good organisations, and I mentioned before the Prostate Cancer Foundation of Australia. We now have the Freemason's centre here and we have Andrology Australia, which is based at the Monash Institute of Medical Research. Men are suffering, for example, from things such as testicular cancer, and there is not even a support group for those young men or men of any age who suffer from that. As far as I am aware, there is no support group for the partners of men who have prostate cancer. There is for women who have

breast cancer, and that is fantastic, but the men are dragging the chain in terms of attention focused on things such as support.

I recently wrote to Kevin Rudd, John Howard and also Mark Vaile—to Mark Vaile, particularly, in relation to the needs of rural men and their health, asking what he is doing about helping country men get adequate information and treatment. Likewise, I wrote to Kevin Rudd and John Howard and asked, 'Where is your men's health policy?' It should be out there for the 49 per cent of the population who happen to be men.

The Minister for Health here (Hon. John Hill) I know has a health policy for men that he has had people working on for some time, and I expect he will release it either later this year or early next year. To his credit, his department has supported things such as a research project into men's use of health services in South Australia, improving men's participation in primary health care, improving men's access to primary health care, and a violence intervention training package involving men; and his department was the principal sponsor of the recent national men's health conference here in Adelaide.

So, I commend the minister for what he is doing. However, it is not just up to him; it is up to men to get active and do more, not only for themselves but also for other men, and take away the shield of ignorance. There would be a lot of older men who would not even know they have a prostate, and anyone over the age of 40 years whose relatives have had prostate cancer should be checked, and anyone over 50 years should have regular checks, anyway, irrespective of whether a relative has had it.

So, I ask the minister to expedite the release of the policy. I commend him on what he has done thus far, and appreciate his commitment (and that of the previous ministers for health, Lea Stevens and Dean Brown). I commend the motion to the house.

Debate adjourned on motion of Mrs Geraghty.

BREASTSCREEN SA

The Hon. R.B. SUCH (Fisher) (11:48): I move:

That this house congratulates BreastScreen SA on its services to the women of South Australia since 1989 and urges women, especially in the target age group, to avail themselves of the mammogram services provided by BreastScreen.

I was not particularly aware at the time I moved this motion that it was breast cancer awareness week, but the timing was fortuitous. What prompted me to raise this was that a near relative recently was diagnosed with breast cancer as a result of having a mammogram carried out by BreastScreen SA. My close relative was called back because the initial screening showed that there could be something present in one of her breasts which needed further attention. She went to the Wayville clinic and they diagnosed one of the less serious breast cancers, the milk duct in situ breast cancer. You still do not want it but, if you are going to have breast cancer, I guess it is probably better to have that than some of the more aggressive and more serious alternatives. Anyway, the good news story is that, despite being diagnosed with that milk duct cancer, she was able to get surgery relatively promptly. She only had to have a small section of the breast taken out and, as far as we know now, it all looks good and clearly needs to be monitored into the future.

My relative, and other female members of my family, speak very highly of BreastScreen SA, and the way in which the staff conduct themselves. We know that not all women in the target group avail themselves of this mammogram service. I understand from women that the process can sometimes be a little bit uncomfortable but, as I said before in relation to prostate cancer, it is better than having the disease manifest itself and remain undetected. So, I want to pay tribute to BreastScreen SA, which has been operating since 1988 when there was a pilot screening project conducted here. It was the first to sign an agreement with the commonwealth to participate in the national program for the early detection of breast cancer, and it is now known as BreastScreen Australia.

The aim of BreastScreen SA is to reduce mortality and morbidity attributable to breast cancer by providing a free government screening mammography service on a state-wide basis. To that end, BreastScreen SA has six permanent clinics in Adelaide, and that is scheduled for now until 2009, and will run 34 mobile clinics in rural South Australia. Once again, it is very important that country people have access to the best screening and, subsequently, if necessary, the best treatment options and access to specialists and other medical professions.

BreastScreen SA's prime target is women aged 50 to 69 years, but women aged 40 years and over are eligible to attend. If there is a particular circumstance, a high risk or something like that, then it is possible for women to attend more frequently than the normal two year interval.

One of the reasons for raising this today is not only to congratulate BreastScreen and the staff who work there for their professionalism and their compassion but also to get the message out; that is, get checked out, have a mammogram. As BreastScreen points out in its literature, one mammogram is not enough to last a lifetime. Women should not put off having a screening mammogram. I have been disappointed to hear some women say, 'I will worry about cancer if I get it'. If you do that, you might be leaving things too late.

The diagnosis of breast cancer has improved through improved technology and screening techniques but, sadly, many women are still diagnosed too late. In that regard, I know a woman who visited the doctor and was told, 'Look, you have a muscle problem.' As it turned out, it was cancer and, sadly, I think they have now determined that it has spread. It is important that not only women have regular screenings if they are in the target age group but also that they are persistent and ensure that, whichever doctor they see, that doctor is vigilant and diligent in what they do and does not try to fob them off with a quick answer about a muscle problem or something of the like. You need to be your own best advocate.

I make the point that, when someone is diagnosed with breast cancer, as with any cancer, it is very important that the person is given strong support by family and other members. From talking to women who have recently been diagnosed, they say that, when they are talking to the doctor and the doctor is trying to explain some of the technical aspects, it tends to go straight over their head because they are in a state of shock and do not necessarily absorb what the doctor is saying in terms of aspects of having breast cancer.

The success of BreastScreen is measured in a whole lot of ways. I refer to work done by Dr David Roder, who is the son of the late judge Roder with whom many of you may have had dealings. His analysis of the effectiveness of BreastScreen shows that the death rate for screening in the target group 50 to 69 has fallen from 68 per 100,000 in 1993 (shortly after the screening started) to 57 per 100,000 in 2002. Hopefully, one would expect those figures to decline. Many women are still dying from breast cancer, so we want to reduce that. Obviously one would aim to reduce it to zero. Between 1 January 1989 and 31 December 2004, 219,000 women had been screened through BreastScreen; and between 1 January 1989 to 31 December 2003, that screening detected 4,081 cancers.

There is still a way to go because—and these are the latest figures—up until 31 December 2004, 63 per cent of women in the 50 to 69 target age bracket were screened, and that is far too low—63 per cent. Many women are still not availing themselves of the service, which is a free service. I emphasise that the people involved in running it are not only technically qualified but very compassionate, so there is no reason why any woman should feel deterred from accessing the wonderful services of BreastScreen SA.

I believe that this motion would receive the support of all members. There is a wonderful network of women and organisations promoting awareness of breast cancer, trying to get better treatment options and better ways of dealing with this insidious disease. It is a very significant disease and I can understand why it creates fear amongst women, because it strikes at the heart of the woman's femininity. I have had some women say to me that, if they were diagnosed, they would kill themselves. We do not want women doing that, but women need to realise that early detection and early treatment gives you a very good chance.

I commend BreastScreen to all South Australians and particularly to women for the wonderful job it has done and continues to do throughout this state. I commend the motion to the house.

Ms SIMMONS (Morialta) (11:59): I support this motion. I am very pleased to report that BreastScreen SA, the free statewide breast cancer screening program, is regarded as a leader in the field and in March this year was awarded full accreditation for four years by the national screening program BreastScreen Australia. The program aims to reduce morbidity and mortality from breast cancer (as the honourable member has advised) and adheres to the WHO principles of screening, which is regularly and strictly monitored to ensure that national standards are met. Adherence to these standards sends a very positive message to clients, who can expect an excellent level of service throughout the screening and assessment process. Screening refers to the use of simple tests across a healthy population in order to identify individuals who have a disease, but who do not yet have symptoms. Breast cancer is one of the most common causes of

death from cancer in Australian women. One in 53 women will die from breast cancer. This means that, before the age of 75, a woman's chance of dying from breast cancer is about one in every 53 women.

At this point, I want to pay tribute to my close and dear friend, Rusty Palmer, who died earlier this year after a brave battle with breast cancer. In South Australia in 2002, 1,040 new cases of breast cancer were diagnosed in women. Interestingly, there were also seven cases in men. In the same year, 290 women and one man died from this disease. The BreastScreen SA program provides free screening mammograms (or breast X-rays) at two-yearly intervals, targeted at all women aged 50 to 69 without breast symptoms. It is estimated that this routine screening reduces the chance of dying from breast cancer by about 40 per cent.

Women aged 40 to 49 and over 70 are also very welcome to attend free screening sessions, although the benefit of screening mammograms has not been clearly established for women in this age group. Women over 40 with a strong family history of breast cancer are also encouraged to attend screening mammograms every year, not just every two years.

BreastScreen SA has six fixed clinics in the metropolitan area. They are located at Wayville, Marion, Twin Plaza in the city, Frome Road, Salisbury and Westfield Shopping Town at Arndale. It also has three mobile units, which visit 27 country regions and seven outer metropolitan areas every two years, which is the recommended screening interval. Since its inception, this amazing service has provided more than 950,000 free screening mammograms and, to the end of 2005, had detected a total of 4,857 breast cancers.

I encourage all women my age (over 50) to take advantage of this free service. Although not 100 per cent accurate, it is currently the most effective tool for early detection. Screening does not cure cancer or prevent breast cancer from developing in the future and, therefore, all women need to stay vigilant, self-examine and remain aware of any symptoms or abnormalities in their breasts and take action.

In conclusion, I would like to highlight recent reports of success enjoyed by BreastScreen SA in detecting breast cancer at an early stage, which increases the chances of survival, and offer them my congratulations. For example, in mid June 2007, the report 'Efficacy of population-based screening in Australia' indicated that women participating in mammogram screening at BreastScreen SA reduced their risk of dying from breast cancer by up to 41 per cent. I again urge all women in the target age group—50 to 69—to call BreastScreen SA on 13 20 50 for an appointment, and I encourage them to have a screening mammogram every two years. I commend the motion to the house.

Ms BREUER (Giles) (12:03): I want to talk on a more personal level about the impact of the breast screening van on women in South Australia. My family was personally touched by breast cancer six years ago: my sister-in-law was diagnosed with breast cancer and had treatment for about eight months in the form of chemotherapy and radiotherapy. I remember a most horrendous Christmas, when Sue had just come back from a chemotherapy treatment and, as is the case with many people after chemotherapy, was very sick for a few days. On Christmas Day she was extremely sick. She looked terrible: she had no hair or eyebrows and she had lost a considerable amount of weight. I am very pleased to say that Sue is certainly still with us. She is fighting fit and is able to enjoy the odd glass of champagne. She has moved on.

However, the impact of that episode of breast cancer on our lives as a family was quite incredible. I think we all sat back and thought about our lives and what was really important—and, of course, what is most important in people's lives is family and family relationships. So, it was a terrible time for all of us—and, of course, for Sue, in particular, who coped with most of it, and my brother, who was with her all the time during her treatment; they felt it more than any of us. However, all of us became very aware of the importance of our family life, and that has carried us through over the years with respect to a number of other crises—for instance, when we both lost parents. That strong family feeling was always there, and the strength of knowing that, out of some bad, some good can come. Sue was an example in our family, but many other families that of I know of have been touched by breast cancer and have had similar incidents and results in their families.

The breast screening van is a regular visitor to Whyalla. It visits every two years, and it parks itself right by my office and takes up the car space there. Every two years I hear a minor complaint, 'The breast cancer van is back again. Oh, damn.' However, I am always very pleased to see it there, because it is very visible in the main shopping centre in the city, and women and men who go past see it constantly. So, it is has a very visible impact on people in our community.

The van stays for two months, and hundreds of women have been screened. Plenty of warning is given when the van comes into town: anyone over the age of 50 is sent a letter and a follow-up. Many women in Whyalla have been screened and, as a result, many have had their lives saved by this. The van also travels to other country areas. Coober Pedy is visited regularly; after Whyalla, the van usually goes to Coober Pedy.

This is really good for country women, because having to travel to Adelaide to have any sort of screening or testing carried out is a real issue for women. It does not matter who you are: every time you go in for that breast screening, at the back of your mind you think, 'Gosh, I hope there's nothing wrong.' There is certainly a feeling of relief when you open that letter and are informed that you are okay. It has great results: you feel really good after that, because it does worry people. If women in country areas have to travel to the city and leave their family behind, it can be very difficult for them.

I congratulate the BreastScreen program; they do an excellent job. I want to comment about mammograms and let you know that I would probably rather have a baby than a mammogram. It is not a good experience for women to have a mammogram, particularly when you are well endowed like I am. I have often asked those at BreastScreen whether it is difficult for women who are big-breasted to have a mammogram and they have pointed out that it is not more difficult, it just takes more equipment. More photos have to be taken. It is akin to having your head put in a vice and screwed in for a while. It is not a pleasant experience.

However, it is not something you neglect because of that. I think we all realise the value of it and, after you have had your first one, it is not quite as bad because you know what to expect, and you just hold your breath. Mammograms are not a pleasant experience for women and I could probably give the example of something similar for men but I will not go into that. It is well worth having and it saves lives. Many women's lives have been saved by having mammograms.

I think the BreastScreen program is an excellent program and I support the motion. I think it is a good motion and we did a similar thing last year, but we need to keep bringing it to the fore, particularly to the attention of women in South Australia. I urge all the men in this place and out there to support their women in going for breast screening, particularly once women reach 50. I urge men to encourage their wives, partners, sisters and mothers to get tested because, if breast cancer is caught early, women can be saved. If it is left too late, it is very difficult.

One of the assumptions about breast cancer is that older women get it and I know that the BreastScreen program covers women over 50, but many younger women get breast cancer. In my family's case, my sister-in-law was only 42 when she developed breast cancer. We all know the tragic story of Belinda Emmett which I think broke many hearts. We have also followed with interest the progress of Glenn McGrath's wife, Jane. She has done a wonderful job in promoting breast screening to women and making women aware of breast cancer and supporting women. I know that my sister-in-law, Sue, and my brother, Gary, were very much supported by the literature that was put out by Glenn and Jane McGrath. When they were going through their treatment they read it and it supported them very well.

Breast cancer is a major health issue for women all over the world. In this state we are very lucky that we have a program such as BreastScreen. We are very lucky that the program is able to go out to country areas in order to work with women in screening them and saving many lives. So, I congratulate BreastScreen on its services to the women of South Australia.

Mr GRIFFITHS (Goyder) (12:11): I support the motion and I commend the member for Fisher for bringing this to the house. I also sincerely thank the member for Morialta for the details she provided in her contribution. Breast cancer has affected my family, as it has affected many in this place. The information that the member for Morialta provided indicated that one in 53 women face the possibility of having breast cancer, and that is terrible. Technology improves in so many ways in our lives, so let's hope that technology ensures that this terrible disease is removed as soon as possible.

In my case, my wife's sister was diagnosed with breast cancer at the age of 35. She was pregnant at the time with her third child when she was diagnosed in the last trimester. She and her family faced a very difficult decision about what to do. I am very thankful that they chose to delay treatment until a week after my nephew was born. My sister-in-law had a mastectomy within three days of giving birth. She has had ongoing treatment since then. It has come back once and she has had a second round of treatment. My wife told me only this week that the latest news is that she is okay again. So, we live in the hope that it will be permanently gone from my sister-in-law because she has a wonderful family. I know that the easy decision would have been to determine a

different course of action when she was pregnant but she chose to have that wonderful young man, Arien. He is a beautiful young boy and I know that he will make a difference to the world. I think it is all part of the greater reason that God has for many of us.

One of the greatest pleasures I have had since becoming a member of parliament occurred earlier this year when I had the opportunity to open the Relay for Life on the southern Yorke Peninsula. Relay for Life is designed around bringing in some necessary funds to help with cancer research. I relayed to the people there that day the story of my sister-in-law and my wife, who was there holding the rope for the first people who had had cancer and recovered from it who had the honour of doing the first lap, was crying while I was speaking. The press representative there ran up to comfort her and she started to cry because her father had died from cancer and her mother was ill with it.

Cancer truly affects so many people. Breast screening is important. My wife is 43 and her other sister who has not had breast cancer is 42, and they have both received yearly screenings since their sister was first diagnosed. We talk about it wherever we go and the fact that families need to be aware of it. They need to ensure that self-examination occurs and that every opportunity is taken to ensure that you are checked out because you should not just assume that you are a healthy person. Human nature means that we think we are impervious to every disease and everything that can harm us. Blokes are even worse than ladies. If anything, I think this has prompted the thought that medical technology out there can help us be aware of issues in our own bodies. Let's make sure that we use it. I commend the member for Fisher for bringing the motion to the house. I thank the member for Morialta for the details in her speech. I am sure that all in this place will support the motion.

Dr McFETRIDGE (Morphett) (12:14): I also rise to support this motion. As the member for Goyder and others have said, many people in this place would know somebody who has been affected by breast cancer and, in many cases, who has died from it. I congratulate BreastScreen for the terrific work they do in assisting people at least to monitor their own health through radiography and mammography. Another way that women can be alerted to any changes in their bodies is through genetic testing. I have introduced legislation in this place on, I think, four occasions to ensure that the public have access to genetic testing. Unfortunately, one of the problems with modern research is that money is needed to continue that research, and people want a commercial return for it. A lot of genes have been isolated and then patented. The licences to use that genetic test for that gene is, in many cases, quite expensive.

I understand that the genes for breast cancer (the BRCA-1 and BRCA-2 gene) have been patented by an organisation. In some cases, the cost of having that test is $10,000. It should not be health care for the rich; it should be health care for everybody. So I urge governments of all persuasions (state and federal) to look at the issue of gene patenting, because we do not want to see people, particularly women, excluded because they cannot afford to have their health monitored and tested.

While the BreastScreen program is absolutely fantastic, the ability to go and have a blood test and have your DNA typed and check whether you have the BRCA-1 or BRCA-2 gene is absolutely vital. I know this because a very good friend of mine has the BRCA-1 BRCA-2 gene. She has a 90 per cent chance of dying by the age of 40 if she does not go through a number of major procedures. She has had a bilateral mastectomy, she is having an ovariohysterectomy soon, and she is faced with ongoing testing to ensure that she does not suffer from the cancers that are linked to the BRCA-1 BRCA-2 gene.

We know now that a number of genes are linked to various cancers. To see people excluded from having the knowledge that they could be susceptible to one of these diseases—whether it be breast cancer, bowel cancer, Parkinson's, or any number of diseases—because they cannot afford the test would be atrocious. I say to members that the gene patenting issue is one that we will have to face in the future: the cost of either paying the licence fees or, better still, outlawing the charges for these vital tests. The licensing of these vital tests is something we will have to work out.

On Monday, I had the pleasure of going to the launch of Hopes & Hurdles by the Breast Cancer Network Australia at the Stamford down at the bay. This is an organisation for survivors of breast cancer. These are women who have been through various surgeries and chemotherapies but are living with secondary cancers. I heard some harrowing stories related by some of the survivors of primary cancers who are having to live with secondary metastases. In fact, one lady had overcome the original onset of breast cancer to then find it had spread to her bones. She had

treatment for that and, on Friday of last week, before she came to speak at the Breast Cancer Network, she was told she had a secondary cancer in her liver. So, she is going to have to go in again and face further chemotherapy. I encourage all women to visit the Breast Cancer Network Australia website and look at the Hopes & Hurdles program. It talks about all the forms of treatment and the social, financial and health issues associated with breast cancer.

