LEGISLATIVE COUNCIL

Wednesday 15 October 2003

The PRESIDENT (Hon. R.R. Roberts) took the chair at 2.15 p.m. and read prayers.

PAPERS TABLED

The following papers were laid on the table:

By the Minister for Agriculture, Food and Fisheries (Hon. P. Holloway)—

Reports, 2002-2003—
Non-Government Schools Registration Board
South Australian Country Fire Service

By the Minister for Aboriginal Affairs and Reconciliation (Hon. T.G. Roberts)—

Adelaide Convention Centre—Report, 2002-03.

DEPARTMENTAL SALARIES

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I table a ministerial statement on departmental salaries made by the Attorney-General last evening.

Members interjecting:

The Hon. P. HOLLOWAY: I wish I could read it out because it says how they got it wrong! There was actually a 5.4 per cent reduction rather than a 60 per cent increase. Please read it.

Members interjecting:

The PRESIDENT: Order! There is too much humour in the chamber.

COMPUTER OFFENCES

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I table a ministerial statement on computer offences and identity theft made by the Attorney-General today.

URANIUM MINING

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I seek leave to make a ministerial statement on the uranium mining industry.

Leave granted.

The Hon. P. HOLLOWAY: Yesterday, the Senate Environment, Communications, Information Technology and the Arts Committee released a report into various aspects of the uranium mining industry in Australia. I would like to outline to the council the various measures undertaken by the previous Liberal government and the current Labor government in relation to both the Beverley and Honeymoon mines. As promised, the state government has initiated an independent review of the environmental impacts of the acid in-situ leach mining process overseen by the Environment Protection Authority. The government is well advanced in selecting the successful tenderer. The review is on track for reporting in April 2004.

The review will have full public involvement and public submissions will be invited. The reviewer will conduct a public forum and outcomes will be publicly available. The terms of reference are to review the acid ISL mining process with regard to its environmental impact and with particular regard to: hydrogeology, ground water management and impacts on aquifers; the management of process liquids, spill response and clean-up; surface disturbance (including vegetation clearance); waste management, recovery and disposal (both liquid and solid); issues relating to rehabilitation on cessation of operations (including aquifer and surface rehabilitation); international experience with its practical application; its current application in South Australia (including whether there are more appropriate leaching techniques for extraction of uranium from the ore); and how existing proposals and operations in South Australia may be improved to reduce any risk to the environment.

I now turn to the major recommendations of the Bachmann Review. The state government commissioned an independent review of the reporting procedures of the uranium mining industry, known as the Bachmann Review. The review put forward eight important and specific recommendations. These are:

1. Incident registers should be kept at each mine site, available to the regulatory agencies and considered at quarterly regulators' meetings.

2. The government should revise and amend the secrecy, confidentiality, etc. clauses in the legislation.

3. Specific incident reporting requirements should be adopted.

4. The Chief Inspector of Mines should forward any incident report form received to the appropriate commonwealth agencies.

5. Reporting arrangements should ensure that all agencies are informed simultaneously.

6. An incident reporting form should be adopted by all agencies involved in the regulation of uranium mining.

7. Public notification should be made of those incidents which cause or threaten to cause serious or material environmental harm.

8. A protocol should be put in place, including identification of a lead agency and a lead minister.

I am advised that all recommendations have been implemented fully and procedures are operating successfully.

I would point out that the former Liberal government (jointly with the commonwealth government) carried out a full environmental impact assessment process for both the Beverley Mine and the Honeymoon proposals. Steps involved in the assessment process included: public and other stakeholders were invited to comment on draft guidelines for assessment; the proponent company prepared and submitted a comprehensive environmental impact statement (EIS); the EIS was published and available to the public for eight weeks (on web sites, in libraries, etc.) and submissions were invited from all stakeholders via press advertisements etc.; public meetings were held in strategic places around South Australia; and detailed conditions were then developed for the mining lease (state) and the export permit (commonwealth). The government will examine the Senate report, but it remains confident that there is proper and rigorous regulation, legislation and oversight already in place.

QUESTION TIME

GOVERNMENT CONSULTANTS

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the minister

representing the Treasurer a question about government hypocrisy.

Leave granted.

