LEGISLATIVE COUNCIL

Wednesday 3 October 2001

The PRESIDENT (Hon. J.C. Irwin) took the chair at 2.15 p.m. and read prayers.

HINDMARSH SOCCER STADIUM

The PRESIDENT: I lay on the table the final report of the Auditor-General on the Hindmarsh Soccer Stadium Redevelopment Project pursuant to the Hindmarsh Soccer Stadium Auditor-General's Report Act 2001.

The Hon. R.I. LUCAS (Treasurer): In accordance with section 5 of the Hindmarsh Soccer Stadium Auditor-General's Report Act, I move:

That the report be published.

Motion carried.

PAPERS TABLED

The following papers were laid on the table:

By the Treasurer (Hon. R.I. Lucas)—

Regulation under the following Act—
Superannuation Act 1988—Electricity Industry.

By the Attorney-General (Hon. K.T. Griffin)—

Regulations under the following Acts—
Electrical Products Act 2000—Certificates.
Forest Property Act 2000—Fee.
South Australian Water Corporation Charter.
Legal Practitioners Education and Admission Council Rules 1999—Academic Requirements.

By the Minister for Transport and Urban Planning (Hon. Diana Laidlaw)—

Local Government Grants Commission South Australia—Report, 2000-2001.
Regulation under the following Act—
Optometrists Act 1920—Fees.
District Council of LeHunte—By-law No. 2—Moveable Signs.

LEGISLATIVE REVIEW COMMITTEE

The Hon. A.J. REDFORD: I lay on the table the 29th report of the committee.

CRIMINAL LAW (UNDERCOVER OPERATIONS) ACT

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement on the subject of the Criminal Law (Undercover Operations) Act 1995.

Leave granted.

The Hon. K.T. GRIFFIN: In April 1995, after the High Court decided an appeal called Ridgeway in favour of the accused, the parliament passed the Criminal Law (Undercover Operations) Act 1995 with the support of all sides of politics. The object of the legislation was to place the law of police undercover operations on a legislative footing and to ensure certainty in the law. It was clear that the High Court ruling on entrapment by police of drug dealers and other criminals had become a source of judicial uncertainty.

As honourable members may be aware, one of the safeguards that was built into legislation which significantly extended police powers was that there should be notification of authorised undercover operations to the Attorney-General and an annual report to the parliament. I am pleased to assure the Council that the system is meticulously adhered to, both by police and by my office. The details of these notifications form the basis of the report which the statute requires me to give to parliament. I now seek leave to table that report.

Leave granted.

The Hon. K.T. GRIFFIN: I reported last year that it is clear that the legislation is working well. That continues to be the case. There have not been any South Australian decisions in the preceding 12 months on the legislation or on this specific aspect of Ridgeway of which I am aware, although there have been a couple of decisions on the general principles of evidence involved, most notably the decision of the South Australian Court of Criminal Appeal in Lobban ((2000) 112 Australian Criminal Reports 357).

There have been a pair of more specific decisions interstate. In Rice v Tricouris ((2000) 110 Australian Criminal Reports 86), Justice Beach of the Victorian Supreme Court upheld the conviction of a person for selling tobacco products to a child on evidence obtained as a result of a controlled buy by a 15-year-old volunteer acting on behalf of health authorities, distinguishing the situation in Ridgeway in so doing. The ground for distinction was that the appellant had not been treated unfairly and had not been entrapped into doing anything that he did not voluntarily want to do.

In Bijkerk ((2000) 111 Australian Criminal Reports 443), the New South Wales Court of Criminal Appeal upheld a conviction for conspiracy to import a large quantity of cocaine, again distinguishing Ridgeway. In this instance, the ground of distinction was that the conspiracy was complete and that therefore the crime was complete before any importation took place and, in addition, the appellant was not an entrapped innocent but rather had instigated the scheme.

I am in a position to assure honourable members that the legislation is working as it was intended to do and that no difficulties have appeared in its effective operation. The law in this area appears to be well settled now.

SELECT COMMITTEE ON WEST BEACH RECREATION RESERVE (REVIEW) AMENDMENT BILL

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning) brought up the report of the select committee, together with minutes of proceedings and evidence, and moved:

That the report be printed.

Motion carried.

The Hon. DIANA LAIDLAW: I move:

That the bill not be reprinted as amended by the select committee and that it be recommitted to a committee of the whole on the next day of sitting.

Motion carried.

Members interjecting:

The PRESIDENT: Order! This parliament does not revolve around members having discussions in loud voices on the back bench. It is hard for other members to hear what the minister is saying.

QUESTION TIME

ARTS FUNDING

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Treasurer a question about the arts budget.

Leave granted.

The Hon. P. HOLLOWAY: I refer the Treasurer to the arts budget and, in particular, recent financial disasters. I remind the Treasurer of the $10 million losses incurred by the Festival Centre, the $1.1 million losses incurred by the 2000 Festival of Arts, which the Minister for the Arts attempted to hide from public scrutiny—

The Hon. Diana Laidlaw: Oh!

The Hon. P. HOLLOWAY: Well, it is true—and now the $2 million government bailout of the 2002 Festival. Can the Treasurer advise from where within this year's budget the government intends to source the $2 million bailout?

The Hon. R.I. LUCAS (Treasurer): We can see where the shadow minister's questions are coming from. Having listened to the shadow treasurer last evening and again this morning, it is quite clear that, as we indicated earlier, one of the areas that will be highlighted for significant cutbacks is regional tourism, and a lot of people involved in regional tourism over the past three months have been advised of the opposition's intentions in relation to slashing their budget, and I have to say that there is a lot of alarm in regional tourism communities about the intentions of the opposition.

Similarly, there is no doubt that the opposition will be targeting the broader arts portfolio for significant budget cutback. The arts minister has demonstrated very capably not only the important artistic benefits of the arts portfolio and all that she has accomplished within that portfolio but also the economic development benefits of, in essence, undertaking the 'business' of arts and its involvement in the broader economic development of South Australia. The minister is better placed than I to put the numbers as to the economic importance of the arts portfolio, as I am sure she will do later on in question time or whenever questions are put to her, and she would be the first to acknowledge that she has, together with senior officers within—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: No, it is in question, Mr President.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: It is in question because there is no doubting that, under a Labor government, there will be a significant targeting of the arts portfolio, together with regional tourism, in terms of significant cutbacks in funding.

The Hon. L.H. Davis: You made that quite clear.

The Hon. R.I. LUCAS: You have made that quite clear. Kevin Foley has made it quite clear, and I am sure that the Minister for the Arts—

Members interjecting:

The PRESIDENT: Order, the Hon. Mr Davis!

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: I am sure that the Minister for the Arts, in her very capable way, will be able to spend the remaining months before a state election advising anybody involved with the arts community and anybody who is associated with or benefits from the arts community in South Australia about the importance of the arts in South Australia and also what this Labor opposition, should it be elected, would do to the arts portfolio.

Again, later on in question time, the minister will be able to provide the detail but, contrary to the claims that have been made—quite wrongly by the opposition—that schools and hospitals will suffer, the minister has made it quite clear that she will be handling this particular announcement in terms of the funding from within the portfolio of DETPA (Department of Transport, Urban Planning and the Arts), which is her broader portfolio. It is to the minister's credit that, as she indicated yesterday, at least in relation to this particular dilemma confronting the Festival in South Australia (which comprises international and national events), she has accepted the responsibility within her own portfolio of being able to enact and implement the proposal she announced and has further outlined over the last 24 hours. Let us make it quite clear that, contrary to the outrageous claims being made by the shadow—

An honourable member interjecting:

The Hon. R.I. LUCAS: Outrageous and hysterical claims, as I am advised by my ministerial colleague. Clearly, the shadow treasurer cannot wait to hack, slash and cut not only regional tourism in South Australia but now the arts portfolio as well. He made the outrageous claim that schools and hospitals would suffer as a result of the announcement yesterday. The Minister for the Arts will certainly be able—

The Hon. T.G. Cameron: All money is going to the western suburbs.

The Hon. R.I. LUCAS: I thought that a number of the initiatives being flagged for the Festival next year certainly related to initiatives and activities within the western suburbs, but again I am batting out of my depth and I will not cut across the portfolio of the Minister for the Arts. All I can say is that the shadow Treasurer has been wrong and the shadow minister for finance is wrong if they are suggesting that schools and hospitals will suffer as a result of the decision taken yesterday.

FESTIVAL OF ARTS

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Minister for the Arts a question about the Festival of Arts.

Leave granted.

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: I refer the minister to a ministerial statement which she made yesterday announcing a $2 million government bailout of the 2002 Festival, which is seven days shorter than the previous Festival. The minister attributed the need for additional funding to the general tightening of corporate purse strings, consequences of the tragedy of the World Trade Centre collapse, the demise of Ansett, lower than usual box office and higher than usual up-front costs. To make matters worse, the 2002 Festival is operating without any reserves due to the financial failure of the 2000 Festival. My questions to the minister are—

An honourable member interjecting:

The Hon. P. HOLLOWAY: I am asking questions of the minister so that she can tell us.

1. Given that the 2002 Festival lost funding of $250 000 from the collapse of Ansett, a fact which was reported last week in the media, why then is the government providing a bailout of $2 million?

2. Will the minister rule out further bailouts of the 2002 Festival?

3. Given the Treasurer's answer that the $2 million bailout will be funded internally within the minister's department, which other arts programs will be cut to provide this funding?

4. Finally, based on projected attendance, what is the anticipated subsidy per patron for the Festival?

The Hon. DIANA LAIDLAW (Minister for the Arts): The answer to the last question is that, compared to any previous Festival in this state, across Australia, or, as I understand, across the world, the subsidy will be little because so much will be free, and that is one of the issues with which we are dealing. The Labor Party wants it all ways. It keeps claiming that the subsidy for too many arts events is too high, yet when we seek to provide free events to a much broader audience—lower income earners, people disadvantaged for a variety of reasons and people in rural areas—members opposite complain again.

Members opposite say that they are a party of the people. They will be there in droves at the unveiling of Don Dunstan's bust in Parliament House next Friday. I think Don Dunstan would be turning in his grave to hear Mr Foley and Mr Holloway, the chief spokespeople for the arts. Where is the shadow Minister for the Arts, the Leader of the Opposition? He is silent. The Labor Party does not even have an arts spokesperson any more, and you do wonder how, faced with similar circumstances, the shadow minister—

The Hon. P. Holloway interjecting:

The Hon. DIANA LAIDLAW: Who is the shadow minister? Is it Ms Pickles?

The Hon. P. Holloway: Yes.

The Hon. DIANA LAIDLAW: Whenever Mr Rann turns up, he says that he is. So, who is? The trouble is that members opposite do not know who their shadow minister is and, when there is an issue, everyone is silent. The only people who speak for the Labor Party today on the arts and the political heritage of the arts are the financial bean counters, the money pinchers and the mean ones—Mr Holloway and Mr Foley. They think that the arts is a soft touch, and they do not even give credit for the fact that the arts and, in particular, the Festival, is a major economic generator in this town and is the focal point for the whole arts infrastructure and industry in this town. If members opposite want to see the Festival fail because they want to nitpick about the dollars—

The Hon. P. Holloway interjecting:

The Hon. DIANA LAIDLAW: No, the interesting thing is that the Hon. Mr Holloway talks about bailouts. He puts the most negative picture he possibly could on every situation in terms of the arts without any reference to the facts and without any concern for the consequences of what he is saying. It is an absolute disgrace in terms of one of the major industries in this state, the arts industry. The arts industry has traditionally defined this state as a great place in which to live, to work and to invest. It is a major employer of people.

This current Festival is already engaging 350 people in the way in which it is formatting and programming the event. Peter Sellars has been up front and, I have had to acknowledge, that comes with consequences for the different formatting, the different way in which the work is being programmed, based on grass roots input across the state, from arts people across the nation and with the much lower than usual box office projections because of the higher than usual free events.

I will repeat statements that I made earlier. The negative reflection that this Labor Party wishes to put on the Festival in terms of calling it a bailout is unforgivable, in my view. This is an investment: it is not a situation that this government would wish to be in and it is not a situation entirely of the Festival's making. It had set an ambitious sponsorship and fundraising budget, and that almost went into free fall in terms of the sponsorship negotiations that were well advanced, as one would expect at this time. It is not a government bailout of $2 million.

It is not a budget blowout for the festival. I have said before that, in terms of the reality check on the whole budgeting program that has been undertaken conscientiously by the board and the new management, all the issues are up front. The government has dealt with them up front and honestly and done it in a way that will enable the Festival, which has been planned for some two years and which has involved so many people across the state in community programming, to proceed as planned.

The Hon. P. HOLLOWAY: Will the minister answer the third of my questions which is: given that this $2 million investment, as she calls it, is internally funded, which other programs will be cut to provide that $2 million?

The Hon. DIANA LAIDLAW: No program will be cut. There are some cash carryovers and a range of areas that will help us address this issue across the portfolio.

The Hon. A.J. REDFORD: Is the minister aware of any comments made on this issue by the Leader of the Opposition and the shadow minister for the arts, Mike Rann, and, if so, what are they? Can the minister explain why Mr Foley has suddenly become the spokesperson on arts issues, particularly the Festival?

The Hon. DIANA LAIDLAW: There is no leadership from the shadow minister—the so-called Leader of the Labor Party—on this important matter.

The Hon. K.T. Griffin: Or on any others.

The Hon. DIANA LAIDLAW: In fact, or on other issues, as the Attorney-General has correctly interjected. He is silent, and I think the arts community is well within its rights to ask why this is so. He certainly is a fair-weather friend of the arts.

In terms of Mr Foley, I do not think that there is any question that, while he says with one breath that he supports the arts and supports the Festival, he almost has a death wish for the arts and for the Festival in particular. You can come to no other conclusion following his statement—and the Hon. Legh Davis mentions this radio interview—this morning on the ABC. Mr Foley said—and I think there should be silence opposite so that members can understand how dangerous and how paranoid his loathing for the arts is—that the Festival of Arts is a disaster waiting to happen. Mr Foley makes an outrageous statement without any knowledge of the facts, without any wish to make inquiries about the Festival and without any regard for the consequences of what he says.

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: I am not sure whether he spoke to Jeremy, but he certainly did not convince Philip Satchell or David Bevan, or those members of the public who called.

Members interjecting:

The Hon. DIANA LAIDLAW: I think it is sad that, in terms of debate, the future of the state and the positive things that the Labor Party would say would traditionally have

bipartisan support, such as the arts, we see a knee-jerk reaction from Mr Foley and there is silence from Mr Rann.

An honourable member interjecting:

The Hon. DIANA LAIDLAW: That is what we have said. We have said that we will fund it. Where is your concern? If we were not going to fund it or if we did not address the issue or seek to identify the issue, then I think you could definitely be concerned.

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: The point is that if we did not fund it you would be critical and if we do fund it you are critical. You would not have a clue whether you are heads or tails on policy and you would not have a clue where you are going in regard to the arts.

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: Every day there is a different agenda.

The PRESIDENT: Order! I will start warning members.

The Hon. DIANA LAIDLAW: I remember—and I think it is worth reflecting—the other hard times that the Festival had with Robyn Archer's poster when there were calls from various quarters for it to be withdrawn. It was interesting to see the absolute deathly silence from Mr Rann then, when leadership was required in terms of an important arts issue; and it is interesting that, when the times get tough, there is deathly silence now from Mr Rann. He lets his dirty little boys go out and muddy the waters and seek to spoil, if not destroy, the Festival with statements such as Mr Foley's statement today that 'this Festival of Arts is a disaster waiting to happen'. It is not a disaster waiting to happen; it is one of the most exciting new events in terms of programming for festivals. It draws on the widest possible number of people and the broadest community in South Australia, expressing concerns through the arts on issues that are of value to our community. The Labor Party does nothing but deride that effort and, in turn, the community that has had such input into the programming which the government will ensure proceeds as planned.

SAMAG PROJECT

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Treasurer a question on the SAMAG magnesium project.

Leave granted.

The Hon. T.G. ROBERTS: We have all, in this state, seen the fortunes of SAMAG reported in the financial pages of the national dailies and in the state paper. There is quite a bit of uncertainty—

The Hon. T.G. Cameron interjecting:

The Hon. T.G. ROBERTS: I read the national dailies, but not so much the local one—in relation to the future of the SAMAG project and there is quite a lot of speculation, particularly in Port Pirie and the mid north region, as many South Australians' jobs rely on it. Speaking to the Port Pirie *Recorder* today—a paper well known and trusted, and often quoted by the Hon. Ron Roberts—Senator Minchin claimed that the federal cabinet would decide how much support to give to SAMAG only when it knew how much the South Australian government was prepared to contribute; and as yet, the state government had not decided on what contribution to make. He said:

> We also need to know what the State Government is proposing to provide. We can't make a decision on our commitment until we know what the State Government is proposing to contribute to the project.

So, my question to the Treasurer, representing government interests, is: does the government and the Treasurer accept responsibility for the delay by the commonwealth as outlined by Senator Minchin in his interview in giving approval for assistance to the SAMAG magnesium project in Port Pirie and, if not, why not?

The Hon. R.I. LUCAS (Treasurer): I have so many other things—

The Hon. T.G. Roberts: Your media monitor not working?

The Hon. R.I. LUCAS: Exactly. The simple answer to the honourable member's question is no. I have not seen the transcript of Senator Minchin's comments this morning, but the South Australian government has made a decision in relation to the level of assistance that it is prepared to offer SAMAG.

An honourable member interjecting:

The Hon. R.I. LUCAS: Well, certainly to his officers and to Senator Minchin. Some two or three weeks ago, the government confidentially briefed Labor Party members of the IDC about the level of state government assistance and I was intrigued to note that, I think, within three days the Leader of the Opposition (Mike Rann) had come out recommending a certain quantum of assistance and a certain type of assistance. I would be the last to suggest that the two Labor members on the IDC breached the confidentiality provisions of the IDC and leaked that information to the Leader of the Opposition. It must have just been a huge coincidence that, within two days of the Labor Party having been briefed about the confidential state government commitment to SAMAG, the Leader of the Opposition came out with his initiative and rather brazenly, given what he must have known, dared to say that the state government had not made its mind up in relation to possible assistance.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: Well, you talked to them. As I have said, I am sure that it is just a huge coincidence that within a couple of days of the Labor Party members, including Mr Foley, being confidentially briefed under the provisions of the IDC legislation, the Leader of the Opposition came out with a new policy initiative in relation to a gas lateral—

The Hon. Diana Laidlaw interjecting:

The Hon. R.I. LUCAS: I would be the last person to suggest that is the case, Minister. I am sure there will be a lot of speculation—

The Hon. L.H. Davis interjecting:

The Hon. R.I. LUCAS: Again, I would be the last person to suggest that either I could not trust him—

The Hon. L.H. Davis: Has Kevin Foley ever left a meeting to brief the media? He would never do that, would he?

The Hon. R.I. LUCAS: I can confirm that the Hon. Mr Foley has previously left meetings to brief the media. We have indicated in this chamber that particular issue. I am sure it was a huge coincidence that after being confidentially briefed and, under the requirements of the IDC legislation, sworn to secrecy, Mr Rann has come out with a bold new initiative. When we are in a position to indicate—

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: I would certainly have thought that if you are a shadow treasurer trust is an important attribute, as is an ability to keep confidences. I would have thought that, if a shadow treasurer is sworn to secrecy on an issue, people should feel assured—

The Hon. P. Holloway: Are you making allegations—

The Hon. R.I. LUCAS: No; I am saying that I would be the last person to suggest that that would have occurred. Let me make that point quite clear.

The Hon. A.J. Redford: Do you trust Kevin Foley?

The Hon. R.I. LUCAS: No, I would not go that far. Don't put words in my mouth. The honourable member is trying to lead me down the garden path very cleverly, but I will not be led down that path.

The Hon. R.R. Roberts: Show some real guts and say that outside this place.

The Hon. R.I. LUCAS: We will be able to when—

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: I would have thought that on recent cases that I would not be making that claim. When the government is in a position to indicate the nature of its offer to SAMAG, it will also be in a position to indicate what it confidentially briefed Labor members on just two or three weeks ago. It will then be a position for dispassionate observers of what the IDC members were briefed on to compare that with the announcement made by Mr Rann just two or three days later.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: That is the point—two or three days after a confidential IDC briefing. As I have said, I am sure that it was a coincidence; I would be the last to suggest otherwise at this stage. I indicate that it has not been a delay by the state government. The state government's position has been quite clear: we have been engaged in extensive discussion with commonwealth officers and ministers and SAMAG as well as associated parties. I believe that the commonwealth government officers and ministers are certainly aware of all the detail but it would be fair to say that SAMAG is not aware of all the detail in relation to the current complicated and complex negotiations going on with the commonwealth government.

The community can rest assured. In particular I pay credit to the Hon. Rob Kerin, the local member for that project, who has for seven days a week for the last few months been working on this project. Should this project be successful, the people of Port Pirie should be eternally grateful that they are represented by a senior minister in cabinet and government who has been single minded in his determination to see the SAMAG project delivered to the benefit of the Port Pirie community. Whilst we welcome the Johnny-come-latelys of this world coming along and offering suggestions after the government has done all the hard work—we always welcome that—the people of Port Pirie will and should know that all of the hard work has been done by Rob Kerin as a senior minister of this cabinet.

STATE DEBT

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Treasurer and Leader of the Government in the Legislative Council a question about the subject of state debt.

Leave granted.

The Hon. L.H. DAVIS: My attention was drawn to the *Australian Financial Review's* Special Report on States of the Nation dated Wednesday 26 September—just last week. This is an article by the well regarded journalist, Tony Harris, on the level of state debt around Australia. According to this article, as at 30 June 2001, the net debt (in billions of dollars) for each state was as follows: New South Wales, $7.5 billion; Victoria, $1.8 billion; Queensland had a net cash position of $10.4 billion (in other words, Queensland had no net debt at all, which reflects the conservative administrations of many decades); Western Australia, $1.2 billion; South Australia, $1.3 billion; Tasmania $0.8 billion; the Northern Territory, $1.1 billion; and the ACT, $0.5 billion.

If the net cash position of Queensland is ignored, the debt for the other five states and two territories is $14.2 billion, and South Australia's share of that is $1.3 billion. If, however, you take the position adopted by the Australian Democrats and the Labor Party that ETSA should not have been privatised, our net debt would have been $4.9 billion greater than it is currently: that is, $6.2 billion. As a percentage of the $19.1 billion, it would represent nearly one-third of the total net debt of the nation ($6.2 billion of a total of $19.1 billion). If one were to be fair and take into account that Queensland has a net cash position, the net debt of the nation would be only $8.7 billion of the six states and territories, and South Australia, if it had not privatised ETSA, would have had $6.2 billion of that. In other words, it would have had 71.3 per cent of the net debt of the nation.

Given that the Labor Party when in government went on the record through the then Treasurer (Hon. Frank Blevins) when selling off its large share of the South Australian Gas Company for the purpose of reducing debt agreeing to the State Bank being sold off to reduce state debt, is the Treasurer in a position to advise the Council of what the impact of not selling ETSA would have been on the state debt relative to the other states in terms of our ability to compete with other states and territories for industry and our ability to spend money on health, education and other important services in South Australia?

The Hon. R.I. LUCAS (Treasurer): This is such a good question that the Hon. Mr Davis has almost answered it himself in terms of the starkness of the figures that the honourable member has outlined to members.

The Hon. T.G. Cameron: Some might say: just as well he did!

The Hon. R.I. LUCAS: I am sure that the Hon. Mr Cameron would not suggest that. Some might, but not the Hon. Mr Cameron. The fact that, potentially under the policies being pushed by the Labor Party and the Australian Democrats, South Australia as a small regional economy might account for some 71 per cent of the total net debt of state and territory governments in Australia—I think that is what the honourable member said—is just too forbidding a prospect ever to have contemplated.

The Hon. L.H. Davis: That is the Holloway and Foley position.

The Hon. R.I. LUCAS: Yes, it is Mr Foley's position and the Hon. Mr Holloway's position, as well. To a certain degree because of the success of the economic policies of the federal government, in particular in relation to low interest rates—and I think that this morning the Reserve Bank has reduced the benchmark from 4.75 per cent to 4.5 per cent, another quarter of a per cent or 25 point reduction—we are at historically low levels of interest rates in—

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: As to the point that the Hon. Mr Crothers makes, we will be doing some work on per capita

debt and interest payments. In average terms, when one looks at the last two or three years in particular, interest rates in our national economy have been at historically low levels. At some stage in the future we will not be able to sustain that low level of interest rates and, as has been highlighted before, just on average, a 2 per cent increase across the debt book or debt portfolio of the state, if we had not taken the hard decisions in relation to the reduction of debt, would mean that, on an annual basis, we would be looking at somewhere between $150 million and $200 million per year extra in interest costs. That would genuinely be money that would have to be taken out of hospitals, schools and police services—indeed, all the portfolios.

Something like one in five of all the schools in the state would have to be closed down. At $200 million, it is the equivalent of about three new emergency services levies to fund that sort of increased interest cost, just with an average 2 per cent increase in interest rates. That would take our benchmark rate from 4.5 to 6.5 per cent, nowhere near the levels that the economy experienced in the late 1980s and early 1990s when small businesses were paying 22 and 23 per cent, or in the high teens and the low twenties. Farmers were paying in the low twenties and home mortgage rates were in the 15 to 17 per cent range. We are not talking about going back to those levels. If we did the figures on those levels, and perhaps we should, and if we had kept the level of debt that we had in South Australia, it would just not have been possible to sustain either the existing level of services or to maintain the existing, relatively low level, of state taxation in South Australia.

TOURIST BUSES

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Minister for Transport a question about city tourist transport and fair trading relating to that.

Leave granted.

Members interjecting:

The Hon. IAN GILFILLAN: I am sorry if you did not hear me, Mr President. I spoke up.

The PRESIDENT: It is a bit hard to hear because there is a member constantly talking on the back bench.

The Hon. IAN GILFILLAN: I have been contacted by the director of Adelaide Explorer, who runs a tourist bus system through the city, and he is very concerned about the method of trading of the competitor, Adelaide Tour City Sightseeing, which was launched by Bill Spurr, the Chief Executive Officer of the South Australian Tourism Commission, on 1 September. He had written previously two letters to the transport department and had not had a reply, hence his asking me to raise the matter. He wrote to the Minister for Transport on 22 August and to Ms Hazelgrove, Director of Contracts, Passenger Transport Board, on 21 September.

His complaints are that the competitor, City Sightseeing, retains a bus in Victoria Square from 9 a.m. to 5 p.m. each day. The buses that are run by City Sightseeing display a large sign on the rear of the bus stating, 'Official tour of city of Adelaide', and City Sightseeing also has access to signage within the city council boundaries on Passenger Transport Board poles.

He wrote to the council to try to discover how this situation arose and he asked whether he could have the same privileges. He wrote to Ms S. Law, the Chief Executive of the City of Adelaide. In part, her reply to Mr Deane Carruthers states:

> Signage: If you wish to place signs in the Adelaide City Council area you will need approval from the Development Applications Department. Council permission is still needed even if the Passenger Transport Board gives permission to use their poles to support your signs.
>
> Lay over zones: The Adelaide City Council does not provide lay over areas for buses. The bus stop to which you refer is a Passenger Transport Board managed bus stop and therefore is not under Council jurisdiction.
>
> Official endorsement: The Adelaide City Council has not endorsed City Sightseeing in any form.

Quite clearly, the city council has not authorised any of these activities about which Mr Carruthers complains.

1. Has the minister received any indication that the Passenger Transport Board gave approval for the ATCS (Adelaide Tour City Sightseeing) to use the bus zone in Victoria Square and, if so, under what terms was that approval given and would it be available for the competitor firm Adelaide Explorer?

2. The Adelaide City Council has specifically denied approving the sign 'Official Tour of City of Adelaide'. Has the Passenger Transport Board endorsed the sign 'Official Tour of City of Adelaide' sign in bold display on the rear of the buses? If so, why? If not, does the minister believe that this is a case of misleading advertising?

3. Could the minister check that the Public Transport Board does not allow the unauthorised use of its poles by the city sightseeing project for advertising?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): Certainly I have observed the buses touring the city and an increasing number of people using them. It has not been an easy time for any company with open top deck buses considering that we have just had our wettest September since 1992. I regret that the Adelaide Explorer proprietor has not received answers to a letter purported to have been written to me on 22 August, some six weeks ago, and further correspondence to the PTB. I will ensure that that matter is attended to immediately, and I will seek answers to the questions that the honourable member has asked today if they are in addition to the questions that have already been posed in the correspondence to me.

SOUTHERN EXPRESSWAY

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about the Southern Expressway.

Leave granted.

The Hon. J.S.L. DAWKINS: I recently noted an article in the September edition of the Civil Contractors Federation (SA Branch) magazine known as *Down to Earth*. The article referred to the recently opened second stage of the Southern Expressway and the work done on this project by the joint venture of Built Environs and the Gawler based company LR&M Constructions. The article states:

> Landscaped mounds and wetlands, architect designed pedestrian and road overpasses, an aesthetically pleasing road, all contributed to making this stretch of the Southern Expressway a landmark in Australian road building. The 12 kilometres of work included associated intersections, access ramps, drainage roads, earthworks services, pavements, landscaping, pedestrian and cyclist paths. Fourteen bridges were constructed during the whole project, which included five pedestrian bridges. One of the bridges constructed during stage 2 of the Southern Expressway was Grant Creek Bridge. This is one of the visual engineering features of this project.

The bridge was designed by Connell Wagner. It took nine months to build and consists of seven x 20.8 metre spans. It is 145 metres long and 27 metres tall at the highest column. The entire length of this project has been an exercise in logistics planning as it runs through many residential areas. Community involvement has therefore been an integral part of this project from design to 'hands-on' landscaping. Local schools were visited, regular community meetings were held, Aboriginal horticulture trainees, school children and other community groups were involved in planting large landscape areas. More than 500 000 trees, shrubs and ground covers have been planted.