I will finish by saying that a number of men suffer from breast cancer as well. Although I did not speak to the member for Fisher's previous motion, it is all part of men's health, too. I am off for my five yearly colonoscopy, or 'bumcam' as my kids call it, in a month's time, because I am aware that I am not immortal, unfortunately. I want to take care of my own health. The member for Mount Gambier's recent episode is a salient example to us all that we are mortal and we should look after our health. If he had not been so fit, he may not still be with us, which would have been a disappointment—and I say that most sincerely. I will finish by saying that I support the motion with the utmost sincerity, and I urge all women to be tested. You may not be the one who is able to overcome a late-stage onset diagnosis. Get the test and make sure you get treatment early.

The Hon. R.B. SUCH (Fisher) (12:20): I thank members for their support. I just say, as I said earlier, at the moment only around 63 per cent of women are being regularly screened, women in the target age group of 50 to 69. That needs to be significantly increased, and I would urge all members here to use their newsletters and so on to prompt their constituents to undertake the appropriate screening, and likewise use their newsletters to encourage men to be checked out for their various health issues.

The member for Giles mentioned about the unpleasant experience of having a mammogram, and members can visualise what it is like to be squeezed in a machine. There are some new techniques and some new machines coming on to the market, and I know someone who recently had one, not through BreastScreen, because they had already been to BreastScreen but they wanted an additional assessment and they said that the equipment used by the private facility was less painful. But, as I said earlier on, it is better to have a bit of discomfort than get a sentence of death which is what people are confronted with if they play Russian roulette with their health. So I commend the motion to the house and I trust that all members will support it.

Motion carried.

ADELAIDE BOTANIC GARDEN

The Hon. R.B. SUCH (Fisher) (12:21): I move:

That this house congratulates the Adelaide Botanic Garden on its outstanding contribution to South Australia over the past 150 years.

The Adelaide Botanic Garden, we could talk about it being a jewel, but I think it is more than one jewel, I think it is several, because, as we know, Botanic Garden is not just that lovely property on North Terrace or Botanic Park but it is also Wittunga, at Blackwood, and the Mount Lofty Botanic Garden.

The Adelaide Botanic Garden has a very colourful and fantastic history, which is beautifully portrayed in a book that was released by the Botanic Garden Board this year, written by Richard Aitken, called *Seeds of Change*, and I would urge any member who loves books and wants a gift to give to a VIP guest, or whatever, to get hold of a copy or some copies of that book. It is a wonderful account of the history of the Botanic Garden.

As we know, South Australia was proclaimed in December 1836, and in 1837 Colonel William Light in his plan of Adelaide showed an area set aside for a botanic garden. So, a very enlightened gentleman. However, it was not until 1854, after a public appeal to the Governor, that the Agricultural and Horticultural Society recommended the establishment of a 16 hectare (that is 41 acres) botanic garden on the present site, and in April 1855 George Francis was appointed superintendent, and the garden was opened to the public on 4 October 1857. So just over 150 years ago this very month. It has been suggested that George Francis, in setting out the Botanic Garden, was influenced by what had happened at Kew in England, at the Royal Botanic Gardens, and Versailles in France, together with influences from German and Dutch experts. So, today it is not surprising that the Adelaide Botanic Garden has a northern European style, which is reflected to a large extent in the buildings which are on that site.

George Francis was succeeded by quite a famous person, Dr Richard Schomburgk, and he held that position from 1865 to 1891 and he created a lot of fantastic things in the Botanic Garden itself and in the Botanic Park, and these include the avenue of Moreton Bay figs, which were planted in 1866, and he also had planted—not my favourite tree—the Plane Tree Ring in

1883. I think it should have been left at that, but the Adelaide City Council has become somewhat obsessed with plane trees, despite their allergenic characteristics.

Botanic Park—the large area to the north of Botanic Garden—is a very popular picnic and family gathering spot, which was acquired in 1866 and which includes the drive which features the plane trees. Many members may not know that the Salvation Army held its first Australasian meeting in 1880 in that area; so the Salvos started in Australasia in Botanic Park, the area north of the Botanic Garden. It is an important area, apart from its botanical significance.

In 1868 Victoria House was constructed, especially for the waterlily Victoria amazonica, which first flowered in cultivation in England in 1849 and later in 1868 in Victoria House. It produced leaves up to two metres in diameter for a large throng of fascinated visitors. The newspapers of the day used to give a daily progress report on the flowering of Victoria amazonica. It is a bit like people's interest in football stars today, I guess.

A significant glasshouse, known as the Palm House, was constructed at the same time and opened to the public in 1877. It was restored in 1994-95. In 1881 the Museum of Economic Botany was opened to the public. It is a fascinating title but, if one thinks think about it, it is a meaningful title. During Dr Schomburgk's time as superintendent—I think he went under the title of director or curator—the Botanic Garden provided recreational and educational functions and services to farmers.

Economic crops, such as wheat, oats and sorghum were introduced, and fruits and vines were tested and, if considered suitable, were distributed to growers. Trees were also propagated and distributed by the Botanic Garden for specific plantings in and around Adelaide. I think the farming community can thank the Botanic Garden for its earlier work under the guidance of Dr Schomburgk.

Today the garden specialises in scientific and educational displays of ornamental plants, both exotic and native. Collections range from palms and endangered cycads through to culinary and medicinal herbs. The popularity of the Botanic Garden is reflected in the fact that over 1.3 million people, including 25,000 students, visit the garden each year to learn about the world of plants.

The Botanic Garden is a historic garden on the Adelaide Plains with a dry Mediterranean climate and alkaline soil. Native and exotic plant collections, including palms, cycads, bromeliads and many spectacular mature trees and shrubs, are displayed. Rainforest species are grown in the temperate Australian forest and the Bicentennial Conservatory for tropical plants, and unique arid Madagascan plants are grown in the Palm House. I mentioned that the Museum of Economic Botany was opened in 1881. It is now listed as a place of significance in the national estate, and so it should be.

During the Gardens 150 program (that is, celebrating its 150 years), a new raised terrace, known as the Schomburgk Pavilion, has been built to the rear of the Museum of Economic Botany offering a variety of visitor services and reinvigorating the area as a cultural heart of the garden. The Botanic Garden also has what is called the SA Water Mediterranean Garden, which showcases plants from mediterranean climates around the world, including south-western Australia, South Africa, central Chile, California and the Mediterranean Basin. The idea, obviously, is to demonstrate plants which thrive in a climate similar to South Australia's mediterranean climate.

The glasshouse or Palm House was imported from Germany in 1875 and features a display of Madagascan arid flora. It was designed by a German architect using what was very sophisticated engineering techniques at the time. It has now basically been restored to its full glory. As part of that process, which involved a lot of careful work, it was completely dismantled and then re-assembled. The Palm House, as I said, contains plants from Madagascar, which was once part of the super continent of Gondwana, about 150 million years ago, just shortly before the member for Stuart entered this parliament and a little before I entered it!

What it shows is the evolutionary links between some of the plants which were a part of, I guess, Gondwana and therefore links with plants of the continent of Australia. The unique arid flora of south-west Madagascar receives much of its water as mist or dew, and the garden has a special facility to ensure that the plants can be watered in the way they have adapted, which is through mist. The Palm House is just another example of an outstanding heritage building in the Botanic Garden and can be enjoyed both now and in the future.

As I mentioned earlier, the Botanic Garden acquired Botanic Park to the north back in the 1800s. I mentioned previously that the Salvation Army started there, but also from the 1890s it had a speakers' corner, where would-be politicians and politicians were able to speak on any topic—something that has gone out of fashion now, but I can imagine some of the members in here being keen to resurrect that activity, and I invite them to do so.

I would like to acknowledge also a wonderful publication supported by the board of the Botanic Garden. I urge members to get hold of a copy before they all go. It is a book on the Sturt Desert pea by David Symon (who is one of the elder statesmen of botany in this state) and Manfred Jusaitis. This wonderful book, which is all about aspects of the Sturt Desert pea quotes Charles Sturt in 1844 when he said:

> We saw that beautiful flower in splendid blossom on the plains.

If members want to be impressed or want to impress their friends I suggest they get a copy of that book from the Botanic Garden. I mentioned earlier the other wonderful book, *Seeds of Change*, by Richard Aitken, which highlights the fantastic contribution of the directors of the Botanic Garden over many years. We are indebted to those farsighted directors and lessees: Thomas Allen; John Bailey; John Frederick Bailey; Forbes (George), Greaves (Harold); Haines, Holtze, Johnston; Lothian, which is a famous name, Morley, another well-known name; Schomburgk (Richard); and Stevenson.

The directors of the Botanic Garden have been very farsighted, and I obviously cannot canvass what each of them did in the time I have, but people such as Noel Lothian were involved in tree planting excursions, encouraging revegetation in the Mid North. They were also involved in the purchase of what is now Wittunga, which was owned by the Ashby family and highlights South African and Australian plants, and also the purchase of the Mount Lofty land which became part of the botanic gardens.

So, we are greatly indebted to all and each of those directors for their farsighted focus on the role of the Botanic Garden. It is an area which has given a lot of pleasure to South Australians, and will continue to do so, but, importantly, it has fulfilled a very vital economic function in helping to establish agriculture and horticulture in the early days. What they do in terms of plant taxonomy and the study of botany generally is of incredible value from a scientific viewpoint. So, it is not just a pretty place: it is a scientific place—or places, because they have more than one property—and it is a credit not only to the directors of the Botanic Garden but also all the people who have worked there over the years such as gardeners and head gardeners, and so on.

I think it is appropriate that we celebrate not just its 150th but also its presence, which goes back further than 150 years to the very early days when it was established. The current director I believe is following in that wonderful tradition of the previous directors, that is, Stephen Forbes, and I am sure that under his direction the Botanic Garden will continue to prosper and not only give pleasure to South Australians but also fulfil its important scientific role as a centre of excellence in regard to the study of botany.

So, I commend this motion to the house and urge members to take a bit of time out from this place and walk down North Terrace and enjoy the Botanic Garden, but also visit Wittunga and Mount Lofty as well, as part of the wonderful organisation that is represented through the Adelaide Botanic Garden. I commend the motion to the house.

Ms PORTOLESI (Hartley) (12:38): On behalf of the government I rise to support the member for Fisher's motion and thank him for highlighting the role and contribution of the wonderful Adelaide Botanic Garden and bringing it to the attention of this house. The Botanic Garden is where I was married in 2000. It was a gorgeous week all week and at 6 o'clock the heavens opened and it rained. It was shocking but it was gorgeous, and it is somewhere we always take our daughter. We know the ducks in the pond very well.

This year marks the third and final year of a three-year sesquicentenary celebration for the Adelaide Botanic Garden. By way of background, the gardens were founded in 1855 and opened in 1857. Consequently, in 2004, the government announced a major upgrade to the gardens with a $5 million contribution to an intended $10 million capital works program, which I was very excited about. The Gardens 150 Foundation was established to raise the other $5 million from public and corporate donations and sponsorships. I am pleased to report that this has now been achieved, with in excess of $5.3 million having been raised to date. I congratulate the board, the foundation and the director on this achievement, and I thank the community more particularly for its generous support.

Capital works undertaken to date have involved the creation of the Schomburgk Pavilion to the rear of the Museum of Economic Botany; the SA Water Mediterranean garden (which I love), created on the site of the former Italianate garden; the Amazon Waterlily Pavilion, created over the site of the former Victoria House; and relocation of the cacti and succulent collection at the back of the historic Palm House to form a new cactus garden. In addition, work is soon to commence on conservation and refurbishment works to the Museum of Economic Botany.

Running in parallel with the capital works program has been a range of community and cultural events and functions within the gardens to celebrate its 150th anniversary. These have included family days, music events, art exhibitions, lectures, horticultural activities, book launches, collections, expeditions in Kaurna and other cultural activities—none of which I have been able to attend because of work, but I am sure they were wonderful.

The concluding events for the official Gardens 150 program are occurring over October and November this year, in particular the celebration weekend of activities that occurred on 6 and 7 October. However, the initiatives and momentum of the Gardens 150 program will live on for many years, with increased public awareness and visitation to the gardens and a range of other capital projects currently under investigation, such as the new western entrance, a new medicinal garden, a stormwater harvesting wetland for First Creek and a possible expansion into the RAH site.

The garden has grown since 1857 and now includes the Mount Lofty Botanic Garden, which I last visited with the member for Newland and his family—it was not just him and me—and the Wittunga Botanic Garden. It needs to be remembered that the gardens are more than just a pleasant, horticulturally inspired landscape to be enjoyed by the public. It is an important cultural and scientific institution, with roles in recreation, education, conservation, science and culture. That is saying something from me, someone with an Italian background where things are only grown for the purpose of eating them.

The gardens have contributed to South Australia both economically through early crop introductions and agricultural research and culturally through public art exhibitions and events programs. The gardens maintain strong programs in education through contact with 25,000 students and over a million visitors each year, while the science program now focuses on plant conservation work. Once all these projects are finished, it is envisaged that the gardens will have garden areas and plant collections to represent all the major shifts in the role of the Botanic Garden through the ages; namely, as medicinal and psychic gardens—I am a Cancer, let the record show—demonstrating the system of plant classification and economic gardens, and showcasing exotic and unusual plants in our plant conservation. I thank the member for Fisher for raising this important matter and I commend this motion to the house.

Ms BEDFORD (Florey) (12:43): I too am grateful for the opportunity to speak on this motion and do commend to everyone this wonderful book *Seeds of Change* which the member for Ashford and I have both looked through because of our great interest in not only the Botanic Garden but its important history within the industrial movement within the state.

Before I go into that, I put on record special thanks to the Friends of the Botanic Garden and the volunteer guides. I often visit the Botanic Garden on Sunday mornings, after I have been for a walk around the Torrens, or whatever. Very early in the day, the guides are waiting by the wonderfully newly refurbished gift shop, which has an excellent range of publications and Ladybird memorabilia and so forth. They love the Botanic Garden and take visitors around to show them all the wonderful things in the gardens. Of course, we will all remember that one of the Wollemi pines was found buried, but growing, in the garden. Along with many people, I have purchased my own prehistoric tree from a nursery, which I now nurture and which I noticed this morning has new bright green pods of growth on it, so I am very excited about it.

I draw members' attention to page 93 of the book which has a picture of the former police paddock and a huge gum tree. The picture dates back to 1874, and staff at the gift shop and the information desk are very kindly making inquiries for me to ascertain whether, in fact, this tree still exists or how long it lived. It is an enormous gum tree, and I think that if it was still there we would notice it. So, I am afraid it must no longer be there.

Another interesting connection to the museum is the fact that it appointed the first female board member, Edith Osborn, in 1915, which is a reminder of South Australia's progressiveness, for all its conservatism. Of course, we know that here in the house we have also benefited from the remarkable exploits of our pioneering women.

However, it is the connection with the struggle for the eight-hour day that I particularly want to bring to the attention of members. In the book (which is how I first learnt of this), there are pictures on page 107 of a group of very fine Australian men, who were apparently some of the earliest gardeners, who had unsuccessfully petitioned in May 1883, requesting an eight-hour day. This did not end their struggle, however, and the workers continued. Further into the book there is an example of the granting of the eight-hour day—a priority of Holtze's directorship—and approval by the gardens board in, I think, 1891. I would also like to thank the people from the South Australian archives who helped to prepare a copy of that to present to the AWU, which would have been associated with those workers. It is a wonderful book and a wonderful garden, and I commend both to all South Australians and every visitor to this state.

Motion carried.

WORKPLACE HEALTH

The Hon. R.B. SUCH (Fisher) (12:46): I move:

That this house calls on the state government, local governments and the private sector to follow the lead of councils, such as the City of Marion and the City of Onkaparinga, and introduce workplace health promotion and comprehensive in situ health checks.

Members would appreciate that this motion ties in with my general bandwagon about trying to provide better health for all South Australians. I have been very impressed by the commitment of the City of Marion, the City of Onkaparinga and Foundation 49, which is an organisation committed to health screening. Its focus is on men in the workplace, but my focus is on men and women in the workplace. I have been impressed by the commitment of those organisations to the issue of workplace health checks. Foundation 49 has undertaken various studies and reported on them in its publication called *A Whole New Ball Game,* which states, in part:

Employers are fast realising the cost benefits of a healthy workforce. A recent study by Wesley Corporate Health found that, if you can reduce health risk factors by 2.9 per employee in an organisation of 1,000 employees with an average salary of $50,000, productivity gains could be as high as $3.48 million per year.

In other words, it is not simply about helping people to live more healthily and to live longer; it is also about economic benefits for the company or the government agency.

I have been lobbying the health minister (Hon. John Hill) on this issue, as I am wont to do. He has not rejected the concept, but I think it is fair to say that he probably needs a little more convincing. Organisations such as the City of Marion and the City of Onkaparinga (and this is what I want to see replicated in the state Public Service, the private sector and other local councils) provide on-site testing for things such as cholesterol, blood sugar, blood pressure, body mass index, nutrition score, vision screening, stress profile, back fitness, care risk rating and cardiac risk rating. In their responses to me, those councils (City of Marion and City of Onkaparinga) have both indicated benefits for their organisations and staff as a result of workplace health checks. In a letter last month from the Acting Chief Executive Officer of the City of Onkaparinga, Beth Davidson-Park, she said:

Recent data analysis of health assessment results since 1999 and conducted by the LGAWCS has shown that regular participation in a health assessment has seen:

- increases in exercise participation
- major improvements in aerobic fitness levels, despite an increase in the average age, which is normally responsible for a decline in fitness
- significant improvements to dietary habits
- a reduction in smoking levels

She summarises her letter by saying:

As can be seen from this information there have been benefits for many of our employees by identifying potential health issues through the annual health assessments and the follow up referral for treatment. We believe that for some of our employees these health checks may be the most thorough health screening they may have had and therefore we believe it is a worthwhile program.

Likewise, the City of Marion does a whole range of tests similar to the City of Onkaparinga. They help staff develop a personal plan involving lifestyle changes and setting goals and realistic timeframes for achieving them. They offer weight loss programs and they help staff who may be going through a stressful situation. The Acting Chief Executive Officer of the City of Marion, in a letter to me in August, said:

Council has been involved in this program—

she refers to the workplace assessments—

for the past 7 years and has seen an increase in participant numbers and an overall improvement in their health and wellbeing.

There is some evidence from organisations that are actively involved in this. I know that the ANZ Bank offers a service to its employees which shows that it is a very progressive organisation.

Foundation 49 has been involved in a very comprehensive workplace health program at Foster's Abbotsford brewery. Whilst this one is focused on men's health, my focus is on men and women's health in the workplace. In their focus on men, they found that a 30-minute health check of the 200 men at the Abbotsford brewery showed that 35 per cent had unacceptably high blood pressure, 10 per cent had high cholesterol, 4 per cent had erectile issues, 11 per cent were living with mental health problems, and 6 per cent had high blood glucose readings giving a clue to diabetes risk. Three-quarters of the participants claimed the health check was excellent or very good and said that they would like another check up in a year's time. I stress that I want this for men and women but Foundation 49 focuses on men in the workplace. The Minister for Health, the Hon. John Hill, in his reply to me at the end of August, said:

The South Australian Government is committed to ensuring that all South Australians enjoy good health throughout their life.

He talks about the State Strategic Plan and the release of the Health Care Plan. His letter continues:

I support your idea of encouraging State Government employees to be healthy through promoting and supporting preventative practices. However, there is little evidence to suggest that mass screening programs reach those who are most at risk.