The Hon. R.I. LUCAS: After the budget this year, one minister of the Rann government expressed some concern to me that there appeared to be one rule for the Treasurer and his departments and another rule for all other ministers. The Auditor-General's Report was released just this week and, as a result of some further concerns expressed to me, I want to highlight two particular issues. The Auditor-General's Report highlights that, according to the Auditor-General, the number of what the Treasurer refers to as 'fat cats', that is, any employee earning more than $100 000 or more, within the Treasurer's own department has increased in just one year by some 36 per cent.

Formerly 33 officers were employed and, in the space of just 12 months under the new Treasurer, there has been an increase of 12 to 45 officers. The Auditor-General's Report also highlights the fact that, in the last Liberal budget year (2001-02), the Department of Treasury and Finance spent $457 000 on consultancies across the total department. Mr President, you and other members will be aware that the Treasurer made a number of statements in relation to his policy on consultants and how he was going to cut down on consultants in his departments and require all other ministers to cut back on consultants. To paraphrase his own words, the Treasurer said, 'Look out consultants.' He was coming after them.

The Hon. A.J. Redford: With a barrow load of money.

The Hon. R.I. LUCAS: Like my colleague, the Hon. Angus Redford, I say that they might be delighted, certainly in relation to the treasury and finance department. As I said, the Auditor-General has confirmed $457 000. This year's budget allocates $2.93 million in the Treasurer's own department for expenditure on consultants in this particular financial year—an increase in expenditure on consultants of 541 per cent. This is occurring at a time when other ministers have confirmed that they have been told by the Treasurer that they must cut expenditure on consultancies within their departments and portfolios to meet the government's overall aggregate policy to reduce expenditure on consultancies.

Does the minister representing the Treasurer agree that it is hypocritical of him to direct other ministers and agencies to reduce expenditure on consultancies in those departments and agencies reporting to all other ministers whilst at the same time he is responsible for a budget increase of 541 per cent on consultants in this financial year when compared with the last Liberal budget year of 2001-02?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I will pass that specific question on consultancies to the Treasurer. I am pleased that the leader has provided me with the opportunity, since in the introduction of his question he mentioned the number of employees over $100 000, to be able to place more information on the record.

Yesterday, the shadow minister for primary industries asked me about the number of employees in the Department of Primary Industries and Resources earning more than $100 000. There has been no increase in the number of executives in PIRSA. There are nine employees who were just under the threshold in 2002, and are now above the threshold due to normal increases in wages—as I reported yesterday. Had these employees remained below the threshold, the number of employees reported would be at 22, at an equivalent cost of $3.2 million, compared to 23 employees at a cost of $3.3 million in 2001-02. That is a decrease of one.

As I also reported yesterday, the $100 000 threshold level has not been updated for over 10 years. The number of employees with a package of over $100 000 has naturally increased, as one would expect. In 2001-02, nine employees had packages just under the $100 000 threshold. The package for these employees has increased above the threshold due to normal wage increases. Had indexation applied from 1992, the threshold would have been in excess—if one assumes an indexation rate of three per cent since 1992—of $138 000. The number of employees in PIRSA earning above $138 000 is nine. Yesterday, and again today, the opposition sought to talk about the number of senior executives in government. Let's make sure that we have some accurate statistics. Let's make sure that we all know what we are talking about. If we look back over the years, if one had indexed that $100 000 figure, the number would be more. The important point is that the number of executives has actually decreased by one.

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: There are lies, damned lies and statistics, as the saying goes. I think it is also important that we should refute some of the nonsense that has been mentioned by members opposite in relation to the additional cost. The Hon. Caroline Schaefer stated that the additional cost was $950 000. Now it is not the incremental cost to PIRSA—

The Hon. Caroline Schaefer interjecting:

The Hon. P. HOLLOWAY: The shadow minister was talking about the additional cost; that is how she interpreted those figures.

An honourable member interjecting:

The Hon. P. HOLLOWAY: The Auditor-General did not say anything. The Auditor-General put some figures about what the cost of employees earning above $100 000 was last year and what it was this year. The Hon. Caroline Schaefer was talking about the additional cost, but this is not in fact the incremental cost, as the nine employees who moved above the threshold this year were already salaried employees in the previous year. So, of course, the incremental cost was simply the increment in salary from a level just below $100 000 to earning just above $100 000. In fact, it is not correct to suggest that there is a huge additional cost. The Hon. Caroline Schaefer has also put out a press release stating that this is money that is not being spent in the department on activities, in fact if one looks at the Auditor-General's Report, salary expenses increased by just 1.9 per cent between 2002 and 2003, which of course is less than the inflation rate.