Other environmental issues that were used throughout the project include the monitoring of noise, vibration, dust and reusing excavated material in the form of fill and noise mounds. Congratulations to our members Built Environs and LR&M Constructions, as well as associated member contractors for a job well done! It was also recognised by the Case Earth Award judges as the South Australian winner in category 3.

I was pleased to take my first trip along the second stage last weekend. I should add that, when returning from the south coast on Monday, I was unable to use the new section, due to the computer teething problems that have been reported in the media. My questions are:

1. Is the minister aware of the article in *Down to Earth*, particularly the reference to the Case Earth Award, and also that it is a landmark in Australian road building?

2. Will the minister advise the Council of any progress in addressing the delays that have been experienced on the second stage of the expressway in the past two days?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I can assure the honourable member that everyone involved in traffic management in the metropolitan region (and that includes the traffic lighting section and also the Intelligent Transport (IT) section) is working overtime to correct the difficulties that have appeared in recent times to frustrate the smooth operation of the changeover of lanes and traffic flow on the Southern Expressway.

One can always anticipate some teething troubles but, out of an excess of caution, Transport SA, in managing this road during the changeover period between the contract managers and Transport SA taking it on full time, are being particularly cautious. We do have some problems, and I am concerned that they demonstrated themselves in their full glory on Monday, the public holiday, when so many people were going to Victor Harbor for the folk festival and other events, and when many others were specifically using the Southern Expressway as an attraction to travel on in its own right.

The Hon. J.S.L. Dawkins interjecting:

The Hon. DIANA LAIDLAW: Yes, people do time their journey to catch it, as I understand the Hon. Mr Dawkins did. But the Southern Expressway (the IT side of it, at least) failed him and many others. We expect that, with manual checking and all the energy that is being put in to rectifying the technology problems, we will soon be on top of this issue and there will be no further frustrations encountered by motorists.

I support the honourable member in his applause for Built Environs and LR&M Constructions. Both of these South Australian civil contracting companies excelled in terms of workmanship and skill, budget planning and engineering works throughout stage 2 of this major project, which cost $137 million in total and built 27 kilometres of road. It is a major asset for the whole of South Australia, and it particularly benefits the southern areas of the state—the local community, businesses, wineries and tourism in the south.

The construction stage created about 1 000 jobs, which is a bonus at any time in terms of capital works, and the professionalism of our companies in undertaking such major works shone through so that we did not need to seek or accept interstate businesses undertaking this work on our behalf. When the teething problems with the IT equipment are over—hopefully, that will be very shortly, because every day is one day too long, in my view—the road will be an asset for all people who use it, as we would all wish.

RAIL SERVICES, COUNTRY

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport a question on the subject of train services in country South Australia.

Leave granted.

The Hon. R.R. ROBERTS: Many years ago—longer than most of us can remember—arrangements were made between the then South Australian Railways—

The Hon. Diana Laidlaw: Even longer than you remember.

The Hon. R.R. ROBERTS: Yes, and even with my enormous memory. The railways were transferred from the control of the South Australian government to the federal government. Since that time, a range of other business arrangements have taken place, and many of those lines—those that are still left and have not been ripped up—are now under the control of a corporatised structure. Part of the original agreement for the construction of new railways in South Australia provided that if services were to be removed it should occur with the agreement of the South Australian government. One very famous case is when the South-East railway was about to be closed and the then minister, Frank Blevins, intervened. A range of other services has contracted since the taking over of rail services in South Australia, in particular, the standardisation of the railways for the east-west line.

I have been contacted by a number of residents in the Mid North, in particular residents at Snowtown, who are concerned with travel arrangements for the sick and the elderly and those who do not have cars and wish to travel on public transport. I am advised that on a daily basis the east-west train stops at Snowtown, but constituents wishing to board or alight from the train at Snowtown are told that that is not possible because, in smaller sidings (such as Crystal Brook, Redhill and Snowtown), Great Southern Railway, I am led to understand, has removed all the platforms. The reason that passengers cannot alight (the reason my constituents are being told that they cannot alight) is that there is no platform.

This raises a contradiction with respect to another matter that I have raised in this Council on a number of occasions regarding Coonamia at Port Pirie where there is no platform. However, people who want to alight from or board the train at Snowtown and Redhill are advised (and, indeed, people in other areas are advised) that they must go to Coonamia to catch the train. This really means that in some cases they have to travel up to 60 kilometres or 70 kilometres to get on the train and, if they want to go to Adelaide, they travel 60 kilometres or 70 kilometres away to get on the train and then travel back past the point from which they started.

My question is: is there anything that the South Australian Department of Transport or the minister can do to ensure that those people who desire public transport are either subsidised in some way or can be assisted to be able to access the services which have replaced those that were their general daily means of transport?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): This has a historical context. Very

briefly, it is correct that when South Australia sold the railways—

The Hon. R.R. Roberts interjecting:

The Hon. DIANA LAIDLAW: No, we sold our railways to the commonwealth in 1975 and subsequently, until 1977, they were owned by the commonwealth. We did have some say in services that may have ceased or lines that would be closed. Not that our voice was heard much: AN, when it was in commonwealth hands, closed down an extraordinary number of lines and services during its period of owning our non-metropolitan railway lines. The federal government sold the line and infrastructure.

There are two different issues here that must be explained and I will have to check the specifics in relation to the honourable member's question because GSR owns the operation but not the line—the interstate line. That is owned by Australian Rail Track Corporation. So, in terms of the platform situation I doubt that that would be owned by GSR or that it would have a say in terms of whether the platform was there or not. Certainly, ARTC would have an opinion. In addition, Great Southern Railway, now Australian Railroad Limited, is responsible for intrastate track and operations; but that is essentially grain movements or, in the Barossa Valley, bulk goods; is it gypsum or stone?

The Hon. J.S.L. Dawkins: Stone.

The Hon. DIANA LAIDLAW: Stone. And there are, increasingly, a number of private passenger services both on the intrastate and the interstate lines; there has been a healthy increase there and that has been great to see.

I will obtain the details for the honourable member. This state government does not subsidise, as a general rule, any interstate or intrastate operation. We have made an exception in terms of the Overland as an operating subsidy over three years to maintain the line between Adelaide and Melbourne, with a diminishing rate of operating subsidy over that three-year period. That has been undertaken in conjunction with the Victorian government. I will look at the matters raised by the honourable member and, in the context of the questions, I will also look at the availability of the community transport networks that this government has promoted across country South Australia, which are operated by the Passenger Transport Board liaising with the Department of Human Services, and see what application there is in terms of community transport networks to meet the honourable member's constituents' needs.

MOUNT BARKER, PLACE NAMES

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Administrative and Information Services questions about proposed changes to the names of country towns and locations.

Leave granted.

The Hon. T.G. CAMERON: Mount Barker council is taking serious issue with the Department of Administrative and Information Services over the proposed change to the names of towns and geographical locations within its district. Apparently there is no justification for it and many local residents are angry. Whilst the department has written to residents advising them of the possibility of proposed name changes, it did not consult about the possible impact on businesses or daily lives.

Many businesses and farmers will be affected as they will have to change their stationery and advertising to comply with this unnecessary name change. Some farmers particularly are known globally in the area of stud services to the cattle and sheep industries, so they will have a very hard time remarketing themselves as a result of this unnecessary change. Most of the affected place names have been in force for about 100 years—so they have quite a bit of local tradition—and therefore there will be financial and marketing burdens if they are changed. It has been suggested that the only reason for changing the names is to justify someone's job in DAIS. This attitude illustrates the depth of feeling. My question are:

1. Considering the impact that a change of location names would have on local businesses, why has the Department of Administrative and Information Services not sought to consult with local residents?

2. Will the minister ensure that a full and proper consultation process is implemented before this matter proceeds further?

The Hon. R.D. LAWSON (Minister for Administrative and Information Services): I thank the honourable member for his question. The process to which he refers is going on right across the country at the moment. Australia Post, emergency services, and the police have suggested that all places in Australia be given official names. It might come as a matter of surprise, but many localities within South Australia have never received any official geographical name. Today, for example, the Minister for Transport tabled the West Beach Trust report. Until about six months ago, the very well known area occupied by the West Beach recreation reserve was not accorded any official geographical name. We accorded to it the name 'West Beach', which, of course, is the name by which it has been known for generations.

Progressively throughout the country, a process is being undertaken to examine the exact defined boundaries of places. Many have traditional names, names that are given locally, and names that are not always universally accepted. In many cases, if you look at the map, for example, for an ambulance, the police or some other emergency service attending, no official boundaries exist for the particular place.

I understand that a process of consultation is going on in the Mount Barker district at the moment, and that process will continue. The Geographical Names Advisory Committee, which is chaired by the Surveyor-General, undertakes this process of consultation. In due course, the committee will report to me on recommendations for the allocation of names. When that report is received, a publication will appear in the *Gazette* and local and state newspapers inviting representations. I envisage that in Mount Barker—as in other places—there may be some—

The Hon. T.G. Cameron: Are you satisfied with the consultation process?

The Hon. R.D. LAWSON: As far as I am concerned, the process of formal consultation in relation to Mount Barker has not yet commenced. It will commence following the recommendation by the Geographical Names Board. I assure the honourable member and his constituents that their views will be listened to, and there will be due process of consultation. I doubt that it will be possible to agree with everyone at the end of the day, because there are disagreements about the appropriate names to be accorded. I assure the honourable member that close attention will be paid to the views of local residents as well as local historians, the local council and local service providers. I am certainly happy to look into the Mount Barker situation in greater detail because no recommendation has yet been made to me. If the honourable member is prepared to provide me with any material in

relation to his constituents' concerns, I will discuss with him an appropriate process.

MATTERS OF INTEREST

COMMUNITY BROADCASTERS

The Hon. J.F. STEFANI: On 11 August 2001, as a life member of 5EBI-FM, I was pleased to open the annual conference of community broadcasters held at Coober Pedy in this the 26th year of community broadcasting in South Australia. I represented the Minister for Transport, Urban Planning and the Arts, the Hon. Diana Laidlaw, who was unable to attend.

The conference included a packed program of community broadcasting business with reports, workshops and practical sessions. It was a great opportunity to share information and compare notes. Equally, it was good to see the attendance of so many representatives and staff of the full-time and part-time radio stations as members of the South Australian Community Broadcasters Association. The conference provided a forum for delegates to enhance their understanding of each other and their role in community broadcasting. The title of this year's conference was 'Diggin In', and where better to dig in than Coober Pedy, which is renowned for its opal mines and distinctive underground dwellings?

This was the first time that the conference had been hosted so far afield. It was hosted by 'Dusty FM', the voice of the outback in that area.

The Hon. Diana Laidlaw: The name shows a sense of humour.

The Hon. J.F. STEFANI: Indeed. 'Dusty FM', as with so many community radio stations, has grown from a humble start. It began some five years ago as a student radio station in the Coober Pedy area and has achieved an exemplary progression. This kind of success comes about because the station does what community broadcasters know best—they engage with their community, they speak to the community and they are a mirror to the community.

If I want local community information on sports, news, the environment, recreational activities, cultural pursuits, or other issues, the chances are that I will find it in the programs of the alternative to mainstream radio—the community broadcasters. Whilst avenues of assistance are open to community broadcasters at the federal level, I am aware that assistance has been made available to community broadcasters at the state level through the programs offered by the state government and Arts SA. In this age of globalisation, where people are increasingly affected by the 'big picture' issues of overseas markets and international trade forces, it is the local and regional community issues to which people have turned.

I congratulate the conference organisers and acknowledge the support of the sponsors—Telstra, Arts SA and the Community Broadcasting Foundation—for their support of the work undertaken by our community broadcasters. I take this opportunity to wish them continued success in the future.

SHEARING INDUSTRY

The Hon. R.K. SNEATH: I take this opportunity to speak about the shearing industry, which has been recognised as uniquely Australian for many years. I will address some of the changes I have seen over the years and mention some of the characters who made this industry great. It has been a place where politics was regularly discussed and where a great many politicians made their start. One of these politicians, the late Jack Wright, went on to become Deputy Premier in the South Australian parliament.

Another couple of shearers who went from the woolshed to politics were the Cameron brothers: Clyde, who went on to become a federal minister, and Don, who became a senator. Mick Young was another shearer who became a federal minister, and Jim Dunford and Keith Plunkett were also formerly shearers before entering politics.

For many years, the Australian Workers Union had amongst its members similar names from the shearing industry. Jack Wright, Clyde Cameron, Don Cameron and Jim Dunford were all secretaries of the union. Alan Begg, a past secretary of the union, and Jim Doyle, a past president, were also shearers. In other states we have had a number of shearers who have held the position of secretary of the Australian Workers Union, the more prominent ones being Bill Ludwig from Queensland and Don Hayes from Tasmania. At one stage, when Clyde Cameron was secretary of the Australian Workers Union, all of the officials employed by the union were ex-shearers. So, about eight people who were employed on the staff as organisers and secretaries were from the shearing industry.

The industry has been responsible for some other wonderful characters, and I would like to mention a few: Ted Cooper, who was still shearing at the age of 70; Harry Caldwell, who was a storyteller in his own right; and, of course, our own Graham Kite, who works in Parliament House, who, in his time, was looked upon as a gun shearer with strong principles. Some shearers who shore in the northern areas in the heat and who ran in and out of the pen for eight hours racing one another were known to hit the water bag with their head on the way in and swallow the water on the way out. I could not name many other industries where the workers actually raced each other all day in extreme temperatures knowing full well that the kerosene fridges would not have their beer cold and the huts would still be as hot as the wool shed when they finished their day's work.

The economy of a number of country towns has suffered due to the decline in the industry. Port Augusta and Naracoorte are two that come to mind as well as other small country towns in the Mid North and the South-East and on the West Coast. They were looked upon as home by many South Australian shearers and they have seen the money that the industry brought into these towns rapidly decline over the last 20 years. Naracoorte in particular has seen sheep numbers fall dramatically, mainly as a result of the expansion into oilseed, grape vines and cattle.

It is also unfortunate that the principles protected by shearers who stood up for one another and their rights, which made this such a unique industry, have virtually become a thing of the past. Today, New Zealand shearers are encouraged to break these rules and conditions and, in most cases, are working for less than the award rate. It is a shame to see Australian shearers no longer defending their award entitlements in the way in which the characters whom I have

mentioned defended theirs. It may be a long time before we see another shearer as secretary of the Australian Workers Union or have the privilege to represent fellow Australians in a house of parliament. I hope that this is not the case and that the next generation of shearers will have a commitment to their industry and its conditions like the Jack Wrights and Graham Kites, etc. of the generation before them.

FOOD INDUSTRY

The Hon. CAROLINE SCHAEFER: I wish to comment today on the astonishing growth in exports in the state food industry over the last financial year. Some time ago, the Food for the Future initiative allocated a group of economists to the task of tracking on an annual basis the performance of the food industry against the long-term aim of gaining a total value of $15 billion by 2010. The past financial year (2000-01) shows a staggering jump of 40 per cent in overseas exports to bring the latest gross state food figure to $8.33 billion from about $5 billion four years ago when the state's Food Plan was introduced. Total food exports have reached $3.2 billion comprising a 40 per cent rise in overseas exports from $1.4 billion four years ago to $2.1 billion now and a 29 per cent increase in interstate exports to $1.08 billion.

A short-term aim of the Food Plan was to increase exports by $1 billion from the year 2000 to the year 2004. We are actually within $300 million of doing that in the first year alone. There is no doubt that the exceptional seasonal conditions and the low dollar have been major factors in this growth, but even if the figures are seasonally adjusted it is estimated that there has been an increase of about $500 million. Perhaps equally important is the 28 per cent increase in private capital investment to $668 million for the year. That is nearly double the 10-year average investment growth.

Import replacement is another success story. The increasing competitiveness of South Australian food is shown in the food import figures which have fallen by 9 per cent for the year from $970 million to $880 million (a fall of $90 million in one year). This fall in imports has led to an increase in the net state food revenue measure which grew to $7.48 billion (an increase of 19.2 per cent). Equally important to all of us is that an additional 3 700 people were employed in the food industry last year, bringing the total number of jobs to 142 000: that is, one in every five people employed in South Australia are employed either directly or indirectly by the food industry.

As I have said, these amazing figures have not been reached without a great deal of help and effort. I would like to commend the commitment that has been made by the private sector and industry in increasingly working with government agencies to reach these astonishing figures. There is little doubt that if we continue as we are this aim of reaching $15 billion by 2010—which was probably seen as unrealistic—will be achieved, and it may be achieved ahead of time.

Some of the industries which have done particularly well are the grain industry, the seafood industry and the livestock industry. I think it bears noting also that the horticulture industry and horticulture exports are growing exponentially. Our farm gate value in the last year was $2.7 billion; processed food value, $3.4 billion; overseas exports, $3.2 billion; retail and food services, $5 billion; and our gross state net revenue, as I previously stated, was $8.3 billion.

I believe that these figures have largely been achieved by working across government agencies and using the expertise of our best and most successful private industry leaders to advise and mentor other hopeful exporters to get them to an export readiness stage together with the help of officers in particular from the Department of Industry and Trade, PIRSA, and this very small band of hard-working people from the Food for the Future group.

Time expired.

ABORIGINAL DEATHS

The Hon. T.G. ROBERTS: I rise to indicate that the area of importance that I would like to mention—and in which I would like the media to take interest, but it probably will not—is the uncovering of the latest statistics on Aboriginal deaths. I am referring not to Aboriginal deaths in custody but to Aboriginal deaths in society generally. An article by Toni O'Loughlin headed 'Most black men die before 50' (released on Tuesday 18 April) states:

> More than half of all indigenous men and 41 per cent of indigenous women die before they reach 50, the latest Bureau of Statistics mortality figures show. The 53 per cent figure for indigenous men means they are four times more likely to die before the age of 50 than non-indigenous men, of whom only 13 per cent die before their 50th birthday.

That is an absolutely tragic figure that indicates the lifestyle and the conditions in which Aboriginal people in Australia, not across the board, but in pockets in metropolitan, regional and remote areas, find themselves. The article goes on to say:

> The risk of death is even higher for Aboriginal and Torres Strait Islander women, who are six times more likely than their non-indigenous sisters to die before they turn 50. Only 7 per cent of non-indigenous females die before 50.
>
> Indigenous babies are more likely to die than non-indigenous babies, with one in four infant deaths being Aboriginal.
>
> The biggest killer of Aborigines is injury, which causes more than 80 per cent of deaths among men and women as against 70 per cent for non-indigenous males and 50 per cent for women.
>
> Compared with the rest of the population, indigenous people are four times more likely to die in a car accident and seven to eight times more likely to be murdered.

That is because of the violence within the communities, in a lot of cases brought about by alcohol, drug abuse and other related social problems associated with poverty and lifestyle. Nutrition is another important factor, with diabetes being a major contributor to those deaths.

If those figures—that more than half of all indigenous men and 41 per cent of indigenous women die before they reach 50—were reflected in the general community, we would be shocked and outraged but, because the figures are not highlighted by major media outlets in any descriptive way, we really have to search for the figures. I am making an attempt to find out what the situation is specifically in this state. However, it is very difficult when looking for figures on the internet or when getting departmental figures to try to match the mortality rates with certain forms of death, either accidental or through lifestyle.

Figures collected between 1974 and 1995—and I highlight the fact that they have been cut off at 1995—indicate that four groups of conditions accounted for almost 70 per cent of total excess deaths in the Aboriginal and Torres Strait Islander population in Western Australia during the five-year period 1992 to 1996. Circulatory conditions accounted for over a quarter, with heart disease, cerebrovascular disease and hypertension accounting for most of the circulatory disease excess. The injury and poisoning group, principally transport

accidents, homicide and suicide, accounted for 15 per cent. Respiratory conditions, including chronic obstructive airway disease and pneumonia, accounted for 16 per cent, and endocrine conditions, largely diabetes, caused a further 10 per cent of all excess deaths.

The situation is getting worse, it is not getting better. In fact, the last figures that I have sighted indicate that the average life span of an Aboriginal person in Australia has fallen by one year. I am not quite sure how we highlight the circumstances faced by remote and regional Aboriginal people in Australia to try to get some major change to the conditions in which they live, because their circumstances are getting worse. In particular, the condition of young people, whose lives are now being destroyed at the age of 10, 11 and 12 with alcohol, drugs and petrol sniffing, is a major disgrace. Something must be done and, in a bipartisan way, very quickly.

SPECIAL OLYMPICS

The Hon. A.J. REDFORD: Last Saturday night I had the privilege and, without any hesitation, the joy of representing the minister for volunteers at the Special Olympics seventh annual awards dinner at which awards were given to those who participate in the Special Olympics. The Special Olympics began in the 1960s and is a program aimed specifically at providing opportunities in sport for people with an intellectual disability. In Australia, some 3 000 athletes are actively involved. The program provides year-round sports training and competition, and opportunities for people with a disability at all levels. Unlike the Olympics or the Paralympics, it is not focused on elite performance.

Regional, national and world games are held at frequent intervals. The sports involved include aquatics, basketball, floor hockey, gymnastics, soccer, softball, tennis, tenpin bowling and track and field, and they are supported by some 2 000 volunteers. It was my privilege to announce the award for the volunteer who made the most outstanding contribution over the past 12 months. It is not the individual who deserves all the accolades: it is all of the 2 000 volunteers who are involved in the Special Olympics.

The joy with which the intellectually impaired participants involved themselves in the function and, I suspect, in their respective sports was nothing short of inspirational, and certainly more inspirational than anything I experienced when watching the ordinary Olympics on television. The sheer joy that all participants share in each other's success and the very open spirit in which they apply their sportsmanship to their sport is something that should be inspirational to all of us. I am sure that anyone who has problems in managing their behaviour or themselves in the sporting field of endeavour could do well to become involved in it.

I had the opportunity to meet Amanda Blair, whom I now listen to more often than not on SAFM, because you get more enlightened political comment from her than from some of the more mainstream—

The Hon. T.G. Roberts: Triple J is all right.

The Hon. A.J. REDFORD: The honourable member interjects and says Triple J is all right, and certainly it does bring a wry smile to one's face. Amanda is the patron of the Special Olympics and gives freely of her time, and it was great to watch the interaction of all the people with her and the genuine warmth in which she held them.

It is events and volunteer issues like that that I understood the *Advertiser* would pick up and report on and I must say that, despite some of the rhetoric from the Editor and others of the *Advertiser*, some of the issues associated with volunteerism have not been given the sort of prominence that one might have thought was due. It is interesting to see that in this morning's paper more coverage is given to what the Hon. Trevor Crothers might or might not have said in parliament and to some quip made by the Hon. Terry Cameron than to probably the most significant volunteer legislation that has been introduced into a parliament in the western world.

For those members who are interested in it, I refer them to a very small column in the bottom right-hand corner of page 14. The people of South Australia have been advised by this monopoly newspaper that volunteers will be protected from legal action under legislation introduced in parliament yesterday. It goes on to say basically that those people who engage in volunteerism will be immune from liability. One wonders about the priority of the Adelaide *Advertiser* that it can report on such things as little quips across the chamber when such little coverage and such little information is provided to a most significant sector in our community, the volunteer sector. It is a disgrace on the part of the *Advertiser*.

Time expired.

YORKE PENINSULA

The Hon. T.G. CAMERON: The SA First candidate for Goyder, Mr Alby Brand, who was featured in the *Advertiser* today, has fought tirelessly for the past few years to have better television reception access for the thousands of people who live on Yorke Peninsula. So far, Mr Brand's efforts, or Alby as I know him, have resulted in more than 13 000 signatures on petitions calling for the improvement of local television reception. I do not know whether any members in this place have visited Yorke Peninsula but it does not seem to be a place that too many Adelaide-based members of parliament get to.

On one trip I met a local councillor who told me that they had been on the local council for 17 years and it was the first time that they had seen a Legislative Councillor in their part of the world. For members who might be interested in a bit of country travel, let me assure them that they will find a very receptive group of people—

The Hon. M.J. Elliott interjecting:

The Hon. T.G. CAMERON: —on Yorke Peninsula. I can understand why the Hon. Mike Elliott might interject. When one looks at the vote they get in the country and the vote they get on Yorke Peninsula, I would keep away, too.

The Hon. M.J. Elliott interjecting:

The Hon. T.G. CAMERON: I have had a close look. Anyway, back to my speech. The fight that Alby is waging is proving increasingly frustrating. He has been given the run-around by almost every politician he has approached, including the Prime Minister. At the last election, Prime Minister Howard promised the people in rural and regional areas of Australia that, if Telstra was partly privatised, $120 million raised from the sale would be used to fix television black spots in country areas. Members can see what country people are thinking about Telstra. The federal Liberal Party is having a great deal of difficulty convincing country people that the rest of Telstra should be privatised and, when one looks at the broken promises that were made when it

dispensed with the second tranche of Telstra, members can see why.

This money was going to be used to fix television black spots in country areas. Neil Andrew, the federal member for Wakefield, in a media release dated 27 October 1998, said:

> A re-elected Coalition Government will allocate funds from its $120 million Television Fund to clean up television transmission black spots in Wakefield. . . These problems can be overcome by installing new or better transmitters. . . and. . . the Coalition's plan will significantly improve the lives of many thousands of Australians in city and country Australia.

It has been over three years, and so far just four regional areas in South Australia have benefited: Truro, Swan Reach, Waikerie and Wudinna.

The people of Yorke Peninsula have missed out. It is a familiar story: before the election promises come thick and fast and then afterwards it is 'Thanks very much, see you later!' This problem can easily be fixed by putting a booster at Arthurton or erecting a transmission tower on the South Hummocks on the southern Flinders Ranges. The cost of either of these solutions could easily be covered by the interest alone from the $120 million promised by the federal government.

I recently travelled to Yorke Peninsula where Alby kindly showed me where the towers could be placed. Alby was quick to point out that we can send a man to the moon, but the 55 000 people living on Yorke Peninsula cannot get decent television reception. Alby is also concerned that when digital television begins residents on the western side of Yorke Peninsula will have their television blacked out completely.

Once again, we have a situation where country people are being taken for granted and ignored by the federal government. The thousands of people who live on Yorke Peninsula have waited a long time for some action on the question of television reception—too long in fact—and they deserve better. Alby Brand is to be commended for his single-minded determination in his fight to ensure that the people of Yorke Peninsula have access to a television signal city people simply take for granted.

Time expired.

HINDMARSH SOCCER STADIUM

The Hon. M.J. ELLIOTT: The release of the Auditor-General's Report today into the Hindmarsh Soccer Stadium redevelopment project—an inquiry which was set up following a motion that I initially moved in this place it seems about two years ago—highlights once again the government's incompetence and mismanagement of projects. It appears that the government is pretty good on coming up with grandiose ideas but very inadequate in terms of implementation in terms of ensuring that the outcomes are optimum results for South Australia.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: Quite clearly the Auditor-General in his report notes that some matters are debatable in relation to social benefit and so on but, when you look at issues regarding the management in a financial sense, I think incompetence is a word that would very quickly spring to mind on reading the report. In part, the report states:

> It is not a case that adequate controls did not exist. They did. It was simply that they were repeatedly disregarded by those who had a responsibility to apply them. In summary, the following critical controls were disregarded.
>
> · At no stage was any adequate feasibility study or cost benefit analysis undertaken of the proposed redevelopment.
> · Cabinet submissions upon which approvals were given by Cabinet for the undertaking of major financial commitments and legal obligations were inaccurate and incomplete in material respects.
> · Alternatives to the Stage 2 redevelopment were disregarded. Building a less expensive stadium was not adequately considered. Using a different venue was not adequately considered.
> · In particular, Treasurer's Instruction 9105 was disregarded in the project initiation phases. It required compliance with Treasury Information Paper 90/1 that required presentation of multiple options including the "do nothing" option. Non-compliance with these requirements constituted a breach of the Public Finance and Audit Act.

The report also notes that FIFA and SOCOG requirements were inadequately defined. Further, the report states:

> Despite recognition by all levels of Executive Government of the importance of the need to resolve ownership and management issues before commitment to the project, these issues were not adequately addressed until earlier this year.

The Auditor-General also noted that the Public Works Committee process was undermined due to inaccurate and confusing statements about the requirements of SOCOG, among other things. It has to be a matter of grave concern that not only does the government mismanage matters internally, it then fails to carry out its due responsibilities in relation to the checks and balances which are applied through this parliament.

It is not unlike the management of the Glenelg development. Only yesterday the Auditor-General's annual report was tabled. On page 118 of the Audit Overview, he looks at the Glenelg Holdfast Shores development. I note that there has been a major variation in the return the government can expect from initially a figure, as I recall, of about $9.6 million, which is down to $3.7 million. When one considers that around $50 million worth of public money and/or assets have gone into this project and there is a return of $3.7 million approximately and, on the government's current admissions, we are now spending $1.7 million a year in perpetuity for the movement of sand and seaweed in relation to Glenelg and West Beach, one has to say that things have gone sadly astray.

The Hon. T. Crothers interjecting:

The Hon. M.J. ELLIOTT: Pointed out right from the very beginning. Again one could ask whether or not adequate feasibility and cost benefit analyses were carried out prior to the event. We also see that there was some overcharging with the EDS contract which now appears to have been recovered. Again one has to be mindful that when the government signed that contract we still did not know how much it was costing us on an annual basis for computing, yet it signed a contract and it was some three years after the signing of the contract before we finally found out what we were expected to pay. This is repeated management incompetence from this government.

Time expired.

SOCIAL DEVELOPMENT COMMITTEE: INQUIRY INTO BIOTECHNOLOGY, PART I, HEALTH

The Hon. CAROLINE SCHAEFER: I move:

That the report of the committee on an Inquiry into Biotechnology, Part I, Health, be noted.

The committee received this reference as a motion passed by the House of Assembly on 6 April 2000. The reference required the committee to:

> Investigate and make recommendations to the parliament in relation to the rapidly expanding area of biotechnology in the context of its likely social impact on South Australians.

It was quickly evident that inquiring into biotechnology would be an impossible task, as the term is used to describe processes that have been part of life for thousands of years, such as using yeast to make bread and wine as the Egyptians did in 4000BC and the Aztecs making cakes from spiridina algae in 1500AD.