We have heard the argument before from people in this place: why can't people go to their doctor? The reality is that a lot of people do not go to their doctor. A person can have high blood pressure and not know it. If you are not checked with a sphygmomanometer you will not know whether you have high blood pressure. It is an insidious condition that can damage your kidneys and other organs of your body. So, the idea that people should go to their doctor is good in theory—and some do it—but the reality is that many do not.

In essence, I am urging the state government to come on board and follow the lead of the City of Marion and the City of Onkaparinga. I have written to the Secretary of the Public Service Association, Jan McMahon, and the President, Lindsay Oxlad. In their reply to me yesterday, they indicated that they would pursue the matter. I think that it makes sense, because the more people we can keep out of our hospitals, the more we can prevent chronic illness and disease: it is better for them and better for the community on every indicator we use, whether it is economic or otherwise.

I urge the state government to come on board, and I urge the federal government—whichever party it is after the election—to do likewise. These two councils are setting the standard, and so are organisations like the ANZ. It not only improves the quality of life for employees but, in some cases, it actually saves their life as well. I commend the motion to the house.

Debate adjourned on motion of Mrs Geraghty.

HEALTH CARE BILL

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (12:58): I seek leave to make a ministerial statement.

Leave granted.

The Hon. J.D. HILL: Yesterday, during the committee stage of the Health Care Bill, the Deputy Leader of the Opposition said that she had corresponded with health services. She said:

The most recent correspondence I forwarded to the attention of the chairs of the hospitals was intercepted by the chief executive, and he wrote to me saying that he considered information that I had communicated to the hospital boards was inaccurate, and he had therefore directed the hospitals to which the correspondence had been forwarded not to pass that correspondence on to their board.

I said last night that I understood the member had asked the chief executive to forward her correspondence. I am now advised that the electorate office of the Deputy Leader of the Opposition emailed public servants in the country health units her press releases on 24 and 28 September 2007. The email message was as follows:

Ms Chapman has requested that the attached media releases be brought to the attention of your board.

As I indicated yesterday, one of the press releases was not passed on because of its inaccuracies. The chief executive of the department made that decision after the matter was referred to him. Should the Deputy Leader of the Opposition, or any other member, wish to communicate with chairs of boards she, and they, are entitled to do so, and they can write to them directly. It is not the responsibility of departmental staff to distribute her statements, particularly her inaccurate statements.

[Sitting suspended from 12:59 to 14:00]

GLENSIDE HOSPITAL REDEVELOPMENT

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition): Presented a petition signed by 65 residents of South Australia requesting the house to urge the government to retain the areas known as precincts 3, 4 and 5 of Glenside Hospital to ensure they continue to be available as open space and recreational, together with mental health services.

SOLID WASTE LEVY

Mr WILLIAMS (MacKillop): Presented a petition signed by 400 residents of South Australia requesting the house to urge the government to ensure all funding raised from the solid waste levy is directed to programs designed to help meet the SA Strategic Plan target for the reduction of waste to landfill.

SCHOOL FUNDING

Mr HANNA (Mitchell): Presented a petition signed by 79 residents of South Australia requesting the house to urge the government to reject cuts to public school and preschool budgets to enable each student to achieve their full potential.

PAPERS

The following papers were laid on the table:

By the Premier (Hon M.D. Rann)—

Santos Limited—Deed of Undertaking pursuant to the Santos Limited (Deed of Undertaking) Bill 2007

By the Treasurer (Hon K.O. Foley) on behalf of the Minister for Transport (Hon P.F. Conlon)—

Transport, Energy and Infrastructure, Department for—Report 2006-07

By the Minister for Transport (Hon P.F. Conlon) on behalf of the Minister for Health (Hon J.D. Hill)—

Dental Board of South Australia—Report 2006-07
Dog and Cat Management Board—Report 2006-07
Food Act—Report 2006-07
Health and Community Services Complaints Commissioner—Report 2006-07
Medical Board of South Australia—Report 2006-07
Nurses Board of South Australia—Report 2006-07
Pharmacy Board of South Australia—Report 2006-07
SA Ambulance Service—Report 2006-07
Upper South East Dryland Salinity and Flood Management Act 2002—Report 2006-07

By the Minister for Education and Children's Services (Hon J.D. Lomax-Smith)—

Road Traffic Act (Drug Driving), Review of Operations—September 2007

By the Minister for Finance (Hon M.J. Wright)—

Administration of the State Records Act 1997—Report 2006-07

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

Bio Innovation SA Charter.

WORKCHOICES

The Hon. M.J. WRIGHT (Lee—Minister for Industrial Relations, Minister for Finance, Minister for Government Enterprises, Minister for Recreation, Sport and Racing) (14:03): I seek leave to make a ministerial statement.

Leave granted.

The Hon. M.J. WRIGHT: I advise the house that the Industrial Relations Commission of South Australia has today handed down the findings of its Inquiry into the Impact of the WorkChoices and Independent Contractors Legislation on South Australian Workplaces, Employees and Employers. I established this inquiry in March this year because I considered it vital that a comprehensive and genuinely independent review be conducted into the practical impact of WorkChoices.

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. WRIGHT: The commission's reports runs to some 234 pages, and the government is yet to fully analyse and absorb all the report and its many recommendations. However, with the report being handed town today, it is timely to advise the house of some of the key findings. The commission found that the Howard government's WorkChoices has already hurt South Australians—and it will get worse. The report states:

> ...at least 350,000 of those South Australian employees covered by WorkChoices have been deprived entirely of an unfair dismissal remedy. This affects not just the minority of employees who have been unfairly dismissed without remedy, but many of those in continuing employment who experience a heightened sense of insecurity and disempowerment—

The Hon. I.F. Evans interjecting:

The SPEAKER: Order, member for Davenport!

The Hon. M.J. WRIGHT: —compounded by a loss of other protections to employment conditions and attitudinal change among some employers.

As members would be aware, one of the claims made by the Howard government about WorkChoices is that it delivers a simplified national system of industrial relations. The commission concluded that WorkChoices:

> ....is a long way from achieving national coverage, that it is not a simplified system of workplace relations, and that it is unduly complex.

The commission went on to say that one of the reasons for WorkChoices being unduly complex is:

> ...the policy decision of the federal government to adopt an interventionist approach involving increased regulation of most parts of an already complex industrial relations system...

After hearing evidence about the reality of WorkChoices, the commission found that ready access to advice and assistance to those now in the federal system—

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. WRIGHT: —they do not like it sir; they know it is crook as well—and not available from the relevant federal government agencies. In a critical finding the Industrial Relations Commission (the independent umpire) concluded:

> WorkChoices is unfair and lacks balance.

The commission also found that WorkChoices:

> ...has failed to deliver flexibility or fairness for employees as a whole.

Members will recall that a cornerstone of the Howard government's argument for WorkChoices was that it helped employees bargain a better deal. However, the commission found:

> ...there is compelling evidence that the changes effected by WorkChoices to the agreement-making process have had significant adverse effects on many employees...

and that under WorkChoices:

> The agreement-making process has become complex, frustrating and non-productive.

On 5 September this year, the federal minister—he won't be for much longer—Joe Hockey said:

> Employees have more protections in place than ever before ensuring that penalty rates, overtime and other protected conditions cannot just be taken away without fair compensation.

The inquiry found that the Howard government's fairness test will not prevent the loss of conditions without compensation. The inquiry also found:

> ...there is a pervasive sense of job insecurity as a result of WorkChoices.

The commission's report also makes it very clear that WorkChoices hurts families and those who already face disadvantage: women, youth and regional South Australians, for example. The commission said:

> WorkChoices has increased the gender pay gap...[and] the ability to manage the work/life balance has been detrimentally affected...

Members would be aware that the Howard government has claimed that WorkChoices delivers increased productivity and more jobs. On this critical issue, and after analysing the facts, the commission said:

> ...there is no evidence or material before this inquiry that supports the assertion that WorkChoices has resulted in benefits to workplaces, employees or employers in terms of increased productivity. To the extent to which WorkChoices has enhanced employer flexibility, this has come at the expense of many employees, and on the evidence and material before us there is no resultant increase in employment opportunities.

This is a watershed report based on hard facts and hard evidence. This is a report from the independent umpire, the Industrial Relations Commission. I thank the South Australian Industrial Relations Commission and all the participating stakeholders for their work. The government will give due consideration to the commission's recommendations before announcing our response.

ECONOMIC AND FINANCE COMMITTEE

Mr KOUTSANTONIS (West Torrens) (14:10): I bring up the 64th report of the committee, entitled Consumer Credit and Investment Schemes.

Report received and ordered to be published.

VISITORS

The SPEAKER: I draw to honourable members' attention the presence in the chamber today of students from Sunrise Christian School (who are guests of the member for Morialta), and students from Loreto College (who are guests of the member for Bright).

QUESTION TIME

LEGISLATIVE COUNCIL VACANCY

Mr HAMILTON-SMITH (Waite—Leader of the Opposition) (14:10): My question is to the Premier. Did Premier Don Dunstan get it wrong when he said that, where there is no relevant party to fill a casual vacancy, the nominee should come from the 'grouping' of the retiring member? On 7 December 1977, when addressing an upper house casual vacancy where there was no registered political party, Premier Don Dunstan said: 'We are to give effect to the voice of the electors', that 'an endeavour to do what is right and supported by the electorate' was paramount, and that the nominee should come from the 'group or grouping'.

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:11): As a former adviser to Donald Allan Dunstan AC, QC and MP and given, of course, about 25 years of involvement in the law and as a Justice of the Peace of the State of South Australia, I am very aware of the law and the constitution, which I think honourable members opposite clearly are not. It was my expectation, and it is my expectation, that John Darley will be nominated for the position to fill the casual vacancy in the upper house. However, they have to fill in the forms. That is my point. I am prepared to—

An honourable member: You missed the point yesterday.

The Hon. M.D. RANN: I have seen the honourable member in court. I saw him when he was talking about the vibe of the constitution. But it is not about the vibe of the constitution: it is about the letter of the law. What is required, and it was required in Don Dunstan's time and it is required right now, is for the relevant people, that is, Nick Xenophon, to sign the form saying that Mr Darley is the person who is their party's candidate. That is what he needs to do.

An honourable member interjecting:

The Hon. M.D. RANN: No. I thought it was absolutely bizarre when I got the letter from Sandra Kanck, and I think it is highly unlikely that any of us will be voting in the joint session for the return of Kate Reynolds to the position because of some bizarre theory in Sandra Kanck's letter that I find rather extraordinary when trying to interpret it.

I believe that we will sit, hopefully, before the federal election and be able to put in a new legislative councillor. My expectation was that it should be John Darley, but what I need to see is the forms filled in, because I am not going to sign Nick Xenophon's name for him. That is the key point. This has to be done properly. Don Dunstan insisted that it be done properly, and so will I.

Mr Hamilton-Smith interjecting:

The Hon. M.D. RANN: Yesterday we saw him talking about an ICAC. Now the Leader of the Opposition wants us to corrupt the process of appointing a new legislative councillor. We will obey the letter of the law: we will obey the letter of the constitution. And, if Mr Xenophon wants Mr Darley, he has to sign along the dotted line.

Members interjecting:

The SPEAKER: Order!

ADELAIDE FESTIVAL OF ARTS

Mr RAU (Enfield) (14:14): My question is to the Premier. Given the growth of festivals around the world, is the Adelaide Festival of Arts still regarded as one of the greatest arts festivals in the world?

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:15): Yet another controversial question. That was the question I expected from the Leader of the Opposition. It is interesting, going back to his previous question, he clearly does not understand that the issue of an appointment to a position in the upper house is justiciable, which means that it would have to be settled perhaps in the High Court of Australia at massive expense. I would rather spend the money on employing more police.

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: I would have liked a bit more notice of this question: it is a controversial one, I know. The Adelaide Festival is absolutely still regarded as one of the greatest arts festivals in the world. Basically, we are up there with Edinburgh, which is the biggest in the world. It is one of the few arts festivals—

The Hon. P.F. Conlon interjecting:

The Hon. M.D. RANN: Who doesn't like it?

The Hon. P.F. Conlon: She doesn't like our festival.

The Hon. M.D. RANN: She doesn't like the festival. She did not like DNA testing of von Einem. It is one of the few arts festivals in the world which is a truly broad-based multi-arts event; with a diverse program of opera, music, dance, theatre, visual arts, film, Adelaide Writers' Week and, of course, WOMADelaide, which I have signed up until 2019 as a yearly event, not every two years. It is at the heart of an exciting festival period soon to commence with the Adelaide Guitar Festival. A world guitar festival in Adelaide, with a fantastic finale, which will be a massive tribute to Jimi Hendrix—I can hear members opposite humming *Purple Haze*.

Members should remember that next year will be the 50th year that we have had an arts festival in Adelaide, and because it is every two years, ipso facto a priori, it will be the 25th festival, so it will be the silver jubilee. Today Brett Sheehy released the program for the 25th festival which promises an outstanding line-up of artists, productions, concerts and events, with over 80 events and 280 performances. It is a truly exciting program. I think it will go down as one of the great festivals ever.

The festival will start with a bang, with North Terrace *Ignited!*: the free festival opening night, including a dazzling fireworks display signalling the illumination of seven of our North Terrace cultural institutions. This stunning Electronic Canvas creation called *Northern Lights* will run each

evening for the duration of the festival. To touch on a few of the many highlights, we have—I know that the Treasurer has been incredibly generous to the arts and I want to acknowledge that today. He has never been an acting arts minister and never will be, but I would like to thank him for his generosity.

First of all, I want to talk about *Ainadamar*. In an Australian premiere and Adelaide exclusive, this new double Grammy Award-winning opera (based on the tragic life of Garcia Lorca, Spain's revered poet)—and, of course, I know that the Deputy Premier is a great fan of Spain and its poetry—will feature an international cast directed by Graeme Murphy. There is the *Book of Longing*, a partnership between the Adelaide Festival and institutions such as New York's Lincoln Centre and London's Barbican Centre. This will produce the world's first collaboration between two titans of contemporary culture: Leonard Cohen and Philip Glass. Philip Glass will be coming here for the event. *Book of Longing* incorporates ballads, love poems, retrospectives and unexpected comic pieces in a supremely elegant music theatre event that will appear exclusively in Adelaide.

Ornette Coleman has been described by the BBC as 'the most recognisable sound on the planet', and this year Ornette Coleman won both the Pulitzer Prize for music and a Grammy Award for lifetime achievement. In his first tour of Australia, Coleman comes to Adelaide. Seeing the 77 year old Ornette Coleman at the Adelaide Festival next year will be a once in a lifetime opportunity, and I think for one night only. Then, of course, Sacred Monsters. At the peak of their powers, this rebel alliance of dance superstars—prima ballerina Sylvie Guillem and Kathak contemporary dancer Akram Khan—smashes conventions.

Turning on their classical roots, these legendary dances create a pas de deux—that is French; the other bit was Italian—unlike anything witnessed before on stage. We have significantly increased arts funding since we have been in government. We have done a number of things, such as set up the Adelaide Film Festival, which has won a series of national and international awards, clean-sweeping the AFI awards for the last two years. We have also made WOMAD and the Fringe annual; the OzAsia Music Festival, the International Guitar Festival—

The Hon. K.O. Foley: The Clipsal after-race concerts.

The Hon. M.D. RANN: The Clipsal after-race concerts—in fact, I saw the Deputy Premier dancing at one. Ross Adler, the chairman of the festival, and Brett Sheehy came to see me recently—and I have to say, this was one of those discretionary payments, which last night the Leader of the Opposition applauded, in response to giving $30,000 to the Dante Alighieri. I was basically given this proposition by Ross Adler and the director of the arts festival that, for $500,000 more, this could go from being a terrific Australian festival to a great world event.

So, I was pleased that the Deputy Premier was extremely generous, and that additional funding has enabled the festival to attract two epic overseas productions, *Cat on a Hot Tin Roof* and *A Midsummer Night's Dream*. Following the outstanding success of Berlin's Schaubuhne Theatre production of *Nora* at the 2006 festival, the company returns for an exclusive season to Adelaide to present the Pulitzer prize-winning classic *Cat on a Hot Tin Roof*, reimagined for the 21st century.

The hit of the Royal Shakespeare Company's Complete Works Festival, Tim Supple's glorious subcontinental *A Midsummer Night's Dream* is vivid, exotic and spectacular, with actors, dancers, musicians and martial arts artists from across India and Sri Lanka. And, of course, dear to my heart, next year's Adelaide Writers' Week includes 64 outstanding Australian and overseas writers for the exciting 2008 program, including two Booker Prize winners, Peter Carey and Ian McEwan. Ian McEwan is making his much anticipated return to Adelaide after 22 years.

It is also pleasing to inform the chamber that, for the first time, the festival is seeking to reduce its environmental footprint by having its carbon emissions audited and then offset through the planting of trees. I want to acknowledge Ross Adler, the Chairman of the Adelaide Festival, and the brilliant Artistic Director, Brett Sheehy. They have made a remarkable contribution to the Adelaide Bank Festival of Arts, to the arts and to Adelaide. I commend the festival to honourable members. We are the festival state, and no-one should ever call across this chamber saying that they do not support this festival. It is vitally important to our icon image in the world, and we do it better than anyone.

EQUINE INFLUENZA

Mr HAMILTON-SMITH (Waite—Leader of the Opposition) (14:23): What immediate steps will the Minister for Recreation, Sport and Racing take to address the looming crisis resulting from multimillion dollar losses incurred by the racing industry as a result of the equine flu virus?

The opposition understands that reduced TAB turnover has resulted in lost revenue to local racing of more than $1 million so far. The industry advises us that it has also incurred additional costs with respect to security vaccinations and the loss of interstate racing opportunities. The minister has promised in the past to give tax relief to racing if it complied with the Bentley reforms, but they are yet to materialise. The opposition understands that a one-off request for emergency funding support of $3 million has been made to the government by the racing industry.

The Hon. M.J. WRIGHT (Lee—Minister for Industrial Relations, Minister for Finance, Minister for Government Enterprises, Minister for Recreation, Sport and Racing) (14:23): I am not so sure that the last comment is right. However, I stand to be corrected. Yesterday I met with Ian Hart, the Chief Executive Officer of Thoroughbred Racing SA, which is the corporate structure that has responsibility for racing. If something has come in over the last day or two, which I have not seen, I will obviously correct what I just said. However, I did have a discussion with Mr Hart yesterday, and he laid before me some of the concerns of the industry as a result of the influenza. There has been some reduction in money coming as a result of TAB distribution because of the lack of racing, in particular, in New South Wales and Queensland. That is a problem for the industry.

What I suggested to Mr Hart yesterday—and there is a board meeting today as I understand it at which he was going to be putting information forward—was that, post that board meeting, if there was a submission that they wanted to make to government, they should feel free to do so. To the best of my knowledge, I am not aware of a submission at this stage. There may well be one coming.

The leader also made reference to the tax relief that the government spoke of at the time of the Bentley recommendation. To remind members, Mr Bentley made an exhaustive report into the racing industry—not just thoroughbred racing, but harness and greyhound as well. He made a number of landmark recommendations, probably the most significant being that, for thoroughbred and harness, they should establish themselves with independent boards. I am confident that that is well underway, particularly in the thoroughbred area. I think moves are afoot also in the harness area. Greyhounds already have an independent board structure in place.