The Hon. R.I. LUCAS: I have a supplementary question.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Let me correct that, too. In relation to the department being smaller, the Hon. Caroline Schaefer does not seem to understand that the bits that were taken out of PIRSA—

The Hon. CAROLINE SCHAEFER: Mr President, I rise on a point of order. Is it normal to allow members to sit down and then respond to an interjection on their feet?

The PRESIDENT: Order! The minister can answer the question in the way he sees fit, although it is not normal for him to sit down and then start again. However, what is definitely out of order are interjections. So I advise honourable members to cease their interjections, and we will get on with the business.

The Hon. R.I. LUCAS: My supplementary question is this: is the Leader of the Government now arguing that the Premier and the Treasurer were grossly misleading the South Australian community in early 2002 when they described fat cats in the public sector as anyone earning over $100 000 or more?

The Hon. P. HOLLOWAY: I am not suggesting that the leader was misleading the community. This government promised to reduce the number of executive positions—as the Treasurer has done. The government—as I have shown in relation to PIRSA—has reduced the number of executive positions, but executive positions are not the same thing as those earning more than $100 000.

The Hon. R.I. LUCAS: As a further supplementary question: is the Leader of the Government arguing that if the salaries were indexed from 1992 through to 2002—when Premier Rann and Treasurer Foley were making these statements—that is indeed what they should have done and they were misleading the South Australian community by arguing publicly that fat cats were all those people earning over $100 000 or more in the public sector?

The Hon. P. HOLLOWAY: The term 'fat cat' was first mentioned in this debate yesterday by members of the opposition. It was members of the opposition who first introduced into the debate the term 'fat cat'.

The Hon. R.I. LUCAS: As a further supplementary question: is the Leader of the Government now denying that the Premier and Treasurer did not use the term 'fat cats' in the period leading up to the 2002 election to refer to public servants earning $100 000 or more?

The Hon. P. HOLLOWAY: The policy that the government put to the people of the state referred to the executives in departments. It is obvious that, from time to time, members will use particular words to describe senior public servants. What I am seeking to do today is simply put some facts on the record. In fact, the statistics are there. There are lies, damned lies and statistics, so it is important that those statistics should have some meaning. I am very happy to enlighten the council about the correct statistics in relation to these matters.

Members interjecting:

The PRESIDENT: I ask members of Her Majesty's opposition to contain their outrage a little and members on my right to cease interjecting when questions are being answered.

The Hon. A.J. REDFORD: As a supplementary question: can the minister explain whether or not there has been an increase in the number of public servants at executive level B or higher since this government took office, having regard to the fact that nine people in that category were referred to in the answer to the question provided to this place on Monday?

The Hon. P. HOLLOWAY: I was talking about statistics in relation to Primary Industries and Resources. I am not sure whether the honourable member was referring to PIRSA or the whole government.

The Hon. A.J. Redford interjecting:

The PRESIDENT: The Honourable Mr Redford has asked his supplementary question.

The Hon. P. HOLLOWAY: So your question is?

The Hon. A.J. REDFORD: My question is: has there been an increase in the number of people falling into the category of executive B or higher since the minister took office?

The Hon. P. HOLLOWAY: I have answered the question generically in terms that there is now one fewer of the number of employees reported in those upper levels. However, I will have to check who is at what level, so I will take that on notice.

The Hon. A.J. REDFORD: As a further supplementary question: is the minister aware that executive level B are public servants who are in receipt of somewhere in excess of between $121 000 ranging up to $250 000 per annum?

The Hon. P. HOLLOWAY: I was not, but I thank the honourable member for enlightening me. I will take the question on notice.

ABORIGINAL HERITAGE

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about Aboriginal heritage protection.

Leave granted.

The Hon. R.D. LAWSON: Last month in Port Victoria a community consultation meeting was held which representatives of the minister's department attended. Last week's *Yorke Peninsula Country Times* contains a report of that meeting as well as a report of the finding just before Easter 2002 by the senior heritage officer Quentin Agius of the remains of an Aboriginal woman at Black Point, in a location where a company called Prodec is developing some 30 blocks. This development has now been stalled while Black Point is the subject of a determination under the Aboriginal Heritage Act. It is reported that this is the first time that the Aboriginal Heritage Act has been implemented in this way on Yorke Peninsula.