Following initial research and consultation with experts in the field, it became clear that it was what is known as modern biotechnology that the committee should concentrate on in its inquiry; that is, research based activities and developments that have been made possible only since the release of research identifying the structure of DNA and, in particular, its most recent innovation, gene technology. Even with this limitation, the Social Development Committee could have investigated many industry sectors that are using gene based research, including the health, agriculture, forestry, mining, manufacturing and chemical sectors.

However, from a social perspective and from the perspective of where most public interest and concern currently lay, it was decided that the areas of health and food production would form the basis of the committee's inquiry. The report being noted today is the first of two that the committee will table for this reference and deals specifically with the area of biotechnology and health. Our aim with this report is to provide our colleagues and members of the public with a summary of the major advances, issues and impacts of biotechnology; to point to areas where legislation or regulation may be indicated, education required or caution suggested; and to sectors that should receive support to assist in the development of informed debate and discussion.

As I indicated a moment ago, the committee held discussions with experts in the field of biotechnology before we commenced hearing evidence. On behalf of the committee, I would like to thank Professor Richard Head of the Human Nutrition division of the CSIRO; Professor Peter Langridge of Plant Sciences at the Waite Institute; and Professor Simon Robinson and Ms Angela Gackle of the Plant Sciences division of the CSIRO for their assistance.

The Social Development Committee commenced taking evidence for this inquiry on 17 August 2000, hearing from 30 people representing 10 organisations, agencies or groups (both public and private) and nine individuals. We also received 15 written submissions and undertook two site visits, the first to the premises of Bresagen Limited and the University of Adelaide, and the second to Bionomics Limited.

The phrase 'great benefits or serious risks' can sum up the committee findings, for we heard that there was the potential for both. However, while there were certainly those who perceived that there were risks and cautioned against the speed with which some developments were being incorporated by the health sector, there was almost total agreement that the potential for good was enormous. As former US President Clinton put it:

> . . . we are learning the language in which God created life. Humankind is on the verge of gaining immense new power to heal.

This immense power has been gained following the release of the 'book of life', the first draft of the complete human genome. In attempting to come to grips with this incredibly complex subject, we were fortunate to have Professor Grant Sutherland, Director of the Department of Cytogenetics and Molecular Genetics at the Adelaide Women's and Children's Hospital (who worked on the human genome project), as well as other well qualified professionals. They provided the members of the committee with a crash course in genetics.

We were told about chromosomes and deoxyribonucleic acid—thankfully shortened to DNA—and the double helix structure, base pairs and genes and proteins. Members were then told of the incredible potential for gene based cures and preventive gene based intervention that this understanding of our genetic makeup offers. Already there are genetics tests that make it possible for individuals to discover whether they have a genetic propensity for developing chronic and/or incurable diseases, for example, tests for diseases such as Huntington's, that can assert with 100 per cent accuracy whether an individual will or will not develop the disease.

In the not too distant future we can expect that we will understand the genetic basis of diseases such as breast cancer and epilepsy. There is hope already that treatments for diseases like Parkinson's will be developed in the coming years and, beyond that, we will see specific gene therapies that will offer complete avoidance of some diseases by replacing those that are defective with healthy genes. I heard a science program recently on late night radio that suggested that my generation may be the last to die of natural causes, and today there was an article saying that we can expect to live to 150 years if we wish but that it will be expensive.

The issues raised during this inquiry were consistent across most witnesses and included the following:

- the need for the public to be given accurate, unbiased information about what biotechnology is and what is and is not currently possible;
- issues of intellectual property and the 'patenting of human life';
- ethical issues, particularly those associated with genetic testing and stem cell research;
- the respective roles of governments and private enterprise in undertaking or facilitating research and the development of markets; and
- that the issues raised by biotechnological advances be openly debated.

The need for informed and rational debate about biotechnology, what is and is not possible now and what will be possible in the future, was supported by each witness heard by the committee. There is a need for society to understand the context in which developments made possible by biotechnology are introduced, and the consequences of those developments and decisions; and to understand what the implications will be for our future and to take account not only of the immediate advantages for individuals but the consequences for global society and the environment.

Worldwide, the discussion of biotechnology and whether it is a good or bad thing has been characterised by emotion rather than fact. For example, the commonly referred to tomato containing a salmon gene, which has given rise to much debate about Frankenstein foods, the committee has been informed does not exist and is unlikely to do so. So, how do we ensure that factual, rational debate of the true potential of biotechnology occurs so that society can make informed choices about what it wants?

Again, almost without exception the committee was advised that there was an urgent need for more investment in general science education in schools. Similarly, governments were urged to be more proactive in putting clear, easily

understood and factual information out to the public generally. As the committee was told, it is not a lack of information that is the problem. The internet and almost daily media coverage of some supposed new development have ensured that there is no shortage of information; rather, that there is a lack of understanding of the basic scientific principles involved, so the sorting of fact from fiction is difficult.

In such circumstances, it has been easy for some groups to generate scare campaigns that have inhibited real debate on the good and the bad of biotechnology. As always with references to the Social Development Committee, there were aspects of this inquiry that touched on individual moral values. With this reference, it was stem cell research. This research has made many health advances possible, and current cancer research relies on the use of stem cells.

Stem cells used in research come from human embryos. Obviously, support for this avenue of research will rest on whether one believes that using unwanted embryos for research is morally supportable. There is hope that it will be possible to regress mature cells to stem cells the equivalent of a five day old embryo. However, this is some time away and, until that time, this issue will continue to challenge society.

In some cases predictive genetic testing can determine with 100 per cent accuracy that a person will develop a disease; in others, likelihood can be predicted. For some diseases the results will assist an individual to take steps, perhaps diet and lifestyle changes, to delay or avoid the onset of disease, or minimise its impact. For others it will simply tell them that the onset will happen, but not when, an example being Huntington's disease that has a 100 per cent mortality rate. Some people do not want to know. Some people want to know, but a positive result will have wider implications than for just themselves; there are also other family members. Should these other family members be told of the results if they also affect them? Must they be told? What if they want to know? What if they do not?

Some people fear that predictive testing could become mandatory and be used as a means of discriminating between people, for example in employment or access to insurance. There is no evidence that these fears will be realised. Representatives of the Investment and Financial Services Association of Australia assured the committee that their industry is acting to ensure that such discrimination does not occur. However, the possibility remains.

It will need continual monitoring by society to ensure that the tests available now and into the future continue to have positive benefits: that individuals continue to have the right to choose to undertake predictive testing or not, to choose what to do with the results and be protected against the potential negative impact an adverse result might have on their financial and social life.

Can life be patented? Yes it can. Should it be? The question was raised a number of times during this inquiry and the arguments both for and against were equally compelling. Medical research is enormously expensive and companies that invest heavily view their intellectual property no differently from physical assets such as stock, plant and equipment, except that the asset protected by a patent is an intangible, it is their knowledge.

It was explained to the committee that, while individual genes are being patented, in reality it was not the gene itself that was owned but the information derived from the gene and any commercial applications that may flow from that information. There was little disagreement with the evidence that research is expensive and that those taking the financial risks ought to be able to protect their investment.

However, we were also told that the practice of patenting has restricted access to knowledge and access to some treatments to those who can afford to pay. There was also the assertion that large international corporations are able to exert a stranglehold over much genetic information at the expense of the smaller players, such as those that we would have in South Australia. We were advised also that agreements that have required Australia to come into line with international practices are not in the financial interests of Australia under the current level of ownership of Australian patents.

There is strong evidence that South Australia is a world leader in some areas of biotechnological research and that, while we cannot compete with the likes of the USA with regard to population and research dollars, we are very clever in some areas, and it is in these niche markets that we must develop. Well-known local examples of small companies leading the way in biotechnological research are Bionomics Ltd, BresaGen Ltd and Gropep. Important in the development of biotechnology businesses locally has been the transfer of knowledge between research institutions and start-up companies. The committee was told that it is essential to continue to foster a strong public research sector through the universities, the public health system and also public service departments, that it was the innovative type of research often undertaken in the publicly funded institutions that may have no initial economic benefit but which often leads to the most important discoveries.

Governments have an important role to play in ensuring that public institutions are provided with the funding required to retain our best brains in our local institutions and also to attract those that they can from overseas. Additionally, governments should assist with the development of rural research into fully developed products by fostering links between public institutions and private enterprise, so that the expertise of both is utilised where it is of most benefit and where the financial rewards are shared equitably.

In South Australia a biotechnology task force was established in 1999 to look at how our fledgling biotechnology industry could be assisted. This grew into BioInnovation SA, which was launched early in the year 2000. In June of this year the 'Bright is the Future' initiative was launched. This will see $12.5 million over four years made available for the creation of a bioscience business incubator and the provision of commercialisation and pre-seed support for start-up biotechnology ventures.

In conclusion, even though it may take many years to finally unravel all the secrets of the human genome, and many, many more, if ever, for all the potential benefits to flow through, it is difficult not to be excited by the possibilities that biotechnology offers in the area of health. This has been a fascinating inquiry to be part of, and the members of the committee have been privileged to hear, in some cases, from world leaders in their field. I am sure that all of us have learnt a great deal from these eminent scientists, when all of us have lay backgrounds ourselves.

There may be some serious risk involved in biotechnology in the health area. There are challenges to society in how we will deal with ethical issues that have already been raised and the many more that will be. However, there is no doubt that the enormous potential for good that biotechnology offers is worth some risk.

I wish to thank the others members of the committee: from the Legislative Council, the Hon. Sandra Kanck and the Hon.

Terry Cameron, and from the House of Assembly, the Hon. Dr Bob Such, Mr Joe Scalzi and Mr Michael Atkinson. I also want to thank the staff members, our Secretary, Robyn Schutte, and Ms Mary Covernton, who was the research officer for this report. She has now been replaced by Mrs Pam Chapman. I would also like to thank Hansard for their efforts. They told us on many occasions that the scientific language, which I certainly could not repeat or spell, was inordinately difficult for them to record. However, I think many of them, like the rest of us, by the end of our hearing felt they had learnt a great deal and, in fact, enjoyed the exercise and the learning experience, even if they did not enjoy taking down these dreadfully difficult scientific words. I thank you all.

The Hon. SANDRA KANCK secured the adjournment of the debate.

CLAYTON REPORT

The Hon. P. HOLLOWAY: I move:

That this Council directs the Attorney-General to direct Mr D. Clayton, QC to complete and provide to the Attorney-General his report into issues surrounding Mr J.M.A. Cramond's inquiry regarding Motorola on or before 22 October 2001, and that, further, the Attorney-General shall, on 24 October 2001, or within 48 hours, whichever is the sooner, pass the report to the President of the Legislative Council who shall, within one day of receipt, table the report or, if the Council is not sitting or the parliament has been prorogued, publish and distribute such a report, and that, further, this motion replaces all previous decisions of the Council in relation to the tabling of the Clayton Report.

This motion relates to the report that is currently being undertaken by Mr D. Clayton, QC which, in turn, is looking into issues that were surrounding the earlier report by Mr J. Cramond in relation to the Motorola contract. Members of this Council I am sure are well aware of the background of this matter. It has been the subject of debate on a number of occasions. Mr Cramond produced his report some time back. It subsequently emerged that there was some information that became public that had not been given to Mr Cramond at the time of his original report. As a consequence of that this Council called for an inquiry, which was ultimately undertaken by Mr Clayton.

Earlier this year, back in July, I moved an amendment in relation to the handling of the tabling of that report. The opposition was, naturally, keen that that report, given the considerable public interest in it, should be made available to members of this Council and to the general public of this state as soon as possible. Basically, the motion that I move today seeks to replace that motion and to put a time limit on it. In effect, this requires Mr Clayton to have his report available by 22 October so it would then be tabled in this parliament within 48 hours or, if the parliament is not sitting, that it would be made public. We are quite confident that Mr Cramond would be able to complete his report within that time frame, and October was the time that was set—

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: Well, as I understand it there has been some publicity in relation to the effect that this report had been nearing completion and that it was at the stage where it could be sent out for those who might be affected by it to comment on it, so we have no reason to believe that it could not be completed within the time, providing there are no delays of the type that we saw in relation to the Auditor-General's report on the Hindmarsh Stadium.

Ironically, that report is being handed down in this parliament today. Members might recall that the Auditor-General put an interim report out on one of the last days of the session back in July, pointing out that he had problems in relation to completing his report because of the delays that he was experiencing in trying to get comments from affected parties in relation to that report. We believe that it would be inappropriate if such a thing were to occur on this occasion; we certainly hope that it would not.

It is clearly in the public interest that this report be made available as soon as possible. I would suggest that it is also important in relation to the cost to the taxpayer of these reports, such as the one we have had today by the Auditor-General; these reports are extremely expensive and, if they are unduly delayed because of various legal tactics and so on that are adopted to prolong these reports, it can only add to the cost to the taxpayer in relation to such matters.

The Hon. Diana Laidlaw: In the pursuit of natural justice.

The Hon. P. HOLLOWAY: Well, the pursuit of natural justice—it is appropriate that natural justice be given; however, we have seen our legal system used, or more likely abused, down the years by people who have used the legal system to avoid justice rather than to gain justice. The classic example of that was Alan Bond who would sue at the drop of a hat to try to avoid justice, rather than gain it.

The Hon. Diana Laidlaw: You are not putting any government minister in that category?

The Hon. P. HOLLOWAY: When the Auditor-General brought out his interim report back in July, he made the comment that the natural justice process was delaying his report and, as a consequence of that, this parliament passed a resolution requiring that that report be tabled today.

We would hope that none of that would be the case here. But, just to make sure, what we are saying with this motion is that there should be a time limit on it, that is, that the report should be completed before 22 October and that the report would then be suitably dealt with, either by tabling in this parliament or, if the parliament had been prorogued, then it would be made public in any event.

I do not think I need to speak for any longer on this particular matter. We have had discussions on this matter on a number of occasions and we have also had a number of discussions in relation to the processes involved with reports of this type. I seek the support of the Council for this measure. Obviously, this motion would need to be passed during this parliamentary sitting week if it is to have any effect because, of course, the parliament adjourns for two weeks after our sitting tomorrow. What I would seek to do, if members wish further time to discuss it and we cannot vote on it now, is to adjourn it until tomorrow so that we could, in any event, deal with the matter this week.

The Hon. Diana Laidlaw interjecting:

The Hon. P. HOLLOWAY: I have not been able to do that but perhaps we could adjourn this on motion and then, if members wish further time to analyse it, I am happy for us to complete it tomorrow. Given the importance of the matter, I think it is important that we have a vote on it this week. With those comments, I commend the motion to the Council.

The Hon. DIANA LAIDLAW secured the adjournment of the debate.

REFERENDUM (GAMING MACHINES) BILL

The Hon. NICK XENOPHON obtained leave and introduced a bill for an act to provide for the holding of a referendum of electors relating to gaming machines. Read a first time.

The Hon. NICK XENOPHON: I move:

That this bill be now read a second time.

This bill provides for a referendum of electors at the next state election in relation to the issue of poker machines and gaming machines. I want to emphasise that there are two distinct issues here to be considered by honourable members. The first is with respect to the issue as to whether electors ought to be involved in this particular issue; the issue of the pros and cons of poker machines is, in many respects, a secondary issue. So, the threshold issue is: should South Australians have a say, via a referendum, on the issue of poker machines?

The whole issue of participation by citizens in important issues has been raised by Charles Handy, the British broadcaster and writer, a man who has been an oil executive, a business economist, a professor at the London Business School and chairman of the Royal Society of the Arts in the United Kingdom. Mr Handy has said that—

The Hon. Sandra Kanck: Professor Handy.

The Hon. NICK XENOPHON: —Professor Handy, in his book *The Hungry Spirit*, has said:

> A servant government has to be seen to be working for its citizens, with their consent and agreement, not ordering them about for its convenience. If we are to feel that it is our government serving us, we need to be kept informed, encouraged to participate where appropriate and be assured that we as individuals will be guaranteed our basic freedoms. While it may often be necessary to remind people that rights entail obligations, it is also pertinent to remind our rulers, who should be our servants, that obligations need to be balanced by rights, because it is rights that buttress dignity.
>
> The first duty of a government, therefore, is to inform its people. It is, however, the assumption of most people in authority that the truth is too important, or too complicated, to be entrusted to ordinary folk. Sometimes this is true; in war, for instance, or in a national emergency. More often it is an excuse because explanations are too difficult or too painful. If, however, governments truly see themselves as the servants of the people they should accept the necessity of [telling] the people everything . . . Secrets evaporate when exposed to the light and then we mostly wonder why they were ever secret.
>
> It is for this reason that I have also become a convert to the idea of referenda. It is argued that the decisions reached by this method are often wrong. But there is little evidence that they are any worse than those taken on the people's behalf by their elected representatives. Those countries with extensive experience of referenda, find that the necessity for a referendum forces politicians to explain the issues. At the same time the populace is encouraged to focus their minds on the questions before them. Referenda make the symbolic point that some decisions are too important to be left to politicians, and that the people can be trusted to be responsible for their own future as a society. Referenda are a form of public education and for that reason alone we need more of them.

This bill allows for a referendum on the issue of poker machines and it is important to put into context the impact that poker machines have had on South Australians and the lack of the direct choice that South Australians have had on the introduction of poker machines in this state.

In 1992, an *Advertiser* opinion poll on the issue of the introduction of poker machines was very clear in terms of the opinion of South Australians on this issue. An *Advertiser* article of 24 July 1992 headed '60 per cent now oppose SA pokies' indicated that 38 per cent of South Australians said yes to the question 'Do you think that poker machines should be introduced in South Australian pubs and clubs?', 60 per cent said no, and 2 per cent did not know.

Since that time, a number of other surveys have been conducted. A survey conducted by Young and Rubicam in 1997 indicated that 79.1 per cent of those surveyed believed that gambling can negatively affect the South Australia economy. I understand that part of that survey was the impact of poker machines on the South Australian community. The Australian Retailers Association survey conducted last year indicated that about 62 per cent of South Australians did not want poker machines in South Australia—a very clear majority.

Perhaps one of the most comprehensive surveys carried out by the Productivity Commission was in relation to attitudes to gambling in every state and territory. It indicated that in South Australia, in relation to the freeze on poker machines, about 96.3 per cent opposed any increase in poker machines in all venues. In terms of all venues and the attitude to gaming machines in South Australia, zero per cent said that there should be a large increase, .6 per cent said that there should be a small increase, 20.7 per cent said that the number of machines should remain the same, 14.3 per cent said that there should be a small decrease, and 61.3 per cent said that there should be a large decrease. So, overall something like 75.6 per cent of South Australians wanted to see some decrease in the number of poker machines.

There is also the issue of the social impact of poker machines. The Premier, the Hon. John Olsen, has been very clear in his statements on poker machines. He has said that the introduction of poker machines into hotels in this state was a mistake. He has made a number of strident remarks in relation to the impact of poker machines, and his position is very clear. The Premier's position has been stated on a number of occasions. In December 1997, the Premier said:

> . . . we made a mistake with poker machines in South Australia, and I think it is time that we admitted it.

He went on to say that, whilst the Gaming Machines Bill was a conscience vote in this parliament, it was a mistake. He went on to say:

> It was a mistake because it allowed the introduction of poker machines into hotels and pubs as well as into licensed clubs. It was ill-conceived and ill-considered.

He continued:

> It is fact that easy access to gaming machines has led to a level of gambling in this state that no-one foresaw; it is fact that easy access to the machines has led to a level of compulsive gambling that was not, and could have been foreseen—and that has certainly shocked me. Even those who rail against the concept of the nanny state, which legislates to protect people from themselves, must be shocked at what this gambling freedom has, in fact, created within our economy and our society.

In relation to the Premier's remarks, the Productivity Commission has found that poker machines are the biggest source of problem gambling in this country. The commission's report, released just under two years ago, indicated that about 290 000 Australians have a significant gambling problem, each affecting the lives of at least five others, and poker machines account for between 65 per cent and 80 per cent of problem gamblers in Australia.

One of the key messages or findings of the Productivity Commission was that greater accessibility to gambling machines has increased the risks of problem gambling for most. Also, problem gambling prevalence rates tend to be highest in areas where accessibility to poker machines is the highest. The state that does not have poker machines—

Western Australia—has the lowest level of problem gambling. The very comprehensive report of the Productivity Commission, instigated by the federal Treasurer, the Hon. Peter Costello, points out that 68.9 per cent of those seeking gambling counselling do so as a result of poker machines, and that they are the most significant source of referrals to problem gambling services and the greatest source of problem gamblers in this country.

The impact of poker machines is a very significant issue in this state. If you translate the Productivity Commission figures regarding the number of problem gamblers into South Australia, this would mean that upwards of 100 000 South Australians are in some way directly affected by the gambling bug brought about by the proliferation of poker machines. That is something that the commission has outlined. It has not been disputed and, in fact, it is backed up, in many respects, by the study carried out by the Department of Human Services that was released only a number of weeks ago.

The referenda proposals in sequence are: first, whether South Australians favour a continuation of the freeze on the number of gaming machines in hotels and clubs in South Australia; and, as we are aware, that freeze expires on 31 May 2003. Secondly, whether South Australians are in favour of the removal of all existing gaming machines from hotels but not from the casino or clubs in South Australia within the next five years. The third question is whether all gaming and poker machines should be removed from the casino, hotels and clubs within the next five years. The final question relates to a requirement that all gaming machines be fitted with a device or mechanism to prevent betting of more than $1 per minute.

In relation to the freeze question, we are aware that in the Productivity Commission survey about 96 per cent of South Australians said that they do not want to see any more poker machines. It took some time for the freeze legislation to pass when it was first mooted and debated in this chamber. Amendments to government legislation were moved in December 1997. That legislation eventually passed at the end of last year. It is important to give South Australians a say to ensure that a freeze on poker machines is maintained.

The second question allows for machines to be removed from hotels rather than from the casino and clubs. It gives South Australians a choice as to the extent of the proliferation of poker machines. There are 500-plus poker machine and hotel venues in this state; and hotels make up for approximately 93 per cent of the poker machine losses in terms of pubs and clubs. So, it gives South Australians a choice. The third proposition—and the one I personally favour—allows for the removal of poker machines from all venues in the state.

The final proposition is, in a sense, an alternative that relates to the nature of poker machines to minimise the amount that can be bet to $1 per minute. We need to put this in context. In 1992, when the Marketing Development Manager of Aristocrat Poker Machines, Mr John Bowly, came to South Australia in the context of the debate on the introduction of poker machines, he lashed concerns about poker machine addiction. In an article written by David Bevan, who was then working for the *Advertiser*, Mr Bowly was quoted as saying that playing the pokies was not gambling but that it was a form of entertainment. The article states:

> 'How can you say taking $20 down to a local club is gambling?'. . . Gambling is when you go in with a couple of hundred bucks and you are wiped out or win.'

Mr Bowly also denied video gaming machines were a more addictive form of gambling. Mr Bowly continued:

> 'It would take you a month of Sundays to lose $100 on these things.'

In many respects, this proposal is to simply bring into line what a senior marketing development manager with the biggest manufacturer of poker machines in this state suggested—that is, 'it would literally take you a month of Sundays to lose $100 on poker machines' if this particular referendum proposal is passed.

In terms of the mechanisms for the referendum, the referendum proposal would allow for the Electoral Commission to be responsible for its conduct. It goes through the mechanics of how the referendum would be conducted. It allows for the funding of an affirmative case, because it is a reality that the hotel industry in this state has an enormous revenue stream by virtue of its poker machine licence, and it allows for an adequate funding of the affirmative case taking that into account.

The Hotels Association has enormous revenue. There are about 120 hotels in this state where the net gaming revenue (the amount that is lost at those venues) is in excess of $1 million a year. The top 10 venues alone in figures released by the Liquor and Gaming Commissioner earlier this year had net gaming revenue of about $44 million, with the top venue earning $5.4 million. So, we need to take into account the enormous political and economic muscle that the industry has by virtue of having a poker machine licence. This is not a bill for a plebiscite. If any of these measures are carried in the affirmative, they will be passed into law.

This bill will allow robust debate on the issue of poker machines and the extent of accessibility that we have. The Hon. Legh Davis has raised the point of what would happen to the significant revenue stream from poker machines. I think it is a valid point. The benefit of a referendum is that it is incumbent on those for the affirmative case to put forward—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! Interjections are out of order.

The Hon. NICK XENOPHON: The benefit of a referendum would be to put all that on the table. The Reverend Tim Costello has made the point—

The Hon. L.H. Davis interjecting:

The Hon. NICK XENOPHON: Yes, I will address that. The Reverend Tim Costello has praised the federal government for the introduction of the GST, because he believes that the GST is a growth tax which, in the medium to long term, will allow for a lessening reliance by states on gambling revenue. Lenore Taylor in an article in the *Australian Financial Review* of December 1999 headed 'Why gambling is taken for granted' sets out her view that the Grants Commission penalises those states which have policies that discourage gambling. So, clearly, in the context of dealing with this issue there must be a broader debate about the effect on the community of reliance on gambling taxes and the commonwealth's role in assisting states to be weaned off gambling taxes.

Again, this measure allows for a five-year lead-in time. There was no five-year lead-in time when poker machines were introduced into this state and devastated and impacted deeply on many small businesses. So, I suggest that this

measure is exceptionally fair to the gambling industry and the poker machine industry in this state.

It will also allow for proposals for alternative revenue measures and debate in the community on the true cost of gambling. I have mentioned in this Council before a person whom I visited at the Adelaide Remand Centre who eventually was sentenced for 10 years and seven months for armed robbery. It was put to the court that the offence was caused by this person's poker machine addiction—and that was not disputed. I do not suggest that anyone who has committed a serious criminal offence should be let off more lightly because of the cause. If the criminal offence is committed because of a gambling addiction, no leniency should be shown. However, I make the point that this man, who was sentenced for 10 years because of his poker machine addiction, is costing the community significantly. Professor Robert Goodman, who wrote *The Luck Business* makes the point (from his studies in the United States) that for every dollar that a state government collects in gambling revenue there is a cost of at least $3 in terms of negative externalities.

These issues can be raised in the context of a referendum in terms of alternative measures of taxation that do not behave in a viciously regressive way when you look at the social impact on tens of thousands of South Australians who are deeply affected by poker machines. Whether you agree or disagree with poker machines, my plea to members of this Council is at least to give South Australians a say.

In terms of the economic impact, Mr John Lewis, the General Manager of the Australian Hotels Association, did not do his industry credit when he suggested several days ago on ABC radio that I would have the blood of 23 000 South Australians on my hands.

Members interjecting:

The PRESIDENT: Order! There is too much audible conversation.

The Hon. NICK XENOPHON: The Australian Hotels Association has previously said that 4 000 jobs have been created by poker machines in this state. Now, the figure within the hotel industry is 23 000. I am not sure where the AHA gets its figures from, but let us put this in context. When La Trobe University undertook its study on the impact of poker machines in Bendigo, where $32 million a year is lost, it found that Bendigo had a net loss of 237 jobs because of poker machines. If money is diverted away from poker machines and into the retail sector, more jobs will be created than lost. Again, having a five-year lead-in time is extremely generous.

In terms of the issue of compensation, which was raised by the Hon. Legh Davis, I have sought advice from and discussed this matter with parliamentary counsel. In an abundance of caution, I have included a clause which provides that no compensation is payable. I invite the Hon. Legh Davis to speak to constitutional law experts on this issue of whether, if state parliament legislates to remove poker machines and the licence, compensation will be payable. Obviously, that is something which—

The Hon. L.H. Davis interjecting:

The Hon. NICK XENOPHON: The Hon. Legh Davis asks whether there is a legal obligation to pay compensation. My advice from constitutional law experts is that there is no such legal obligation. The five-year lead-in time allows for the—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! There will be plenty of time for debate in committee.

The Hon. NICK XENOPHON: The points made by the Hon. Legh Davis can, of course, be made in the context of a referendum which will give South Australians a choice on this issue. This bill provides for South Australians to have a choice. Obviously, the hotel industry is perfectly entitled to put forward its arguments in a robust fashion regarding what it considers the impact will be on its industry, as can those who deal with gambling addiction at the front line regarding the benefits of winding back the number of poker machines in this state.

I quoted earlier the Hon. John Olsen, who has made a number of statements expressing his concern about the impact of poker machines. The Hon. Don Dunstan in a speech that he gave at a public rally on 25 July 1998 spoke out against poker machines. He said:

> We've got far more here in this gambling activity than should ever have been allowed to take place and the state ought to admit that the decision to establish poker machines and particularly to allow them into hotels has been a gross mistake for the state. Now we have to set about rectifying it. The problems which have been stated here today are obvious enough and we have got to stop what is going on. There should be no further development of poker machines and we should devise a means by which we peg them back over a period.

So, one of the great social reformers of this state, the Hon. Don Dunstan, expressed the view about the social impact of poker machines that they ought to be wound back. This referendum proposal gives South Australians that choice. It will allow those who are both for and against poker machines to put their views in a robust fashion. It will be good for the democracy of this state to give South Australians a say. I urge members, whatever their views on poker machines, to support this bill.

The Hon. R.R. ROBERTS secured the adjournment of the debate.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE: ECOTOURISM

Adjourned debate on motion of Hon. J.S.L. Dawkins:

That the report of the committee concerning ecotourism be noted.

(Continued from 26 September. Page 2223.)

The Hon. J.S.L. DAWKINS: I rise briefly to thank my colleagues on the Environment, Resources and Development Committee for their considered contributions of Wednesday last week and I commend the motion to the Council.

Motion carried.

STATUTORY AUTHORITIES REVIEW COMMITTEE: COMMISSIONERS OF CHARITABLE FUNDS

Adjourned debate on motion of Hon. L.H. Davis:

That the second report of the committee into the Commissioners of Charitable Funds be noted.

(Continued from 26 September. Page 2226.)

The Hon. R.K. SNEATH: I was not part of the Statutory Authorities Review Committee when the committee made its first report into the Commissioners of Charitable Funds. However, being part of the committee for its second report, I was somewhat surprised that the original recommendation to abolish the Commissioners of Charitable Funds was not adopted by the minister. Whilst preparing the second report, the committee had the opportunity to hear from a number of

specialist witnesses. One such witness, Mr Flack, the Director of Third Sector Management Services in Queensland and a highly regarded member of his profession, impressed me with his evidence to such an extent that I find it impossible to recommend the continuation of the Commissioners of Charitable Funds.