Mr Bentley also recommended that, if the racing industry achieves that, plus some other particular standards with regard to its business, the government should look at tax relief commencing on 1 July 2008, and the government is prepared to look at that. But, of course, this work needs to continue. By the way, I am pleased with the progress that has been made, particularly in the thoroughbred area. It is disappointing that the specific issue that the leader refers to in regard to influenza is on top of the TVN dispute which also caused financial difficulty for the racing industry. We will have a good look at that but, as I said earlier, I have invited Mr Hart, post the meeting of the board today, to provide a submission to the government if they see fit.

LEGISLATIVE COUNCIL VACANCY

Mrs GERAGHTY (Torrens) (14:26): Can the Premier advise the house as to whether the provisions in the constitution for filling a casual vacancy in the Legislative Council are the same as applied in Don Dunstan's time?

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:27): There is some breaking legal news for the opposition. We know that at the federal level there are eminent lawyers who make up 70 per cent of their front bench; apparently, that is not the case here in South Australia when it comes to the state opposition.

I was asked a question before about whether I would do the same as Don Dunstan in terms of filling a casual vacancy in the Legislative Council. I will because he did the right thing and I will do the right thing. But there is something perhaps that the Leader of the Opposition and his legal adviser next to him perhaps missed out. The constitutional provisions that deal with the filling of casual vacancies in the Legislative Council were enacted in 1985. Don Dunstan resigned in February 1979, six years before.

Previously, it required a joint sitting only. There was no reference to nominations based on party affiliations/endorsements. Therefore, Don Dunstan's comments related to a completely different constitutional environment. I would have thought that someone who practised law, albeit

not as a justice of the peace for a quarter of a century, would now understand that this parliament is required to follow the current law and the current constitutional provisions, and that is exactly what we are doing. We are taking the advice of another distinguished QC in Chris Kourakis QC, the Solicitor-General.

Members interjecting:

The SPEAKER: Order!

INDEPENDENT COMMISSION AGAINST CORRUPTION

Mr HAMILTON-SMITH (Waite—Leader of the Opposition) (14:29): My question is to the Attorney-General.

Members interjecting:

The SPEAKER: Order! When I call the house to order, I expect it to come to order. The Leader of the Opposition.

Mr HAMILTON-SMITH: When arguing against an anti-corruption body in South Australia yesterday, why did the Attorney-General selectively quote and misrepresent the view of Mr Brian Carr to the house? Yesterday I drew to the house's attention remarks by the New South Wales Labor premier who told an anti-corruption conference in that state that any state that has failed to set up a stand-alone anti-corruption agency was 'crazy'. In defending the Rann government's position, the Attorney read from an opinion piece by Mr Brian Carr. Having quoted a section of the piece, he failed to include the following conclusion:

> While there is no question an independent authority needs to be established in South Australia to deal with allegations of corruption—

Mr Carr went on to conclude his remarks by saying:

> It is not a question of whether there needs to be an ICAC, it's just a question of what model should be considered.

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs) (14:30): I agree entirely with Mr Carr's article; I think it is a comprehensive debunking of the state Liberal Party's position. I was delighted to—

Members interjecting:

The Hon. M.J. ATKINSON: One of these days, the Liberal spokesman for multicultural affairs will be able to pronounce names other than English surnames; he has not quite arrived at that point yet but, with a bit of training from Kevin Naughton and John Lewis, perhaps he will be able to pronounce the New South Wales Premier's name soon.

I think Mr Carr has authoritatively debunked the state Liberal Party's position on anti-corruption measures. I think he speaks from the perspective of experience in New South Wales. If the Leader of the Opposition had followed my remarks on this topic carefully, he would have noted that I had not ruled out changes to our anti-corruption laws. Time and again I have left the door open to the suggestions of our Acting Ombudsman, Ken MacPherson, that perhaps there does need to be a panel of people experienced in public life to vet the kind of allegations which are routinely thrown around by the state parliamentary Liberal Party, the minor parties and members of the South Australian community, and to make some assessment of whether there is a substratum of fact for the allegation to proceed to investigation.

As we all know, there are so many allegations made in public life here in this state that do not have a scrap of evidence to their name. So, I think there is some merit in that. Even Jerrold Cripps QC, the head of ICAC in New South Wales, conceded when he came to Adelaide that, of more than a thousand allegations sent to ICAC only about 50 were worth looking at and about five or six seriously investigated. So, all people of goodwill who come to this topic agree on the substance of what needs to be done. Meanwhile, the Leader of the Opposition and the Hon. Rob Lucas in another place just throw off all kinds of allegations which, with the effluxion of time, prove to have no substance whatsoever.

I remember the member for Waite—the Leader of the Opposition—striding into police headquarters to thump down some lever arch files on the desk. What came of those allegations? Nothing! It is interesting also—

Members interjecting:

The Hon. M.J. ATKINSON: Well, apparently the Leader of the Opposition thinks the police Anti-Corruption Branch is itself corrupt because it didn't—

Mr Venning: Could be.

The Hon. M.J. ATKINSON: Oh, it could be, according to the Liberal Party whip. So according to the Leader of the Opposition and the member for Schubert, the police Anti-Corruption Branch may be—

An honourable member interjecting:

The SPEAKER: Order!

Mr HAMILTON-SMITH: On a point of order, Mr Speaker: the Attorney is clearly making false statements. You just can't allow this sort of putting words into the mouths of people when they have not been uttered. It is just inappropriate.

Members interjecting:

The SPEAKER: Order! There is no point of order. If a member feels that an interjection has been misrepresented, then there is an appropriate way to deal with that by way of personal explanation. I was distracted; I didn't hear what the Attorney said. But, again, as I have said many times before, if members interject, the interjection becomes really the property of the member on his or her feet. So, don't interject. The Attorney-General.

The Hon. M.J. ATKINSON: So, Mr Speaker, as you yourself have constantly ruled, if the opposition make interjections, which of course are always out of order, I and other members are in order to place those silly interjections on the parliamentary record. So if members of the parliamentary Liberal Party—

Mr HANNA: On a point of order, Mr Speaker: the Attorney-General is no longer answering the question.

The SPEAKER: Order! Yes, I ask the Attorney to go to the substance of the question please.

The Hon. M.J. ATKINSON: Yes. Sir, I will not stand for the parliamentary Liberal Party accusing the police Anti-Corruption Branch of being corrupt because it does not take up every allegation that members of the parliamentary Liberal Party make. Indeed, on the question of Mr Carr, the Chief Executive Officer of the Light council, that was exactly the point he was making in his—

The Hon. I.F. Evans interjecting:

The Hon. M.J. ATKINSON: No; he is in fact the CEO of the Light council here in South Australia. He was the chief executive officer of, or at least worked for, the Liverpool council. Mr Carr made the exact point that an ICAC can be used as a cover for making allegations, knowing them to be false or recklessly indifferent to whether they are true or not. I well recall in this house allegations that were made by members of the parliamentary Liberal Party against the police, which are now the—

Ms CHAPMAN: Point of order, Mr Speaker.

The SPEAKER: Order! The Attorney will take his seat. The Deputy Leader of the Opposition.

Ms CHAPMAN: The Attorney-General is clearly not answering the question, but just throwing allegations across the chamber against the members of the opposition. It is quite unacceptable behaviour towards the other members who are not interjecting.

The SPEAKER: Order! The deputy leader will take her seat. If you are raising a point of order with me it is necessary to point out which standing order the member is infringing. It is not necessary to pass commentary. Has the Attorney concluded his answer?

The Hon. M.J. ATKINSON: Just one last remark, sir: but for parliamentary privilege there are some people who might find themselves in the dock.

Members interjecting:

The SPEAKER: Order!

TRAMLINE EXTENSION

Mr KENYON (Newland) (14:39): My question is for the Minister for Transport.

Members interjecting:

The SPEAKER: Order!

Mr KENYON: Is the minister aware of differing opinions on the tram extension and the new trams?

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (14:39): I am, Mr Speaker, aware of—

An honourable member interjecting:

The Hon. P.F. CONLON: I have been on the trams. I was on them a very long time ago.

Mr Hamilton-Smith interjecting:

The Hon. P.F. CONLON: Well, you'll come up in this. I would just wait my turn if I were you. We have been aware of many differing opinions about the new trams. We have had strong, heroic supporters from day one; and I can name the returned mayor, Michael Harrison, as being a strong supporter from day one. In fact, there is no doubt in my mind that his support for the trams was a major factor in his fighting off the challenge and being re-elected.

Some people originally opposed the trams, then changed their mind. I will not name them—my purpose is not to embarrass them—but we are grateful for that. Others have never changed their mind—and that is their entitlement—and there are others, such as the Editor of the *Sunday Mail* who, I recognise, has not supported the trams but has encouraged South Australians to support them. I think that is a very intelligent and adult approach.

Some people have not only changed their mind and their story but also managed to do it in a mercurial fashion in a short time; and I refer to the member for Morphett. I hope people pay attention to this. On Tuesday this week he rang Carol Whitelock, who said, 'You also wanted to mention something about the trams.' He said:

> Yes, unfortunately, the new trams—and I warned the government about this four years ago—they are just not the right trams for Adelaide. Last week, I was here when the system broke down and had to catch the train home.

Of course, it was not anything to do with the trams—but we will leave that. He said:

> It took me an hour and a quarter to get down the Bay. On Friday there was another incident. I was half an hour late for a meeting with the Premier. I let the Premier know about—the new trams just aren't big enough—twice the length of the old trams but they carry about the same number as one of the old trams—like sardines in there in the mornings.

Members should make no mistake: the member for Morphett has gone on radio and told people he was half an hour late for a meeting on Friday with the Premier because the new trams are not good enough, they are too small. That is what he told Carol Whitelock and the people of South Australia.

Then he came here the next day—24 hours later. It may be that he has multiple personalities, but I would like members to hear what he told the house. He said:

> First, the bouquets. It is an undisputed fact that the new trams have been very popular. Thousands of people have been on the new trams. Can I just say, 'I told you so.' I have always had the belief, and I have said in this place for four years that light rail is the answer to modern public transport in Adelaide. The only problem is getting off and on the trams, as well trying to get a seat at times.

Then Friday's incident with the Premier makes another visit. He said:

> The new trams have excellent brakes, and I can vouch for that. They have a couple of different sorts of brakes. They have electric brakes and a magnetic brake. I know this because, last Friday morning after leaving this place, I was not quite thrown to the ground but I certainly had to hang onto some of the poles. In fact, I was late for a meeting with the Premier at Brighton High School because of this. A stupid fellow stepped out in front of the tram on King William Street and the whole tram came to an absolute stop on a dime, and that was because of the new trams'

modern brakes—electric and magnetic brakes. Fortunately, no-one was hurt. The crew was changed. The driver had to go because he was very shaken up by that idiot's actions.

On Tuesday the trams are no good and they kept him late for a meeting with the Premier; on Wednesday the new trams are so good that the driver managed to save an idiot but it kept him late for a meeting with the Premier. This bloke will say anything. Next time members hear anything from the member for Morphett, they should wait 24 hours to see whether there is a different story.

Members interjecting:

The SPEAKER: Order!

TRUMPS

Dr McFETRIDGE (Morphett) (14:44): My question is to the Minister for Transport. What is the minister doing to fix delays, registration errors and cost blow-outs being encountered with the Transport Regulation User Management Processing System (TRUMPS)?

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (14:45): I want all members to note that the honourable member said 'cost blow-out', because he was on the radio again today saying that there was a cost blow-out in the TRUMPS program, which he knows is not true. He knows—

Dr McFetridge interjecting:

The Hon. P.F. CONLON: Mate! I think our serial misleader has a glass jaw. The truth is—

Dr McFetridge interjecting:

The Hon. P.F. CONLON: Yes, and the truth is—

Dr McFetridge interjecting:

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

The Hon. P.F. CONLON: Nothing cheers me up like the misfortune of others!

Dr McFetridge interjecting:

The Hon. P.F. CONLON: Oh, dear, it is still not going any better for you. The truth is—

Dr McFetridge interjecting:

The Hon. P.F. CONLON: No; just let me talk. The honourable member cannot hide his embarrassment by interjecting all day. As the honourable member well knows—

Dr McFetridge interjecting:

The Hon. P.F. CONLON: I am sorry? What is it now? Sir, are they insulting me on the basis of my generous proportions and expecting it to hurt me? Sir, this is all spoken for; it was all well earnt. I think that is very harsh, sir. I can tell members that I look a bit like Brad Pitt in a certain cut of suit. But it does show just how pathetic they are. In New South Wales they call it the bear pit: in here we call it the teddy bear pit!

The SPEAKER: Order!

Ms CHAPMAN: I rise on a point of order, Mr Speaker. If the minister can't or won't answer the question, he might as well sit down.

The SPEAKER: There is no point of order. The Minister for Transport.

The Hon. P.F. CONLON: If people make personally offensive interjections, I cannot help but respond. I was very hurt by that. The truth is that the blow-out to which the honourable member refers is, of course, the fact that the TRUMPS project was started with a certain licensing and registration scheme; and, as was identified by the Auditor-General in last year's report, it had to be changed to take into account what, from memory, is called the graduated licensing scheme, where we converted our licensing scheme for a very simple one where you have a learner's permit and then subsequently a driver's licence into a complex graduated licence scheme. It was well identified that the TRUMPS scheme had to spend a great deal of money to incorporate that.

The truth is that the scheme started, and the criticism of the Auditor-General that was made last year was that those scope changes were not sufficiently dealt with in submissions to cabinet. That has all been changed and fixed up. That was the criticism—not a blow-out—and it is utterly erroneous and misleading to say that. The TRUMPS scheme has had some problems since

set-up on two occasions. One of them was an issue with a server company providing services. I will not name it; that is not fair. There were issues with a server company providing services.

On another occasion it was a break in a Telstra line. I will name Telstra because it probably does not like me anyway! Those things happen, okay? It is a new scheme and it will be criticised. It will be a very good scheme for the people of South Australia. There have been issues, and issues with vehicle dealers have been raised today. Our office has been in contact with the MTA and said, 'If there are any issues, can you please contact our office that so we are aware of them and can deal with them.' That is a proper response.

The great way not to have problems with a new system is not to set up new systems. There are problems in new systems. A courageous and a good government introduces new systems. What you must do is to take into account changes in law, such as the graduated licensing scheme. It is just utterly misleading, once again, for the honourable member to suggest that it is a cost blow-out.

PREMIER'S READING CHALLENGE

The Hon. P.L. WHITE (Taylor) (14:48): Will the Premier inform the house of the results of the Premier's Reading Challenge for 2007.

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:49): I want to thank the former minister for education for her question. For the fourth year in a row, the results for the reading challenge have been a fantastic success. More than 100,300 students across South Australia completed the reading challenge this year. I am advised that this is an increase of 10 per cent on the figures for 2006. So, congratulations to the minister and her department. I can advise the house that 748 schools took part, including government, Catholic and non-government schools, as well as schools for students with disabilities and Aboriginal schools. That means that 93 per cent of schools in South Australia are taking part in the challenge.

Of course, 2007 is the first gold medal year, and more than 20,800 students will receive a gold medal for successfully completing the challenge four years in a row. It has now truly become the Olympics of reading. The challenge remains popular even for students who leave the state, and this year medals will be sent to Queensland, Victoria, the Northern Territory, and further afield to Ireland, Vanuatu, Canada, Indonesia, the United Kingdom and the Philippines. There are also 200 students who are home scored or who have taken part independently because their schools did not participate who will receive awards.

The success of this initiative has far exceeded all of our expectations. In the first iteration of South Australia's Strategic Plan, the target was to have 50 per cent of schools participating in the challenge by 2006. Here we are in 2007 with more than 90 per cent of schools completing the challenge. The success of the challenge is due to a number of things. The involvement of high-profile South Australians as ambassadors for the program has been instrumental. The ambassadors are: Mark Bickley, Matt Primus, Rachel Sporn, Danielle Grant-Cross, Juliet Haslam, Aurelio Vidmar, Che Cockatoo-Collins, Rebecca Sanders, Jenny Williams, Travis Moran, Brooke Krueger-Billet, and our South Australian authors Mem Fox, Phil Cummings and Amanda Graham. These ambassadors visit schools across the state highlighting the importance of reading in their own careers, as well as simply promoting the joy and love of reading.

Above all, the ability to win medals has enormous appeal for young South Australians. For some students, winning a medal is something that they could only achieve if they were good at sport, so receiving a medal for being good at reading is an extremely positive recognition of their efforts and encouragement for the future. Of course, the efforts and commitment of the school communities is vital to the success of the challenge, and I take this opportunity of thanking them all for enthusiastically supporting this initiative—the principals, teachers, parents and, very importantly, the real heroes of the scheme, the teacher librarians.

There have been wonderful stories that have come out of the challenge. This year a student from North Haven school has broken the Reading Challenge record by reading more than 1,000 books. It is the all-time record. The previous record I think was about 400 books. I am told that some refugee families have used the challenge to help with their English skills, with both the parents and the students reading the same books. What is probably the most encouraging result this year is that 88 Aboriginal students from the APY Lands schools have completed the challenge for the first time. Overall, 2,264 Aboriginal students from state schools have completed the challenge, and we hope to build on that result in 2008.

I am delighted that in a time when electronic entertainment such as computer games, DVDs and television can take up so much of the time of our children, that such a simple initiative such as the Premier's Reading Challenge can be so successful. To maintain the momentum of the challenge three more medals have been announced. We have had a certificate, bronze and silver medals, and this year the first gold medal winners. In 2008 (next year) students can achieve the Premier's Reading Challenge champion medal, in 2009 the legend medal, and in 2010 the hall of fame medal. The 2007 certificates and medals are now being sent to schools, and I encourage all members of the house from all sides of politics to be involved in their presentation to acknowledge the achievements of our school communities.

NOARLUNGA RAIL LINE

Dr McFETRIDGE (Morphett) (14:53): My question is to the Minister for Transport. Why has the government failed to deliver on its promise to build a rail line extension from Noarlunga to Seaford? On 6 April 2005, the minister announced a feasibility study into the rail extension. He told the Messenger newspaper reporters it would be completed by June 2006. In May 2006, the member of parliament for Mawson (Leon Bignell) told a *Sunday Mail* community forum:

> The tram isn't our only focus. We are doing feasibility studies to determine if we can continue a train line further down south.

In August this year, the Onkaparinga council was reported in the local Messenger as demanding a meeting with transport minister Conlon because it was sick of the delays. Today, minister Conlon is quoted in *The Advertiser*, more than two years after he first said he was waiting for a feasibility study, as saying he was investigating the feasibility of extending rail services from Noarlunga to Seaford. How long do you need, minister?

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (14:54): At least it is a different approach. Usually I have to correct the assertion of the member for Morphett, but this time he corrected his own assertion in his explanation. His question was: why did we not deliver the train line we promised? Then he talked about the feasibility study that we promised. I think that says enough for that. Let me go on to deal with the issue of delays in the finalisation of the feasibility study and some of the things that have been said by the mayor.

The Hon. J.D. Lomax-Smith: Who is the mayor?