The Narungga Heritage Committee has been working with Prodec, and it is reported that negotiations are continuing, although—and I quote from the Chairperson Calvert Agius of the Narungga Heritage Committee—'the. . . consultation meeting revealed divisions within the Aboriginal community and highlighted wide-ranging concern and cynicism about state government policy.' Mr Agius is quoted as saying, 'I think we should go one step further and classify the entire coastal region of Yorke Peninsula as an Aboriginal heritage area.' My questions to the minister are:

1. Does he support the views of the Chairperson of the Narungga Heritage Committee in relation to classifying the whole of Yorke Peninsula?

2. If he does not support the views of Mr Agius, why not?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his important question. I will say that since we have come to government we have paid particular attention to any potential problems that might emerge in respect of the protection of heritage and culture. We have addressed a whole range of problems carried over from the previous government's mishandling of the situation. We are paying particular attention to the issues not only at Black Point on Yorke Peninsula but also all around the state, because this government recognises that the whole of the state is potentially rich in heritage for Aboriginal people throughout this state and that the heritage committees that are now starting to be formed at local levels are well informed and well versed in the government's policy on protection. That is certainly not

to declare or classify whole geographical areas in the way the honourable member has suggested, but the issue confronting us at Black Point is that the developer discovered human remains during the development program and, fortunately, immediately contacted the department. The government's policy was put into place after that contact was made.

A number of sites have been irreparably damaged by developers and others who have not made contact with the department and have not gone through the process, and we have run into a whole range of problems because of that. That includes departments, such as highways and PIRSA, which have uncovered sites that have not been registered or notified. Departmental officers have subsequently made contact and gone through the process to protect those sites. In this case the developer acted responsibly, contacted the department and the department has put in place a protective program.

The Black Point area has come to the attention of the Department for Aboriginal Affairs and Reconciliation with regard to potential damage to Aboriginal sites through a proposed residential development. Evidence of Aboriginal sites was discovered in several lots along Black Point Road, and the owners were advised in writing of this discovery and the requirement under the Aboriginal Heritage Act 1988 to avoid further damage to the sites. The owner of the adjacent rural property was also contacted to discuss the conservation of the sites on his property.

The land-holders are planning a subdivision at Black Point and DAARE officers have met with their planners, Masterplan, and Dr Keryn Walshe of Flinders University has prepared a cultural heritage survey report for the developer. A cooperative approach is being taken by the developer and the department. The land-holders have applied under section 12 of the act seeking determination of the Aboriginal sites in the area and, if necessary, authorisation under section 33 to disturb parts of these sites. The process of consulting Aboriginal people in relation to these applications commenced with a public meeting on 24 September at Port Victoria and this meeting was attended by 56 members of the local community, including approximately 12 non-Aboriginal people. Although the meeting made considerable progress in terms of Aboriginal stakeholders reaching consensus on the proposed development, further consultation is required and will be conducted. I expect to make my determinations and authorisations in this matter in late November.

We handled the Starfish Hill issue in a similar way and we have made public the determinations that we made on Starfish Hill. We are listing the determinations on the register. South Australia is fortunate to be so rich in indigenous culture and heritage. The program we have to put in place now is not only to protect and display where permission is given but also to encourage exploration and registration of those areas that have potential for cultural heritage where the traditional owners regard such protection as valuable.

We have a lot of potential in South Australia to advance reconciliation by offering education to all Australians and people from around the world who are interested in the culture and the history of development within this state. That is part of our developing policy, to provide opportunities for indigenous people within their own regions to register, classify and explain their rich culture and heritage, and to try to educate the broader community in what it is that links the spirit of our indigenous people, the first Australians, with the land and for us to respect that. Those are the steps that we have taken, that is our policy, and we will pursue that policy as quietly and effectively as possible throughout the state.

The Hon. R.D. LAWSON: I ask a supplementary question. Given the policy stated by the minister, will he now write to Mr Agius and formally advise him that the government does not support the view expressed by the committee that the entire coastal region of Yorke Peninsula should be classified as an Aboriginal heritage area?

The Hon. T.G. ROBERTS: If Mr Agius contacts my office and requests that process—

The Hon. R.D. Lawson: You won't tell him to his face.