I find that the current arrangement does not allow for the money raised by hard-working volunteers and donated by generous people to be invested with the likelihood of maximum returns. I also appreciate that in this regard the Commissioners of Charitable Funds have their hands somewhat tied. I therefore believe that the abolition of the Commissioners of Charitable Funds would result in further funds being available for the various wonderful research projects that take place. I think that this was also one of the areas that frustrated Mr Fletcher, the Fundraising Manager at the Royal Adelaide Hospital, who is not at all happy with the current arrangements. Mr Fletcher also expressed his surprise that the previous recommendation to dismiss the Commissioners of Charitable Funds had not been enacted. Mr Fletcher said in evidence:

> I am of firm belief as a fundraiser that the organisation that has been given the money should be administering it and have control of it. And, as a professional fundraiser, having had close contact with our donors and supporters, I believe that they would not be happy giving away the money to a third party.

It was interesting to hear that other universities, hospitals and charitable organisations are using foundations to raise and manage funds, employing the expertise of people who have outstanding success in the area of financial management and investment. In his evidence to the committee, Mr Maurice Henderson, Executive Director of the Queen Elizabeth Hospital Research Foundation Incorporated, said:

> I believe that it is a major flaw in the structure to have the investment arm separated from the fundraising. Whilst many donations are bequests and there might not be anyone around to question what you are doing, the majority of donations we receive are from people still alive. They're making donations to our organisations to invest in research that is happening.

It is also worthy to note that the Commissioners of Charitable Funds is the only such body that exists in Australia. It is time we allowed the Royal Adelaide Hospital to manage its own funds and bring it into line with the rest of Australia, allowing the Royal Adelaide to benefit from wider investment choices and better returns. The report was supported by all members of the Statutory Authorities Review Committee and I hope that this time around the minister accepts the recommendation to abolish the Commissioners of Charitable Funds. I also take this opportunity to thank the research officer and secretary.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

STATUTORY AUTHORITIES REVIEW COMMITTEE: INQUIRY INTO TIMELINESS

Adjourned debate on motion of Hon. L.H. Davis:

That the report of the committee on an Inquiry into Timeliness of 1999-2000 Annual Reporting by Statutory Bodies be noted.

(Continued from 26 September. Page 2227.)

The Hon. R.K. SNEATH: I support the committee's report into timeliness and I take this opportunity to congratulate the majority of statutory bodies on their reports being professionally submitted. Having had the experience of keeping pressure on auditors to complete this task, it can sometimes be hard to submit a report on time. However, it was disappointing to see some reports well past the deadline and also disappointing to see that particular ministers had not made the effort to ensure that some of the statutory bodies under their portfolios had complied with the deadline. One of those who rates a particular mention is the Minister for Water Resources, who failed to table four annual reports of water catchment boards when the boards themselves had compiled and provided his office with the reports on time.

I think that this report by the Statutory Authorities Review Committee will see further improvement in the accountability of statutory bodies and ministers and result in better procedures being put in place. I support the report.

The Hon. L.H. DAVIS: I thank the Hon. Bob Sneath for his contribution and, as I mentioned in my introductory remarks, the recommendations from this committee were again unanimous in this report.

Motion carried.

AUDITOR-GENERAL, SUPPLEMENTARY REPORT

Adjourned debate on motion of Hon. P. Holloway:

That the Supplementary Report of the Auditor-General, 1999-2000 on Electricity Business Disposal Process in South Australia: Engagement of Advisers: Some Audit Observations, be noted.

(Continued from 4 April. Page 1249.)

The Hon. P. HOLLOWAY: I thank members for their contributions.

Motion carried.

The Hon. R.R. ROBERTS: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

FREEDOM OF INFORMATION BILL

In committee.

Clause 1.

The Hon. IAN GILFILLAN: From canvassing conversations in the chamber, I do not anticipate that this will be a closely contested issue. I do not want to prejudge, and I would invite others who are speaking on behalf of the government or the opposition to clarify their position but, if I am correct, there seems little point in analysing my bill—precious and valuable though it is—clause by clause if at the end of the day the positions are already determined.

The Hon. T.G. Roberts: Everybody should see it as precious!

The Hon. IAN GILFILLAN: 'Everybody should see it as precious,' says the frontbencher for the opposition, the Hon. Terry Roberts, obviously cementing himself into support for my bill! That is a sort of preliminary opening up of the batting, and I will be interested to hear whether other members of the chamber want to deal with this clause by clause. I will be happy to do that if that is the case, but I do not see it as essential.

The Hon. R.D. LAWSON: The government will be opposing this measure. As members will be aware, the government already has on the *Notice Paper* a bill containing significant amendments to the Freedom of Information Act, which we believe correctly and appropriately addresses the issues identified in the report of the Legislative Review

Committee, which recommended the bill that the Hon. Ian Gilfillan has introduced, with one very minor amendment.

It is worth saying that the freedom of information regime in South Australia is one of relatively recent introduction. The model adopted in South Australia has been adopted in other Australian jurisdictions, and more recently the United Kingdom (following an extensive consultation process, a white paper and a green paper) has introduced a Freedom of Information Act that is substantially in the same form as that which has been adopted in the Australian states and federally.

The government agrees that a number of improvements can be made to the Freedom of Information Act and, accordingly, in our amendments we have sought to achieve those improvements. For example, one of the major complaints has been the time taken to dispose of freedom of information applications. Presently, 45 days is allowed, and the government measure proposes that that be reduced to 30 days, a not inconsiderable improvement. The Hon. Mr Gilfillan, on the other hand, in his bill proposes that it be reduced to 20 working days.

The advice that the government has received from freedom of information officers across government is that 20 working days is, for many of the rather more complex applications, simply insufficient time. Many will be dealt with within that time, but some requests require significant examination of records, and it is for that reason that the government has suggested 30 days rather than 20.

The honourable member's bill also, and here I am speaking in very general terms, proposes the abolition of the process of internal review. Presently under our act internal reviews are permitted. If a freedom of information officer down the management line in a department refuses a request, it is possible for the person making the request to ask that a senior executive within the department review that decision. That is an important and useful mechanism and one that the government would wish to retain, and it is retained in our amendments, although we do propose to give to the Ombudsman and the principal FOI officer additional powers, and also to encourage conciliation of issues.

The bill introduced by the Hon. Ian Gilfillan would abolish appeals to the District Court except on questions of law. The government, however, believes that it is appropriate to have a right of appeal to the District Court, not only on questions of law but also on the merits of an application. That is an important protection for the citizen. It is already in the legislation, and I am frankly surprised that the Hon. Ian Gilfillan, supported by the Australian Democrats, would take away that right that currently exists to any citizen dissatisfied with a decision under the Freedom of Information Act.

The most important and significant difference between the bill proposed by the Hon. Ian Gilfillan and the existing legislation, which has been in force for a number of years in South Australia and which we seek to amend, is a changing of the test by which public interest considerations are judged. The present act does have a significant advantage in that it defines quite specifically in schedules to the act those documents that are exempt from it. It makes it easy for any citizen or any public servant, on the other hand, to know exactly where the line lies in relation to a particular application.

What is suggested be introduced is to change from that objective and fixed line to a subjective test about public interest: a subjective test that is quite a complex issue. What is being removed or is sought to be removed is something that is simple and straightforward—one might not always agree with where the lines are drawn but they are certainly drawn—as opposed to something that is subjective and quite complex. This is highlighted in the fact that cabinet documents, for example, would not under the bill of the Hon. Ian Gilfillan be exempt from a freedom of information application.

What would be required is someone to make a judgment about whether the public interest was or was not served by the release of a particular document that is prepared for cabinet. The government happens to believe that the Westminster system depends on the secrecy of cabinet, that government decisions are taken in camera in a confidential setting and that the documents prepared for cabinet are freely and fiercely prepared.

It is advice to the government which cabinet ministers are entitled to examine and discuss without the prying eyes over their shoulder. We do not believe that there should be any occasion for the breaking down of that very important principle of government.

Accordingly, we prefer to remain with the existing model—tried and true, adopted elsewhere in this country and federally and one which preserves cabinet secrecy. The honourable member's bill would, as it were, open the cabinet door to any prying eyes and then require a detailed examination to be made on a case by case basis of whether or not some document is in the so-called public interest, determined by some freedom of information officer. Accordingly, it is for those reasons that this bill is opposed.

I should also add that it is undesirable to tear down a model that has been established. We are still working on it, and we are still seeking to improve it and to set up an entirely new model, an untried model, and one which, I acknowledge, does have the support of certain academics but one which is not supported by those engaged in the practical business of governing the state.

The Hon. P. HOLLOWAY: When we last debated this bill (I think it was the day after the government introduced its own Freedom of Information Bill), I made some comments at the time that we had a choice of two approaches before us as far as freedom of information legislation was concerned. We have before us the Hon. Ian Gilfillan's bill, which arose out of the Legislative Review Committee's consideration. Incidentally, I was the member who—I think it was in February 1997—originally moved the motion in this Council for the Legislative Review Committee to examine FOI because, from the experience I had at the time in gaining documents under that act, certainly I was aware of the deficiencies in that area.

That is one model. In response to the committee's report and the proposed bill, the government made its announcement and then in the last week of the session (in July) the government produced its own bill. I made the comment then that we would look at the two approaches and make our decision when parliament resumed. The opposition has had the opportunity to discuss these matters. We believe that at this stage, the eleventh hour in the parliament, it would be a better approach to adopt the government's approach. As the Minister for Administrative and Information Services just pointed out, it is more of an evolutionary approach based on the existing FOI Act, which was introduced about nine or 10 years ago.

We would see that as a better approach at this late stage rather than going with a more radical measure. That is not to say that we necessarily believe that the amendments moved by the government in all cases will go far enough. I suspect that we will be revisiting the Freedom of Information Act in

the future and again looking at further changes. Nevertheless, we do accept that the proposals the government has made are advances in the area and at least improve the situation. Dealing with a government bill at this eleventh hour of the session, I believe that it is much more likely to get through the parliament and be in operation than perhaps would be the case with a private member's bill.

Essentially that is the approach of the opposition. At this stage, we will be supporting the government bill and, therefore, we would not support this approach, although at this point let me put on record my appreciation of the job that the Legislative Review Committee has done in bringing forward its report and raising these issues. It has highlighted many of the problems. The committee's report states:

> The overwhelming volume of evidence received by the Committee is that the South Australian Freedom of Information Act is not operating in a manner that meets the objectives of the Act passed by Parliament in 1991.

I certainly would endorse that comment. In response to the government's proposal earlier this year, I point out that my colleague the Deputy Leader of the Opposition in another place made some salient points, as follows:

> The so-called 'sweeping changes' proposed. . . by the Olsen government would be totally unnecessary if the Government bothered to follow the FOI Act in the first instance. It is the Olsen government that has failed to properly follow the Act to this point. The government can bring in any changes to legislation that it likes but, unless there is the will of government to follow it, it will not work.

That is an important point to make about the FOI Act. If a government believes that information should not be made available to the public, if it treats the act as a freedom from information rather than a freedom of information act, then, no matter what legislative provisions we put in, it will be very difficult indeed to get the act to work.

Whatever legislation we do have, it really does require a commitment on behalf of the government of the day to openness in government, and unfortunately we have not always had that in this state in the last few years—and I am sure members would be aware of many instances. Anyway, that is the approach of the opposition. We will not be supporting the bill at its final reading because we will be supporting the approach of the government. However, I will make some comments in relation to the government bill later. There are a couple of issues, for example, the local government provisions on which the opposition is still finalising its position. Hopefully, we will be in a position to debate that bill when we meet in the next sitting week. With those remarks, I hope I have outlined to the Council the approach the opposition will be taking on this matter.

The Hon. IAN GILFILLAN: My wish that we deal with the committee stage expeditiously was slightly thwarted by a rerun of the second reading speech from the Hon. Robert Lawson, but it was nice to hear a contribution from the Hon. Paul Holloway which really applied more to a second reading debate than the committee stage. It is unfortunate that there is a reluctance of any government, or any party that prides itself on having the opportunity to govern, to be exposed to an effective FOI Act. Although the Hon. Paul Holloway acknowledged that there needs to be a sense of cooperation and willingness on the part of the government for an FOI procedure to work, the fact of life is that governments by their very nature are resistant to FOI. Therefore, it is very important for safeguarding the rights of the community at large that there is effective adequate legislation which, if implemented, can enforce freedom of information.

The more sensitive areas such as the availability or otherwise of cabinet documents and for them to be protected and needed to satisfy an independent entity on the grounds of public interest are not just a rush of blood to the head idea of the committee: it was actually entrenched in a lot of submissions that came to us and of course reflects the New Zealand experience. I do repeat the observation I made earlier; that is, there seems to be little point in our going on clause by clause through the committee stage. It is certainly not my intention to debate the government bill at this time. I think that is inappropriate and we will have criticism to make of that measure at the appropriate time.

However, I feel that the clear indication from the government and the opposition, being the only two parties in the near future likely to hold government, is that they are nervous about this bill. I am therefore disappointed that neither of them can see fit to support it, especially as a committee of this parliament—on which all three parties were represented, and which sat over a long period of time with a vast array of contributors—came to a unanimous view of supporting the principles enshrined in this bill.

The Hon. T.G. CAMERON: I will be very brief. I just wanted to put my position into the *Hansard*. SA First will be supporting this bill. I note the Hon. Mr Gilfillan's comments in relation to the position of the government and the opposition on this. However, it should come as no surprise to him. He was predicting in the corridors months ago that, with an election in the offing and with the Labor Party expecting to go into government, there was no way that they would support a decent freedom of information bill. They have the same interests at heart as the government, and that is disappointing. I commend the Hon. Ian Gilfillan for pressing ahead with this freedom of information bill, notwithstanding that he knew a long time ago what its fate would be.

The Hon. T. CROTHERS: Independent Labour also indicates that it will be supporting the Hon. Mr Gilfillan's bill. In respect of this matter, governments of the day, whatever persuasion they are, have a penchant to shy away from the shadows of freedom of information. This is no different to the debate we are having this afternoon in respect of this matter.

I want to make point of what Roosevelt said about unemployment when he first went into office. He said there is nothing to fear except fear itself. I would tell the government and the opposition that, if they talk about truth in government, there is nothing to fear whatsoever unless it is a generated fear from what people may claim they are doing behind the scenes. I have great pleasure in supporting the proposition moved by and spoken to so well by the Hon. Mr Gilfillan.

The Hon. R.R. ROBERTS: I was actually a member of the Legislative Review Committee which conducted probably the most comprehensive review of this matter and which took evidence from a wide range of areas. I did support a bill of the same nature as that which is before us. I note also that the Hon. Nick Xenophon has before the parliament a bill which is almost in precisely the same terms. Members may wonder why I do not take complete umbrage at the fact that our party is now supporting a slightly different bill than the one we produced.

The Hon. T.G. Cameron: Slightly weaker?

The Hon. R.R. ROBERTS: Slightly different, and it probably has some attractions—

The Hon. T.G. Cameron: Use the right word.

The Hon. R.R. ROBERTS: Well, it has almost everything that is in the bill that we put forward, and it covers other areas where concerns have been expressed.

The Hon. T.G. Cameron interjecting:

The Hon. R.R. ROBERTS: Obviously, unlike some in this parliament, I do not believe that I am fearful of the truth on everything. It has been widely debated in the ALP caucus that the view being put by the government is a better view. In my opinion, it is certainly no worse than the bill before us. The bill before us was constructed by the Legislative Council and was put up as a discussion bill.

The Hon. Ian Gilfillan saw fit to bring that bill straight into the parliament, and obviously the Hon. Nick Xenophon felt that that was the proper thing to do. Clearly, when we put that bill, it was a draft bill that we believed was worthy of discussion.

As in many cases in the Legislative Review Committee, we bring down reports and often we expect the government to respond in a fairly short space of time. I have been on my feet in this parliament in the past when the government has not responded adequately or efficiently to matters that have been brought up in reports from the Legislative Review Committee. On this occasion, we had a draft bill that we put out for discussion and comment. People have taken it up. The government has responded with a bill which the Labor Party has seen fit to support in preference to the draft bill that was put up by the Legislative Review Committee. I would like to be in a position where we had a unanimous decision of a committee—tripartite in this case—upon which we could reach a solution, an agreement, in this parliament along the same lines.

I hasten to add that I do not think that we have completely abandoned the draft bill that we drew up and I am confident that the new Freedom of Information Bill will provide far greater access to the public. I think it is far more open than it was before and I think it will be a vast improvement for those people who want to access the system. I will not be supporting this particular bill but I will be supporting the government's bill.

The Hon. NICK XENOPHON: I indicate that I support the Gilfillan bill wholeheartedly in preference to the government's bill. The Gilfillan bill is, in fact, based identically on the draft bill prepared by the Legislative Review Committee. It is a bill that was prepared by a tripartisan committee after much deliberation. The work of the Hon. Angus Redford, the Hon. Ian Gilfillan, and the Hon. Ron Roberts in relation to this bill is to be commended and I am very disappointed that it has not been embraced by the government or, indeed, the Opposition. Obviously, I do not know how disappointed the Hon. Angus Redford and the Hon. Ron Roberts are, but I would imagine that, given their hard work in relation to this bill, to see a watered down version I would have thought most disappointing.

I support the Gilfillan bill. It is based on the Legislative Review Committee's recommendations on this draft bill. It is a substantial reform in relation to freedom of information. It is reasonable, it is considered and it is based on legislation in other jurisdictions which has worked. The government's bill, with all respect to the minister, the Hon. Robert Lawson, does not address a number of the fundamental issues that the Legislative Review Committee dealt with exhaustively over a number of months and, for that reason, I will be maintaining my wholehearted support for the Gilfillan bill.

The Hon. R.D. LAWSON: A couple of points have been made in committee which I wish to respond to. I commend the Legislative Review Committee for undertaking the exercise which it has undertaken and I commend the members for conscientiously undertaking an examination of this issue. The fact that the government does not agree with the conclusion reached by the members of the committee on the evidence that they had does not mean that any disrespect is intended to the conscientious efforts of those members. But, for example, one issue that the report emphasised was the claim that:

> There is a public service culture of antipathy and even antagonism to the concept of open government.

Culture of antipathy in the public service—what this government has done is to commit itself to improve the standard of education and training of FOI officers and also to ensure that FOI officers in our government have a higher standing in the particular agency than they presently have by conferring on the chief executive officer responsibilities and by creating a principle information officer in each agency. So the government is addressing, through that mechanism, one of the principal complaints of the Legislative Review Committee.

The government has also announced in the interim that all government contracts will be made public, and that policy has been implemented. There is a mechanism for determining items of commercial confidentiality or sensitivity, the release of which might not be in the public interest. That is further evidence of the government's commitment to open government and to the release of information.

Honourable members have said that this bill is based upon the New Zealand provisions. True it is. However, the situation in New Zealand is quite different. First, the Official Information Act in New Zealand was created organically out of government agencies: it was not something that was imposed by the parliament upon the bureaucracy but something that the bureaucracy developed and the parliament embraced. One important element of that process was the establishment of the Information Authority that operated for the first five years of the Official Information Act in New Zealand. It was an expensive and important mechanism that does not find a place in this bill.

It is also worth mentioning that the situation in New Zealand with regard to personal information is quite different to the situation here. It is also worth remembering that, I think, over 70 or 80 per cent of applications under the Freedom of Information Act are for personal details, whether they be hospital, police or other medical records, rather than so-called public policy documents. In New Zealand, applications for personal information by the person to whom the information relates are dealt with under a privacy act—a separate piece of legislation—which does not apply in this state.

Whilst on the subject of the Legislative Review Committee, it is worth mentioning that it was the belief of the committee that the introduction of this bill would lead to readier access to information regarding so-called policy matters. But, in fact, most publicity in South Australia about FOI applications that have been refused does not relate to policy documents, as defined. The documents that seem to excite the interest of journalists and members of parliament do not relate to policy at all but to administration matters, such as people's expense vouchers and so on. For example, a request by the Leader of the Opposition was for details of every staff development exercise and conference attended by

staff in every government department. That sort of application is more in the nature of a fishing expedition than an inquiry about policy. The current government amendments to the Freedom of Information Act will appropriately address that issue.

Finally, in relation to cabinet documents, I should have mentioned in my earlier committee contribution that an Australian Law Reform Commission report concluded that cabinet documents should be exempt. It states:

> It is not in the public interest to expose cabinet documents to the balancing process contained in most other exemptions in the act or to a risk undermining the process of collective decision making. To breach the cabinet oyster would be to alter our system of government quite fundamentally.

For those reasons, and others that I have mentioned, the government will oppose the measure.

The committee divided on the clause:

AYES (6)

Cameron, T. G.	Crothers, T.
Elliott, M. J.	Gilfillan, I. (teller)
Kanck, S. M.	Xenophon, N.

NOES (11)

Dawkins, J. S. L.	Griffin, K. T.
Holloway, P.	Laidlaw, D. V.
Lawson, R. D. (teller)	Lucas, R. I.
Roberts, R. R.	Roberts, T. G.
Schaefer, C. V.	Sneath, R. K.
Stefani, J. F.	

Majority of 5 for the noes.

Clause thus negatived.

The Hon. IAN GILFILLAN: I seek the indulgence of the committee. I have been advised that not only will the process of voting on each clause be time consuming but if each clause is defeated at the end of the committee stage there is virtually a vacuum but the bill remains. It is a most unsatisfactory process. I would ask the committee to allow the remaining clauses to pass through the committee stage and indicate their opposition to the bill at the third reading stage.

The Hon. R.D. LAWSON: It is certainly the government's point of view that that is a satisfactory process. By defeating the first clause and also in my opening remarks we have indicated our opposition to the bill, but we are happy to allow it to proceed through the committee stage without deleting it clause by clause and then vote accordingly at the third reading.

The Hon. P. HOLLOWAY: We support that course of action.

Remaining clauses (2 to 48), schedules and title passed.

Bill reported with amendments; committee's report adopted.

The Hon. IAN GILFILLAN: I move:

That this bill be now read a third time.

The council divided on the third reading:

AYES (6)

Cameron, T. G.	Crothers, T.
Elliott, M. J.	Gilfillan, I. (teller)
Kanck, S. M.	Xenophon, N.

NOES (11)

Dawkins, J. S. L.	Griffin, K. T.
Holloway, P.	Laidlaw, D. V.
Lawson, R. D. (teller)	Lucas, R. I.
Roberts, R. R.	Roberts, T. G.
Schaefer, C. V.	Sneath, R. K.
Stefani, J. F.	

Majority of 5 for the noes.

Third reading thus negatived.

ENVIRONMENT PROTECTION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 July. Page 2057.)

The Hon. T.G. ROBERTS: The opposition will facilitate the passage of this bill by supporting the second reading. But, as I indicated to the mover privately, the opposition has not considered it in caucus and we do not have a defined position on it. I was mindful of the contribution made by the honourable member when he moved the bill and said there may be some amendments and further discussion to take place to finalise the drafting of the bill. I am a member of the same committee as that of which the Hon. Mr Elliott is a member, and I support the report by the Environment, Resources and Development Committee in relation to changing some aspects of the bill, which is certainly far more wide ranging than perhaps just the EPA.

The bill is to amend the Environment Protection Act 1993 and to make consequential amendments to the Development Act 1993, the Protection of Marine Waters (Prevention of Pollution from Ships) Act 1987 and the Public and Environmental Health Act 1987. So, there are certain aspects that need consideration by our party room, which I will endeavour to undertake at the next shadow and caucus meetings.

The principles involved in some of the proposed changes are commendable and were discussed during a consequent Environment, Resources and Development Committee meeting, where some witnesses from the EPA agreed with the mover's intention in relation to some of the changes. But, as the bill indicates, there has not been any change as yet by the authority or the agency in accepting some of the recommendations that have been put forward. In fact, there are—

The Hon. M.J. Elliott interjecting:

The Hon. T.G. ROBERTS: In fact, any of them. There are major stumbling blocks in relation to the principles that the government sets and determining the lines of authority and responsibility in reporting to the minister, including the matter of whether the minister has a direct line to the authority, whether he has a direct line to the agency, and what influences the minister can bring to bear on the role of both the agency and the authority.

The other thing that we found (and I have probably confused some people who are listening) was that the EPA means two things to legislators, and it probably means all sorts of different things to the public. In fact, the EPA is a confusing acronym when you are talking about either the EPA, the agency, or the EPA, the authority, and the lines of responsibility that run through the two. It is very difficult for me, as a single committee member, to believe that the authority did not have any staff of its own to conduct its own business in defining its own independence from the agency.

The Hon. M.J. Elliott interjecting:

The Hon. T.G. ROBERTS: That is what we found—that the authority was having trouble in building up lines of communication back to the agency so that it could be an authority and authorise some of the activities in which the agency was involving itself. I am not sure that that was the original intention of the legislation when it was set up but, from memory, when it was set up under a previous Labor government (Kym Mayes was the minister), the agency was

certainly to play a role distinct from the authority, but it was not to be outside the control of the authority. We found that the authority was being administered effectively in its own right in determining what the authority's role was, and a lot of volunteer time was put in by some committed people. But it was acting in the absence of good authoritative information so that it could determine its own position in relation to the agency, and was certainly taking the heat from some of the agency's actions in the community without the responsibility of shared information.

I would argue within our own party that there do have to be some changes to the way in which the authority and the agency interact. We have had indications of change from some witnesses who believe that there ought to be a change, that the authority should have some staff so that it can be seen to be independent of the agency and not reliant on the agency for staff overlays, and that there should be clear, delineated lines of responsibility.

The Hon. M.J. Elliott interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: Yes. And we have found that those proposals that the honourable member makes in his bill are being looked at but have not yet been given due consideration for any report back to either the ERD or the minister. I understand that the minister would be having some trouble in being able to define what the new role of the authority and/or the agency would be if there were changes to those lines of communication and responsibilities, and whether governments of the day want to let go of the lifeline they may have in being able to—dare I say it—interfere in the role of the agency if the authority was in conflict with policy set by its own parliament.

There are a number of reasons why there needs to be closer scrutiny of and more attention paid to outcomes in relation to change, because the evolution process of the setting up of the agency/authority and its lines of communication back to the minister need far more discussion and debate internally, I think, and it may possibly be a good bill to refer to a committee for discussion to track down and monitor what changes the government is making at a particular time. At the moment, if it is not referred to a committee at the third reading stage, and if we do not have any recommendations for change, alteration or amendment, we will oppose the bill. But at this stage we support the second reading, and we will make our position clear before the third reading is completed.

[Sitting suspended from 6.02 to 7.45 p.m.]

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): The government does not support this measure, introduced by the Hon. Mike Elliott, to amend the Environment Protection Act 1993. The bill arises from a report prepared some time last year by the Environment, Resources and Development Committee of the parliament addressing the subject of environment protection in South Australia and, in particular, Mr Elliott's perceived concerns about measures arising from the report that would require legislative change.

I want to speak, first, from the perspective of the Minister for Transport and Urban Planning and highlight my profound concern about one measure in clause 2 in the schedule of the bill, which is an amendment of the Protection of Marine Waters (Prevention of Pollution from Ships) Act 1987. In introducing the bill, the Hon. Mike Elliott has made a consequential amendment to the Protection of Marine Waters Act. The Hon. Mr Elliott's intention is to make the act the responsibility of the minister responsible for the Environment Protection Act, assisted by staff employed by or assigned to assist the Environment Protection Authority.

The recommendation of the report to which this amendment refers was subsequently clarified by the ERD Committee following the taking of further evidence after the report was released. The report was tabled in this place on 28 June last year and my contribution was made on 5 July, and I took exception to the way in which the committee had conducted its report by failing to take evidence from the State Committee of the National Plan and yet made quite sweeping recommendations referring to that plan and the wholesale transfer of the implementation and enforcement measures arising from the plan.

I am interested that the committee seems to have taken note of my strong (perhaps even strident) comments about the lack of integrity and, I thought, credibility of the committee's recommendations, having failed to take evidence from the state committee and then having nevertheless made sweeping recommendations for change that did not even reflect evidence presented to the committee by Dr Cruickshanks-Boyd, the Deputy Chairman of the EPA.

Dr Cruickshanks-Boyd, in his evidence to the ERD Committee, had talked about the EPA's wish to have the investigating and prosecuting functions under the act transferred to the Environment Protection Act, but not all aspects of the operations and implementation of the plan. I note that in moving the fortieth report of the ERD Committee in the House of Assembly on 8 November 2000 the Chairman of the committee, Mr Venning, stated:

> It was agreed that recommendation 37 of the committee's thirty-ninth report, titled 'Environment protection in South Australia' be clarified by the inclusion of recommendation 37A, which states:
>
> The committee recommends that the Minister for Transport and Urban Planning and the Minister for Environment and Heritage formalise, by legislative amendment if necessary, that operational functions of marine pollution incidents remain with the marine group within Transport SA and the investigation and prosecution functions of marine pollution incidents be passed on to the Environment Protection Agency. I commend this recommendation to the Minister for Transport and Urban Planning (the Hon. Diana Laidlaw) for her consideration.

I did indeed consider this amended recommendation by the ERD Committee and was satisfied to support it. I now advise the Council that arrangements have been made to formalise this suggestion by the signing of a memorandum of understanding on 12 April this year between me as Minister for Transport and Urban Planning, the Minister for Environment and Heritage and the chair of the Environment Protection Authority.

The memorandum clearly identifies that the responsibility for the investigation of a pollution incident is that of the Environment Protection Agency, with any prosecution to be undertaken by the appropriate minister responsible for the act under which the offence is made. Responsibility for the operational aspects of the response to a pollution incident is to remain with me as Minister for Transport and Urban Planning. The arrangements in the memorandum are to be reviewed after each pollution incident, and in any event after three years of signing in order to ensure that these arrangements are appropriate and remain effective.