The Hon. P.F. CONLON: The mayor of the Noarlunga council, of course, is a complete political cleanskin by the name of Lorraine Rosenberg. The truth is that we have had endless meetings, and I sat at lunch before Christmas last year with the mayor and the chief executive. I have driven on tours with the chief executive of the council and we have talked a great deal about it. But, let us be clear, we are not dealing with some political innocent. We are dealing with someone who used to be a Liberal member of parliament, and I suspect entertains ambitions in that regard in the future. Let us just put it all in context.

Let me give members the primary reason for the delays in the feasibility study. We had to take into account very late arguments for changes put to us by the Noarlunga council. Can I say, yesterday I met with the planning minister and we are checking it out, but the Noarlunga council now appears to have a further argument about where a rail extension should go. Now, we will deal with those and we will answer them. However, we will not be criticised for delaying a feasibility study on which the Noarlunga council keeps coming up with new ideas.

Mr Pengilly: Onkaparinga council.

The Hon. P.F. CONLON: Onkaparinga council, sorry. The bottom line is this: we promised a feasibility study. I have been open and honest. The honourable member asked me in the estimates committee, and I told him that the major impediment that we had seen so far is that the traffic corridor we own crosses the Onkaparinga River at its widest possible point—some 1.5 kilometres—which may not only prove cost prohibitive but may actually be impossible to build on environmental grounds. I do apologise for whoever acquired the corridor in the 1970s, but it wasn't us—it wasn't me; okay. We will continue to deliver what we promised, that is, a feasibility study. We will continue to look at new material, if the council wants to put it up, but I will not accept a criticism of delaying a feasibility study when it is delayed for ideas put to us by the Onkaparinga council.

PROTOCOL UNIT PROCUREMENT TRANSACTIONS

Mr GRIFFITHS (Goyder) (14:57): Can the Premier provide to the house details of the high risk procurement transactions undertaken by the Protocol Unit of the Department of the Premier and Cabinet in the 2005-06 financial year? In his recent report, the Auditor-General commented:

> During 2005-06, the Department contracted an external accounting firm to review the procurement arrangements in the Protocol Unit. The accounting firm's report identified a number of high risk findings. The report also identified a number of transactions, within the unit, that, in the Audit's opinion, warranted further examination as to their propriety and reasonableness. Audit communicated its view to the Chief Executive of the Department. During the year, further review work was undertaken by the accounting firm and the Government Investigations Unit of the Attorney-General's Department. As a result of that work, and in consideration of advice from the Crown Solicitor, the Chief Executive has advised Audit that a more focused investigation of certain matters will be undertaken.

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:58): I thank the honourable member for prior notice of this question. A routine internal audit within the department in 2006 identified a number of issues of concern within the protocol unit particularly relating to procurement arrangements. A number of strategies were implemented to prevent any recurrence of these practices, including training provided to relevant staff and documenting policies and procedures to be followed.

The conduct of an employee, formerly attached to the protocol unit, was considered by the internal audit report. As a result, additional analysis of a number of transactions was undertaken. As a result of this analysis, a meeting was held with the Crown Solicitor. The Crown Solicitor referred the matter to the government investigations unit to assist in determining whether any further action should be taken in relation to the employee. The effect of the final advice received from the Crown Solicitor in September 2007 was that there was insufficient grounds to warrant disciplinary action being taken pursuant to provisions of the Public Sector Management Act 1995.

However, there was sufficient cause that the chief executive could, utilising sections 44 and 50 of the Public Sector Management Act, find the employee had performed unsatisfactorily and assign the employee to another role in the Public Service. The chief executive has accepted the recommendations of the Crown Solicitor. The employee has been informed of the chief executive's findings and formally removed from the position. The employee is now being managed as an excess employee of the Department of the Premier and Cabinet.

PUBLIC-PRIVATE PARTNERSHIPS

Mr GRIFFITHS (Goyder) (15:00): My question is to the Treasurer.

Members interjecting:

The SPEAKER: Order!

Mr GRIFFITHS: How will the government ensure that the public-private partnerships investments are made transparent to the South Australian taxpayer? The Auditor-General has identified that, in the 2006-07 budget, expenses for PPP projects have been limited to the cost of PPP consultants, and the government has not yet resolved whether the transactions associated with those PPPs will be off balance sheet, or how they will be represented in the financial reports.

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (15:01): Ultimately, the Auditor-General will make a determination as to whether these projects are on balance sheet or off balance sheet. It will depend upon the nature of the PPPs, the quantum of risk that is transferred and the number of services that are transferred to the private sector as to whether or not these will be off balance sheet transactions.

The advice I am provided with is that a view is developing with some speed in the United Kingdom and Europe (particularly in the United Kingdom) that public-private partnerships should be on balance sheet; that they should not be treated, in an accounting sense, as off balance sheet. That is the sort of stuff that accounting firms and auditors-general spend a lot of time on, working out how the world will be structured in terms of those transactions. So, I will leave it up to the accountants and auditors-general of the world as to how these projects will be treated in terms of their accounting standard.

It does not much matter, at the end of the day because, even if these transactions are off balance sheet, as far as the rating agencies are concerned, they view the debt exposure to a public private financing initiative as being a state liability, as a state debt. For presentational purposes, you might say that we have $2 billion worth of state debt, and then try to say that the extra

$2 billion you are carrying because of the PPPs is not state debt. That does not wash with the rating agencies: they would view that as a $4 billion state debt. In terms of the creditworthiness of the state, there is not a lot in it in respect of whether it is on balance sheet or off balance sheet.

There are, of course, some benefits to its being off balance sheet, as it is treated as an operating expense. If it is on balance sheet, it is treated in a different manner. So, there are a lot of issues to be resolved. We have not as yet gone to the expression of interest stage or the tendering stage, but my expectation would be that almost certainly these projects will be treated as on balance sheet, particularly given that, with the prisons, we are not outsourcing the custodial services. As I said, I think that the other projects will more than likely be treated as on balance sheet, and it will be open to full scrutiny, as these projects are.

SA WATER

Mr WILLIAMS (MacKillop) (15:04): My question is to the Minister for Water Security. How many senior managers within SA Water are receiving incentive bonus payments based on the corporation's profits, as opposed to its level of service delivery, and how is this consistent with the corporation's customer obligations?

The Hon. K.A. MAYWALD (Chaffey—Minister for the River Murray, Minister for Water Security, Minister for Regional Development, Minister for Small Business, Minister Assisting the Minister for Industry and Trade) (15:04): I thank the member for his question. I do not have that information to hand. I will bring it to the house once I have made inquiries on his behalf.

MORGAN-WHYALLA PIPELINE

The Hon. G.M. GUNN (Stuart) (15:05): My question is to the Minister for Water Security. Were sufficient replacement pipes available in South Australia when the Morgan-Whyalla pipeline burst so that repairs could be made properly? Can the minister further assure the house that the necessary ongoing maintenance will be carried out to assure people of the Upper Spencer Gulf that all steps have been taken to prevent further breakdowns?

The Hon. K.A. MAYWALD (Chaffey—Minister for the River Murray, Minister for Water Security, Minister for Regional Development, Minister for Small Business, Minister Assisting the Minister for Industry and Trade) (15:05): I am advised that there is absolutely no truth to the rumour that the availability of pipe was a factor in repairs at Port Augusta. SA Water advises that the large diameter pipe needed to repair the mains was in stock at SA Water's Crystal Brook depot and the smaller plastic pipe required was available from the Port Augusta depot.

As a consequence of the breach of the Morgan-Whyalla pipeline that occurred and interrupted the supply to Port Augusta, there will be an extensive review of the cause of the problem, and we can assure the house that SA Water will take all steps to ensure that that does not occur again in the future.

WELLINGTON WEIR

Mr PEDERICK (Hammond) (15:06): My question is to the Minister for Water Security. Why has the government only just called for tenders to conduct an environmental impact statement for the Wellington weir proposal? The proposal was first made public by the Premier on 7 November 2006. In December 2006, the Department for Environment and Heritage made application to the commonwealth government for exemption from the requirement to complete a full environmental impact statement.

In July 2007, the federal Department of Environment and Water Resources declared a full EIS was required before construction of a weir could commence. A report in the *Victor Harbor Times* of 19 July 2007, alluding to this decision, stated:

> Minister for the River Murray Karlene Maywald said the EIS will get underway virtually immediately.

According to a radio interview by ABC 639's Andrew Male with minister Maywald on Tuesday 23 October, the invitation to tender for this EIS was advertised in *The Advertiser* that day, almost 14 weeks after minister Maywald's promise that it would get underway immediately.

The Hon. K.A. MAYWALD (Chaffey—Minister for the River Murray, Minister for Water Security, Minister for Regional Development, Minister for Small Business, Minister Assisting the Minister for Industry and Trade) (15:07): I thank the member for his question and I recognise his keen interest in the Wellington weir on behalf of his constituents. The process for the environmental impact statement is being undertaken by the Department for Environment and Heritage managed in the portfolio responsibilities of minister Gago.

However, I can advise the house that the tenders were called for the environmental impact statement over the last week or so. The work that has been undertaken by the Department for Environment and Heritage leading up to that is to collate all the information that we already have to hand right across government to ensure that, when we let the tender, we were letting it to fill the gaps in the information that we currently have. So, a significant amount of work was undertaken within the department first and foremost to determine what information we had and what information we needed to get.

EMERGENCY SERVICES WORKERS

Ms FOX (Bright) (15:08): Can the Attorney-General inform the house of any measures that are designed to further protect those who serve the community as emergency workers through legislation?

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs) (15:08): Emergency workers provide a valuable service to the people of South Australia. They are often called upon to act in unpredictable and dangerous circumstances, many times putting their own health and safety at risk. I am pleased to tell honourable members that, under new regulations I recently announced, penalties for offences against a range of emergency workers, including those in hospital emergency units, ambulance and fire crews and volunteer emergency workers, are to be substantially increased.

Changes to the Criminal Law Consolidation Act will extend to the aggravation of an offence against an emergency worker in the same way that such penalties already apply to offences against police and law enforcement officers. The range of offences covered is broad and it includes violent offences such as assault, acts endangering life and recklessly or intentionally causing harm through crimes such as theft. Aggravating an offence will increase the potential penalty by up to 50 per cent. This is the least we can do to protect further those who provide such a valuable service. Their work requires a quick response and a capacity to assess unhindered true life-threatening situations. They do this in emotionally demanding and unpredictable circumstances. The last thing any such worker should have to contend with is the fear that they will become a victim of crime while performing their duties.

The changes will cover workers in hospital emergency departments, including doctors, nurses, other medical professionals, support staff and volunteers, the South Australian Ambulance Service, the Metropolitan Fire Service, the Country Fire Service, the State Emergency Service—

Ms Chapman interjecting:

The Hon. M.J. ATKINSON: —well, I'm sorry that the member for Bragg thinks this initiative is a waste of time—Surf Life Saving South Australia, Volunteer Marine Rescue SA and any provider of a service that is incidental or related to the service provided by one of these emergency service providers and essential to it. For the offence to be aggravated, the alleged offender must know of the worker's occupation and that the worker was engaged in that occupation at the time of the offence, and have appreciated the worker's vulnerability when committing the offence. I thank the member for Bright for her interest in the welfare of South Australia's emergency workers.

DRUG DRIVING

The Hon. J.D. LOMAX-SMITH (Adelaide—Minister for Education and Children's Services, Minister for Tourism, Minister for the City of Adelaide) (15:12): I table a ministerial statement from another place relating to the review of random roadside testing.

MEMBER'S REMARKS

Mr VENNING (Schubert) (15:12): I seek leave to make a personal explanation.

Leave granted.

Mr VENNING: During question time today, while the Attorney-General was answering a question about setting up an independent commission to investigate corruption, he raised the question of the police anticorruption agency. He inferred that I said by interjection that the police anticorruption agency was corrupt. I did not; I said that all agencies of government—which would include the police anticorruption agency—could be corrupt by varying degrees, and that is the very reason we need a truly independent watchdog. I can quote the former auditor-general's comments about that.

I did not specifically raise the police anticorruption agency; the Attorney General did, and he tacked my interjection to it. So, I just reiterate that I do not think that the police Anti-Corruption Branch is corrupt. It has an excellent record. If I have caused the police Commissioner, the police and this very much appreciated branch any grief, I apologise. But the question remains: who watches the watchdog?

GRIEVANCE DEBATE

ONKAPARINGA CITY COUNCIL

Mr PENGILLY (Finniss) (15:13): I would like to pick up on a few local government issues, one of which surfaced this afternoon regarding the City of Onkaparinga. The mayor of Onkaparinga, Lorraine Rosenberg, and the CEO, Jeff Tate, have raised some major concerns over the extension of the urban boundary change down in Onkaparinga. They are most concerned about the next 22,500 people who will move onto land already zoned and, if this urban boundary is extended, we will have another 14,000. As was discussed by the Minister for Transport this afternoon, there are some major issues down there. The issue that the council is raising relates to the lack of the extension of the train and public transport down to that rapidly growing area. It is a matter of grave concern to myself and the opposition that the South has been deserted largely by this government and it is being treated with disregard and disdain. Then we saw the mayor being put down in the parliament this afternoon. I think it is most unfair and unfortunate to a volunteer in that situation.

I would like to also add that an extended urban boundary is going to add more than 680 hectares of urban land to the City of Onkaparinga. According to the mayor:

> Unplanned and uncoordinated growth will create significant impacts on the delivery of services and facilities to future generations in suburbs already experiencing a population boom, and where deficits in infrastructure and services have been identified.

Just going on, we have the case of another council in the north, the northern councils actually, who are most concerned about the removal of the 200 regional administrative jobs under the Shared Services plan. What I am alluding to is where on earth is this government going with local government in this state? What are they trying to do to rural communities? What are they trying to do to regional communities. We saw the Health Care Bill debated in this place over the last couple of days. Mayor Geoff Brock from Port Pirie has been on the ABC, on 639 up there, vocally calling the government to account on the removal of these jobs and, in fact, they are looking to come and see the government to talk to them about it.

If I go a bit further, and indeed down to my own electorate, I refer to the recent cabinet trip to the island, where they met with the local council and local communities. The communities raised a number of issues with the government and raised concerns. I am pleased to say that there has been some money contributed towards the upgrade and completion of boat ramps on the island. But actually the key points have been missed in a fob off. There are two key issues for Kangaroo Island. The first is the cost of getting back and forward, the freight costs, the passenger costs and the charges back and forth from the island, which conveniently were put to one side by the government, although some members of the government expressed horror at the prices.

The other key issue over there is road funding. There was absolutely nothing outlined or put out by the government on assistance to Kangaroo Island Council for dealing with this road funding and there was absolutely no talk about the major issue of subsidisation or some scheme of providing for the island, providing for those people who live there, and, more to the point, also providing for those people who wish to go there, in streamlining and making the costs much cheaper. That was all put to one side and, unfortunately, it was just the issue of the boat ramp funding—which, as I said, we were appreciative of—that got front page in the local press, and the rest did not even get heard of.

It is just an absolute nonsense, and it is typical of the spin doctor tactics that are used by this government, quite cleverly, to con the community into thinking that they are doing a wonderful job. But the guts of it is that absolutely nothing has happened in that area, and it is a great concern to me. There is a study being done which has been funded by the state government, but I am afraid that myself and others have seen a million studies done and gathering dust on the shelves of various buildings and councils and government departments. Indeed, in my office at home I have I think a two-foot high pile of studies done of Kangaroo Island into freight and roads, and we are still waiting to actually see something happen. It is a very sample task.

Time expired.

KINGSTON ELECTORATE

Ms FOX (Bright) (15:18): I rise today to speak on the matter of federal Labor's commitment to the south and the interesting decision of a former Liberal member of this house to run for a so-called third party. I say 'so-called' because I think that the decision of the former Liberal member for Mawson, Robert Brokenshire, whose career in this place spanned some 13 calendar years, to run as a federal candidate for the Family First Party demonstrates just how close these two parties are to each other.

A vote for Robert Brokenshire in Kingston will be a vote for the current Liberal member for Kingston, of that I am sure. A vote for Brokenshire will be a vote for Howard, a vote for Costello. Mr Brokenshire, the pro-WorkChoices, climate change sceptic, the man who represented the south for so long, claimed in *The Advertiser* on Monday 22 October:

> I want people to send a message out...that the south is not happy with the lack of support in areas such as roads and other infrastructure services.

Well, isn't that an appalling indictment of his own 13 years in the south, which has just ended, and of his federal Liberal colleague's current term as the member for Kingston?

Until very recently Robert Brokenshire represented the south and Kym Richardson, the current Liberal member for Kingston, still does; so, Mr Brokenshire comes out and publicly fouls his own nest—most peculiar. What I also find peculiar is that when I heard Mr Brokenshire speak at the declaration of the poll in early 2006 after the election he made a moving and, indeed, convincing speech that he had lost 13 years of his life to politics. I was there: I heard this. He said that he regretted not spending time with his family because he had been at local meetings and functions instead—and that is entirely understandable.

Why is he throwing his hat back into a ring that he had so clearly wearied of? Why is he joining the Christian democratic party which is Family First. This is from a man who, during his membership of the Parliamentary Christian Fellowship, was apparently confused about the difference between the Church of Jesus Christ of Latter Day Saints and other Christian denominations.

In my opinion this is an elaborate stunt on Mr Brokenshire's behalf. He is doing the Liberals' dirty work by syphoning off votes in Kingston while schmoozing up to Family First in the hope that they will let him into the upper house where, if he gets in, he will carry on being what he always does—that is, a good Liberal. Well, it will be up to the voters of Kingston to decide—and they are spoilt for choice. A Labor candidate—the hardworking and passionate Amanda Rishworth—and not one, but two Liberal candidates—Richo and Brokey—and a raft of minor parties.

So what has Amanda Rishworth secured for the south? What commitment will a Rudd Labor government bring to the south? A Rudd Labor government will work in partnership with the South Australian government to jointly fund a solution for the Main South Road and Victor Harbor Road interjection. Martin Ferguson announced two days ago that the $7 million project will widen and upgrade the existing intersection and include the installation of traffic lights and an upgrade of Main South Road at the Seaford Road intersection. Amanda Rishworth has been a strong advocate for this upgrade—as she has for another important project in the south.

A Rudd Labor government will invest $3 million in the McLaren Vale wine region to help grape growers switch from using mains drinking-quality water to treated recycled water. The $3 million will connect a number of small to medium-sized irrigators to new recycled water supplies from a local infrastructure upgrade. This will save 500 million litres of drinking water every year and bring about significant local environmental benefits, with less effluent outflow at Christies Beach, parts of which are in the electorate of Bright. Of course, Mr Brokenshire, who refers to the Greens as 'loopy' in *The Advertiser,* is probably not very interested in this as it is a positive environmental outcome.

DROUGHT

Mr VENNING (Schubert) (15:23): Today I rise to speak about the impact the drought is having, and will continue to have, on everyone in South Australia and every single household in the state. I am referring to the impact of the drought on food availability and food prices.

Years ago legislation existed to ensure that we had a certain amount of food stocks in reserve, in other words, on hand, should desperate times call for a reliance on such reserves. Our wheat and barley boards were compelled by an act of parliament to retain minimum stocks of grain

as emergency carryover stocks, so every year thousands of tonnes were quarantined and kept in South Australian storage. Well, it just does not happen any more—and I am very concerned.