The Hon. T.G. ROBERTS: It is not a matter of telling him to his face; it is a matter of consulting all stakeholders who have an interest. I am aware of Mr Agius's concerns. His concerns are the government's concerns. We certainly do not want to see heritage sites which communities hold sacred destroyed. We want to protect all sites that are disturbed and presented to us, and we would certainly like to be proactive in those areas where indigenous landowners and traditional owners contact us with concerns that there may be heritage sites within them. We would certainly like to protect those sites before they are disturbed. Unfortunately, not only Aboriginal heritage sites are disturbed from time to time; we have had cases of places of geographical significance such as the implosion of the caves down south where areas of geographical concern were not protected. We will certainly hope for more cooperation from landowners so that, if they find sites with either Aboriginal heritage or geographical significance, they report them so that they can be protected.

VISITORS TO PARLIAMENT

The PRESIDENT: I draw members' attention to the presence today in the public gallery of some very important young South Australians from Pembroke College with their teacher, Mr Shillabeer. They are here today as part of their community and political studies, and I understand that they are sponsored by the member for Goyder (Mr John Meier). We hope you enjoy your visit to our parliament and find it educational and interesting.

Honourable members: Hear, hear!

NATIVE VEGETATION HERITAGE AGREEMENTS

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about native vegetation heritage agreements as they apply to mining.

Leave granted.

The Hon. CAROLINE SCHAEFER: It has just come to my notice that a regulation under the Native Vegetation Act has been introduced which will have the effect of virtually excluding any mining exploration on land which comes under a native vegetation heritage agreement. It would be remembered that, in the early 1980s, under the Bannon government, much of South Australia's native vegetation was put under heritage agreements with the landowners. At that time, a multi-use agreement was introduced, similar to that which applies to most national parks.

The PRESIDENT: Order! I draw members' attention to standing order 165 relating to standing in corridors and talking. It is difficult for me to hear the question, and I am sure the minister is having difficulty.

The Hon. CAROLINE SCHAEFER: As I said, this regulation would have the effect of virtually excluding mining exploration from land which is held under native

vegetation heritage agreements. It would, amongst other things (as it has been explained to me) require not only the Native Vegetation Council's agreement for exploration and/or clearance but it would also require the landowner to approve. Not only that, the mining exploration company would not be able to apply for Native Vegetation Council approval: that approval could be sought only via the landowner. It would make, as I understand it, restrictions greater in Native Vegetation Heritage Agreement country than in national parks. My understanding is that these regulations were introduced by the Department of Water, Land and Biodiversity without any consultation with PIRSA.

They are a significant change to the act. They change the scope of the previous exemptions for mining. Minister, is it correct that PIRSA was excluded from any consultation in this matter and, if that is the case, what have you done to protect mining exploration rights throughout South Australia?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): Any regulation, like other pieces of legislation that are introduced by the government, must be approved by cabinet, and therefore they are circulated through the cabinet process to departments. It would certainly be exceptional if that had not occurred in the case of the particular regulation to which the honourable member refers. Given that these regulations have been introduced by a colleague and I do not have responsibility for them, I will take the question on notice and give the honourable member a more detailed response.

As I say, the normal processes that should be followed are that whenever regulations are proposed both the approval to draft and the final regulations are presented to cabinet; and, as part of that process, they are circulated to departments for comment. I will examine this particular case and provide a more detailed answer to the honourable member.

WOOL INDUSTRY

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about the wool industry.

Leave granted.

The Hon. CARMEL ZOLLO: There is widespread concern that the recent drought has had a further negative impact on already low sheep numbers. Will the minister advise the council whether the Department of Primary Industries and Resources South Australia is involved in any projects that are geared towards assisting the wool industry?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank the honourable member for her question and her continuing interest in rural South Australia, like my colleagues the Hon. Bob Sneath, the Hon. John Gazzola and the Hon. Gail Gago who spend regular time representing all our constituents in the country areas of this state. Earlier this year I visited G.H. Michell & Sons and heard first-hand about the difficulties it was experiencing in obtaining sufficient wool to keep its plants operational. With the national sheep flock at an all time low and the compounding problem with the recent drought, it is crucial that we focus on the wool industry, where it is heading and how to meet and encourage the demand for this valuable fibre.

At the end of July this year I had the pleasure of launching look @ Wool, a program in which the Department of Primary Industries and Resources South Australia was involved in developing with the look @ Wool steering committee and Australian Wool Innovations. The philosophy of look @ Wool is to deliver an industry owned and industry driven group learning program in which wool producer groups are supported by a facilitator in their goal to access information and funding necessary to achieve a group's desired outcome. Cooperation within the group is essential.