In addition, these arrangements are to be embodied in the South Australian Marine Spill Contingency Action Plan. The plan is required following the passage of the Protection of Marine Waters (Prevention of Pollution from Ships) (Miscel-

laneous) Amendment Act 2001, which passed in this place in July 2001. Under the terms of that act, the plan is to be tabled in parliament. The plan is currently undergoing revision to reflect these and other operational arrangements prior to tabling in this place. Therefore, having followed the amended recommendation from the ERD Committee's report (recommendation 37A) on environment protection, I do not believe that there is any need to pursue the amendment as proposed by the Hon. Mike Elliott to schedule 2 of his bill.

I have many other comments to make that have been prepared for me by the Minister for Environment and Heritage. He advises that the Mr Hon. Mr Elliott's bill fails from the outset to take proper account of the state government's response to the ERD Committee's report. He has emphasised that the ERD Committee's report was unanimous, as is usual practice. However, as is also usual, the government provided a response to that report which clearly indicated how the government proposed to implement the ERD Committee's recommendations. The Environment Protection (Miscellaneous) Amendment Bill 2001 seeks to address a number of the ERD Committee's recommendations where the state government's response and subsequent actions have shown that legislative change is unnecessary or even inappropriate.

Such provisions in the Hon. Mr Elliott's bill include those relating to the terms and conditions of office for members of the authority, public liaison officers and the conduct of round-table conferences. Before turning to consider the key elements of the Hon. Mr Elliott's bill, first, I must respond to his assertion that he has introduced this bill because of a lack of action by government in responding to the ERD Committee's report. I am well aware that my colleague, the Hon. Iain Evans, takes the work of the ERD Committee seriously, and much work has been done in relation to the ERD Committee's report on environment protection in South Australia.

In terms of progressing the government's review of the Environment Protection Act 1993, I advise that this review, which commenced in late 1999, included public consultation on two major discussion papers relating to offences and penalties and the powers and responsibilities of the Environment Protection Authority. A range of miscellaneous amendments to improve the effectiveness and efficiency of the act have also been considered at the suggestion of the Environment Protection Agency and others. The inquiry by the ERD Committee regarding environment protection in South Australia was also held during the course of this review.

The outcomes of the consultation process, relevant recommendations from the ERD Committee's report and the state government's response to that report were considered in the draft report prepared by the Environment Policy Office of the Department for Environment and Heritage in May 2001 and initial drafting instructions to amend the act. The initial drafting instructions were endorsed by the authority on 17 July 2001, and the Minister for Environment and Heritage is working toward introducing a bill during this spring session of parliament.

In relation to key actions taken to implement various other recommendations of the ERD committee's report, I advise that, in addition to pursuing legislative changes to improve the efficiency and effectiveness of the act, the government has been pursuing the implementation of other recommendations from the ERD committee report. I do not wish to repeat all that was provided in the government's response to the ERD committee's report, but I do note the following significant steps that have been taken since that response was delivered in May 2000. First, the government announced in the budget in May this year an extra $1.4 million over the next four years to allow the EPA to expand its regional presence. Secondly, the authority has pursued ERD recommendation 2 to conduct additional community consultation forums, having held, in addition to the annual round table conference, regional consultation meetings in Port Augusta and Whyalla in May this year. Another regional consultation meeting is to be held in Mount Gambier this month. The authority has also resolved to hold open meetings in the northern and southern metropolitan regions each year to facilitate interactions with interested environment and community groups.

Thirdly, in response to ERD recommendation 18 regarding the clarity of licences, the EPA is currently reviewing all licence conditions with a view to ensuring that they all meet the principles of clarity, consistency and legal enforceability. It is expected that this review will be completed by May 2002. Fourthly, in accordance with ERD recommendation 23 regarding the operation of a readily accessible shopfront, the Department for Environment and Heritage's environment shop on the ground floor of 77 Grenfell Street did reopen earlier this year following its recent refurbishment.

Having regard for all these circumstances, the government strongly believes that the Hon. Mike Elliott's bill is unnecessary and, at best, is an ad hoc response to the comprehensive process that the government is undertaking to review the act. As I indicated on the minister's behalf, it is his intention to introduce that bill in the spring session of this parliament. The Minister for Environment and Heritage has highlighted a number of serious flaws in key elements of the Hon. Mike Elliott's bill. First, in relation to civil penalties, the ERD committee's report recommended the introduction of civil penalties into the EPA act recommendation nine without substantive discussion after considering the offences and penalties discussion paper which was released for public consultation in December 1999.

It was observed in the state government's response to the ERD committee's report:

> The Offences and Penalties Discussion Paper introduced and discussed the concept of administrative penalties, and while the paper differentiated between civil and administrative penalties for the purposes of discussion, the terms are used interchangeably. There was broad support for the introduction of an 'administrative' penalty system in the submissions received on the paper and the Committee recommended the introduction of 'civil' penalties.

Despite not being discussed in the second reading explanation of the Hon. Mr Elliott, the introduction of a form of civil penalties is a key element of his bill. Twenty-one of the 40 clauses of the bill are designed to create or accommodate civil penalties.

Through amendments to various sections, the bill proposes to replace a range of criminal penalties with civil penalties. The proposed civil penalties are substantial, with penalties up to $250 000 available for contravention by a body corporate in some circumstances. Clause 30 of the bill before us will enable the authority to make application to the Environment, Resources and Development Court for an order that a person pay to the authority a civil penalty (not exceeding the amount prescribed in the relevant section) for the breach of a civil penalty provision in the act. Such orders would be able to be made only by a judge of the ERD Court.

The level of proof for civil penalties would be on the balance of probabilities rather than beyond all reasonable doubt as it is in the case for criminal offences. The bill provides that in determining the amount to be ordered as a civil penalty in the nature of exemplary damages, the ERD Court would need to have regard to a range of specified matters, including any environmental harm caused.

The introduction of civil penalties in the form proposed has a number of serious difficulties associated with it. First, certain serious criminal offences are proposed to be replaced by civil penalty provisions only, while other moderate offences are retained. For example, one could be convicted of a criminal offence for contravening a mandatory provision of the EPP, but only have a civil penalty apply if found to have polluted the environment causing serious environmental harm. This is considered particularly serious, not only because it creates an inconsistent approach to punishment of increasingly serious matters, but also because a person could become liable to pay a very significant penalty with the matter having been decided on the balance of probabilities only.

Also, in respect of the proposal in the bill to amend section 79(2) of the Environment Protection Act to be a civil penalty provision with a potential fine of $250 000 for a body corporate, the Hon. Mike Elliott is proposing to reduce the existing rights of a defendant to a fair trial. The existing criminal offence in section 79(2) allows for a maximum penalty of $250 000 to be imposed against a body corporate. However, for a person to potentially have a fine of more than $120 000 issued against them, the matter must be taken to an indictable offence in the Magistrates' Court. In such circumstances, the defendant has the right to choose whether the charge should be dealt with summarily or by way of committal. Importantly, if the matter is to proceed to trial, the defendant can elect to have a trial by jury in the District Court. If a fine of more than $150 000 is considered to be warranted, the Magistrates' Court must remit the matter to the District Court for sentencing. These procedural rights would not be open to a person accused of breaching the civil penalty provision of causing serious environmental harm under the Democrats' proposal.

Secondly, the civil penalty scheme proposed does not introduce a system whereby the authority can readily deal with offenders in appropriate circumstances, as can occur using the administrative penalty system proposed in the drafting instructions to amend the Environment Protection Act as is being pursued by the state government. Under the Hon. Mike Elliott's proposal, the authority would still always need to take the matter to court to extract any penalty from a person who has contravened the act.

Thirdly, the ERD Court already has the power to issue exemplary damages in respect of any civil enforcement proceedings taken under the act. Fourthly, pursuant to section 34 of the bill, depending upon the order in which actions are taken, a person could potentially be required to pay a substantial civil penalty and be convicted of a criminal offence for substantially the same action.

In relation to strict liability provisions relating to the causing of an environmental nuisance, the Hon. Mike Elliott's bill proposes that a new provision, section 82(2)(a) be inserted in the Environment Protection Act which would effectively, together with proposed amendments to the definition of an 'environmental nuisance', introduce a strict liability provision of up to $15 000 for an environmental nuisance. In other words, no mental element at all would need to be proved for the penalty to be applicable as proposed in the bill. It is considered inappropriate, in circumstances where a person was not intentionally or recklessly undertaking an activity which caused environmental nuisance, for the person to be generally liable for a penalty of up to $15 000 where it is found, on the balance of probabilities only, that an environmental nuisance was created.

The Environment Protection Act already adequately governs such circumstances by allowing the authority to issue environment protection orders or clean-up orders to such a person for breaching the general environmental duty. If a person fails to comply with such an order, they are then guilty of an offence. Also, if a person intentionally or recklessly causes an environmental nuisance they will also already be guilty of an offence.

The system established by the current act focuses predominantly on fixing the nuisance problem created by a person. The system proposed by the Hon. Mike Elliott could see the authority being pressured to take numerous small prosecutions in respect of neighbour disputes where one neighbour may not be aware that they have created a problem for the other. For the reasons discussed, I am advised that the proposed provision in the bill before us is considered too broad in application and will therefore be opposed by the government.

The last matter to which I refer is in relation to the public register. Section 109 of the current Environment Protection Act, along with supporting regulations, specifies material that must be kept on the public register. In addition, the authority has had a longstanding resolution from December 1996, which it revised on 30 August 2001, further detailing the information that will be reported on the public register pursuant to section 109 of the act. The public register administrator of the EPA has advised that the current practice is that, given the huge volume of material available under the register and the changing currency of much material, such as monitoring information, the register is not maintained in total hard copy in one location as it would not be cost or environmentally effective.

A person wishing to inspect the register will be assisted by the Public Register Administrator or, in his or her absence, the deputy or other member of the licensing area. The Public Register Administrator can promptly provide copies of information relating to an environmental authorisation development application and can also promptly access copies of any current licence, environment protection or clean-up order for inspection. Other material available under the register is able to be made available in a timely manner. Charges are levied for the taking of copies of material on the public register in accordance with the act. The Environment Protection Agency is permitted to maximise the accessibility of the register.

So, in addition to the reasons that I gave as Minister for Transport and Urban Planning for opposing the provisions of the bill in the schedule relating to the Protection of Marine Waters Act, and for all the reasons that I have outlined in the material prepared for me by the Minister for Environment and Heritage, the government opposes the bill. The government sees it as unnecessary, but, as a matter of course, will not necessarily be voting against the second reading but would prefer debate to be stalled pending the government's more thorough, comprehensive and fair bill, which will be introduced in the spring session, arising from the review and public consultation process.

The Hon. T. CROTHERS secured the adjournment of the debate.

SUMMARY OFFENCES (PIERCING OF CHILDREN) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 September. Page 2227.)

The Hon. P. HOLLOWAY: Dr Such, in another place, introduced this bill, along with a number of other bills. I guess it must be close to an election, such is the wont of the Independents in the parliament that they have introduced a number of bills to get themselves noticed. I guess there is nothing wrong with that.

In principle, the opposition agrees that parental approval is desirable in relation to the piercing or tattooing of children. Of course, the practicality of that is not so easy in its implementation, as I am sure most parents of teenagers can attest. I would like to read into the *Hansard* record some comments that were made on this bill by the Youth Affairs Council of South Australia, because I believe they raise some issues and give a perspective to this bill which should be considered. The Youth Affairs Council wrote to Dr Such in April. I will read these comments and then I will read from a later letter from it.

An honourable member interjecting:

The Hon. P. HOLLOWAY: No, they do not. The letter states:

> YACSA understands that this bill would make it an offence for anyone to pierce any part of the body of any person under the age of sixteen, unless they are accompanied by a parent or guardian who consents to the piercing, or the piercing is for a medical or therapeutic purpose. Currently, there is no legislative age limit set to regulate this practice.
>
> YACSA can see the reasons for setting an age limit, however we are not convinced that there is problem enough to warrant such a move. We would also ask you to explain how this would be policed, as our information is that the current law pertaining to tattooing of minors is not being effectively enforced, to cite a comparable situation.
>
> Liaison with body piercing professionals has found that there is currently a set of guidelines that professionals are encouraged to follow, and that body piercing of children is currently not considered to be a concern by professionals, parents or children due to the non permanency of piercing, unlike tattooing.
>
> Council would like you to consider that in raising this issue with the parliament there has been a missed opportunity. YPAG members identified a significant concern amongst young people and parents regarding the safety of body piercing procedures—a concern that they determined to far outweigh the concern regarding parental consent to piercing. In response to this, the Australian Medical Association recently produced a pamphlet entitled *Ask Some Piercing Questions* aimed at young people as part of their Youth Health Advocate program. A copy is attached for your information.

Those were the comments of YACSA in a letter to Dr Such, copies of which were given to other members in April this year. YACSA again wrote to Dr Such with copies to other members on 26 September last. The letter reads as follows:

> As per our correspondence of 23 April 2001, YACSA continues to have a number of concerns pertaining to this bill. We understand that the House of Assembly has passed the bill, with debate awaiting in the Legislative Council for the current sitting of parliament. The debate in the parliament to date appears to have centred on the following issues:
>
> · Protection of children from harm
> · Controlling medical procedures using medical standards
> · Increasing parental awareness of their children's behaviour
> · Increasing the accountability of body piercing practitioners to their clientele who are under 16 years.
>
> YACSA agrees that all of these issues should be of concern for our state's policy makers, however we are not convinced that the primary problem of protection from harm such as blood-borne diseases will be solved through the involvement of a parent or guardian.
>
> In fact, as has been pointed out to us by members of YACSA's Youth Participation and Action Group (YPAG), young people under 16 years of age are not the only group who are placed at risk by body piercing procedures. The risk of sustaining complications from a body piercing is not necessarily linked to age.
>
> We reiterate our argument that body piercing is different to tattooing in its relative impermanency and that all potential clients, including young people under 16 years, are better served by universally applicable guidelines which are enforceable, rather than by the presence of a parent or guardian for a small age group.
>
> We believe that the central issue of concern to the parliament is the accountability by piercing practitioners to all clients to provide services which minimise the risk of complications which may arise from obtaining a piercing. Therefore, YACSA does not believe that this bill should be passed in its current form. We propose that the focus of the bill be changed from protecting children from harm to protecting all clientele of body piercing establishments, through the following amendments:
>
> 1. That all clauses relating to the age of a person seeking a body piercing are removed.
> 2. That the bill establish a set of guidelines to be observed by body piercing practitioners.
>
> We would recommend that the that the information recently published by the Australian Medical Association *Ask Some Piercing Questions* be included in the guidelines, as follows:
>
> · The piercer must use an autoclave to ensure appropriate sterilisation of equipment.
> · All needles should come in their own packaging and should only be opened in the presence of the customer.
> · The studio should be clean and hygienic.
>
> Breaches of the guidelines should attract a fine of up to $1 000.
>
> 3. That all clauses referring to the presence of a parent or guardian at a body piercing be removed.

The letter concludes:

> I have enclosed a copy of *Ask Some Piercing Questions* for your information. YACSA believes that, by providing balanced and factual information (in the form of a pamphlet for instance), young people will be able to make an informed choice about the risks associated with body piercing.

I think that some good points are made in that letter, but the opposition will not oppose this bill, because we do support the principle of parental responsibility. However, I think that the points raised by YACSA are important.

There is a much wider range of issues in relation to this matter than are addressed in the bill. I would certainly have some reservations about the effectiveness of these measures, and I believe that there are complementary issues, such as those health issues, which are perhaps more important in this debate. But, because we support in principle parental responsibility, we will not oppose the bill.

The Hon. T. CROTHERS: I indicate that I will be supporting the bill that was introduced in the other place by the Hon. Dr Such, the carriage of which in the Council is in the hands of the Hon. Nick Xenophon. I will lay down a number of reasons why I will support this bill. I think that an awful lot of parental control has been lost in the past 30 years or so, and that has had a detrimental effect on society at large. For instance, in my view, the banning of the cane at school was one such measure that was taken up by a lot of people, and I think that that has also caused some problems. The issue of two parents working, which has resulted in latchkey children, again has a bearing on behaviour in modern life.

It just seems to me (and maybe I am an old fogy, as my grandchildren might say) that discipline amongst the younger people in our community has been considerably lost from the days (some years ago) when I was a very young child under the control of my parents. If I went to my parents and told

them that I had been caned by the teacher for doing something naughty, I would have received six on the other hand as well. People might ask, 'What does this have to do with body piercing?' What body piercing is doing—

The Hon. T.G. Cameron: Well they might!

The Hon. T. CROTHERS: They might, and they would be just as stupid now as they were when they took away a lot of parental control. Body piercing, of course, restores to some extent some measure of parental control to parents, and it does it realistically and by legislation—this is almost like the mosquito story in the formerly green swamplands that has now been brought on again, in respect of Ross River fever. However, the point I want to make is that, for instance, the Hon. Mr Holloway quoted some organisation (I did not catch the name) as saying that there was really no damage done to children by body piercing. I take issue with that, because sometimes children get tattoos on their body (and I take it that that also is body piercing, although no-one has said whether or not it is; but I should imagine that it is), and all over their body at times, and then later in life they think to themselves, 'These really set me apart, and it is not exactly how I want my intended spouse to see me.' They then go away and have the tattoos removed by expensive cosmetic surgery, which leaves an abominable scar where the tattoo was.

I certainly support the bill that has been introduced by the Hon. Dr Such in another place for those reasons, and for other reasons, which I am sure other speakers will touch on and, indeed, which previous speakers, such as the Hon. Mr Holloway, have touched on. It is with much pleasure that I indicate my total support for the bill.

The Hon. T.G. CAMERON: I rise to support the second reading of this bill but I have a couple of concerns about some of the drafting of the bill. I endorse the sentiments echoed by the previous speaker, the Hon. Trevor Crothers, in relation to parental and family control, and I think his argument that this does something to put parents back in control of their family is reasonably persuasive.

I have had some personal experience, and I am sure members will not mind if I share this with them. I have only just realised what I am about to say, so I ask that no-one laughs. I have had some personal experience with the piercing of a child under the age 16 years, which involved my son.

The Hon. A.J. Redford: What are you talking about?

The Hon. T.G. CAMERON: Sit back and listen, Mr Redford. To quote the Hon. Trevor Crothers: listen and learn. I was a single parent and my three boys were with me. Much to my shock, horror and disgust, one of my sons came home, when he was about 14 years old, with an earring in his ear. We had a conversation about it and I asked him whether he was aware of the significance for some people of wearing an earring in the left ear and had he been subjected to attention since he had been wearing it? He did not have a clue what I was talking about.

The Hon. A.J. Redford: He has joined a number of other people.

The Hon. T.G. CAMERON: He liked wearing his earring, his mates were all wearing earrings and his mother had approved of his wearing the earring. So, I guess in some small way, as a family unit, we conformed with Dr Bob Such's bill, in that my son had the permission of one of his parents. My sons used to—

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: I will ignore your nonsense interjections. My sons would go backwards and forwards from my place to their mother's place, so I reached a compromise in relation to the wearing of his earring. I said, 'When you are at your mum's place you can wear your earring but, when you come home, out of respect for me, take it out and you can put it back in whenever you leave the house. I just do not want to see your earring.' He quickly agreed to this, but after only four or five days he was sick of putting the earring in and taking it out and he quickly discovered that after a day or two without his earring the hole started to close. It was one of the few battles with my children that I won. However, whilst it is a story of varying interest, it brings to mind some of the problems that I think could be associated with clause 21AA(1). I am not a mother: I am a father.

The Hon. T. Crothers: You wear your earring in your right ear?

The Hon. T.G. CAMERON: You would be surprised where I wear my earring.

The Hon. R.R. Roberts: Don't show us.

The Hon. T.G. CAMERON: I am tempted to recognise that interjection and put it on the record. If the Hon. Ron Roberts is so interested and so intrigued with my earring, he may come to my office later and I might accommodate his request. Unfortunately, I think he will probably leave disappointed.

It was not about boys' having their ears pierced that I wanted to talk: it was about girls' having their ears pierced. I must confess that I have not had any daughters; I have had very little contact with young girls, so I would be very interested to hear comments from one of the women, if there is a comment to be made, in relation to my contribution. I may well be wrong about this, but it is my understanding that girls as young as seven, eight or nine will often have their ears pierced and love to sport their little earrings, and they look quite pretty.

The Hon. Sandra Kanck interjecting:

The Hon. T.G. CAMERON: I welcome the interjection of the Hon. Sandra Kanck when she says that in a number of cultures children as young as two, three and four may wear an earring in their ear. If, as the Hon. Diana Laidlaw has interjected on a number of occasions when she has referred to me as a man of the world—it is not a term I would choose to describe myself—she means that I have travelled wide and extensively, then I will accept her definition but, if one travels around the world, one sees that the adornment of one's body with tattoos and body piercing of various parts of the body are quite common. As members of this place would know—

The Hon. Diana Laidlaw: For initiation

The Hon. T.G. CAMERON: Yes, and for a whole host of reasons. If anyone has travelled to Indonesia and Sumatra and seen some of the exquisite body tattoos that they wear, the mind would boggle, I guess, at our concern about some young girl wearing an earring. I am not sure about clause 21AA. It provides:

> A person must not pierce any part of the body of a child under the age of 16 years unless the child is accompanied by a parent or guardian and the parent or guardian consents, in writing, to the piercing of that part of the child's body.

While I sympathise with what the Hon. Dr Such is trying to do, it is a little officious to request that mum not only go along with her six year old daughter but also provide consent in writing as well. One would expect that, if mum or dad was there with the daughter who wanted the ears pierced, they were giving consent merely by their actions rather than going through this mini bureaucratic process of submitting it in

writing. If one reads on, one can see that the records and the particulars must be kept for a minimum of two years.

I do not pretend to be any expert on mothers' attitudes to their daughters' having their ears pierced. I have real sympathy in relation to some of the other quite bizarre piercing and tattooing practices in which people engage, such as through the nose, nipples, belly buttons, genitals, and so on, and one can imagine the horror that a parent would endure on walking in and finding that their young daughter or son—particularly a daughter, I guess—has engaged in these practices. I would be interested in any comments from any women members in this Council on my concerns about what we will do with the tens of thousands of young girls who get their ears pierced.

What concerns me a little bit is that, if 12, 13 or 14 year old kids are refused permission by their parents to have their ears pierced, in particular (and I do not know whether members are aware of this), they do it themselves to each other. It is not considered to be some major surgical procedure. Apply a hot needle, wear a sleeper for a day or two and you have got your ears pierced! As I understand it, a lot of young kids do it themselves—do it to each other—to save the costs associated with having it done professionally because it is such a minor surgical procedure. I do not put the other types of piercing into that category, but I do categorise ear-piercing in that way.

In relation to tattoos, I guess there are a hell of a lot of adults running around today who wished that this piece of legislation was in operation when they, in a fit of passion under the influence of drugs or alcohol, got a prominent tattoo placed somewhere on their body. Most people live to regret having various parts of their body tattooed. If one needs any testimony to that fact, one needs only to look at the number of people who subsequently seek medical advice to try to have their tattoos removed. When one looks at the wording of the bill, one sees that it may well be impossible to separate piercing and tattooing because of the nature of the process of tattooing.

I am happy to support the second reading and, in all probability because on balance the bill is positive, I will support it, but I am concerned about the implications of using a sledgehammer to crack a walnut if we include young boys and girls who just want to copy mum and wear an earring in their ear. From now on, they will have to be accompanied by a parent or guardian. There is no problem with that, I guess, because it would be mum or dad who would take them along to have their ears pierced, but we are going to put it in writing and we are going to keep records of that for two years.

I do not have a problem with the other types of tattooing but it has been suggested to me that there may well be a lot of infections with ear tattooing, and that is just not the case. The much more dangerous types of body piercing activity that are engaged in involve the piercing of the nipple or the belly button, and I will leave the various other parts of the anatomy there. Certainly a lot more parts of the body are pierced that are a hell of a lot more dangerous and run a higher risk of infection than a simple pinprick to the ear. I concede that, occasionally, a pinprick to the ear may lead to infection. But that is a very neutral part of the body; it is not subject to immediate infection; and, according to the medical advice that I have received, any infection that one gets from the piercing of the ear, whilst it is an unlikely possibility, would be treated by a simple course of antibiotics or, in all probability, it would clear up itself.

The Hon. IAN GILFILLAN: I indicate the Democrats' opposition to the second reading of this interesting bill, which seeks to prohibit the piercing of children under the age of 16 years without parental consent. I quote from the bill, as follows:

> A person must not pierce any part of the body of a child under the age of 16 years unless the child is accompanied by a parent or guardian and the parent or guardian consents to the piercing of that part of the child's body.

I note that in the other place the debate on this bill has focused on protecting children, parents' knowledge of their children's behaviour, and the medical procedures involved in piercing. I agree with members that these are important issues. However, the question arises: would the provisions in the bill solve the concerns raised? The Democrats do not believe that they would. The Democrats believe that the most important issue is to ensure the safety of people who choose to get their body pierced.

This would require a two pronged approach: first, adequate information being available on the issues surrounding piercing and, secondly, that any piercing occur in a clean environment and with sterile equipment by capable people, whether it be a general practitioner or in a salon. As did other members, I received a letter on this issue from Ms Sarah MacDonald, Executive Officer of the Youth Affairs Council of South Australia (YACSA), probably the peak authority on how youth view this issue and how a sober and competent body reflects on it. Ms MacDonald recognised and acknowledged the concerns expressed by parliamentarians, and in her letter stated:

> YACSA agrees that all of these issues should be concerns for our state's policy makers. However, we are not convinced that the primary problem of protection from harm such as blood-borne diseases will be solved through the involvement of a parent or guardian.

Ms MacDonald went on to suggest an alternative approach to the problem, which we wholeheartedly support. This centred around legislating for the accountability of piercing practitioners to all of their clients. This would be achieved by establishing a set of guidelines for piercing practitioners. I further quote from the letter from Ms MacDonald:

> We would recommend that the information recently published by the Australian Medical Association [in its pamphlet] *Ask some piercing questions* be included in the guidelines as follows:
> - The piercer must use an autoclave to ensure appropriate sterilisation of equipment.
> - All needles should come in their own packaging and should only be opened in the presence of the customer.
> - The studio should be clean and hygienic.

We believe that this is a sensible approach to take and, if the bill moves into the committee stage, we will be introducing amendments along those lines. I would like to put on record my congratulations to the AMA for this pamphlet. I think that it is one of the most well-compiled documents pitched at a younger readership. It does not attempt to moralise. It actually stipulates in accurate detail what are the risks and the comparative risks, and some very strong recommendations on how to minimise temporary or long-term damage that may result. I commend YACSA for distributing it to members of parliament and also, I assume, to young people wherever it has contact with them.

It is rather naive to believe that a measure that will supposedly require parents to be present for piercing will to any substantial degree reduce the appetite and enthusiasm for young people to be pierced. Rather than attempt to chase after some routine that will not have any specific effect on the

issue, it is much better to concentrate on minimising the potential damage that can occur to young people who will either be pushed into going to areas that are not properly set up, not scrutinised or, as was identified by previous speakers, who will experiment on themselves with dire consequences. We oppose the second reading.

The Hon. NICK XENOPHON: I thank members for their contributions. I note the support of the government via the Attorney and the support of the opposition in terms of the Hon. Paul Holloway's contribution, and I will deal with some of the matters raised by the Hon. Paul Holloway. He talks about YACSA's points with respect to infection control: that all people should be protected and that there should be clean and hygienic premises. No-one takes issue with those things, but the core principle of this bill is that a child under the age of 16 cannot have his or her body pierced in the absence of parental consent.

That is the core principle. When one considers that a medical practitioner cannot, in general terms, undertake a surgical procedure on a child under the age of 16 without parental consent, it does not make sense that body piercing ought to be exempt from that degree of parental control and responsibility. The points made by the Youth Affairs Council of South Australia are certainly interesting. Its points about infection control are quite valid but ignore the core issue of parental control, responsibility and consent. The Hon. Trevor Crothers has, of course, dealt very succinctly with the whole issue of parental responsibility.

The Hon. Terry Cameron has indicated his support for the second reading of this bill. However, he is concerned that the bill is a sledgehammer to crack a walnut. The Hon. Dr Bob Such introduced this bill as a result of a number of cases that were brought to his attention of quite significant infections suffered by young children as a result of body piercing; and the issue of parental responsibility is something that could have obviated those situations. The Hon. Terry Cameron made the point that ear piercing is at the very low end of risk. I accept that, but I would have thought that parental consent would be much easier to gain in the case of ear piercing than, say, the piercing of a navel, an eyebrow or a tongue.

The Hon. Ian Gilfillan, on behalf of the Democrats, opposes the bill. Again, he makes the quite valid points about having a clean environment to prevent infection but, with respect to the Hon. Ian Gilfillan, the Democrats have missed the point about parental responsibility. The intention of this bill is simply to ensure that parents have a say when their children have body piercing. For that reason, I urge members to support the second and subsequent readings of this bill.

The Council divided on the second reading:

AYES (13)

Cameron, T.G.	Crothers T.
Dawkins, J. S. L.	Griffin, K. T.
Holloway, P.	Laidlaw, D. V.
Lawson, R. D.	Redford, A. J.
Roberts, R. R.	Schaefer, C. V.
Sneath, R. K.	Stefani, J. F.
Xenophon, N. (teller)	

NOES (2)

Gilfillan, I. (teller)	Kanck, S. M.

PAIR(S)

Pickles, C. A.	Elliott, M. J.

Majority of 11 for the ayes.

Second reading thus carried.

In committee.

Clause 1.

The CHAIRMAN: There are three clauses and no indicated amendments. Does the Hon. Mr Gilfillan have any amendments?

The Hon. IAN GILFILLAN: Under the circumstances, no. Unfortunately, the timing did not allow us to get it drafted in time. I have had a consultation with the mover who indicates that there is a time frame that urges him to proceed. Were we to have the indulgence of the committee to enable us to have them drafted I would have, on behalf of the Democrats, drafted the amendments recommended by YACSA. What I would be attempting to move would be the amendments that were recommended by YACSA: first, that the piercer must use an autoclave to ensure appropriate sterilisation of equipment; secondly, all needles should come in their packaging and should only be opened in the presence of the customer; thirdly, that the studio should be clean and hygienic.