I can see that desperate times are, or could be, fast approaching as the worst drought in the history of our country continues to worsen. Food is already increasing in price, with further rises assured, as everyday commodities become more expensive to produce and less readily available. There are alarming predictions about huge price rises before Christmas and shortages into the New Year, resulting from failed crops due to lack of water. I cannot think of another agricultural disaster in the history of our state—or the country, for that matter—that comes close to this one.

South Australians need to brace themselves for a hit in the hip pocket or resign themselves to the fact that they may have to go without some of the food they take for granted. There was a similar situation with the Queensland storm (Cyclone Larry), which caused an acute shortage of bananas. Prices increased twentyfold and often bananas were not available.

The nation's food bowl, the Murray-Darling Basin, does not have enough water in the system to keep its 150,000 hectares of citrus, apples, pears, apricots, plums, cherries, table grapes and wine grapes alive. The established trees in the basin are currently withering and dying as they fail to survive on their current 16 per cent water allocation. Fruit production in the Murray-Darling Basin accounts for approximately 40 per cent of Australia's produce and is worth approximately $1.5 billion. The demise of this region is and will continue to impact financially on everyone.

The Australian Vegetable Growers Federation has suggested that there will be nil production in the Murray-Darling region this year as farmers will not be planting crops. Manufacturers and farmers have been absorbing the costs over recent times and, with the drought showing no signs of easing, it is getting to a point where it can no longer be sustained. Farmers are paying exorbitant prices for water, and they will have no option but to pass on the soaring costs to their customers across South Australia and the rest of the country.

Consumers have in part the Rann Labor government to thank for the price rises that have already and will continue to occur. If alternative water supplies were implemented sooner, South Australia would have been weaned off its reliance on the Murray, and the Murray-Darling Basin irrigators would have had a chance to save their fruit trees and continue to grow the quality citrus that we all enjoy. This drought could result in increasing prices similar to those experienced in Cyclone Larry, except that such increases would be across all commodities, not just bananas.

Experts have warned that bread, dairy, eggs, fruit and vegetables will all increase sharply in price in the lead-up to Christmas—some commodities by as much as 50 per cent. A commodity that everyone consumes, bread, will have to rise by at least 20¢ a loaf. The current plight of grain crops will also mean that the cost of hundreds of processed foods will increase sharply, too. I remind the house that less than 20 per cent of the cost of a loaf of bread relates to the cost of the wheat and the flour. Milk is also forecast to jump heavily in price as dairies around the state are being forced to close as a result of the high cost of production and decreasing milk production.

That means that milk and dairy products will be less plentiful. Butter will increase by as much as 40 per cent—and it has—in South Australia due to the nationwide shortage. Many small businesses rely upon butter for their products and they are already feeling the squeeze, and suppliers have begun to ration this everyday commodity. The pork industry has indicated that many pork products will rise in price by $1 or $2 per kilo. That is due to the rising cost of grain. It will also result in pork becoming less readily available as pig farmers in many cases destock and empty their sheds.

Pensioners and those from low socioeconomic groups will find these price rises impossible to deal with and will simply turn to less healthy but cheaper food options. The state government needs to appreciate the financial difficulties such rises will have on families and use its power to limit the negative effect it has on South Australian households. A boost to funding for anti-poverty programs may help to ease the strain this has on people's budgets. Also, a price-watch program needs to be set up.

However, price rises are only the tip of the iceberg in regards to food. As less produce leaves farms, supplies will dwindle. Items such as wheat, milk, eggs and vegetables, which are all foods essential for people's health, will become much less plentiful. The state government needs to monitor the food levels. We must ensure that there is enough should the drought crisis reach unimaginable levels and certain foods become completely unavailable. We must also monitor the levels of availability of some of the essential food items overseas.

Time expired.

SHARED SERVICES

Ms BREUER (Giles) (15:28): I want to speak today about the proposed shared services reform. A number of comments were made in this place yesterday as a result of questions asked of the minister. Also, comments by the member for Flinders related to shared services reform, and this morning I became aware of a number of media reports regarding this issue. As a country member, I do have concerns about this. When I was first told about it I was horrified, I have to say, because I was given some inaccurate information.

As a country member, any time there is any discussion about withdrawal or what appears to be withdrawal of services or jobs in country areas I am concerned. However, I do believe it is important to point out some of the inaccuracies that have been reported about this issue. Despite what has been said, this is not about targeting the regions. It is actually a whole of government initiative, and it stretches right across the Public Service, so it does not apply just in our country areas.

It is also inaccurate to suggest that the government is putting pressure on drought-affected communities—an accusation that has been levelled at the government. Certainly, the government is not singling anyone out. I met with the minister to discuss this, and I discovered that we are talking about approximately 0.11 per cent of the regional labour force in South Australia. I think that this morning a figure of 2,000 jobs was quoted. Certainly that is not the issue in country South Australia. The transitioning of the staff will be a gradual process. It will commence in late February. It will not be a wham-bam immediate occurrence.

The gradual reduction of the workforce numbers will be managed through natural attrition or through redeployment of excess staff and by reducing contract staff usage. If employees want to relocate from regional areas—and some will—they will be entitled to full relocation benefits, including: reimbursements of conveyancing costs if they sell their house or purchase a property; reconnection costs for utilities and services such as gas, electricity and telephone; and reimbursement of removal and storage costs. That is certainly quite a generous offer that will be made for those who wish to relocate. Of course, there were some big regional initiatives announced in the 2007-08 budget, and that will provide increased employment opportunities in our part of the state, including money for new education projects (over $13.6 million), and $12.4 million for the expansion of the Roxby Downs police station. Of course, with the mining industry, we are certainly on the edge of a boom in jobs in my part of the state.

The government would hope to maximise the number of regional staff taking up positions in shared services but, where it is clear that employees do not wish to relocate (and there will be many, because they have partners working in the communities where they are living or they may have grown up in those communities and do not choose to leave), a range of options will be offered to them, and that will be explored in conjunction with the relevant agency. That may include the restructuring of their duties. Agencies may seek expressions of interest from other suitably skilled employees who may wish to relocate, and in some way those jobs can be worked out and the person who will be redeployed will be able to look at other jobs. Certainly any workforce reduction will be conducted in line with the government's policy of no forced redundancy for ongoing employees, so no-one will compulsorily lose their job.

The figure I heard quoted was over 2,000 jobs. This is absolutely ridiculous. In regional South Australia we are looking at approximately 250 FTEs. I know that that can be split up because there will be a number of people who are doing shared and part-time employment, so it will be more than 250 people involved, but it is still not the sorts of figures that have been quoted. I believe that, with the options people will be given, they will be able to find other employment, particularly, as I have said, with the boom that is happening in many parts of our state. Even in smaller communities I believe they will be able to find other employment within that service. In the regions of Eyre and Western South Australia we are looking at only 56 FTEs. So, certainly, in my part of the state it is much smaller numbers, and we will be able to find other employment for those people.

So, while I have certainly had concerns about this, and I still will have some concerns and will be keeping a very close watch on it, I fully understand that this is the way of the world now. This shared services project will save $60 million. It is what is happening in other states across Australia. I believe our people will be given a good opportunity to find other employment if necessary, and all will be well.

Time expired.

INFRASTRUCTURE PROJECTS

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:33): A feature of the state Labor government's infrastructure program over the last five years has been to announce a new project, announce that the existing facility, wherever it might be, will be sold and announce that there will be a new rebuild of the facility, usually in some outer lying area. A classic example is the announcement of super schools. Inner suburban schools that have served the community and are on valuable land are to be sold off and rebuilt further out some time in the future. We have had the announcement that the prisons that currently service South Australia (Yatala, Magill, and other correctional facilities) will be sold for housing development and relocated at Murray Bridge. Similarly, the mental health forensic facility at James Nash House is to be sold and moved to a new facility to be collocated at Murray Bridge.

We have had another announcement of the possible public-private partnerships to cover this type of redevelopment, which, as I say, is a feature of the government. A new one announced recently—the Glenside Hospital redevelopment—has a rather new feature; that is, not to just sell it up and build a new facility somewhere else, but to sell half of it. This is a 30-hectare site in Glenside. It is very close to metropolitan Adelaide, situated on the intersection of Fullarton and Greenhill roads. For over 130 years, it has been the home of mental health in South Australia.

The new feature is that you sell off half and you squash the patients and the proposed facilities into one half of the remaining half—that is, a quarter. The proposal has been justified on the basis that the government is committed to mental health, it will provide services elsewhere and it does not need to have such a vast expanse. In addition, it claims that it is doing some urban good by selling off this land. We all know that is a complete nonsense.

Yesterday, when the Treasurer was asked to identify whether there would be any redevelopment if the land was not sold, he did not know the answer. This is a $150 million project and he did not know the answer. It was interesting because a similar question was asked in another place of the Minister for Mental Health and Substance Abuse (Hon. Gail Gago), and she had some interesting ideas about the sale of this land. She explained to her chamber that one of the important aspects of selling off these facilities was to provide income for the development. She was quite honest. That will happen because it has to be sold to be able to proceed with the infrastructure.

The minister went on to say that, in relation to one of the precincts which is for private housing, the housing development is about helping to contain our urban sprawl. Her excuse for why they have to sell off this valuable site is that it will be doing some good for urban sprawl. We have heard the explanations to the house that we need to have a supermarket, which is an utter nonsense, given the supermarket facilities in Glenside already. One of the biggest supermarkets in South Australia at the Burnside shopping centre is in Glenside. We have supermarkets in both Mitcham and Unley. The supermarket story is a complete nonsense.

This is all about trying to gain the maximum amount of money. It is absolutely ridiculous to say that we have to have commercial facilities on the Glenside Hospital site on Fullarton Road. Again it is about maximising return. We do not need new office space on mental health land. Mental health is the biggest single project needing assistance. It is a complete nonsense to suggest that. The tragedy is that, at a meeting the other night which the local community were invited to attend, officers of the Department of Health said, 'The sale of this precinct is not negotiable.' That is public consultation for this government. What an utter disgrace. Officers of the department said, 'This is what we will be doing. You can give us a view about what colour taps you want in the new building or whether or not there will be four trees planted next to the new wetlands area, but you cannot have a say about whether one half of this asset will be sold off to the highest bidder and miss out on the open space you have now.'

Time expired.

PUBLIC ACCOUNTS COMMITTEE

Mr O'BRIEN (Napier) (15:38): In March this year, the Legislative Council took upon itself the role of providing to the parliament of South Australia a de facto public accounts committee called the Budget and Finance Committee. The role of this new committee is like duly constituted public accounts committees elsewhere in Australia: to monitor and scrutinise all matters relating to the state budget and the financial administration of the state. Members may be aware that South Australia is the only parliament in Australia (and probably one of the few in the western world) that does not have a public accounts committee.

The South Australian Public Accounts Committee, with all its highly focused powers of investigation over budgetary and public administration matters and close working relationship with the Auditor-General, was replaced with the more generalist Economic and Finance Committee in 1991. With the loss of our own PAC, all we were left with were estimates committees that examine forward spending but no truly dedicated parliamentary instrument for checking on the performance of previous budgets—all foresight and no hindsight.

My view, informed by a brief study of public sector finance at Harvard University, is that a public accounts committee function is essential for oversight by the legislature over the executive. The decision of an earlier parliament to dissolve the PAC and create a generalist economics and finance committee was, I believe, an extremely poor decision, predicated on less than full knowledge of public sector finance and the proper role of PACs. As they say, nature abhors a vacuum. In the absence of a public accounts committee, the Legislative Council has taken upon itself the role of providing a de facto PAC.

The action of the Legislative Council in setting up its Budget and Finance Committee is, in my opinion, a clear breach of the South Australian Constitution Act 1934, which clearly prohibits the Legislative Council any role in a money bill. Section 61 provides that money bills shall only originate in the House of Assembly, and section 62 provides that the Legislative Council cannot amend any money clause. Now, section 62(2) allows the council to make suggestions but, under subsection (4), they have to be in erased type, meaning that any suggestions they make have no import whatsoever.

These provisions of the South Australian constitution are a clear reflection of an earlier informal agreement between both houses of parliament, known as the South Australian Compact of 1857. This is the reason why members of the Legislative Council do not serve on estimates committees. They are clearly prohibited from an oversight role in the financial management of the state of South Australia. It is a restriction that was at first a voluntary compact between 1857 and 1913 and, from 1913, a feature of the state's constitution.

Should the assembly assert its control over money matters by making some challenge to the legitimacy of the Legislative Council's Budget and Finance Committee? Probably not. This is an area of contention between the houses, best addressed by simply re-establishing the constitutional role of the House of Assembly through the reformation of the public accounts committee.

If what I have said about the House of Assembly's sole constitutional responsibility for public finance sounds a little esoteric and, hence, of little consequence, I would like to direct members to the observation made by the State Editor of *The Advertiser*, Greg Kelton. In *The Advertiser* of 13 October he wrote:

> Time will tell whether Budget and Finance provides good value but it appears to be going from strength to strength and could eventually replace the economics and finance committees as the most influential.

Usurped by a committee with no constitutional legitimacy.

STANDING ORDERS SUSPENSION

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs) (15:44): I move:

> That standing orders be so far suspended so as to enable me to introduce two bills without notice.

The ACTING SPEAKER (Mr Koutsantonis): 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.

STATUTES AMENDMENT (EVIDENCE AND PROCEDURE) BILL

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs) (15:45): Obtained leave and introduced a bill for an act to amend various acts to make provision for miscellaneous evidentiary and other procedural matters. Read a first time.

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs) (15:46): I move:

> That this bill be now read a second time.

This bill supersedes the Evidence (Miscellaneous) Amendment Bill 2007, which the government introduced in February this year and allowed to lapse when parliament was prorogued to enable further consultation to occur.

Comments were sought from many groups and individuals about that bill and about its companion bill the Criminal Law Consolidation (Rape and Sexual Offences) Amendment Bill 2007 introduced at the same time and allowed to lapse for the same reasons. As a result, both bills are to be reintroduced in much the same form but with what we think are improvements.

The Statutes Amendment (Evidence and Procedure) Bill achieves two main kinds of evidentiary law reform. It reforms laws governing the way evidence is taken in sexual offence proceedings. This is part of a suite of legislation reforms arising from the government's extensive review of South Australian rape and sexual assault laws in 2006 that also includes the Criminal Law Consolidation (Rape and Sexual Offences) Amendment Bill 2007 to be reintroduced in this session concurrently.

It also reforms laws about the special arrangements that may be made for witnesses giving evidence. In particular, it provides for the way in which evidence is taken from vulnerable witnesses, including children and victims of serious offences, the way witnesses may be questioned and the manner in which judges warn or direct juries about the evidence of children. It also restricts access to sensitive material that is to be used as evidence in proceedings. These reforms are made in response to recommendations of the Child Protection Review (sometimes known as the Layton Report) about children and the courts, and also to remove systemic impediments to the reporting and prosecution of serious crime.

Amendments are to the Evidence Act 1929, the Summary Procedure Act 1921, the Criminal Law (Legal Representation) Act 2001, the Supreme Court Act 1935, the District Court Act 1991 and the Magistrates Court Act 1991. I seek leave to have the remainder of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The Bill also makes an unrelated statute revision to s71B (repositioning the penalty clause) and updates s59IQ so that it uses the same terminology as a consequence of the enactment of the Statutes Amendment (Domestic Partners) Act 2006.

Special arrangements for witnesses

Current section 13 of the Act allows a court to make special arrangements for the taking of any witness's evidence to minimise the witness's distress and embarrassment. It also identifies witnesses who are likely to find giving evidence particularly frightening, humiliating or stressful. It calls these witnesses 'vulnerable witnesses' and gives them additional support in criminal proceedings. 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.

So as to avoid some of the confusion about witness entitlements to special arrangements that became apparent during the period of consultation, and to clarify the different procedures necessary for vulnerable witnesses for criminal proceedings, the Bill separates provisions dealing with special arrangements for witnesses generally from those dealing with special arrangements for vulnerable witnesses in criminal proceedings. The same special arrangements are available for each group of witnesses, and the Bill, like the Act, lists some examples and permits a court to order any combination of them for a witness.

The Bill, like the Act, does not permit an order for special arrangement to be made if this would 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 also 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 – so long as the indirect method of transmission also shows any person who may be accompanying the witness to provide the witness with 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 retains the requirement for judges, in criminal trials, 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. This requirement applies whether the witness is a vulnerable witness or not.

One of the examples of a special arrangement is the taking of an electronic recording of a witness's evidence outside the courtroom to be replayed 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, in place of the child giving evidence in court, for the recording to be replayed to the court during the trial; an arrangement that is especially useful in cases where the trial takes place several years after the alleged offence. Although available to any witness, this kind of special arrangement is likely to be used mainly for children.

The other example added by the Bill, 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.

There is nothing in the current law, which is facilitative and not prescriptive, to stop any of these kinds of arrangements or the use of CCTV already being made for witnesses. The real reason they have not so far been used, or have not been used very often, is that 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 CCTV, 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, not cost-effective. The Government has taken the sensible approach of installing these facilities in the courts where they are most in demand, with a view to extending them to other courts if need be.

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. Granting a request for special arrangements for a vulnerable witness in a criminal trial is by no means automatic.

It is possible, therefore, under the current Act, for a judge to deny a child victim in a criminal trial the opportunity to give evidence using special arrangements even when 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 CCTV 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.

The Bill will require courts in criminal proceedings to make special arrangements for vulnerable witnesses if the party calling the witness applies for them. It allows a court to dispense with such arrangements for adult witnesses when the facilities necessary for the special arrangements are not readily available to the court and (taking into account the cost, inconvenience and delay involved in procuring them or in adjourning to some other place where the facilities are available and the urgency of the proceedings), it is not reasonably practicable to make the facilities available. The Bill requires the court to give reasons if the court decides to dispense with the making of special arrangements.

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 wider application than contemplated by the Layton Report. It provides that a court may, if it thinks expert evidence would help the court to determine what special arrangements should be made for taking the evidence of a witness (whether vulnerable or not), receive such evidence in civil or criminal proceedings. It also allows a court in civil or criminal proceedings to receive expert evidence about any additional difficulty that may be caused by a witness (whether vulnerable or not) giving evidence through an interpreter where the witness's native language is not English and the witness is not reasonably fluent in English. Some Aboriginal languages, for example, do not translate easily into English, and vice versa, because they do not describe a concept familiar to the English language. It is important that the court and the jury appreciate this when listening to the witness giving 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).

Vulnerable witnesses

Under the current 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, blackmail, 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:

- he or she may not be cross-examined in person by an unrepresented defendant in criminal or civil proceedings;
- a criminal court may take an audio visual record of his or her evidence and, must do so, if the vulnerable witness is a child of 16 years or less and has not already had that evidence pre-recorded;
- a civil or criminal court may admit an official audio visual or written record of his or her evidence given in an earlier criminal proceeding and relieve him or her of the obligation to give oral evidence in the current proceedings.

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 it is 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 except where 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 the fact that the witness is a child, why the warning is needed.

Cross-examination of victims of certain offences

A defendant 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 witness who is the 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 blackmail, 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 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 alleged victim in person in a criminal trial may cross-examine him or her in person in later civil proceedings, such as criminal injuries compensation proceedings.

An unrepresented defendant who wishes to cross-examine an alleged victim of a relevant offence in a criminal trial must do so through counsel.