However, look @ Wool goes beyond this by fostering the development of a strong wool producer network across South Australia, and in establishing beneficial partnerships between look @ Wool producers and the wool industry supply chain. The look @ Wool program provides considerable opportunity for the state's wool producers to take part in three supportive activities. First, the group activity involves action planning, benchmarking and a framework for debating the relevant issues to wool producing businesses. Secondly, the network activity assists producers in linking to other programs, and it enables the exchange of ideas and information. Lastly, PIRSA is responsible for the management and administrative activity.

I understand that the team of wool producers, the PIRSA representative and the state coordinator have already experienced some success, having gained approval for a submission for funding over three years from Australian Wool Innovation Ltd. I should point out that Australian Wool Innovation is making an important contribution nationally in the development of the wool industry through the support of on-farm research and development as well as through its strong commitment to wool producer development through programs such as look @ Wool and Bestprac.

There is no doubt that the wool industry is important to the state's economy. In light of this, I have asked the Wool and Fibre Industry Development board to support the development of a strategic plan for the South Australian sheep industry and have encouraged it to ensure that it is an industry plan, rather than a plan focused solely on government support for the sector. Members of the board have been asked to engage with individuals and industry bodies to seek comment and input into a plan for the sheep industry for the next decade. The level of discussion and deliberation that is occurring at the moment will support the further development of wool businesses within South Australia and will also provide many insights into the future directions of the industry in this state.

Look @ Wool aims to assist the state's wool producers to develop a highly skilled and innovative industry. The flow-on effect of this will, hopefully, be increased profitability and efficiency that will go a long way towards restoring confidence in the future direction of the South Australian wool industry.

The Hon. CAROLINE SCHAEFER: I have a supplementary question. How much money is the state government putting into this project?

The Hon. P. HOLLOWAY: As I said, we are supporting it through the management and administrative activity. I am not sure what the exact value of that is but I will take the question on notice and provide the honourable member with an answer.

CHILDREN IN CARE

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Social Justice, a question about children in the minister's care.

Leave granted.

The Hon. KATE REYNOLDS: Earlier this week, I asked a question about the current number of children not receiving services from Family and Youth Services, including children who were, reportedly, at serious risk. My office has now been informed that some children in the care of the minister are not being followed up, despite the minister being mandated to review their welfare and progress on a regular basis. The law requires that the care and progress of these children and young people be reviewed at least annually, but this has not been complied with for more than a decade due to a lack of resources.

It is my understanding that there were at least 279 guardianship breaches as at the end of September. According to FAYS workers, the only time they are seeing children under the guardianship of the minister is when those children have a major problem. I also understand that a month ago the minister requested all FAYS officers to provide file documents for all children in her care directly to her. My questions are:

1. What prompted the minister to direct that all records about children and young people under guardianship orders be provided to her office?

2. What action is the minister taking to ensure that all guardianship of minister cases are reviewed as mandated?

3. Will the minister investigate how often guardianship cases are reviewed and report back to parliament? If so, when? If not, why not?

4. What action has the minister taken in relation to the information provided?

5. Why did the minister request FAYS officers to provide reports directly to her in recent weeks?

6. What steps have been taken to ensure that no breaches of confidence occur in relation to any guardianship files now in her office?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer those questions to the minister in another place and bring back a reply.

GAMBLING, LOYALTY PROGRAMS

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Gambling, a question about gambling loyalty schemes and targeting problem gamblers.

Leave granted.

The Hon. NICK XENOPHON: Last Monday on the ABC, *Four Corners* broadcast a story entitled 'George's Gold' about the gambling giant Tattersalls which has a duopoly interest in Victorian hotel and club poker machines. I also acknowledge an article that appeared in today's edition of *The Age* by Anne O'Casey and James Doughney entitled 'Gambling with People's Lives'. The program reported on a leaked document from a whistleblower in relation to Tattersalls' making profiles of players, including how much was lost. The data was gathered from the Tatts Pokies Advantage Program, a card based loyalty membership scheme, tested across 13 Victorian venues, which tracked members' use of cards. The behaviour of members was tracked, based on their use of cards and poker machines, and subsequently analysed.