Quite clearly, those amendments require the skill of parliamentary counsel to put them in the right terminology. If it is not possible for them to be presented and dealt with in the committee stage tonight, I put on the record that we urge that the parliament address these three very practical issues in whatever regulations, consequential controls or legislation come into place, because if we line up the priority to have—

The Hon. A.J. Redford interjecting:

The Hon. IAN GILFILLAN: Shut up, please. I want the chair to listen to me without having to strain his ears. I make the point that, even if a person under 16 does have parental written approval, if the piercing is not done hygienically and properly, the damage is still consequential and quite severe.

So, I make the point that, regardless of how people feel about whether or not there should be written parental approval, these points raised by YACSA, and by the AMA I might point out, are of prime importance and must be addressed if we are really serious about reducing the damage of body piercing.

The Hon. T.G. CAMERON: I think that the Hon. Ian Gilfillan has raised some very important points. I am wondering where we would all be if this bill were passed and three or six months down the track somebody became seriously ill as a result of getting an infection in a surgery or in some area that was not properly clean. If it is not possible to incorporate the suggestions that he is making in this bill, they should be looked at and I would ask the Hon. Nick Xenophon, as the mover of this bill, that if this bill is subsequently passed tonight where do we go with the sensible suggestions that have been put forward by the Hon. Ian Gilfillan and supported by the AMA?

The Hon. T. CROTHERS: Can I ask for some guidance from you, sir?—

The Hon. A.J. Redford: You have already asked a question.

The Hon. T. CROTHERS: I am only asking for some guidance on this.

The CHAIRMAN: I have called the Hon. Trevor Crothers.

The Hon. T. CROTHERS: Is it possible—because the Hon. Mr Gilfillan has made some points—that when this bill goes down to the lower house for reconsideration the Hon. Mr Xenophon may take up these matters with the Hon. Dr Such and perhaps the other place when considering this bill may see fit to move some amendments which might embrace those points of validity that the Hon. Mr Gilfillan has made?

Is that possible under our present processes between the two chambers?

The CHAIRMAN: I will seek some further advice but this bill came as a private member's bill already from the other place. If it is passed here unamended, it goes back and that is it; the process is finished. It has to be amended here to be different from the one that arrived here.

The Hon. T. CROTHERS: What I am asking you is whether it can be amended in the lower house once it goes from here.

The CHAIRMAN: The short answer is no, but if this chamber amends it then I assume that the other place can re-amend it, but it has to go back in a different form.

The Hon. A.J. REDFORD: My question is to the Hon. Nick Xenophon. Apart from keeping the member for Fisher happy—we are not in the habit of keeping ministers or various other people happy in terms of setting our agenda and the timing of our agenda—what possible harm would there be in this matter being adjourned so that the Hon. Ian Gilfillan can present his amendments and we can agitate these issues properly? This would be the very first time since I have been here that the Legislative Council has been pushed around, and not even by government, not even by some issue that is urgent, but because Dr Such's press release timing might be put out a bit, but we have never accommodated those considerations before and I do not think we ought to in this case.

The Hon. NICK XENOPHON: I take note of what the Hon. Ian Gilfillan, the Hon. Terry Cameron, the Hon. Trevor Crothers and the Hon. Angus Redford have said in relation to this. I note that the YACSA letter to the Hon. Dr Such is dated 28 September. I would like to report progress and, out of an abundance of caution, have this matter adjourned on motion until later this evening. In fairness to—

The Hon. T. Crothers interjecting:

The Hon. NICK XENOPHON: Well, in fairness to the Hon. Dr Such—

The Hon. A.J. Redford interjecting:

The Hon. NICK XENOPHON: I would do the same for the government. The point has been raised. What I would suggest—

Members interjecting:

The Hon. NICK XENOPHON: Okay. I take the points raised by members. The Hon. Ian Gilfillan indicates that he wishes to move some amendments. I understand that he has not had an opportunity to do so. I would like to report progress—

The Hon. T.G. Cameron interjecting:

The CHAIRMAN: Order!

The Hon. NICK XENOPHON: I would like an opportunity to speak to the Hon. Dr Such, who is not here—

The Hon. A.J. Redford interjecting:

The CHAIRMAN: Order, the Hon. Angus Redford!

The Hon. NICK XENOPHON: Given the matters that have transpired, I suggest that progress be reported.

Progress reported; committee to sit again.

SELECT COMMITTEE ON THE FUTURE OF THE QUEEN ELIZABETH HOSPITAL

Adjourned debate on motion of Hon. J.F. Stefani:

That the interim report of the select committee be noted.

(Continued from 26 September. Page 2230.)

The Hon. R.K. SNEATH: I indicate my support for the motion. I find this committee very interesting and, having heard the opinions of many expert witnesses, I realise what an important role the Queen Elizabeth Hospital plays in the lives of not only the people who live in the western suburbs but also many others who live in the state of South Australia, the Northern Territory and beyond. The renal unit offers services to country hospitals and country people. It must be kept fully operational. If the renal unit were to be transferred to another hospital, the care and expertise available to our country folk and people in the Northern Territory might be lost.

The Queen Elizabeth Hospital also runs a significant home and community based program which has led the way for innovation in South Australia. Services include hospital in the home; home based cancer treatment; interface with facilities for people going home with increased services rather than being admitted to hospital; and linkage with the western division of general practice through programs including shared care in diabetes and respiratory medicine. These services are continuing to grow and they need strong encouragement and support.

The people of the western suburbs are passionate about their hospital—and rightly so. A good example of this is the very active resident body. Of course, the passion of Kevin Hamilton, a past member of parliament, was strongly demonstrated when he gave evidence to the committee. He has also demonstrated his support for the Queen Elizabeth Hospital by, over a number of years, walking to Port Pirie to raise funds for the hospital.

There are many other strong advocates of the Queen Elizabeth Hospital in the western suburbs. Another one who comes to mind is the ALP candidate for Cheltenham, J. Weatherill, who has been a strong supporter of the hospital, who will take up the fight to maintain the services in the western districts when he is elected to parliament.

The Queen Elizabeth Hospital, which was originally a maternity hospital, has been a part of South Australia since 1953, receiving its first patient in September 1954. It was also the first teaching hospital to be accredited by the Australian Council on Health Care Standards and has received six consecutive accreditation awards. Many mothers in the western suburbs and in country South Australia have fond memories of the hospital, some with their whole families having been born there. It would be wrong when speaking well of the Queen Elizabeth Hospital not to mention the magnificent staff who, over many years, have demonstrated a commitment to their hospital. At times they have been put under tremendous pressure to sustain the level of service that the public both desires and needs.

The two previous speakers touched on the subject of beds and referred to quite a lot of the evidence that the committee received so, rather than repeat it, I would like to mention one matter given in evidence that did interest me. This was the suggestion to move management and financial staff off the site to allow extra room for patients. Perhaps this should be looked at further when deciding on the changes that might be vital to the continuing upgrade of the Queen Elizabeth Hospital. I look forward to continuing to help the committee develop a final report and, in the meantime, confirm my backing of the interim report. Long live the QEH!

The Hon. SANDRA KANCK secured the adjournment of the debate.

ROAD TRAFFIC (TICKET-VENDING MACHINES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 May. Page 1475.)

The Hon. SANDRA KANCK: The Democrats will not be supporting this bill. We believe that most people can take responsibility for their parking needs when they come into town. It is quite clear that the provision of meters that allow 50¢ coins to be accepted will actually add to the parking costs for people in the city. While that might be a desirable thing in encouraging people to use public transport rather than bringing in their cars, I do not believe it is the intention of the Hon. Mr Cameron with his bill, and to increase the costs of street parking just as a matter of convenience in this way simply is not justified, so we will not be supporting this move.

The Hon. R.R. ROBERTS secured the adjournment of the debate.

DIGNITY IN DYING BILL

In committee.

Clause 1.

The Hon. SANDRA KANCK: I am pleased that we are to progress in committee tonight. I am not intending to make us stay here until all hours and I do not intend to take it to completion tonight. At the outset I say that two members are not able to be here tonight through illness—the Hon. Carolyn Pickles and the Hon. Carmel Zollo. Both have absolutely opposing views on this legislation, so I expect that they would cancel out each other's vote. They are, in effect, a pair. However, because they are not here to present their case, should we get to the end of committee and either of those two members who are not able to be here indicate to me that they would have liked to move an amendment to the earlier clauses, I will be very happy to accommodate that by recommitting the bill. That is the way I propose to do it for the rest of the bill. Members may remember that we did that last year with the Prostitution Bill. If people are not able be here at a particular time, regardless of whether or not those people support my view, I will happily accommodate that by recommitting the bill at the end of the debate.

Clause passed.

Clause 2 passed.

Clause 3.

The Hon. K.T. GRIFFIN: I oppose clause 3. Clause 3 sets out the objects for the bill and, although clause 4 and subsequent clauses deal with the terminology and concepts which are referred to in the objects clause, nevertheless I believe that the objects clause is an important one which sets the tone for the rest of the debate and also for the bill. We had quite a substantial debate on the moral and ethical positions as well as the legal position in relation to the bill when we were all speaking at the second reading stage. Suffice to say that I am vigorously opposed to active euthanasia. It is a form of legalised homicide and in my view to reflect approval in the objects clause is inconsistent with my position, which is opposed to it. I intend to raise a few issues when we get to the definition clause but I believe it is appropriate to undertake at least some review of the objects in the light of the concerns which a number of us have expressed at the second reading stage.

The Hon. T. CROTHERS: Unlike my very good friend the Attorney, I support the concept of euthanasia. In the contribution he just made, the Attorney said he thought it was a form of legalised homicide. He is a very capable and competent lawyer, and far be it for me ever to take issue with him on legal matters, but I will on this, because I do not think euthanasia is legalised homicide. Homicide is taking the life of a third party without the party who has been killed or murdered having had anything to say about it, whereas euthanasia occurs where the person so desires it. Or, if the person is not compos mentis to make a decision, two people representing them as well as two doctors then determine whether or not the person's wish to be euthanased is carried out. It is an entirely different matter from the Attorney-General's suggestion that it is legalised homicide. I do not agree with him. This is a very difficult position for me, because on more occasions than I care to remember I have agreed with him, because he always speaks commonsense and is most competent. However, on this occasion, for the reasons I have stated, I do not agree with him and I do support clause 3.

The Hon. DIANA LAIDLAW: I indicate that I strongly support the objects as outlined in the bill. I find it most interesting that in the short title, which provides that this act may be cited as the Dignity in Dying Act 2001, the emphasis is on dignity in dying, and the Attorney and other members of my party or generally in this place have not taken exception to or even raised questions in relation to the title of the bill—'Dignity in Dying'. I think the objects amplify the title of the bill and the overall intention of the mover and those who support this thoroughly researched, well-considered and compassionate piece of legislation.

I highlight that clause 3(a) would give competent adults the right to make informed choices; 3(b) deals with hopelessly ill people who have voluntarily requested euthanasia; 3(c) deals with people who may want to request euthanasia; 3(d) ensures that the administration of euthanasia is subject to other appropriate standards and supervision; and 3(e) would recognise the right of medical practitioners and other persons to refuse to participate in the administration of euthanasia.

What I highlight in drawing attention to the terms 'informed choices', 'voluntarily requested' and 'hopelessly ill' is that they relate to people who want to request euthanasia. Nothing in this bill seeks to force people to be involved in voluntary euthanasia. There is nothing compulsory about it, in terms of the doctor or the person who is hopelessly ill, from the point of view of there being no other satisfactory, humane option for them to reduce the pain and suffering that they are enduring in the last days of their lives.

The object of the whole bill is simply to provide people with options where they would otherwise have no option today but a painful end to a life. I do not think that any person should inflict that on any other human being. People should be provided with options that afford dignity in life. I suppose that it is a matter of dignity in living that they would wish to have in their last days, as well as in dying. It is not for us to tell them how they should die. It is not legalised homicide but a compassionate measure—I think a long overdue one—for an acknowledged legal and humane problem.

As a Liberal, I find it extraordinary that the basis of my philosophy and Liberal philosophy generally is so much about individual rights, and, while I respect the conscience vote of my colleagues, the fact that they would deny someone

the right to die with dignity is something that I find difficult to rationalise. However, that is their choice. It is certainly not a denial of a right or a dignity that I would want to be party to in a person's life or especially at their death. I believe that the objects of the bill are absolutely critical in reinforcing the title of the measure to which I note that no member has taken exception in committee.

The Hon. CAROLINE SCHAEFER: I indicate my opposition to the objects of this bill, particularly as they apply to the definition of 'hopelessly ill'. Clause 3(a) provides that one object of this bill is to give competent adults the right to make informed choices. Clause 3(b) provides another object as being to ensure that hopelessly ill people who have voluntarily requested euthanasia can obtain appropriate and humane medical assistance to hasten death.

Clause 3(d) provides that a further object of the bill is to ensure that the administration of euthanasia is subject to other appropriate safeguards and supervision. Yet the definition 'hopelessly ill' contained later in the bill describes a person as being hopelessly ill if that person has an injury or illness 'that will result, or has resulted, in serious mental impairment or permanent deprivation of consciousness'. I fail to see how anyone who has a serious mental impairment or a permanent deprivation of consciousness can voluntarily request or make an informed choice. It seems to me that those two clauses are mutually exclusive.

The Hon. R.K. SNEATH: I support the objects in the bill, especially clause 3(e), which provides as follows:

> to recognise the right of medical practitioners and other persons to refuse to participate. . .

I think the Attorney-General indicated that, if he was a doctor, he certainly would not want to participate because of his beliefs. As a lawyer he might, against his beliefs, have to defend a person who had committed a homicide and was charged with a criminal offence—I am not too sure about that. At least this bill stipulates that medical practitioners can refuse, and rightly so. I do not think that lawyers are in that position all the time, when they are appointed by the court to act on behalf of people who have committed a homicide, or what have you, and sometimes have to defend people who, in the end, are proven to be guilty of committing terrible crimes. I support the objects of the bill and apart, from some amendments, of course, I support the bill.

The Hon. SANDRA KANCK: I was certainly surprised by a couple of the Hon. Trevor Griffin's comments, particularly when he referred to voluntary euthanasia and what we have in this bill as being legalised homicide. The Hon. Trevor Crothers has drawn the distinction between voluntary euthanasia and homicide in terms of consent. With respect to homicide, the person does not consent to the murder; they do not seek it, nor do they consent to it. There is a huge difference between that and voluntary euthanasia.

I am also surprised at the outright opposition to the objects. Given the opposition of both the Hon. Trevor Griffin and the Hon. Caroline Schaefer to voluntary euthanasia, I should have thought that clauses 3(d) and 3(e), in particular, in the objects are something that they would find desirable, to ensure that there are appropriate safeguards and supervision, and to give medical practitioners the right to say, 'I do not want to be involved.' I would have expected those two members to support those provisions, in particular.

I should have thought, too, that having objects in an act such as this would be very important. I am not clear whether the Attorney is saying that there should not be objects in this act, or whether he simply does not like all five of these objects.

The Hon. A.J. Redford interjecting:

The Hon. SANDRA KANCK: That is just my response in terms of what I have heard. To my way of thinking, when there are people who say that they oppose voluntary euthanasia, to have these objects in the bill creates a greater clarity and also provides up front what the protections are.

The Hon. A.J. REDFORD: Can I say at the outset that I am a great believer in setting out objects and general terms, because it assists everyone in understanding legislation. However, I would really like the Hon. Sandra Kanck to give some thought to this, because I think that the Hon. Caroline Schaefer has raised a very pertinent point—and it was one that I intended to raise separately and independently; in other words, within the caucus.

Under the objects, clause 3(a) talks about giving competent adults the right to make informed choices. The term 'competent adult' is not defined anywhere in the bill. Clause 3(b) then talks about ensuring that hopelessly ill people who have voluntarily requested euthanasia can obtain the necessary treatment to hasten death. In the definitions in clause 4, 'hopelessly ill' talks about a serious mental impairment or a permanent deprivation of consciousness. The Hon. Caroline Schaefer is asking how the objects of the bill are consistent with what transpires later in the bill, in the sense that, pursuant to the definition of 'hopelessly ill', is it possible for someone who is suffering a serious mental impairment or a permanent deprivation of consciousness to make an informed choice, and is it possible to put such a person in the category of a competent adult?

I note that there is some protection in clause 9 of the bill where a medical practitioner has to certify that a person must be of sound mind. I think the Hon. Caroline Schaefer is asking—and I am sure she will correct me if I am wrong: how does that sit, that is, the concept of a person being of sound mind making a conscious and informed decision when, by definition in the bill, they are permitted to do so when they have a serious mental impairment or, I must say incongruously, suffering a permanent deprivation of consciousness? My understanding is that it simply does not mix, that it is just not possible.

If you relate those issues back to the objects of the act, the Hon. Caroline Schaefer is asking—and I think it is a perfectly valid question: how can you say in the objects of the act that someone has to be competent, or it gives the competent adult the right, when there is an implication subsequent in the bill that someone with a mental impairment—and, in the eyes of some, perhaps an incompetent adult for the purposes of this bill—might be able to avail themselves of some of the rights and opportunities this bill might potentially give?

How can someone who is hopelessly ill, that is, suffering a serious mental impairment or a permanent deprivation of consciousness, voluntarily request euthanasia or assistance to hasten death? So she is saying that these objects, when one looks at them in the context of the definition, are inconsistent. There might be a simple explanation but it is certainly one that escapes my mind, and I am not sure whether there is a possibility that one can suffer a serious mental impairment or be suffering a permanent deprivation of consciousness and yet at the same time be certified by a medical practitioner as being of sound mind. They are concepts that I find mutually exclusive, and maybe there is a simple explanation.

The Hon. SANDRA KANCK: I think it is important to understand that there are two types of requests: there are

advanced requests and current requests. Obviously, if you are of an unsound mind it would be impossible for you to make a current request. It would depend on your having made an advance request when you were in a competent state. In the definition of 'hopelessly ill', paragraph (a) begins 'that will result', so it is talking about the future. So it is perfectly possible, using an advanced request, to clearly spell out—

The Hon. A.J. Redford interjecting:

The Hon. SANDRA KANCK: You fill out an advance request that says, 'In the event that at some time in the future I end up in a particular state or with a particular illness, my request is to be carried out.' If that particular illness eventuates, then it has resulted in the serious mental impairment or permanent deprivation of consciousness. I cannot see any conflict in that. You have to look at it in terms of the advance request and the current request and 'that will result', which is when you fill in your intention in the future, and then the 'has resulted' is when it takes effect.

The Hon. A.J. REDFORD: Why do you then insert the words 'or has resulted' in the definition of 'hopelessly ill' in paragraph (a)? This might be looking further, but these words are specifically used in the objects in clause 3.

The Hon. SANDRA KANCK: If you fill out an advance request and your doctor is looking at the advance request, obviously the doctor will not act on the request until such time as the condition has resulted in unconsciousness. Under those circumstances the doctor would not be able to act on your request until the condition has resulted in unconsciousness.

The Hon. J.S.L. DAWKINS: I do not wish to delay the committee, but I want to briefly indicate that I support the objects of this legislation. I think that the five objects are well structured and take in the necessary accommodation, making sure people know what they are doing; that there are appropriate safeguards and supervision; and that the right of medical practitioners and other persons to refuse to participate are recognised and acknowledged. I also echo the views of the Hon. Trevor Crothers in the fact that I rarely disagree with the Attorney-General, but in this case I cannot agree with his description of this bill as 'legalised homicide'. I support the objects.

The Hon. K.T. GRIFFIN: I do not have any problem with objects being included in a bill. I have no problems with that at all.

The Hon. Sandra Kanck interjecting:

The Hon. K.T. GRIFFIN: No, I would prefer not to have this bill. The reason why I am objecting to clause 3 is that it reflects the tenor of the whole bill. If I were not to object to clause 3, then it could be taken that I support all the things which the objects clause states is encompassed by the bill.

The Hon. Sandra Kanck interjecting:

The Hon. K.T. GRIFFIN: I do not have a problem with paragraphs (d) and (e), but they are subsidiary to the principal objects. Of course, if we are going to have euthanasia we would want to have safeguards. The question is whether the safeguards in the bill are appropriate. To that extent, if the parliament decides that there ought to be voluntary euthanasia, then certainly we have to try to build in as many safeguards as possible. Paragraph (e), which would allow medical practitioners and other persons to refuse to participate, I support that, too, if we are going to have voluntary euthanasia. But it is subsidiary to paragraph (a) which provides:

> To give competent adults the right to make informed choices about the time and manner of their death should they become hopelessly ill.

Paragraph (b), which is the most difficult and which is at the centre of this, provides:

> To ensure hopelessly ill people who have voluntarily requested euthanasia can obtain appropriate and humane medical assistance to hasten death.

That is the core of it. Paragraph (c) is the provision of information. Again, if the parliament is going to agree that voluntary euthanasia should be recognised in our law then obviously people have to be properly informed. By objecting to the objects clause, I am going to the core of it. If I go to the core of it and oppose that, then it necessarily follows that the remaining paragraphs will equally be opposed. That is the reason why I have taken the view that I should oppose the objects clause. I want to get that clear. There has been a comment about my rather curt—

The Hon. Sandra Kanck: Intemperate.

The Hon. K.T. GRIFFIN: No, it is not intemperate.

The Hon. Diana Laidlaw: Wrong.

The Hon. K.T. GRIFFIN: No, my rather blunt description of the bill. If we did not have this bill, a medical practitioner who assisted a person today—

The Hon. Sandra Kanck: Which they do now.

The Hon. K.T. GRIFFIN: They do, but in some instances they are prosecuted. If they assist a person to die, all the ingredients of homicide are satisfied. We have to have this bill to protect people who participate from criminal prosecution.

The Hon. Diana Laidlaw: What about the person dying?

The Hon. K.T. GRIFFIN: We are talking about the criminal law at the moment.

The Hon. Diana Laidlaw: There is more to it than the criminal law.

The Hon. K.T. GRIFFIN: That is right, but if you look at the way in which this bill is framed, the real risk in the bill is not the people who act in good faith but the people who act in bad faith, and that is a major cause for concern. As I say, if you do not have the bill, there are those circumstances in which a medical practitioner assisting someone to die may well satisfy all the ingredients of homicide. That is why you have to have the bill. If the parliament wants to have voluntary euthanasia, it must have this bill, particularly to protect against the application of the criminal law, and that is obvious when one looks at clause 19, which states:

> Death resulting from the administration of voluntary euthanasia in accordance with this act is not suicide or homicide.

Homicide is a criminal offence and assisting a suicide is a criminal offence. The clause continues:

> If voluntary euthanasia is administered in accordance with this act, death is taken to be caused by the patient's illness.

The cause of death is not the assistance which, apart from this act, is likely to constitute a criminal offence. It is deemed to be the person's illness. With those provisions alone, no-one can escape the logic that, without the bill, this is homicide and this bill legalises it in the circumstances covered by the bill.

I want to talk about a couple of other issues. The Hon. Angus Redford has raised the issue of the meaning of hopelessly ill and it is a matter of judgment whether we talk about the definition now or in clause 4, but I think it is appropriate to do it now and then I will not take time on clause 4. As has already been indicated, the bill defines hopelessly ill as where a person is hopelessly ill with an injury or illness—

(a) that will result, or has resulted, in serious mental impairment or permanent deprivation of consciousness; or
(b) that seriously and irreversibly impairs a person's quality of life so that life has become intolerable to that person;

Both of those paragraphs are extremely wide. I think I said in the second reading debate that it is probably difficult to quarrel with the words 'has resulted in permanent deprivation of consciousness' so long as permanently means what it says, that is, irreversibly, and I drew attention in that debate to section 17(2) of the Consent to Medical Treatment and Palliative Care Act.

That speaks of 'prolong life in a moribund state without any real prospect of recovery or in a persistent vegetative state'. I remember that we debated those words at length in 1995 to get as much clarity as possible in the description. They are much more appropriate words than the words 'permanent deprivation of consciousness'. Paragraph (a) refers to a condition that will result in permanent deprivation of consciousness, and I think it is difficult to understand what that is really aimed at.

Paragraph (a) also includes the words 'will result or has resulted in a serious mental impairment'. The Hon. Angus Redford has referred to those words already, and I concur in his observation that 'serious mental impairment' is undefined. No reference is made to the question of whether or not the serious mental impairment is treatable or controllable, and without an appropriately limited definition it could be argued that the bill authorises the suicide of anyone who suffers from a serious mental illness, whether or not it is treatable.

Paragraph (b) is very wide. All that it requires is an injury or illness that seriously and irreversibly impairs the person's quality of life so that life has become intolerable to that person. One may question, and I think I raised this in the second reading debate, whether the onset of diabetes or multiple sclerosis, for example, could qualify. The Oregon precedent defines 'terminal disease' as 'an incurable and irreversible disease that has been medically confirmed and will within reasonable medical judgment produce death within six months'. That is more confined than the definition in this bill.

The test is, in significant part, subjective. No doctor can make a judgment about an impairment to the quality of life, let alone whether life has become intolerable to that person. The only medical judgment involved in paragraph (b) is about whether the illness or injury has the required effect irreversibly. It is not a question of whether the injury or illness is of itself irreversible: the illness may be quite reversible. The question is whether its effect on the patient's quality of life is irreversible.

In the second reading explanation, again, I referred to a person who suffers from the late onset of mumps, which renders a male infertile, questioning whether that may qualify under this definition, depending on how the patient feels about it. I think it can be said that the test leaves open the position in relation to the effects of treatment—

The Hon. Diana Laidlaw interjecting:

The Hon. K.T. GRIFFIN: It might be, but we are dealing with a defence to what I referred to earlier as homicide, and you have to look at all the possibilities, because it helps to understand the scope of the legislation.

The Hon. Diana Laidlaw interjecting:

The Hon. K.T. GRIFFIN: No, I always look at the positive. When you are making a radical and controversial change to the criminal law, as this is, you have to look at all the possibilities.

The Hon. Diana Laidlaw interjecting:

The Hon. K.T. GRIFFIN: It might be negative, but you have to look at the negatives.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: Everyone has a different view. Everyone around the chamber is expressing a view, and that is fine. We will just agree to disagree.

The Hon. P. Holloway: Keep going.

The Hon. K.T. GRIFFIN: I will.

The Hon. R.R. Roberts: You have had only 20-odd years experience at this.

The Hon. Diana Laidlaw: If someone had measles they might be infertile.

The Hon. Nick Xenophon: Mumps.

The Hon. K.T. GRIFFIN: The test leaves open the position in relation to the effects of treatment. For example, treatment for a curable cancer—quite reversible—may leave a person bald or with a disfigurement, and that may, in fact, be irreversible and hence fall within the paragraph if it is thought that there is no distinction between an illness which does not produce the effect and the treatment for the disease which does produce the effect. One must conclude, whether one looks at it positively, negatively or both, that the definition of 'hopelessly ill' is quite astonishingly wide.

It is far beyond the sort of sympathetic cases that proponents of active euthanasia espouse. The phrase 'hopelessly ill' is, in fact, quite misleading, and that is one of the issues. One can raise other issues in relation to the object clause, but I return to the point I made earlier, namely, that I see this as a key provision of the bill, and I cannot let it go unremarked upon, nor can I let it go unopposed because of the relevance and significance of it to the rest of the bill.

The Hon. R.R. ROBERTS: I find myself in concert with the Attorney-General. When looking at the objects of the bill—and if we had a greenfield site and if we did not have any legislation covering these areas—it would be easy to make the sort of assumptions and assertions that are being made by the Hon. Sandra Kanck and others. But the fact is that, in 1995, I think, and in 1999 we visited this issue in the Consent to Medical Treatment and Palliative Care Bill, and many of the objects that are now in this bill were similarly embraced in that legislation.

People do have the opportunity to make forward wills, and regimes are in place within which medical practitioners can assist people in respect of their wishes to give them not only dignity in living but also some dignity in dying. It is not as it was prior to that time when medical practitioners could not provide drugs to relieve pain. If they administered drugs to relieve the pain and the patient subsequently died, medical practitioners were then able to be charged if an autopsy indicated that the concentration of drugs was higher than would normally be given without causing death.

So, many of the concepts espoused in the bill are already within legislation. I did not agree with everything in that legislation, but collectively the parliament passed it. I therefore see myself bound as a legislator to respect that law. Clearly, the Attorney-General is right in that this bill goes beyond that legislation: this bill enables someone to pull the trigger. That is what this bill is about.

With respect to the previous bill, we were given assurances by vehement supporters of voluntary euthanasia and vehement supporters of that piece of legislation—and I speak respectfully of my colleague the Hon. Anne Levy who was passionate about the bill and who implored us all to support the Medical Treatment and Palliative Care Bill because it

provided all these options for people that were never there before. It provided protection for doctors and it gave consenting adults, before they became ill, an opportunity to lodge a forward request in terms of what was to happen if they reached these circumstances.

We have debated this bill extensively, and we are going over the same issues. I think that, at the end of the second reading contributions, there was a general consensus that we all understood what was trying to be achieved. Most people at that stage believed that this legislation was flawed, and we are not talking about any amendments to the legislation as it was presented at that stage. Most people indicated very clearly that, whilst they were prepared to go to the second reading, they would not be supporting the third reading because of the content of the legislation.

Statements have been made such as 'to recognise the right of a medical practitioner and others to refuse to participate in the administration of euthanasia,' and held up as one reason out of five objects as to why people such as the Attorney-General and I, and others, ought to say that that is a reasonable assumption. The fact of life is that a medical practitioner cannot be involved in active euthanasia, but a medical practitioner now who has a desire or a compassion, if you like (to use the arguments used by the honourable member) to assist a suffering patient with the application of medication, firstly, to control the pain but which may result in his death is able to do so.

The honourable member is not really introducing anything new. It is a laudable objective and I understand why it would be put in, namely, to try to seduce all of us into the honourable member's line of thinking. Also, the Hon. Caroline Schaefer and the Hon. Angus Redford talked about the 'hopelessly ill' definition, and the Hon. Sandra Kanck attempted to explain that away. But then there is another problem when we get to clause 11, which is the revocation of a request. You might be able to have the forward will, but what happens if at a later stage a person changes their mind? This has happened on more than one occasion. A person may have said, 'I am ready for euthanasia,' but then they change their mind. But I cannot see how you can actually do that if the illness results in serious mental impairment or permanent deprivation of consciousness. It is fairly hard to register your formal revocation at that stage.