An unrepresented defendant who wishes to cross-examine an alleged victim of a relevant offence in a civil proceeding may do so either through counsel or by submitting questions to the judge in writing, after which the judge or the judge's delegate (for example, the judge's associate) will ask the witness those questions that the judge determines are allowable in cross-examination.

In a criminal trial, the court must warn an unrepresented defendant of these limitations on his or her trial entitlements, inform him or her of his or her statutory rights to legal assistance, and ensure that he or she has had a reasonable opportunity to engage counsel before the evidence is taken.

The Bill requires the court, in a criminal trial where an unrepresented defendant obtains the assistance of counsel to cross-examine, to explain the reasons for such assistance and warn the jury not to draw any inferences adverse to the defendant from it.

The Bill also makes related amendments to 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 amendments 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 CCTV, 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 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 a record of the witness saying it. In the Skaf case, where the witness was not prepared to give evidence in person 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, of or under the age of 16 years and the 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 during the trial itself.

This part of the 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 Bill also includes provisions that requires the Supreme, District and Magistrates Courts to give priority to criminal trials of sexual offences involving children.

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 retrial.

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 while giving evidence 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 retrial. The legislation applied retrospectively to prevent those particular accused from escaping prosecution.

This Bill will let a later court admit as evidence in proceedings before it an official record of any relevant evidence given in an earlier 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. What is important is that the evidence constituting the official record is relevant to those proceedings.

Before admitting that official 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. 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 retrial as the alleged victim in a rape trial.

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 both 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. The problem for judges, however, 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) and in Victoria in 2006 (s 41F Evidence Act 1958 (Victoria)). These laws were designed to meet 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 (ALRC.) 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.

On 17 October, 2007, the model for new uniform evidence laws was introduced to the NSW Parliament as the Evidence (Amendment) Bill 2007 (NSW). It amends the recent NSW laws on improper questions.

This Bill amends our Act in a similar way.

It replaces current section 25 of the Act with a provision that 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. If, however, the court fails to disallow an improper question or tell a witness an improper question need not be answered, and the witness answers the question, the answer may still be admissible.

The Bill defines an improper question as one that is misleading or confusing, or that is apparently based on a stereotype, or that is unnecessarily repetitive, offensive or oppressive, or is one of a series of questions that is unnecessarily repetitive, offensive or oppressive, or one that is put in a humiliating, insulting or otherwise inappropriate manner or tone.

The Bill also 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 he or she considers distasteful or private.

When determining whether a question is improper, the court may take into account not only relevant characteristics of the witness (such as age, personality, education, disability, ethnicity and culture) but the context in which the question is put.

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, so 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 cannot 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 of the nature and contents of an out-of-court statement made by a 'protected witness' from the person to whom it was given, so long as the protected witness has been called or is available to be called as a witness and the court will allow him or her to be cross-examined on the matters arising from the hearsay evidence. A protected witness is defined as a young child or a person with a mental disability that adversely affects his or her ability to communicate effectively with the court. The court may permit such cross-examination only if satisfied that it would elicit material of substantive probative value or material that would substantially reduce the credibility of the hearsay evidence. The provision will therefore sometimes allow evidence of what protected witnesses have said out-of-court to be admitted even though the protected witness has not been questioned about it in court. Whenever this happens, the court must warn the jury that this evidence should be scrutinised with particular care because it has not been tested in the usual way.

The aim of this provision is 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. It does not, of course, derogate from any discretion the court may have to exclude evidence that is admissible in this way.

These amendments are needed so that, where possible, people who commit crime do not escape liability simply because the youth or mental disability of the victim or a key witness stops them being available, in the technical sense, to give evidence in person. The ALRC. 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.

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.

In the case of Longman, the High Court held that where delay between an offence and the defendant's awareness of the charge may put the defendant at a forensic disadvantage, the judge should warn the jury to scrutinise the evidence against the defendant with particular care in the light of that disadvantage, to prevent a perceptible miscarriage of justice.

In some sexual cases, judges have used this principle to warn juries 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, some courts have assumed 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 sexual 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 because each case is different, but the average threshold appears to be about four years.

This Bill abolishes the Longman warning not just as it applies to sexual cases but to any criminal case. In the words of the ALRC and Victorian Law Reform Commission in their report on the Uniform Evidence Laws:

> The forensic disadvantage which may be occasioned to an accused by delay arises independently of the nature of the proceedings, and accordingly the courts have held that a Longman warning may be required in any case where the conduct of the defence has been affected by delay. The nature of sexual assault prosecutions is such that delay is more likely to arise in this context, however it is clearly not confined to such cases. Although some of the authorities discussed earlier in this chapter conflate the issue of delay with the reliability or credibility of sexual assault complainants, the ALRC and VLRC are of the view that this is erroneously done.

The Evidence Amendment Bill 2007, introduced in October 2007 to the New South Wales Parliament, applies to any criminal proceeding. The provision in this Bill is along similar lines.

The Bill 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 significant 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, whether the proceedings are for a sexual offence or any other criminal offence.

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 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 (see the discussion above).

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 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 (see current section 34I of the Act).

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 may make a tactical decision to ask the complainant when he or she reported the offence but not to ask further 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 in explanation 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 ALRC. and the 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. It 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. It allows the admission of evidence of a complainant's initial report of a sexual offence, if relevant, whenever that occurred. That evidence may be given by any person 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.

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. A public official is 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.

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 Bill also 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 Bill 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 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. 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, sometimes, 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 person.

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 (Legal Representation) Act 2001

4—Amendment of section 4—Interpretation

It is proposed to insert a new definition of an assisted person so as to include a person for whom legal assistance is, or has been, provided in connection with the cross-examination of a section 13B witness. A section 13B witness is a witness who is the alleged victim of an offence to which section 13B of the Evidence Act 1929 applies.

5—Amendment of section 6—Entitlement to legal assistance

It is proposed to amend this section of the principal Act to provide that if a defendant who is not legally represented in a trial applies to the Commission for legal assistance for the cross examination of a section 13B witness in the trial, the Commission must (subject to the qualifications listed in the section) grant such legal assistance.

6—Amendment of section 9—Representation of certain defendants

This proposed amendment makes it clear that section 9 of the principal Act does not apply to a defendant in a trial who is only represented by a lawyer for the purposes of the cross-examination of a section 13B witness in the trial.

7—Amendment of section 10—Certain costs may be awarded against defendant personally

Section 10 currently provides that certain costs (such as costs resulting from an adjournment attributed to some failure on the part of a defendant) may be awarded against the defendant personally. The proposed amendment provides that such an order for costs may not be made against the defendant if the adjournment is to allow a defendant who is not legally represented in a trial to obtain legal representation for the purposes of the cross examination of a section 13B witness in the trial.

Part 3—Amendment of District Court Act 1991

8—Insertion of section 50B

It is proposed, by new section 50B (Trials of sexual offences involving children to be given priority) to provide that the District Court will give the necessary directions to ensure that a trial of a sexual offence where the victim of the offence is a child is given priority over any less urgent criminal trial and is dealt with as expeditiously as the proper administration of justice allows. A sexual offence is defined for the purposes of the new section.

9—Amendment of section 54—Accessibility of evidence etc

These proposed amendments are related to the amendments proposed by new Part 7 Division 10 of the Evidence Act 1929 (see clause 20).

Part 4—Amendment of Evidence Act 1929

10—Amendment of section 4—Interpretation

The proposed amendments to this section insert (among others) the following definitions:

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

11—Amendment of section 9—Unsworn evidence

The proposed amendment deletes the reference to a 'trial by jury' and substitutes 'criminal trial'. The effect of the amendment will mean that the section applies to criminal trials by jury and criminal trials by judge alone.

12—Substitution of sections 12A and 13

12A—Warning relating to uncorroborated evidence of child in criminal proceedings

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—

- 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
- 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—Special arrangements for protecting witnesses from embarrassment, distress, etc when giving evidence

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; or
- to prevent the defendant from instructing counsel while the witness is giving evidence.

If, in a criminal trial, special arrangements are made for the taking of evidence, 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.

13A—Special arrangements for protecting vulnerable witnesses when giving evidence in criminal proceedings

This new section provides 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 party calling the witness, be made. The sorts of arrangements that may be made are the same as under proposed section 13.

The section sets out the procedure for the making of the application.

The court may dispense with special arrangements for taking the evidence of a vulnerable witness in criminal proceedings if the witness is an adult and the court is satisfied that—

- the facilities necessary for the special arrangements are not readily available to the court; and
- it is not reasonably practicable in the circumstances of the particular proceedings to make the facilities available.

13B—Cross-examination of victims of certain offences

New section 13B 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 a criminal trial unless the cross-examination is by counsel;
- in civil proceedings relating to the offence unless the cross-examination is by counsel or, if the defendant is unrepresented, the cross-examination is conducted in accordance with proposed subsection (2) of this section.

Subsection (2) provides that, following the submission in writing to the trial judge of proposed questions to be put to the witness in cross-examination, the judge (or the judge's delegate) will ask the witness those of the submitted questions that are determined by the judge to be allowable.

The offences to which this new section applies are—

- 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.

13C—Court's power to make audio visual record of evidence of vulnerable witnesses in criminal proceedings

New section 13C 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 13A(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.

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

This new section 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.

13—Amendment of section 21—Competence and compellability of witnesses

These amendments are consequential.

14—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 stereotype, including a sexual, racial, ethnic or cultural stereotype or a stereotype based on age or physical or mental disability; 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.

15—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'.

16—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—

- the protected witness has been called, or is available to be called, as a witness in the proceedings; and
- the court gives permission for the protected witness to be cross-examined on matters arising from the hearsay evidence.

In a criminal trial, the judge must, if hearsay evidence of the nature and contents of a statement made outside the court by a protected witness has been admitted but the protected person has not, for some reason, been cross-examined on matters arising from the hearsay evidence, warn the jury that the hearsay evidence should be scrutinised with particular care because it has not been tested in the usual way.

34CB—Warning relating to delay where defendant forensically disadvantaged

This new section 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 and replaces it with a requirement that, if a forensic disadvantage caused by a delay in the defendant becoming aware of the charge of an offence that 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.

17—Repeal of section 34I

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

18—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—Directions relating to consent in certain sexual cases

This new section 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.

19—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.

20—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

67G—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.

67H—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.

67I—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.

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 or both.

67J—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.

21—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.

22—Transitional provision

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

Part 5—Amendment of Magistrates Court Act 1991

23—Insertion of section 48B

New section 48B (Trials of sexual offences involving children to be given priority) is substantially the same as the amendment proposed to the District Court Act 1991 by clause 8. New section 48B provides that the Magistrates Court will give the necessary directions to ensure that a trial of a sexual offence where the victim of the offence is a child is given priority over any less urgent criminal trial and is dealt with as expeditiously as the proper administration of justice allows. A sexual offence is defined for the purposes of the new section.

24—Amendment of section 51—Accessibility of evidence etc

These proposed amendments are related to the amendments proposed by new Part 7 Division 10 of the Evidence Act 1929 (see clause 20).

Part 6—Amendment of Summary Procedure Act 1921

25—Amendment of section 4—Interpretation

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

The proposed amendments to sections 4 and 104 are related to the amendments proposed by new Part 7 Division 10 of the Evidence Act 1929 (see clause 20).

Part 7—Amendment of Supreme Court Act 1935

27—Insertion of section 126A

New section 126A (Trials of sexual offences involving children to be given priority) is substantially the same as the amendments proposed to the District Court Act 1991 and the Magistrates Court Act 1991. This new section proposes to provide that the Supreme Court will give the necessary directions to ensure that a trial of a sexual offence where the victim of the offence is a child is given priority over any less urgent criminal trial and is dealt with as expeditiously as the proper administration of justice allows. A sexual offence is defined for the purposes of the new section.

28—Amendment of section 131—Accessibility of evidence etc

These proposed amendments are related to the amendments proposed by new Part 7 Division 10 of the Evidence Act 1929 (see clause 20).

Debate adjourned on motion of Mr Venning.

CRIMINAL LAW CONSOLIDATION (RAPE AND SEXUAL OFFENCES) AMENDMENT BILL

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs) (15:49): Obtained leave and introduced a bill for an act to amend the Criminal Law Consolidation Act 1935; and to make related amendments to the Child Sex Offenders Registration Act 2006, the Correctional Services Act 1982, the Criminal Law (Sentencing) Act 1988, the Evidence Act 1929 and the Summary Procedure Act 1921. Read a first time.

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs) (15:50): I move:

That this bill be now read a second time.

This bill is a result of the government's review of South Australia's rape and sexual assault laws that began in 2006 with the issue of a discussion paper. An earlier version of the bill, with the same title, was introduced into parliament on 8 February this year and allowed to lapse when parliament prorogued to enable extended consultation. The bill amends the Criminal Law Consolidation Act 1935 to:

- reform the offence of persistent sexual abuse;
- reform the offence of rape to include a continuation of sexual intercourse when consent is withdrawn and to include compelled sexual intercourse or bestiality;
- introduce a new offence of compelled sexual activity;
- define reckless indifference to consent to sexual acts;
- define consent to sexual activity and set out the circumstances in which consent is to be taken to have been vitiated;
- reform the offence of unlawful sexual intercourse;
- reform the offence of incest;
- reform offences with animals;
- reform the law on severance of trials for sexual offence proceedings;
- update references to sexual organs in the act to include surgically reconstructed or altered organs.

It makes related amendments to the Child Sex Offenders Registration Act 2006, the Correctional Services Act, the Criminal Law (Sentencing Act) 1988, the Evidence Act 1929 and the Summary Procedure Act 1921.

I thank parliamentary counsel and the legislation and legal policy section of my department for their diligence and persistence in drafting the many complicated and difficult provisions in this bill. I also thank them for responding to my unreasonable demands to have the bill ready for parliament at this time. I also thank the many people in groups who provided detailed submissions during the working up of these proposals. I seek leave to have the remainder of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The aim of the Bill and parts of the Statutes Amendment (Evidence and Procedure) Bill 2007 (to be introduced in this session of Parliament) is to help reduce sexual violence and encourage victims of sexual violence to report it. Together, these Bills will clearly define the boundaries of lawful and unlawful sexual behaviour, require courts to explain the law to juries in a way that does not reinforce unfounded stereotypical beliefs about the way people respond to sexual violence and the circumstance in which it occurs, make it less frightening for alleged victims of sexual violence to give evidence in court and reduce delays in trials of sexual offending against children.

There are many misconceptions about sexual offending that are brought into the jury room. They can have a devastating and unwarranted effect on the conviction rate.

For example, although many people know that the most likely victims of sexual offences are women, children and physically or mentally vulnerable people, many think a sexual offender will be a stranger to the victim. In fact, the victim will often know the alleged offender.

Similarly, many people think that if there are no signs of physical resistance to sexual activity it must have been consensual. But sexual offending often occurs in situations where there is unlikely to be any physical sign of violence. Obvious examples are when the victim is under threat or duress or is unable to resist because unconscious, asleep or under the influence of alcohol or a drug. Less obvious examples are when the victim consents because confused about the nature of the activity or mistaken about the identity of the other person.

Ignorance of what victims of sexual assault actually experience often makes it difficult for jurors to understand or believe what a victim says. People commonly find it hard to understand why a person did not report a sexual offence immediately and laws on jury directions have traditionally been based on the incorrect premise that the less immediate the reporting, the less likely it was that the sexual offending took place. There are many valid reasons why a person might not report a sexual crime immediately - fear of retribution (particularly in violent family situations), shame, trauma or shock, isolation being just a few of them.

The Government recognises that the incidence of sexual violence in our society is not reflected in the number of sexual offences reported to police or prosecuted in our courts and that inbuilt misconceptions about sexual offending in our laws are partly to blame. These amendments seek to deal with that problem without detracting from fundamental principles of criminal responsibility.

AMENDMENTS TO THE CRIMINAL LAW CONSOLIDATION ACT 1935

Definition of bestiality

The Bill defines bestiality to mean sexual activity between a person and an animal. The definition is in the interpretation section because the new offence of rape is to include compelling an act of bestiality and there is also a new offence of bestiality which replaces the current offence of buggery with an animal.

Definition of sexual intercourse

The current definition of sexual intercourse, which includes the sexual penetration of a person's anus or labia majora, means that people who have had surgery to construct or alter these parts of their body (for example, victims of female genital mutilation or transsexuals) may not be considered to have been raped if a person has sexual intercourse with them against their will.

The Bill redresses this anomaly by providing that references in the Act to sexual organs, including but not limited to these parts, include a reference to a surgically-constructed or altered sexual organs.

The Bill also redefines sexual intercourse to include a continuation of sexual intercourse. This supports reforms to the offence of rape.

Consent to sexual activity

The Bill inserts a new provision into Division 11 of the Act (Rape and other sexual offences) to define consent to sexual activity for the purposes of this Division.

The provision aims to clarify the current law. It says 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 lists circumstances where a person's agreement to sexual activity is not to be taken to be free and voluntary and therefore will not be taken to be consent. The list does not define all possible situations when a person, apparently consenting to sexual activity, should not be taken to have given that consent freely or voluntarily. It simply identifies some circumstances that have been identified in court decisions as vitiating consent and requires a court to take them to have vitiated consent. These circumstances are:

- when the person agreed to sexual activity only because force was applied to him or her or to 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;
- when the person was unlawfully detained at the time of the activity;

- if the activity occurred while he or she was asleep or unconscious;
- if the activity occurred while he or she was so intoxicated (whether by alcohol or any other substance or combination of substances) that he or she is incapable of freely and voluntarily agreeing;
- if the activity occurred while he or she was 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;
- if the person was unable to understand the nature of the activity (for example, when under a delusion that the activity is not a sexual one but one of an entirely different kind);
- if the person is mistaken about the nature of the activity (mistakenly thinking, for example, that it is necessary for medical diagnosis);
- if the person agreed to the activity with a person under a mistaken belief about the identify of that person.

Other Australian jurisdictions, the UK, 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 Statutes Amendment (Evidence and Procedure) Bill 2007 will set out the kinds of directions a judge must give a jury about consent in sexual offence proceedings.

Reckless indifference

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.

Many have criticised this subjective approach, saying it is based on outdated and now inappropriate concepts of acceptable sexual behaviour. In some rape cases 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. Suggestions for reform include abandoning the subjective approach in favour of an entirely objective one; 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.

The Bill takes the last-mentioned approach.

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 UK 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 NSW] s 61R(1). Section 48 of the Criminal Law Consolidation Act 1935 (SA) 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 of his 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 Government's discussion paper on reform of the rape and sexual assault laws, published in 2006, 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 the slightest thought to whether the other person consents (for any reason, including self-induced intoxication). They suggested that a failure to take reasonable steps, in the circumstances, to ascertain whether the other person was consenting should be taken into account by the court in determining the accused's state of mind.

The Bill achieves this and applies the definition of reckless indifference to all relevant sexual offences in Division 11 of the Act, not just rape.

For these offences, it requires the prosecution to prove that there was a relevant sexual act, that the complainant did not consent to that act, and either that the accused knew the complainant was not consenting to the act or that the accused was recklessly indifferent as to whether the complainant was consenting to the act.

Reckless indifference to the fact that the other person does not consent to an act or has withdrawn consent to an act means either of two things. It means that the accused person realised the possibility that the other person might not be consenting to the act or might have withdrawn consent to the act or that the accused person, and did not take reasonable steps to ascertain whether the other person did in fact consent or had in fact withdrawn consent to the act. Alternatively, it means that the accused person did not give any thought as to whether or not the other person was consenting to the act or had withdrawn consent to the act.