I do not know how long we will spend going through this bill. I respect the Hon. Sandra Kanck. We have had some discussions about it and I think we will have to agree to disagree on most of this. I respect her enthusiasm and her integrity. I rather suspect that we will go through this whole bill chapter and verse, on matters that we have tortuously debated for days previously, to get to the second reading, and I rather suspect that we will get to that point again. Given that in the last few weeks we have been harassed almost to have vote on this, I am really keen to get to the voting stage.

Before people leap to their feet and say that I am undemocratic because I do not want to go through it chapter and verse, can I say that the truth is that in the past six or seven years we have probably spent more private members' time on this subject than on any other, except perhaps for prostitution. I think all the issues are before us and I, for one, am keen to get to the third reading stage because otherwise we will go through every clause and revisit everything we discussed at the second reading stage. Every one of these clauses—

Members interjecting:

The Hon. R.R. ROBERTS: I understand and I have acknowledged that, but it seems to me that we are now talking about the extension into legalised homicide (to use the words of the Attorney-General). We now have the Consent for Medical Treatment and Palliative Care Act where many of these things have gone almost to the point, but ensure that people can live in a dignified state. They can be assured of proper treatment and proper care and, if a side effect of that care, given compassionately and with the intent to preserve dignity and comfort, results in death, they now have it there. So my view is that I have not been persuaded after hours and hours of discussion, and I am very keen to get to the third reading stage and to get this off the *Notice Paper*, because everyone knows what we are talking about and we are just prolonging the agony.

The Hon. NICK XENOPHON: I endorse the general approach of the Attorney in relation to his objection to the objects clause, and I note that the Attorney referred in turn to the definitions in respect of clause 4 and the hopelessly ill and that that ties into the objects clause. I have some very significant concerns about the definition of 'hopelessly ill' because, if a person has an injury or illness that will result in serious mental impairment or permanent deprivation of consciousness, you simply do not know. The nature of medical conditions is that they can vary, people can go into remission of an illness, and there can even be a recovery. So, it is this area that concerns me quite significantly.

In terms of paragraph (b) and the hopelessly ill, and again this ties into the objects clause of the honourable member's bill, I am concerned at its lack of precision in terms of what 'intolerable' means and what 'quality of life' means, in that they are not medical terms. I have indicated previously that I support the second reading of this bill on the basis that I am opposed to the bill. With the greatest respect to the Hon. Ron Roberts, I believe that the Hon. Sandra Kanck is entitled to have this bill dealt with exhaustively and fairly in the committee stage. Even if it takes time, it ought to be dealt with fairly. I can understand the Hon. Ron Roberts' frustration with the bill but I am more than happy to be part of the long haul of the process. I indicate that I will oppose clause 3 for the reasons outlined by the Attorney and other honourable members.

The Hon. DIANA LAIDLAW: I want to reflect on some of the comments made by the Attorney-General earlier. He spoke about this bill being legalised homicide, and then he dealt with the definition of 'hopelessly ill' and referred to baldness and infertility. I just want to say that I do not think that the Attorney meant to demean or belittle the people who are hopelessly ill with cancer and people like Gordon Bruce who wasted away in major pain.

I just want to say that the extremes of the argument in terms of mentioning baldness and infertility are not necessary to further the case. We know that the Attorney-General genuinely does not support the taking of life, even at one's own request and with the assistance and cautions provided in this bill. But, having had a mother go through circumstances like this, I was not prepared to accept that the Attorney would put people who are hopelessly ill from her category into that of infertility and baldness. It does not do him justice.

The Hon. K.T. GRIFFIN: I just want to respond. I have not made any personal criticism of the Hon. Sandra Kanck. I have tried to deal with this on the basis of what I see as a logical argument and proper debate. I am not looking to demean the argument. She has every right to deal with the issue. It is an important issue, but it is a radical and controversial issue on which it is appropriate that we all argue properly. My use of descriptions such as baldness and other

disfigurement was to try to, quite starkly, identify the issues such as 'irreversibility', and what is irreversible. Now, if some people have taken that as demeaning the argument, I apologise for that. It certainly was not intended. I will find some different examples. I was really trying to focus upon the breadth of language used within particularly the definition of 'hopelessly ill', and how it can be construed in a way which perhaps was not intended and how, perhaps, if this legislation is to be passed in the parliament, there ought to be tighter constraints. However, I am not demeaning the issue or the debate; I am merely trying to explain in stark language what I perceive to be problems with this particular definition.

The Hon. SANDRA KANCK: First, I want to put on the record my response to something which the Hon. Ron Roberts said when he suggested that members have been harassed into dealing with this legislation tonight. A week ago, I put a memo on the desk of each member of this chamber. I did so before members came into the chamber, and I did not speak to them. In the past week, I have not lobbied anyone about progressing this legislation. So, I assure members of the public who may read the *Hansard* that there was certainly no harassment.

In a piece of legislation, one thing rolls on to another. We are talking about the objects, particularly clause 3(b), which refers to the hopelessly ill. We go on to clause 4, the definition, and a number of examples have been cited by the Hon. Trevor Griffin. I, in turn, then roll the argument on to clause 7 of the bill. The Hon. Trevor Griffin asked whether or not a serious mental impairment is reversible. He cited the example of whether the onset of diabetes or—and I thought this trivialised it, but I accept his apology—someone contracting mumps and finding themselves to be infertile would qualify.

The doctor must examine a person who requests voluntary euthanasia and ensure that that person is fully informed of the diagnosis and prognosis of the illness, and the doctor must advise that person of the forms of treatment that are available and their respective risks, side-effects and likely outcomes. So, if the issue is infertility, there may be sources of treatment available. The doctor might recommend that the couple apply for adoption or avail themselves of some form of IVF or other fertility treatment. Under the act, the doctor would be obliged to give that infertile person that information.

Clearly, if someone went to a doctor and said, 'I want to have my life terminated because I am infertile,' there would have to be a question about whether that person was suffering from treatable clinical depression, and the doctor would have to sign a form that says that that person was not suffering from treatable clinical depression. I do not believe that, under the terms of this act, any doctor would be able to sign for and administer voluntary euthanasia to a person for reasons of diabetes, infertility or the sort of examples that the Hon. Trevor Griffin has cited.

If serious mental impairment is reversible, under clause 7, the doctor would be obliged to ensure that that information is given. Obviously, if a person has a serious mental impairment and makes a current request, again, it would be unlikely that the doctor would sign, because the person must be competent.

I do not believe that the reservations spoken about so far stand up to examination. In terms of what the Hon. Ron Roberts has said, I suggest that we progress to the end of clause 3, take a vote on that and report progress; I do not want to hold up the chamber for an interminable time. For instance, I know that two ministers want to introduce bills tonight.

The Hon. CAROLINE SCHAEFER: I do not want to prolong this debate, either. However, everyone in this chamber knows that I am opposed to this bill and to the Hon. Sandra Kanck's views on euthanasia. However, as arduous as it may be, I certainly defend her right to have the bill debated clause by clause. The honourable member has suggested that we progress to the end of clause 3. However, it seems to me that, in fact, we have discussed clause 4 to such an extent that I would like to put on the record my grave concerns, together with a number of other members, about clause 4(b), relating to the definition of 'hopelessly ill' which provides that a person is hopelessly ill if that person has an injury or illness 'that seriously and irreversibly impairs the person's quality of life so that life has become intolerable to that person'.

There are no parameters or third party judgments as to that intolerability of life. It seems to me, therefore, that it could relate to a piano player who has lost the use of their hand, a musician who has become deaf, or an artist who has become blind, to name a few things that most of us would not consider would make life intolerable. I remember previous similar bills debated in this chamber at least having a definition of 'hopelessly ill' as being in the terminal phase of a terminal illness, but this is a self-assessment of life becoming intolerable.

Much of the reading I have done also indicates that clinical depression is extraordinarily difficult to diagnose in someone who is not well known—and known over a long period of time—by a qualified psychologist or someone who knows exactly what they are looking for. I believe that that definition is fraught with real danger. I have always said that I have never seen a bill with sufficient safeguards that would enable me to vote for voluntary euthanasia, but this bill appears to have holes in it that you could drive a truck through.

The Hon. T.G. CAMERON: First, I again congratulate the Hon. Sandra Kanck for making what I consider to be an excellent case, notwithstanding the criticism that it has come in for at times. I have been quite surprised at the passion that she has brought to bear on the subject. I do not intend to support this clause, but I want to make a couple of points. I am not strongly opposed to voluntary euthanasia. Most people in this chamber who know me know that, whilst I do not support the bill, I do not list myself as a strong advocate or strong opponent of voluntary euthanasia. The first thing I am often asked by people—and I tell them that I am not supporting the voluntary euthanasia bill—is, 'Are you a Catholic?' to which I politely point out that I am not a Catholic and nor am I a Christian. I believe in God. My view of the world is that there is only one God; it was people who decided that there would be a number of Gods, etc.

I want to make quite clear that my opposition to the bill, which is obviously not as strong as the opposition of other members of this chamber, is not based on any religious consideration at all. As a human being, I am entitled to practise whatever religion I choose, and that is a right that I accept that every other citizen of our community has got. Just because I do not necessarily believe in what somebody else believes does not make me right or them wrong—it just means that I have a different set of beliefs from these people. I would like to think that I respect all religious viewpoints.

My opposition to the bill is not as strong today as it was six years ago when I came into this place, and that probably

has had a fair bit to do with listening to the Hon. Sandra Kanck for six, seven or more years of making contributions on this matter as she continues to push her view forward, as indeed is her right. My concerns are about medical matters, and the Hon. Sandra Kanck is aware of some of the concerns that I have.

In relation to clause 3, it is very difficult to find any problems with subclauses (a), (b), (c) and (d), but like the Hon. Ron Roberts I have some concern about placing subclause (e) into the objects of the act. To be fair, the Hon. Sandra Kanck's bill talks only about recognising the right and recognising a right to refuse. She has not got me this time, I am sorry to say, but I will continue to listen to all the arguments in relation to this matter.

Regarding whether or not we should proceed to debate the bill, I am happy at any time (although perhaps not at 10.30 p.m. at night, when we always seem to get on to important private members' bills at the later hours on a Wednesday night) to debate and discuss the bill ad nauseam. I find the process useful, informative and interesting, and it helps me formulate my own opinions, but the honourable member does not have me this time.

The Hon. P. HOLLOWAY: I indicate that I will oppose clause 3, consistent with the position I have taken in this parliament on previous occasions when the subject of euthanasia has been discussed.

The Hon. SANDRA KANCK: It looks as though we are coming to the end of the debate on clause 3. I encourage members to support the inclusion of objects, whether or not they like the bill. It is very valuable in any act to have a set of objects up front so that one knows exactly what the bill is about. By removing the objects, it lessens the bill. I therefore ask members to vote for their inclusion.

The Hon. K.T. GRIFFIN: To refer to the Hon. Sandra Kanck's plea in relation to objects, the real problem is not that objects are proposed for this bill but that the objects actually embrace the principles of what the legislation is seeking to do.

If one were to vote for the objects that would indicate support for what the objects are promoting, and that is the difficulty. I do not think anybody has a problem with objects per se, but it is what is in the objects. There will be other legislation wherein the objects support the whole legislation, but with this bill it is the principles that the objects embody that I have difficulty in supporting. I think it needs to be clearly understood that it is not whether or not we should have objects that is the question for me: it is what principles the objects reflect, and it is those principles in respect of which I have concern.

The committee divided on the clause:

AYES (4)	
Dawkins, J. S. L.	Kanck, S. M. (teller)
Redford, A. J.	Sneath, R. K.
NOES (7)	
Gilfillan, I.	Griffin, K. T. (teller)
Holloway, P.	Lawson, R. D.
Roberts, R. R.	Schaefer, C. V.
Xenophon, N.	
PAIR(S)	
Elliott, M. J.	Stefani, J. F.
Pickles, C. A.	Zollo, C.
Laidlaw, D. V.	Davis, L. H.
Roberts, T. G.	Lucas, R. I.
Crothers, T.	Cameron, T. G.

Majority of 3 for the noes.

Clause thus negatived.

Progress reported; committee to sit again.

CONSTITUTION (PARLIAMENTARY TERMS) AMENDMENT BILL

In committee.

Clause 1 passed.

Clause 2.

The Hon. K.T. GRIFFIN: I move:

Page 3, lines 7 and 8—Leave out all words in these lines.

The Hon. Ian Gilfillan raised the issue and flagged that he had some reservation about deleting from the Constitution Act the words in section 6, 'Provided that this section shall not authorise the Governor to dissolve the Legislative Council'. Section 6 identifies the place and time for holding sessions of parliament. I have reflected upon what the Hon. Ian Gilfillan said. I think that, from a drafting point of view, the provision in the bill is quite appropriate. But the fact that we are, by the provision in the bill, removing those words that at least signal a protection for the Legislative Council might well send the wrong message. There is no harm done in leaving it in. If it is deleted, some persons may read something into it. My amendment is to ensure that those words remain in section 6 of the Constitution Act, therefore not raising the possibility that someone might at some time in the future read something sinister into the deletion of the provision.

The Hon. P. HOLLOWAY: The opposition will accept the amendment moved by the Attorney-General. Let me say by way of background that when this bill was drafted it was deemed that the provision that we are now discussing was redundant, and it was removed by parliamentary counsel on the basis that it was no longer important to the bill because the other changes that had been made had meant that, in fact, there could not be a separate election for the Legislative Council because of these other provisions in the constitution. But, as the Attorney says, there is certainly no harm in leaving it in there. If it gives some comfort to people to have it remain in the bill, we are happy with that. It does not in any way, as we see it, change the purpose of the bill.

Amendment carried; clause as amended passed.

Clause 3.

The Hon. P. HOLLOWAY: I move:

Page 3, lines 11 to 23—Leave out all words in these lines and insert:

Term of House of Assembly

28. (1) Subject to this section, a general election of members of the House of Assembly must be held on the third Saturday in March in the fourth calendar year after the calendar year in which the last general election was held.

(2) The Governor must, where a general election is to be held on a day fixed under this section, dissolve the House of Assembly and issue a writ or writs for the election at a time prior to the election that is in accordance with the requirements of the Electoral Act 1985 for the issue of writs.

(3) Before the issue of a writ or writs for a general election under this section, the Governor may, where—

(a) the day fixed under this section for the election is the Saturday immediately following Good Friday; or

(b) a general election of members of the commonwealth House of Representatives is to be held in the same month as the election; or

(c) it is reasonably necessary in order to meet a difficulty in the conduct of the election arising from a state disaster that has occurred, is occurring or is about to occur,

defer the day of the election, by notice published in a newspaper circulating generally throughout the state, to a Saturday not more than 21 days after the day otherwise fixed under this section.

(4) A day to which a general election is deferred in accordance with subsection (3) will be taken to be a day fixed under this section for the general election.

(5) After the issue of a writ or writs for a general election under this section, the day of the election may be deferred in accordance with the provisions of the Electoral Act 1985.

(6) In this section—

'state disaster' means any occurrence (including fire, flood, storm, tempest, earthquake, eruption, epidemic of human, animal or plant disease, hostilities directed by an enemy against Australia and accident) that—

(a) causes or threatens to cause, within the state, loss of life or injury to persons or animals or damage to property; and

(b) is of such a nature or magnitude that extraordinary measures are required in order to protect human or animal life or property.

I move the amendment standing in my name, that is, the provision that was in the bill as it came to us from the House of Assembly that clause 3 be taken out and a more comprehensive section be inserted.

The reason for this was discussed at some length during the second reading debate. The Attorney-General, during his contribution, referred to some problems that could arise if, for example, a commonwealth election was called within the same month as the state election, which is now on the third Saturday of March beginning in the year 2006 and every four years thereafter. The Attorney also raised the matter of what would happen if there was a natural disaster or some other problem, for example, the occurrence of Easter Saturday.

So, the opposition took on board the comments made by the Attorney-General and has made provision for a slight adjustment of the election date from the third Saturday in March should those three eventualities occur, that is, if the date was an Easter Saturday, if there was an election for the commonwealth House of Representatives in the same month, or if it was, as it says, reasonably necessary in order to meet the difficulty in the conduct of an election arising from a state disaster that has occurred. Of course, the definition of 'state disaster' is included in that section. I commend the amendment to the committee because I believe that it improves the bill and addresses the matters raised by the Attorney.

In conclusion, there is a similar provision in the New South Wales act which, of course, has four year fixed terms and, in a sense, we are mirroring that provision in this legislation.

The Hon. NICK XENOPHON: I have a question of the Hon. Paul Holloway in relation to these amendments. I am concerned with respect to new subsection (3)(c), which provides that there cannot be an election or that writs should not be issued if there is going to be difficulty in the conduct of the election arising from a state disaster that has occurred, is occurring or is about to occur. I am not sure how you can predict—

The Hon. K.T. Griffin: There might be an early warning of an earthquake.

The Hon. NICK XENOPHON: The Attorney suggests that there might be an early warning of an earthquake. He is serious, but I would have thought that an earthquake is something that we would have some warning of. I do not know whether amateur seismologists can tell us about that. However, I am concerned about the wording 'is occurring or is about to occur'. How can we predict? We have one example given by the Attorney.

The Hon. K.T. Griffin: It might be a hurricane.

The Hon. NICK XENOPHON: Or a hurricane, but I do not think we are in a hurricane zone.

The Hon. T.G. Cameron interjecting:

The Hon. NICK XENOPHON: Anyway, that is my point. My query, I think, may have been answered by the Attorney, and the Hon. Paul Holloway has been let off the hook, but it concerns me that 'is about to occur' seems extraordinarily broad. That is my principal query in relation to this amendment.

The Hon. P. HOLLOWAY: I assume that point has been answered. Again, I make the point that there is a similar provision in the New South Wales act. Under new subsection (6) of my proposed amendment, 'state disaster' is defined to include any occurrence including 'fire, flood, storm, tempest, earthquake, eruption, epidemic of human, animal or plant disease, hostilities directed by an enemy against Australia and accident'. It is fairly comprehensive.

I notice that recently the UK election was delayed because of problems with foot and mouth disease and people moving about. I guess it is probably moot to speculate about the stage at which the spread of foot and mouth reached the point where it was a disaster. So, to cover eventualities, the clause is written the way it is and I would not envisage that there would be any problems with it, as there have not in fact been in New South Wales.

The Hon. K.T. GRIFFIN: The government indicates support for the amendment. It did arise out of some representations that I had made in my second reading contribution. There is already provision in the Electoral Act for the Electoral Commissioner to postpone an election. It seemed appropriate that there be some mechanism included in the Constitution Act to ensure that that continued to apply.

There was also the issue of the state disaster and the capacity to postpone an election in those circumstances where a disaster had occurred, was occurring or was about to occur. The Hon. Paul Holloway has identified a number of those which are reasonably predictable, particularly in the context of early warnings from hurricane or earthquake centres or in similar circumstances. The difficulty is that with a fixed term it removes the flexibility of a government, even in genuine circumstances where it might be appropriate to defer an election.

We saw that happen in the United Kingdom with the Prime Minister having signalled that the election would be held, I think in March—earlier in the year—but because of the foot and mouth outbreak it was deferred by the Prime Minister for a couple of months. He had that flexibility because he had a nominal five year term. He had indicated when the election would be held but then indicated that, as a result of the foot and mouth disease outbreak, which was a true natural disaster, he would defer it for several months.

The difficulty we have with this bill is that no such flexibility is given. I will address some issues in relation to that in a moment. The amendment being proposed by the Hon. Paul Holloway is certainly better than what is in the current bill, and I therefore indicate support for it.

Amendment carried; clause as amended passed.

Clause 4.

The Hon. P. HOLLOWAY: I move:

Page 3, line 28—After 'and issue' insert:
a writ or

Of course, we have just amended clause 3 to delete proposed new section 28(1)(a). It is therefore necessary that we should adjust the transitional provision in clause 5 to allow for the

amendment that we have just made. In effect, it ensures that in the case of the next parliament—that is the parliament elected after the next election—the date of the election after next will be the third Saturday in March 2006. If we had not moved this amendment, it would refer to a non-existent clause. So this is a tidying up, or consequential, provision based on the amendment that the committee has just carried. I commend the amendment to the committee.

Amendment carried.

The Hon. K.T. GRIFFIN: I want to raise an issue that I have been pondering for quite some time. It arises out of the fact that, with a fixed term parliament, there are very limited options for an early poll. The Constitution Act provides that the current structure is for a fixed term of three years from the day on which the House of Assembly first met for the dispatch of business after a general election but within that three-year time frame it provides for a motion of no confidence in the government. If that is passed in the House of Assembly, there can be an election during that period. There can also be an election if a motion of confidence in the government is defeated, if a bill of special importance passed by the House of Assembly is rejected by the Legislative Council or if the Governor is acting in pursuance of section 41, which is the double dissolution provision. There was flexibility in the government of the day after that three-year minimum had passed.

A bill of special importance is deemed to have been rejected by the Legislative Council if the bill is defeated on a vote taken in the Legislative Council, if the bill has not been passed by the Legislative Council at the expiration of two months from the date of the transmission of the bill to the Legislative Council, and if the bill is passed by the Legislative Council with an amendment or suggested amendment to which the House of Assembly disagrees and the differences between the houses are not resolved within one month after the passing of the bill by the Legislative Council.

The real crunch question is that a bill of special importance is one declared by resolution of the House of Assembly, passed before or immediately after the third reading of the bill in the House of Assembly, to be a bill of special importance. That was enacted at a time when a political party had a majority in the House of Assembly. I do not think it was in contemplation at that time that there would be minority governments that would not be able to have a motion passed in the House of Assembly that a bill was a bill of special importance.

We have a situation now, of course, where there is a House of Assembly with Independents who may not necessarily agree with the government of the day that there is a bill of special importance and there ought to be a declaration to that effect, that there is a bill of such importance that ultimately the electors should make a determination about the government which was promoting that particular bill of special importance. If this bill is passed and if there is a minority government, it may be impossible, say halfway through the term or after two years from the general election, when the government has a significant policy issue of vital importance to the state, that it resolves to declare it a bill of special importance but may not get the support of the House of Assembly.

So, this bill of special importance in reality may go to the Legislative Council and be rejected, and there is then no way that that issue can be tested before the people. That is no different, I admit, from what is presently in the act except that, if it was at the two year or 2½ year mark, there might be only a relatively short period to run before a government could then go to the people to test that particular issue. Under the bill, with fixed terms it might be two years before that issue can be tested. In those circumstances there is potentially a major constitutional issue.

I do not have the answer to it at this stage except that one possibility, which I certainly had contemplated, was the government of the day being able to propose a vote on a resolution declaring a bill to be a bill of special importance and, if that was not successful, a mechanism to allow the government, through the governor, to deliver a message to the House of Assembly that the bill is a bill of major importance. That was floated informally. It did not meet with immediate approval, but it may be that that is the mechanism by which this ultimately is achieved, because I suggest that it is not in the interests of the community that there be a government unable to get significant policy at least through the House of Assembly or, if through the House of Assembly, not able to achieve a resolution that the bill is a bill of special importance and, ultimately, test that before the people.

We can reflect on recent history in this state, and there are probably a handful of those bills that governments of both political persuasions would have regarded as bills of special importance. I am flagging the issue now because I do not want it to be said that, by indicating the government's support for this bill, the government could be accused of not giving consideration to that very real issue of a stalemate, which might frustrate proper and effective government in South Australia. I certainly want to put it on the table.

Time does not allow a full consideration of that issue as we enter the remaining weeks of this session, but it is an issue that will need to be addressed. It does not matter which party is in power: it is my view that it is appropriate that the issue be addressed; and the suggestion that I have proposed is one that I think worthy of consideration, because the last thing that this state needs is a government limping to the next election, frustrated by its inability to get this resolution that a bill is a bill of special importance through the House of Assembly.

The Hon. P. HOLLOWAY: It is interesting that the Attorney concluded with the image of a government limping to the next election. In the current climate, I would think that it is more a question of a government that has to be dragged kicking and screaming to the next election. But I think I understand the point that the Attorney is making on this matter.

Let me take this opportunity to acknowledge the contribution that the Attorney-General has made to this bill and the constructive way in which he has approached it. We appreciate that, as I am sure does my colleague Kris Hanna, who was the author of this bill and who has done most of the work on it.

I will perhaps answer the points raised by the Attorney in this way. The first point I make is that there really is no change to the current provisions, as the Attorney has acknowledged. For the first three years of a government the bill of special importance provisions would apply, so that if there is a problem under a fixed four-year term exactly the same problem would apply as now applies to the first three years of government. The second point I make is that, of course—

The Hon. K.T. Griffin: Except in relation to the further time that one might have.

The Hon. P. HOLLOWAY: Yes; it is just a matter of scale. If it happened early in a government's term under the current provisions, and if it was going to be a problem in the

future, it would be a problem then. Of course, there has not yet been within this state any bill that has been declared a bill of special importance. Certainly, it is not an issue that has occurred yet in the constitutional history of this state. I understand that the Attorney is saying that we could have a situation, such as we have in the lower house at the moment, where Independents have the balance of power.

If a government put up a bill would we have a situation where that bill might be passed by the Independents in the lower house but those Independents would not support a resolution of a bill of special importance? It just seems a little odd to me that Independents would support a bill and say, 'Yes, look, it deserves to be passed but it is not so important that we will declare it a bill of special importance.' I think that is a fairly—

The Hon. K.T. Griffin interjecting:

The Hon. P. HOLLOWAY: It is conceivable but I would have thought highly unlikely and, given the nature of relationships of minority governments (where a lot of horse-trading occurs between the Independents and the government), I would have thought that those issues would, in 99.99 per cent of cases, be resolved through negotiations anyway. I think that it is a highly unlikely scenario but the problem is how we would solve it, and that is our difficulty. If Independents were allowing the bill to pass but not declaring it a bill of special importance, would you then give a government the right in that situation to say, 'A motion to declare a bill of special importance is regarded as a motion of confidence in the government'?

That is one situation you could look at, but I suspect that we could create—and it is the view of the opposition—more anomalies by doing that than we would by leaving the measure as it is particularly, as I said, as that provision relating to bills of special importance has never been exercised in the constitutional history of the state.

The Hon. K.T. Griffin: It has been there only since the mid 80s.

The Hon. P. HOLLOWAY: It is 20 years; it could arise. The other point I should make is that, given that this bill is really about four-year terms, this question of bills of special importance certainly has a peripheral relationship to it, but it is not central to the issue about whether or not we should have four-year terms. At some stage in the future perhaps we will need to look at the deadlock measures that apply to this parliament and within the constitution as a whole. For example, we have the deadlock provisions relating to double dissolutions that are really, I would have thought, quite obsolete in this day and age given the current political situation.

The Hon. R.D. Lawson interjecting:

The Hon. P. HOLLOWAY: My point is that when those deadlock provisions apply extra seats are created in the Council. For a start it must straddle two elections, which makes it highly unlikely in itself. But if you reached the stage of a double dissolution you would have extra seats, which provision was, as I understand it, designed in the days when this Council consisted of representatives of a number of districts rather than the state as a whole. My point is that I think that particular provision of the constitution—and I am sorry I do not recall the clause—is certainly—

The Hon. K.T. Griffin: It is clause 41.

The Hon. P. HOLLOWAY: It is clause 41; I thank the Attorney. That is certainly, I would suggest, an obsolete provision; and maybe at some stage in the future, in terms of constitutional reform, this parliament could look at the whole question about how we deal with deadlocks in some greater detail. It might be appropriate to revisit this question of bills of special importance in that context. That is about all I can say on the subject. I appreciate the Attorney's contribution, but it is not a matter that we can easily fix here.

The Hon. K.T. GRIFFIN: It is true to say that this bill is about fixed terms, but in looking at fixed terms it is important to look at all the issues which are likely to impinge upon it. And so, I do not accept that it is just an issue of a fixed term, because fixed term has to work. What I have been pointing out is that there is a very real prospect that at some time in the future there will be circumstances which will conspire against a government wishing to have major legislation passed, the government's wish in that respect being thwarted in the way in which it can have that achieved. One only has to hark back to the issue of Dartmouth and Chowilla in 1970. That was a situation where there was an evenly divided House with an Independent in the House of Assembly holding the balance of power.

It was a debate about the welfare of the state, and then Premier Steele Hall felt so strongly about the issue, Dartmouth or Chowilla, promoting Dartmouth against the political views of the then Labor Leader of the Opposition, who subsequently acknowledged that Premier Hall was right, even though Hall was then in opposition. The circumstances there were quite clear: Dartmouth was critical for the interests of the state. There was an election in those circumstances, because the Speaker declined to support the government, which regarded the bill for Dartmouth to be passed. So, it was an issue of confidence in the government of the day.

That sort of situation can equally apply where there is a bill of such importance to the state that, ultimately, if it is not passed, the people of South Australia ought to have at least an opportunity, if the government of the day so determines it is a bill of such importance, to express a view on that particular issue. They are the sorts of circumstances which can arise, and the constitution has to work for the people and not bind the people, because it is a document about the way in which the state is governed. I am merely putting these issues on the record. I will not be here after the next election to say, 'Well, I told you so' at some time in the future, but I might well ring up or write letters to the editor.

The Hon. R.K. Sneath interjecting:

The Hon. K.T. GRIFFIN: The editor may not publish them of course. I think it is important to recognise that it is not just an issue about fixed terms: it is an issue about capacity of governments to govern or government to be stable.

The Hon. P. HOLLOWAY: I thank the Attorney for his comments; they will go on the record and time will tell. Mr Chairman, I draw your attention to the state of the committee.

A quorum having been formed:

Clause as amended passed.

Clause 5.

The Hon. P. HOLLOWAY: I move:

Page 3, line 33—leave out 'section 28(1)*(a)*' and insert: section 28 (1)

This is a consequential amendment.

Amendment carried; clause as amended passed.

Title passed.

Bill reported with amendments; committee's report adopted.

The Hon. P. HOLLOWAY: I move:

That this bill be now read a third time.

The PRESIDENT: This bill is of such a nature as to require the third reading to be carried by an absolute majority of the whole number of members of the Council. I have counted the Council and, there being present an absolute majority of the whole number of members, I put the question that the bill be read a third time. For the question say aye, against no. I think the ayes have it.

Bill read a third time and passed.

RETIREMENT VILLAGES (MISCELLANEOUS) AMENDMENT BILL

The Hon. R.D. LAWSON (Minister for Disability Services) obtained leave and introduced a bill for an act to amend the Retirement Villages Act 1987 and to make a related amendment to the Residential Tenancies Act 1995. Read a first time.

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

That this bill be now read a second time.

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

Leave granted.

The *Retirement Villages Act 1987* ('the Act) regulates the rights of residents of retirement villages by providing that certain matters be outlined in residence contracts and that certain information be provided prior to settlement. The Act also imposes some miscellaneous duties on administering authorities of retirement villages.

There are approximately 300 retirement villages in South Australia. They provide appropriate accommodation for many older people. Most residents indicate a high level of satisfaction with the arrangements in their village and the great majority of retirement villages are generally well managed. However, there are several aspects of the current regulatory regime which could be improved.

In January 2000, a Discussion Paper entitled *Issues associated with the Regulations under the Retirement Villages Act 1987* was released for public discussion.

The Discussion Paper was widely circulated and there was extensive consultation between retirement village residents and their representatives, residents' committees, retirement village owners and administering authorities, other interested individuals and the Office for the Ageing (OFTA). Submissions were received from a number of interested persons and the issues were examined by the Retirement Villages Advisory Committee (RVAC) which consists of resident and industry representatives as well as officers from OFTA.

The Bill has been prepared as a result of this consultation process.

It is usually provided in the residence contract that the resident is responsible for the payment of recurrent (or so-called maintenance) charges until such time as the resident's unit is re-licensed. As the process of re-selling or re-licensing can often take some months, considerable hardship can occur and the resident's funds can be diminished, if not exhausted, by the continuing obligation. The Government considers that the Act should set a maximum period in respect of which these amounts should be chargeable. That period is sufficient time for a unit to be redecorated (if necessary) and re-licensed. There have been complaints that some administering authorities are dilatory in re-marketing of a unit and that the continuing contribution of the resident has meant that there has been no incentive to hasten the re-marketing process.

After considerable consultation, the Government has decided that six months should be fixed as the maximum period in respect of which recurrent charges can be charged to residents after the date of vacant possession. After that time, the Bill stipulates that the administering authority will be responsible for meeting these charges. There will be a provision for administering authorities to apply to the Residential Tenancies Tribunal in individual cases where imposition of a six month period would be harsh and unreasonable.

To reduce opportunities for dispute and disagreements and to ensure that residents (and administering authorities) are aware of the process for re-marketing a unit after it is vacated, residence contracts will be required to set out the procedures and the respective rights and responsibilities of both administering authorities and residents in relation to the re-marketing of the unit. It is envisaged that issues such as the appointment of a selling agent, an advertising regime and consultation in relation to these matters will be included in the contract.

Presently, there is no universal requirement that the financial statements which are required under Section 10(5)(a) of the Act to be presented to residents are audited. As residents place a great reliance on these statements, the Bill introduces a requirement that the statements and balance sheet be audited by a suitably qualified person.

On occasion, issues arise in retirement villages which give rise to a desire on the part of residents to know the current financial position which may affect current or anticipated expenses, some of which will be borne by residents. However, administering authorities are only obliged to present financial statements at the annual meeting. The Bill introduces a provision which allows a resident or a residents' committee to require the delivery of interim financial statements. The cost of preparing such statements will be with the person (or committee) making the request.

The Bill also addresses a number of definitional and minor administrative matters and other amendments to bring the legislation into line with other legislative or administrative changes. They include:

- Correction of references to various bodies eg 'Commissioner' to 'Minister'; 'Companies (SA) Code' to '*Corporations Act 2001 of the Commonwealth*'; 'Commission' to 'Corporate Affairs Commission' or 'Australian Securities and Investment Commission' where appropriate
- Clearer definitions of resident/spouse
- Clarification of delegation for the administration of the Act

In addition to the foregoing amendments incorporated in this Bill, it is intended to amend all Regulations made under the Act to incorporate the following changes.

The Regulations will require an administering authority to issue to prospective residents a copy of the Code of Conduct which outlines significant obligations of the administering authority. This copy of the Code of Conduct will be in addition to the Disclosure Statement which is already required to be issued to prospective residents.

To reduce disputes about resident obligations to pay or contribute to refurbishment, the Regulations will require administering authorities to complete a 'Premises Condition Report' at the commencement and conclusion of each occupancy. This report will provide a statement concerning the condition of fixtures, fittings and furnishings.

In line with the requirements of the Commonwealth *Aged Care Act 1997* and to ensure that retirement village residents are not disadvantaged in comparison to others in the community, when moving to a higher level of care, the Regulations will be amended to stipulate that assessment by an Aged Care Assessment Team will be required.

In order to reduce uncertainty in relation to the use and management of specific purpose funds, the expression 'specific purpose funds', eg capital replacement, long-term maintenance, are to be defined in the compulsory Disclosure Statement. These funds must only be used for their designated purpose.

The Regulations will require that any exemptions granted to a retirement village under the Act be noted in the Disclosure Statement.

The Regulations will also require the administering authority to undertake reasonable consultation with residents where matters could have a significant impact on their financial affairs, amenity or way of life.

Regulation of the retirement village industry operates to encourage transparency in the contractual relationship between a resident and a provider of retirement village accommodation and services. Hence, the legislation and any Regulations should continue to seek to provide the clarification of the rights, obligations and relative risk for residents and administering authorities, whilst protecting the legitimate property interests of the both parties.

This transparency should occur not only at the time of entering a contract, but also during the period of residency and after the resident vacates the accommodation for whatever reason.

The *Retirement Villages (Miscellaneous) Amendment Bill 2001* will improve legislative protection for retirement village residents and require increased disclosure and transparency in relation to the mutual rights and obligations of residents and administering authorities.

Explanation of clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will be brought into operation by proclamation.

Clause 3: Amendment of s. 3—Interpretation

The definition of 'resident' is to be revised to provide specifically that a resident must be a party to a residence contract, or a spouse of such a person (whether or not the spouse was the person's spouse at the time the person commenced occupation of the relevant unit), although the extension of the definition to spouses will be subject to any provision in the residence contract. A spouse will include a *de facto* spouse.

It is also to be made clear as to when a person will be taken to have ceased to reside in a retirement village for the purposes of the Act.

Clause 4: Repeal of s. 5

The Commissioner for Consumer Affairs no longer assumes responsibility for the administration of the Act.

Clause 5: Amendment of s. 6—Creation of residence rights

Section 6(3) of the Act provides that a statement provided to a resident under the section will prevail over any inconsistent contractual term. However, the resident should be able to elect to rely on the contractual term.

Clause 6: Amendment of s. 8—Premiums

This clause is consequential.

Clause 7: Amendment of s. 9A—Arrangements if resident is absent or leaves

These amendments provide for a scheme under which the administering authority will assume initial responsibility for maintenance and other recurrent charges after a resident leaves the retirement village. If the resident is subsequently entitled to a refund of a premium, then the administering authority will be entitled to recover an amount equal to what would have been the resident's liabilities for these charges over the prescribed period (as defined). However, a right of recovery cannot be for an amount exceeding the amount of premium repayable to the resident. If an administering authority fails to make a payment under this scheme, it must keep a record of the outstanding payment and identify it in relevant financial statements. Furthermore, it cannot seek to recover the amount of the outstanding payment from other residents.

Clause 8: Amendment of s. 10—Meetings of residents

Financial statements provided for the purposes of an annual general meeting of residents will now be required to be audited by a registered company auditor.

Clause 9: Insertion of s. 10AAA

A resident or a residents' committee will now be entitled to request and receive a quarterly financial report. An administering authority will be able to require the payment of a specified amount to cover the cost of preparing and providing a report, provided that information about this fee is provided to the resident at the time of the request, and that the fee is reasonable in the circumstances.

Clause 10: Amendment of s. 14—Tribunal may resolve disputes

The maximum penalty for a breach of an order of the Tribunal (other than an order for the payment of an amount) is to be increased from $2 500 to $10 000.

Clause 11: Amendment of s. 16—Lease of land in retirement village

Clause 12: Amendment of s. 17—Termination of retirement village scheme

These amendments are consequential.

Clause 13: Amendment of s. 18—Certain persons not to be involved in the administration of a retirement village

The opportunity is being taken to update a reference so as to refer to the new *Corporations Act 2001* of the Commonwealth.

Clause 14: Amendment of s. 22—Offences

This amendment is consequential.

Clause 15: Insertion of s. 22A

This amendment will provide a specific power of delegation for the Minister in the administration of the Act.

Clause 16: Amendment of s. 23—Regulations

The regulations will be able to require the provision of certain policies to residents.

Clause 17: Amendment of Schedule 1

These amendments correct out-dated references.

Clause 18: Amendment of Schedule 3

Clause 19: Amendment of Residential Tenancies Act 1995

Related penalties are to be increased.

Clause 20: Transitional provisions

The amendments made by clause 7*(b)* and *(c)* of this measure will not apply to existing residence contracts. The Governor will be able to make regulations to deal with other saving or transitional matters.

The Hon. P. HOLLOWAY secured the adjournment of the debate.

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Administration and Probate Act 1919, the Criminal Law Consolidation Act 1935, the Criminal Law (Sentencing) Act 1988, the Evidence Act 1929, the Partnership Act 1891, the Public Assemblies Act 1972, the Real Property Act 1886, the Summary Offences Act 1953, the Trustee Act 1936, the Trustee Companies Act 1988 and the Worker's Liens Act 1893. Read a first time.

The Hon. K.T. GRIFFIN: I move:

That this bill be now read a second time.

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

Leave granted.

This bill will make a number of minor, uncontroversial amendments to legislation within the Attorney-General's portfolio.

Administration and Probate Act

Section 121A of the *Administration and Probate Act* currently requires an applicant for administration or probate or an applicant for the sealing of a foreign grant of probate or administration to provide the Court with a statement of all the deceased person's assets and liabilities known at the time of the application. The section further provides that, once the administration or probate is granted or sealed, the administrator or executor of the estate is under an obligation to inform the court of any other assets or liabilities that come to his or her attention during the execution or administration of the estate.

The statement of assets and liabilities proves useful by providing essential information to a person with an interest in the administration of an estate and who is considering whether or not to bring a family provision application. It also ensures that there is a comprehensive list of the estate's assets and liabilities, which can be referred to if there are concerns about the administration of the deceased's estate at a later date.

While, in general, there are substantial merits in requiring an applicant to provide the court with a list of all the deceased's assets and liabilities, the benefits that such a comprehensive statement bring are likely to be outweighed by the cost of compiling such a statement in circumstances where the deceased's connection to Australia is tenuous. As such, the Government is satisfied that only Australian assets should be disclosed in accordance with the requirements of section 121A of the Act where the deceased's last domicile was not Australia, and where the deceased was not a resident of Australia at the time of death. This bill ensures that section 121A of the Act is amended accordingly.

Criminal Law Consolidation Act

Presently, only a few provisions in the *Criminal Law Consolidation Act 1935* give rise to the need for Regulations and, where this is the case, a specific regulation making power has been included in the body of the particular section. There is no general regulation making power in the Act. A recent proposal to prescribe the form of a warrant for a detention order under section 269O of the Act, which deals with defendants who are declared liable to supervision, highlighted the difficulties of not having a general regulation making power in the Act. It was not anticipated that regulations would be required so no specific regulation making power was enacted in connection with section 269O. Given that there was also no general regulation making power in the Act, there was no power to prescribe the form of the warrant by regulation.

Although the lack of a general regulation making power has only been identified as a problem in relation to section 269O of the Act, it is foreseeable that the issue may again arise in the future, particularly with the spate of amendments resulting from the staged reform of the criminal law. As a result, the bill introduces a general regulation making power into the Act to allow the Governor to make

regulations as are contemplated by the Act, or as are necessary or expedient for the purposes of the Act.

It is also necessary to make two technical amendments to the *Criminal Law Consolidation Act* to correct omissions made when the mental impairment provisions were inserted.

Section 269G should have provided for the Court to direct that a person who was found to be mentally incompetent under that section be declared liable to supervision under the relevant Part. However, when the amendments were made, the words "declared liable to supervision under this Part" were unintentionally omitted from this section. The bill will therefore amend the Act to correct this error.

When the power to detain for the Governor's pleasure was removed and replaced with the provisions regarding persons being declared liable to supervision, one reference to the power to detain for the Governor's pleasure was accidentally retained. The bill will strike out section 354(4), which contains this reference. Section 354(4) relates to the powers of the appellate court to quash a conviction and order detention where it appears to the court that the appellant was "insane" at the time of commission of the offence. In place of section 354(4), the bill amends section 269Y of the Act dealing with appeals, which is located in Part 8A of the Act relating to mental impairment, to confer equivalent powers on the appellate court where the court is of the opinion that the appellant was mentally impaired or unfit to stand trial.

Criminal Law (Sentencing) Act

Section 71(8) of the *Criminal Law (Sentencing) Act* enables the Court to deal with the situation where a person who has been given a community service order obtains remunerated employment which makes it difficult for the person to comply with the order. The section currently gives the Court two options:

- revoke the community service order; or
- impose a fine not exceeding the maximum fine that may be imposed for the offence in respect of which the community service order was made (or, if the order was made in respect of more than one offence, for the offence that attracts the highest fine).

It is the latter of these options that creates the problem. An anomaly arises because of the operation of section 70I of the Act, which provides for the court to revoke a fine which has been imposed where the defendant is unable to pay the fine and instead require the defendant to perform community service.

A practical example will probably serve to best illustrate the problem. The Magistrates Court has recently had to deal with two files where the defendants had not complied with a community service order as a consequence of obtaining full time work. Both persons were before the Court on alleged breaches of community service orders arising from the provisions of section 70I.

The first defendant (A) had an alternative sentence of 212 hours in lieu of $2 667 of unpaid penalties. The second defendant (B) had a sentence of 104 hours in lieu of $1 383. Neither of them had done any of the hours due. A's most serious offence was 'break and enter' and so theoretically A could have been fined up to $8 000—he could, therefore, have been reinstated to the full extent of the monetary penalties he owed prior to his alternative sentencing. B's most serious offence, on the other hand, was driving an uninsured vehicle which carries a maximum fine of $750, which is much less than the $1 383 owed by him prior to the alternative sentence and therefore the maximum he would be required to pay in the changed circumstances would be $750.

It is not difficult to envisage a situation arising where two people owe the same amount of money but are subject to considerable difference in their fines because of the different nature of the matters on which they were first penalised.

The bill will therefore amend the *Criminal Law (Sentencing) Act* so that the Court can impose an appropriate maximum fine, taking into account all the offences for which the original penalty was imposed (ie so that the fine cannot exceed the total of the maximum penalties that could be imposed in respect of each of the offences to which the sentence relates).

Evidence Act

Section 6(4) of the *Evidence Act* requires a witness who wishes to affirm to recite the entire affirmation. Where a witness is swearing, however, section 6(1) provides a formula for swearing an oath which simply requires the witness to state "I swear" after the oath has been tendered to him or her.

There is no need for different practices to apply to oaths and affirmations, given that they now have equal status. Further, problems can arise where the witness is illiterate or has forgotten his or her glasses and is therefore unable to read the form of affirmation.

In the Northern Territory, the form of affirmation used in the Courts is for an officer of the Court to ask the witness "Do you, X, solemnly, sincerely and truly affirm and declare etc", to which the witness replies "I do". In Victoria, individual witnesses are required to recite the whole oath or affirmation, but where more than one person swears or affirms at the same time, then those persons may be administered an oral oath or affirmation, to which the response is "I swear by Almighty God to do so" or "I do so declare and affirm" as appropriate.

It would seem appropriate that the same procedure apply to oaths and affirmations. The bill will therefore amend the *Evidence Act* to provide that those who wish to affirm can do so by having the affirmation read out to them and saying "I do solemnly and truly affirm".

Further amendments are required to the *Evidence Act* to address an anomaly regarding the form and admissibility of proof of convictions in the District Court. Sections 34A and 42(1) of the *Evidence Act* predate the creation of the District Court and deal only with convictions on indictment in the Supreme Court. These sections are to be amended to deal with admissibility and proof of convictions in the District Court in the same way as they deal with admissibility and proof of convictions in the Supreme Court.

Section 34A provides that, where a person has been convicted of an offence, and the commission of that offence is in issue or relevant to any issue in a subsequent civil proceeding, the conviction shall be evidence of the commission of that offence admissible against the person convicted or those who claim through or under him. The provision was inserted into the *Evidence Act* to abrogate the common law rule in *Hollington v Hewthorn & Co Ltd* that evidence of a conviction cannot be used to prove the facts on which the conviction was based. The benefits of the provision include ensuring that highly probative evidence is not excluded, as well as saving time and expense involved in re-litigating issues which have already been resolved, to a higher standard of proof, in prior criminal proceedings.

Currently section 34A provides that convictions other than upon information in the Supreme Court shall not be admissible unless it appears to the court that the admission is in the interests of justice. There is no justification for distinguishing between the admission of Supreme Court and District Court convictions. The amendment also removes the distinction between types of offences completely, so that convictions for summary offences are admissible in the same way as convictions for indictable offences. The current distinction confuses questions of admissibility with questions of weight. This conforms with the approach in the Commonwealth and New South Wales Evidence Acts to the admission of prior convictions in subsequent civil proceedings.

Partnership Act

Section 10 of the *Partnership Act* provides that partners will be liable for any loss, injury or penalty incurred as a result of any wrongful act or omission of another partner acting in the course of partnership business or with the authority of the other partners.

The Law Society has expressed concern that there is the potential for partners in law firms to incur liability under this section based on the activities of their partners where those partners act as directors of outside companies. While there are times when this activity has a substantial connection with the partnership, there are other times when such a connection may be exceedingly tenuous.

In particular, if the only connection between the partnership and the directorship is that the partners have consented to the partner acting as a director of a company, or that more than one partner is a director of the company, then it is very difficult to establish the requisite connection. To hold the (non-director) partners liable for the acts or omissions of the director partner in these circumstances does not accord with the principle underlying section 10, which is to prevent partners from using the partnership structure to escape liability in circumstances where the partners derived a benefit from the acts of their partner. Therefore, the bill amends section 10 to provide that a partner who commits a wrongful act or omission as a director of a body corporate is not to be taken to be acting in the course of partnership business or with the authority of the partners' co-partners only because the partner obtained the agreement or authority of the partners' co-partners, or some of them, to be appointed or to act as a director of the body corporate or any co-partner is also a director of that or any other body corporate.

Public Assemblies Act

The *Public Assemblies Act* is committed to the Minister for Justice but the amendment is included in this bill for the sake of convenience.

The *Public Assemblies Act* creates a system whereby members of the public who wish to hold public assemblies can notify named authorities of their intentions. If the proposal is not disapproved, then the participants in that assembly are immune from civil and criminal liability by reason of the obstruction of a public place. The three authorities to whom notice may be given are the Chief Secretary, the Commissioner of Police and the clerk of the council in whose area the proposed assembly is to be held. Once one of these authorities is notified of a proposal, it is his or her duty to inform the other two.

There is some uncertainty as to who now exercises the powers of the Chief Secretary, a position which no longer exists. It appears that the powers and functions of the Chief Secretary have been ultimately transferred to the Minister for Environment and Heritage. However, this is not certain.

It is questionable whether the Minister for Environment and Heritage is the appropriate Minister to be exercising the powers under the *Public Assemblies Act*. The powers contained in this Act may be considered to be more appropriately exercised by the Minister for Justice. The intention of the *Public Assemblies Act* is to provide a mechanism by which members of the public can inform authorities of proposed assemblies and gain protection from criminal liability arising from obstruction of a public place, therefore it is desirable for it to be clear on the face of the Act who the authority is to whom notice should be given. Therefore the amendment provides that this will be the Minister for Justice.

Real Property Act

The only Act within the Attorney-General's Portfolio which refers to the Chief Secretary is the *Real Property Act*. Section 210 of that Act provides for the Chief Secretary to countersign a warrant under the hand of the Governor in relation to acceptance by the Registrar-General of liability in claims for compensation from the Assurance Fund under the *Real Property Act*. This role would be more appropriately exercised by the Attorney-General and this bill amends the *Real Property Act* to replace the reference to the Chief Secretary with a reference to the Attorney-General.

Summary Offences Act

The *Summary Offences (Searches) Amendment Act* amends the *Summary Offences Act* to regulate the procedures for intimate and intrusive searches of detainees by police, including the videotaping of such procedures. While the amending Act imposes a heavy penalty for unauthorised playing of a videotape recording of an intimate search, it is desirable that there also be the ability to prescribe a penalty for breaching certain provisions in the Regulations, including the prohibition against copying a videotape and failing to return it for destruction. The bill amends the *Summary Offences Act* to include a power to make regulations prescribing penalties not exceeding $2 500 for breach of a regulation.

Trustee Act

The *Trustee Act* (s. 69B) provides that applications for the variation of a charitable trust may be considered either by the Supreme Court or, if the value of the trust property does not exceed $250 000, by the Attorney-General. This amount was fixed in 1996. To maintain the status quo, the amount should now be adjusted for inflation. The amendment increases the amount to $300 000. This increase exceeds the effects of inflation and ensures that the amount will remain relevant for some time into the future. This is important given that the requirement to apply to the Supreme Court would involve a large amount of cost to a small trust.

Trustee Companies Act

The *Trustee Companies Act* regulates the powers and activities of certain bodies prescribed to be trustee companies under Schedule 1 of the Act. An amendment is required to Schedule 1 of the Act to replace the reference to "National Mutual Trustees Limited" with a reference to "Perpetual Trustees Consolidated Limited" to reflect the change of name of that body (from National Mutual Trustees Limited to AXA Trustees Limited to Perpetual Trustees Consolidated Limited).

Workers Liens Act

The bill makes various amendments to the *Workers Liens Act* to clarify the jurisdiction of the courts under the Act and make other changes consequent on the replacement of the former local courts with the new Magistrates and District Courts. It is not clear pursuant to the transitional provisions of the legislation relating to the transition to the new Courts that the District Court has jurisdiction under the Act. In particular, the amendments make it clear that the District Court may exercise jurisdiction under section 17 of the Act in relation to applications to direct the Registrar-General to make a memorandum that a lien has ceased.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This clause provides that a reference in the bill to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

PART 2

AMENDMENT OF ADMINISTRATION AND PROBATE ACT 1919

Clause 4: Amendment of s. 121A—Statement of assets and liabilities to be provided with application for probate or administration

This clause sets out the disclosure requirements where a deceased person was not domiciled in Australia at the time of death. Disclosure need only by in respect of the assets situated, and liabilities arising, in Australia. The insertion of new subsection (7a) clarifies where assets and liabilities will be deemed to be situated where that is unclear or where they are situated partly in Australia and partly elsewhere.

PART 3

AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT 1935

Clause 5: Amendment of s. 269G—What happens if trial judge decides to proceed first with trial of objective elements of offence

This clause amends section 269G of the *Criminal Law Consolidation Act* to clarify the effect of finding the objective elements of an offence proved, followed by a finding that a defendant is mentally incompetent to commit an offence. In such circumstances, the defendant will be found not guilty and declared liable to supervision under Part 8A of the Act. Paragraphs *(a)* and are consistency changes in respect of certain phrases in Part 8A: the court must now *find* the defendant not guilty rather than *record a finding* that the defendant is not guilty.

Clause 6: Amendment of s. 269Y—Appeals

This clause clarifies the powers of the appellate court on an appeal under section 269Y. The court has the power to confirm, set aside, vary or reverse a decision, direct a retrial or make any finding or exercise any power that could be made or exercised by the court of trial and make any ancillary orders or directions.

Clause 7: Amendment of s. 354—Powers of Court in special cases

This clause removes subsection (4) which relates to an appeal on the grounds of insanity and the keeping of a defendant 'until the Governor's pleasure is known'. This provision has been superseded by the provisions of Part 8A of the *Criminal Law Consolidation Act*, and the amendments in this bill to section 269Y of the Act.

Clause 8: Insertion of Part 12

This clause inserts a general regulation making power to enable the Governor to make regulations for the purposes of the *Criminal Law Consolidation Act 1935*, and a specific power to make regulations imposing penalties not exceeding $2 500.

Clause 9: Further amendments of principal Act

This clause refers to further amendments to the *Criminal Law Consolidation Act 1935*, which are set out in the Schedule to this bill.

PART 4

AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988

Clause 10: Amendment of s. 71—Community Service orders may be enforced by imprisonment

This clause amends section 71 of the principal Act to address an anomaly that arises where the court has revoked a fine imposed on a defendant and substituted a community service order under section 70I of the Act. If the defendant is subsequently unable to perform the community service because they have obtained employment, the court under section 71(8) of the Act may impose a fine in relation to the offence or offences to which the community service order relates. Currently, where there is more than one offence involved, the maximum fine that can be imposed in this situation can not exceed the maximum for the offence that attracts the highest fine. The amendment allows for the imposition of a maximum fine that cannot exceed the total of the maximum penalties that could be imposed in relation to each of the offences to which the sentence relates. This

allows the court to impose a penalty on the same basis as the original penalty (in accordance with section 18A of the Act).

PART 5
AMENDMENT OF EVIDENCE ACT 1929

Clause 11: Amendment of s. 6—Oaths, affirmations, etc.

This clause amends section 6 of the principal Act so that the procedure for making an affirmation is similar to the procedure for taking an oath.

Clause 12: Substitution of s. 34A

This clause is similar to the existing provision relating to proof of commission of an offence but differs in that it now includes previous findings by a court of the commission of an offence (that is, where no conviction is recorded) and it removes the proviso that restricts the admissibility of previous offences in lower courts to where such admissibility is in the interests of justice.

Clause 13: Amendment of s. 42—Proof of conviction or acquittal of an indictable offence

This clause updates the existing reference in the Act to the 'Chief Clerk', to the 'Registrar'.

PART 6
AMENDMENT OF PARTNERSHIP ACT 1891

Clause 14: Amendment of s. 10—Liability of firm for wrongs

This clause amends section 10 of the Partnership Act, which deals with the liability of a partnership for the wrongful acts or omissions of partners. The amendment makes it clear that a partner who commits a wrongful act or omission as a director of a body corporate is not to be taken to be acting in the ordinary course of business of the partnership, or with the authority of the other partners, by reason only of the fact that the partner obtained the agreement or authority of the co-partners (or some of them) to be appointed or to act as a director or because any co-partner is also a director of that, or any other, body corporate.

PART 7
AMENDMENT OF PUBLIC ASSEMBLIES ACT 1972

Clause 15: Amendment of s. 4—Notice of Assembly

This clause updates the current reference in the Act to Chief Secretary, to Minister for Justice.

PART 8
AMENDMENT OF REAL PROPERTY ACT 1886

Clause 16: Amendment of s. 3—Interpretation

This clause strikes out the obsolete term 'Chief Secretary' and makes express the District Court's jurisdiction in section 191 and Schedule 21.

Clause 17: Amendment of s. 210—Persons claiming may, before taking proceedings, apply to the Registrar-General for compensation

Clause 17 updates the obsolete reference to 'Chief Secretary' in section 210 of the Act to 'Attorney-General'.

Clause 18: Amendment of Sched. 21—Rules and regulations for procedure in the matter of caveats

This clause makes express the District Court's jurisdiction in Schedule 21.

PART 9
AMENDMENT OF SUMMARY OFFENCES ACT 1953

Clause 19: Amendment of s. 85—Regulations

This clause inserts a power to make regulations imposing a penalty not exceeding $2 500 for a breach of the regulations.

PART 10
AMENDMENT OF TRUSTEE ACT 1936

Clause 20: Amendment of s. 69B—Alteration of charitable trust

This clause sets an increased ceiling limit of $300 000 on the value of trust property in respect of which a trust variation scheme may be approved by the Attorney-General.

PART 11
AMENDMENT OF TRUSTEE COMPANIES ACT 1988

Clause 21: Amendment of Sched. 1

This clause updates the name of the trustee company formerly called 'National Mutual Trustees', to 'Perpetual Trustees Consolidated Limited'.

PART 12
AMENDMENT OF WORKER'S LIENS ACT 1893

Clause 22: Amendment of s. 2—Interpretation

This clause updates the definition of 'Court' to reflect the jurisdiction of the District Court.

Clause 23: Amendment of s. 17—Proceedings to compel Registrar-General to record lien in event of refusal

This clause gives express power to the District Court to direct the Registrar-General to make a memorandum of cessation of lien.

Clause 24: Amendment of s. 18—Judge or magistrate may make order

This clause removes the term 'special' before magistrate, reflecting current usage.

Clause 25: Repeal of s. 35

This clause repeals section 35 of the Act.

Clause 26: Amendment of s. 36—Jurisdiction etc. of courts preserved

This clause makes a consequential amendment to section 36 with the effect of preserving the jurisdiction of any court, not just the Supreme Court or local courts.

Clause 27: Amendment of s. 42—Application of proceeds of sale

This clause provides that if the sale of goods held on lien yields a surplus (after payment has been taken by the person entitled to the lien), the surplus is to be paid to the Magistrates Court and held for the benefit of the person entitled to it.

SCHEDULE

Further Amendment of Criminal Law Consolidation Act 1935

The Schedule updates the style, terminology and obsolete references in the *Criminal Law Consolidation Act 1935*.

The Hon. P. HOLLOWAY secured the adjournment of the debate.

STATUTES AMENDMENT (CONSUMER AFFAIRS) BILL

Returned from the House of Assembly without any amendment.

TRADE MEASUREMENT (MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly without any amendment.

ADJOURNMENT

At 11.15 p.m. the Council adjourned until Thursday 4 October at 11 a.m.