The Bill does not affect the current law on 'the drunk's defence'. The common law principle that a defendant can rely on evidence of intoxication to negative any mental element, including voluntariness, intention, knowledge or subjective recklessness applies in South Australia for involuntary intoxication, but the common law has been modified for self-induced intoxication, in response to political disquiet about the effect of the defence. The Criminal Law Consolidation (Intoxication) Amendment Act 1999 preserved the common law principles of self-induced intoxication but introduced procedural restrictions on the circumstances in which evidence of intoxication could be left for the consideration of the jury. The Criminal Law Consolidation (Intoxication) Amendment Act 2004 overrode the common law to provide that self-induced intoxication is no longer relevant to deny any mental element. This Bill does not affect the operation of these laws.

The offence of rape

The Bill retains the existing elements of rape: having sexual intercourse with another person without their consent and knowing the person was not consenting or being recklessly indifferent as to whether the person was not consenting.

It also includes in the offence of rape the continuation of sexual intercourse when consent is withdrawn and compelling a person to have sexual intercourse with another person, to engage in sexual self-penetration or to engage in an act of bestiality, or to continue to engage in these acts if the other person withdraws initial consent to doing so.

Continuation of sexual intercourse

In consultation on the lapsed Bill, some commentators suggested that the Act should make it clear that to continue with sexual intercourse after consent is withdrawn is rape.

Although it is not mentioned specifically in the offence of rape, the courts have held it to be rape if at any point in sexual intercourse the defendant becomes aware that the other person is not consenting to it or is recklessly indifferent to whether the other person is consenting to it and proceeds with the sexual intercourse regardless.

Rape can therefore be committed in situations where a person who has initially consented to sexual intercourse withdraws that consent and the sexual intercourse continues.

There is, however, authority in South Australia that sexual intercourse, if by sexual penetration, cannot be rape when consent is withdrawn after penetration, the offence then being indecent assault. That authority is based on an interpretation of a definition of carnal knowledge (the equivalent of 'sexual intercourse' in the current offence of rape) that deemed it to be complete upon penetration only. The Privy Council has since pointed out that the purpose of this definition is to identify the minimum physical characteristics of the sexual act upon which the offence is based (i.e. that mere penetration is enough to constitute that act), not to identify a point at which awareness of consent is no longer relevant. That our offence of rape is expressed in terms of 'having' sexual intercourse would tend to confirm this interpretation.

New South Wales, the ACT and Victoria have amended their sexual offence laws to refer to the non-consensual continuation of sexual intercourse, to emphasise that this conduct is criminal.

The Bill amends our laws along similar lines to the laws in Victoria. It defines sexual intercourse to include a continuation of an activity that comprises sexual intercourse. It makes it rape for a person who is engaged in sexual intercourse with another person to refuse or fail to disengage from the sexual intercourse knowing or being recklessly indifferent to the fact that the other person has withdrawn consent.

Compelled sexual intercourse

In consultation on the lapsed Bill, some commentators suggested that it should be a specific crime for a person to compel another person to have sexual intercourse with a third person or to sexually penetrate themselves, citing offences to this effect under Victorian and New South Wales law. Although the 2006 South Australian discussion paper on reform of the rape laws did not refer to this topic, the Government takes the view that offences of this kind will stop a potential gap in the law.

The definitions of rape and sexual intercourse in the current law and in the lapsed Bill are directed at the state of mind of a person who has sexual intercourse, in person, with another person, without that other person's consent. They do not contemplate compelled sexual intercourse.

The laws of aiding and abetting do not clearly cover a person who compels another to have sexual intercourse in this sense. If the person being compelled does not commit an offence (because under duress or being an innocent agent), it may be difficult to convict the person compelling him or her of aiding and abetting an offence. Making this conduct a specific offence will remove that ambiguity.

The Bill makes it rape to compel a person to have or continue to have sexual intercourse with a third person (regardless of whether that third person consents to it or not), knowing that the person being compelled does not consent to it or has withdrawn consent to it or being recklessly indifferent to whether this person consents or has withdrawn consent. It makes it rape to compel a person to sexually-penetrate themselves knowing that the person does not consent to it or has withdrawn consent to it or being recklessly indifferent to whether this person consents or has withdrawn consent. It makes it rape for a person to compel another person to engage in an act of bestiality knowing that the person being compelled does not consent to it or has withdrawn consent to it or being recklessly indifferent to whether this person consents has withdrawn consent. As rape, this conduct attracts a maximum penalty of life imprisonment.

The common law defence of duress will apply where appropriate to prevent a person who is compelled to perform sexual acts from being convicted of a sexual offence him or herself.

Consequentially, the Bill reconstructs offence with animals (limited at present to 'buggery with an animal') as an offence of bestiality, defined simply and more broadly as sexual activity between a person and an animal.

Compelled sexual manipulation

The Bill makes compelled sexual activity that is not sexually-penetrative or does not involve bestiality a separate crime, because the acts being compelled are less serious than rape, amounting, at most, to indecent assault. The offence has the same elements of knowledge and reckless indifference to consent as compelled rape and includes a continuation of the act. The defence of duress applies in the same was as to compelled rape.

The offence includes, for a prurient purpose, compelling a person, without their consent, to sexually manipulate oneself, to sexually-manipulate someone else, and to sexually-manipulate themselves or to continue to do any of these things when consent is withdrawn, knowing or being recklessly indifferent as to consent or withdrawal of consent.

The new offence of compelled sexual manipulation is more serious than ordinary indecent assault because of the element of compulsion. It therefore carries a maximum penalty, for a basic offence, of imprisonment for 10 years, and, for an aggravated offence, of imprisonment for 15 years. These penalties are greater, by 2 and 3 years respectively, than the maximum penalties for basic and aggravated offences of indecent assault.

Unlawful sexual intercourse

The Bill changes the criteria for what makes sexual intercourse between an adult and a child who is 17 years old unlawful. The need for this change was pointed out in consultation about reforming the offence of persistent sexual abuse of a child. The new criteria proposed by the Bill will apply to both unlawful sexual intercourse and the new offence of persistent sexual exploitation of a child.

The current criteria are too narrow, referring only to guardians, school masters, school mistresses and teachers.

The effect of the Bill will be to make it unlawful for an adult to have sexual intercourse with a child who is 17 years old, even if the child consents to it, if the adult is in a position of authority in relation to the child. The Bill defines a position of authority exhaustively. An adult is in a position of authority for the purposes of this offence if he or she is the child's teacher, the child's step-parent, foster parent or guardian (note that a parent who engages in such conduct is already liable for the offence of incest), a religious official or spiritual leader providing pastoral care or religious instruction to the child, the child's medical practitioner, psychologist or social worker, a person who is holding the child in lawful detention or custody, or the child's employer (whether the work is paid or not).

All these people are, by dint of their position of authority, able to wield considerable influence over a young adult's will. That influence should therefore be exercised with great care and the utmost professionalism, and not to secure consent to sexual activity. By enacting this provision, Parliament is saying that sexual activity between an adult in such a position and a child of 17 years old is inherently reprehensible and should be a criminal offence.

Persistent sexual exploitation of a child

The Bill repeals the offence of persistent sexual abuse of a child 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 each separate incident of abuse that is required to prove the offence.

The new offence has the same aim as the current offence: to punish the persistent sexual abuse of a child, and not just the sexual acts that can be identified with enough particularity to be charged as specific offences in themselves.

Often, children who have subjected to long-term sexual abuse can remember in some detail when the abuse started and when it ended, so that the first and last alleged acts are often capable of being charged as specific offences, but can't remember the detail of when and where each of the many intervening acts occurred enough to distinguish each one from the other. That is why all these acts cannot be charged as specific offences, and why, when convicted of only the acts that can be so charged, the law fails to recognise or punish the full extent of the abuse. The current offence aims to overcome this but has not worked.

The Bill proposes to replace the current offence with a new one of persistent sexual exploitation of a child. The new offence focusses on acts of sexual exploitation that comprise a course of conduct (persistent sexual exploitation) rather than a series of separately particularised offences.

Under the Bill, an act of sexual exploitation is an act of a kind that could, if it were able to be properly particularised, be the subject of a charge of a specific sexual offence. The kinds of sexual offences to which these acts should approximate are rape, unlawful sexual intercourse, indecent assault, acts of gross indecency, procuring sexual intercourse, procuring a child to commit an indecent act, sexual servitude and related offences, incest and bestiality, including an attempt to commit any of these offences or an assault with intent to commit any of them.

The Bill provides that those parts of the course of conduct that can be charged as specific offences against the Act may be charged on the same information as the charge of persistent sexual exploitation of a child, as alternatives to that charge. Importantly, it prevents a person who is convicted of a charge of persistent sexual exploitation being convicted or punished for the same conduct twice.

As under the current law, the offence applies when the child is of or under the prescribed age.

The Bill uses the same age thresholds as under the current law but redefines the circumstances in which the offence applies to children between the age of 17 and 18 years in the same way as in the offence of unlawful sexual intercourse with a child (already explained).

As under the current law, 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.

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

Section 278(2) of the Act 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 each other count relating to any of the other alleged victims.

In determining the admissibility of evidence supporting 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, and also, that the judge is not to 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 this evidence for these reasons alone.

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

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. It replaces the little-used offence of persistent sexual abuse of a child with a new offence of persistent sexual exploitation of a child, designed to overcome obstacles to the prosecution of people who persistently abuse children. It 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, and that in determining whether evidence supporting a count relating to one alleged victim is admissible in relation to each other count relating to a different alleged victim (a determination which will dictate whether the trials of different victims can be heard separately or together) the judge may no longer have regard to whether there is a reasonable explanation consistent with the defendant's innocence or whether the evidence may be the result of concoction or collusion. It will update the offence of incest. It will introduce new offences of compelled sexual intercourse (to be a form of rape) and compelled sexual manipulation. It will define reckless indifference to consent or the withdrawal of consent to an act and to allow a court determining whether a person charged with a sexual offence was recklessly indifferent to consent or withdrawal of consent to consider whether the evidence suggests the person did not take reasonable steps, in the circumstances, to ascertain consent. It will redefine rape to include a continuation of sexual intercourse where consent is withdrawn. It will define consent to sexual activity as free and voluntary agreement to the sexual activity and will set out circumstances when a person is to be taken not to have freely and voluntarily agreed to sexual activity.

The Bill will be complemented by evidential and procedural amendments in the Statutes Amendment (Evidence and Procedure) Amendment Bill 2007 that 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 inserts a new definition of bestiality and amends the definition of sexual intercourse in section 5 of the Act to ensure that it includes penetration of the vagina and also that it includes a continuation of any activity constituting sexual intercourse. The clause also inserts a new subsection into section 5 to deal with the issue of surgically constructed or altered breasts and genitalia.

5—Substitution of section 48

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

46—Consent to sexual activity

This proposed section 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).

47—Reckless indifference

Proposed new sections 48 and 48A both use the concept of a defendant being recklessly indifferent with respect to the issue of consent to a sexual act. This proposed section defines that concept of reckless indifference.

48—Rape

This proposed section enacts 2 rape offences under which—

- a person who engages or continues to engage in sexual intercourse with another person when that other person does not consent to engaging in the sexual intercourse or has withdrawn consent to the sexual intercourse is guilty of the offence of rape if the person knows, or is recklessly indifferent as to, the fact that the other person does not consent or has withdrawn consent;
- a person who compels another person to engage or to continue to engage in sexual intercourse with a third person, an act of sexual self penetration (defined in the section) or an act of bestiality (defined in section 5) when the compelled person does not consent to engaging in the sexual intercourse or act ,or has withdrawn consent, is guilty of the offence of rape if the person knows, or is recklessly indifferent to, the fact that the person does not consent or has withdrawn consent.

A person found guilty of rape is liable to life imprisonment.

48A—Compelled sexual manipulation

This proposed section provides that a person who, for a prurient purpose, compels a person to engage or to continue to engage in an act of sexual manipulation (defined in subsection (2)) or an act of sexual self manipulation (defined in subsection (2)) when the compelled person does not consent to engaging in the act ,or has withdrawn consent, is guilty of the offence of compelled sexual manipulation if the person knows, or is recklessly indifferent to, the fact that the person does not consent or has withdrawn consent. The maximum penalty for a basic offence against the section is 10 years imprisonment and for an aggravated offence is 15 years imprisonment.

6—Amendment of section 49—Unlawful sexual intercourse

This clause substitutes a new subsection (5) into section 49, so that the provision applies in respect of a person in a position of authority in relation to the child (and defines who is in a position of authority).

7—Insertion of section 50

This clause inserts a new section 50 in the principal Act (to replace the current section 74, which is repealed under clause 12 of the measure) as follows:

50—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 act of sexual exploitation with the child over a period of not less than 3 days) under the prescribed age is guilty of an offence punishable by life imprisonment.

An act of sexual exploitation is an act that constitutes (or would, if it were able to be sufficiently particularised, constitute) an offence against Division 11 (other than sections 59 and 61) or section 63B, 66, 69 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 in a position of authority in relation to the child (which is defined consistently with the new definition proposed to be inserted in section 49).

If the child was at least 16 years of age at the time of any alleged act of sexual exploitation, the act is not taken into account for the purposes of this offence if the defendant proves that he or she 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.

A person may be charged on one information with an offence against this section and other offences, but cannot be convicted of both this offence and another sexual offence against the same child during the same period alleged for this offence.

The provision applies in relation to acts of sexual exploitation of a child whether committed before or after the commencement of the provision.

8—Amendment of section 57—Consent no defence in certain cases

This clause reflects the changes to section 49, discussed above, and provides that a person under the age of 18 will be taken not to be capable of consenting to an indecent assault committed by a person who is in a position of authority in relation to the person.

9—Substitution of section 69

This clause substitutes a new section 69 (to replace the current offence of buggery with an animal) as follows:

69—Bestiality

It is an offence to commit bestiality (defined in section 5 as sexual activity between a person and an animal) punishable by imprisonment for 10 years.

10—Substitution of section 72—Incest

This clause substitutes a new incest offence into the current Act, making it an offence to have sexual intercourse with a close family member (defined in the section as a parent, child, sibling of half sibling, grandparent or grandchild, other than such a person who is related only by marriage or adoption). The offence is punishable by 10 years imprisonment and it is a defence to a charge of such an offence to prove that the defendant did not know, and could not reasonably have been expected to know, that the person was a close family member.

11—Amendment of section 73—Proof of certain matters

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

12—Repeal of section 74

This clause repeals section 74.

13—Amendment of section 75—Alternative verdict on charge of rape etc

This clause makes a consequential amendment to section 75.

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

This clause deletes an obsolete reference.

15—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 determining the admissibility of evidence for the purposes of determining whether severance should occur.

Schedule 1—Related amendments and transitional provision

The Schedule makes consequential amendments to various other Acts and includes a transitional provision relating to the repeal of section 74 of the Criminal Law Consolidation Act 1935.

Debate adjourned on motion of Ms Chapman.

CONTROLLED SUBSTANCES (POSSESSION OF PRESCRIBED EQUIPMENT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 September 2007. Page 902.)

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:54): I will be both brief and cooperative in indicating to the house that the opposition has considered this legislation and will be supporting it. This bill was recently introduced to amend the Controlled Substances Act 1984 after the government announced its intention via a press release on 25 September 2007. Essentially, if the parliament is to legislate to control the sale of hydroponic equipment used to produce cannabis, it also makes sense to legislate in the same way for specific equipment commonly used in illicit drug laboratories.

So, essentially, this bill will introduce an amendment to the act, as I have said, to make it an offence to possess regulated equipment without reasonable excuse. The onus will be on the person in possession to prove, on the balance of probabilities, that he or she has a reasonable excuse for possessing the equipment. So it is an interesting prescription, which will carry a penalty of $10,000 or imprisonment for two years, or both, and the prescribed equipment is to be as identified by regulation, or in a document containing instructions from a manufacturer of a controlled drug or the cultivation of a controlled plant.

I made inquiry—and indicate my thanks for assistance being provided from the minister's office—as to what is proposed to be the prescribed equipment that this will cover. It is important here that, when you identify pieces of equipment which will place this very significant onus on someone to explain why they have it in their possession, you make sure that it is not equipment that is otherwise used in quite lawful activity or for domestic use, or such purposes.

As I am advised, the clandestine laboratory equipment is to refer to: a condenser, a distillation head, heating mantle, rotary evaporator, reaction vessel, including a reaction vessel under repair or a modification of a reaction vessel, splash head, including a splash head under repair or parts of a splash head, manual or mechanical tablet press, including a tablet press under repair or modification of a tablet press and parts for a tablet press, and manual or mechanical encapsulator, including an encapsulator under repair and modification of an encapsulator and parts of an encapsulator, or any item modified to perform the function of the listed items.

One example I can consider here is that if there was a pill making machine, a mechanical tablet press used to actually manufacture quite a legitimate product, some herbal tablet, for example, some vitamin pill, and it was being used quite lawfully for a quite legitimate product, then we have to make sure that we do not unfairly include those people in such a circumstance.

This also refers to any recipes or instructions for the manufacture of a controlled drug and controlled precursor, whether it is written or stored on a computer or other electronic device. It is obviously important to cover those who are using it as their menu for produce. And the cannabis equipment is: high intensity discharge lamps, including metal hallide 100 and 400 watts, high pressure sodium 100, 400 and 600 watts, and mercury vapour 400 watt, ballast boxes, including control gear, lamp mount and reflectors, and cannister carbon filters, to be used in the production of cannabis.

The opposition agrees that this is an appropriate addition to the legislation in the fight against crime in ensuring that, if we are going to deal with the regulation of illicit drug lab equipment, as well as cannabis production, that is, the hydroponics, we must make sure that we do not interfere with the normal and legitimate activities of members of the community. I think with sensible application this could be a useful tool in our efforts to fight against drug manufacture in this state, and ultimately perpetuate the misery on the community that that inflicts. So I indicate our support.

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs) (16:00): I thank the opposition for its support. It is yet another example of the Rann Labor Government working hand in glove with the Independents and minor parties to give them an opportunity to make an impact on the statute book of South Australia.

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

RAIL SAFETY BILL

The Legislative Council agreed to the bill without any amendment.

ENVIRONMENT PROTECTION (SITE CONTAMINATION) AMENDMENT BILL

The Legislative Council agreed to the amendment made by the House of Assembly without any amendment.

VICTIMS OF CRIME (COMMISSIONER FOR VICTIMS' RIGHTS) AMENDMENT BILL

The Legislative Council agreed to the bill without any amendment.

STATUTES AMENDMENT (VICTIMS OF CRIME) BILL

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

No. 1. New clause, after clause 15—Insert:

15A—Amendment of section 18—Application for compensation

Section 18—after subsection (4) insert:

(4a) If—

(a) the claimant is a child or other person who is not of full legal capacity; and

(b) the Crown Solicitor and the person acting on behalf of the claimant propose to settle the claim for statutory compensation by agreement; and

(c) an application is made to a court for an order or orders in respect of that agreement,

the offender must not be joined as a party to the proceedings before the court on that application.

Consideration in committee.

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

That the Legislative Council's amendment be agreed to.

Motion carried.

At 16:07 the house adjourned until 13 November 2007 at 11:00.