The leaked document, in effect, says that the result of the analysis is a reasonably representative snapshot of all Victorian poker machine losses, that Tattersalls derives 'enormous value' from a 'very small group of customers' and that this group is the 15 per cent who lose $100 per visit. It represents 6 per cent of Victorians, accounting for 50 per cent of total losses. The document also reveals that 34 per cent of all customers who lose more than $50 a visit contribute over 82 per cent of revenue. According to *The Age* feature, the document identifies this group as its primary target market.

According to the report, those in the $100 plus group spend, on average, 153 minutes play time for each visit; 66 per cent of losses come from women; and users between the ages of 46 and 55 provide the greatest value to the business. My questions are:

1. Is the minister familiar with the contents of the leaked Tattersalls report and, if not, would he like me to give him a copy?

2. Is the minister aware of the extent to which South Australian poker machine loyalty schemes based on card-based systems track player behaviour, including analysis of that data and the use to which such data is put, and will the minister support the release of such data in the public interest?

3. Will the minister inquire into the similarities between the Tattersalls scheme and South Australian card-based loyalty schemes for poker machine venues in South Australia?

4. Does the minister concede that card-based loyalty schemes, in effect, have the capacity to be used to target problem gamblers, particularly in light of the Tattersalls document?

5. What information does the minister, or the Independent Gambling Authority, have in relation to the extent of data collected by card-based loyalty schemes in this state and the use to which it is put?

6. Given the disturbing revelations contained in the leaked Tattersalls document, will the minister request the Independent Gambling Authority to investigate this matter further as a matter of urgency to ensure that problem gamblers are not being targeted directly or indirectly as a result of card-based loyalty schemes in South Australia?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will take those important questions to the Minister for Gambling in another place and bring back a reply. I advise that it has been reported to me the Crown Casino in Melbourne, I think, has a card system where, if you do not return to the casino within a fortnight (the casino uses your card to check that you have been absent and have not been playing), they send you a get well card and a voucher. I rest judgment with members as to whether the casino is inquiring into your health or trying to jog you into getting back into the groove again.

The Hon. A.J. REDFORD: I have a supplementary question. Can the minister give us an assurance that no similar schemes or strategies are used by the Lotteries Commission to target the vulnerable in South Australia?

The Hon. T.G. ROBERTS: I will refer that question to the minister in another place and bring back a reply. It was reported by a Victorian and not a South Australian player, but I will pass that on for the honourable member.

The Hon. NICK XENOPHON: As a supplementary question, will the minister provide details of loyalty schemes used by the Lotteries Commission, details of that data and the use to which it is put?

The Hon. T.G. ROBERTS: I will refer that question to the minister in another place and bring back a reply.

HOME OWNERSHIP

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries, representing the Minister for Infrastructure, a question about housing affordability.

Leave granted.

The Hon. A.J. REDFORD: Yesterday, the minister tabled the 2002-03 annual report of the Land Management Corporation, which noted that the corporation is responsible for 1 515 hectares of land suitable for residential, or future residential, development. This is the equivalent of some 21 000 housing blocks. This state is in the midst of an unprecedented housing boom, which is the product of the strong economic policies of former state governments and the current federal government.

Two weeks ago, an article in *The Advertiser* reported that between 6 000 and 8 000 homes will have to be built each year for the next 14 years to meet demand. Stock is at an all time low, and the government is stalling the development of some housing developments. The Executive Director of the Housing Industry Association was quoted in *The Advertiser* as saying:

> I'm just worried about so many young people not being able to ever get out of the rental market if prices continue like this.

The only response by the government has been to release some 600 blocks, which will not be ready until next year, and initiate the Port Adelaide redevelopment plan, all designed to get maximum prices. In that respect I quote the Premier when he said, 'The South Australian taxpayer will make tens of millions of dollars profit from the sale of redeveloped properties.' We have the second highest number of persons per capita of any state on housing waiting lists. This is at a time when, to quote the Housing Industry Association:

> The combination of federal, state and local government taxes on new housing are destroying the home ownership aspirations of young Australians. It is ironic that when housing interest rates are at a 40-year low, taxes on new housing are at a 40-year high.

Indeed, the Productivity Commission issues paper on first home ownership, released last month, stated:

> Industry representatives claim that the reason for surging land prices is an artificial shortage of land for development. Greenfield land may be in short supply at certain times because governments whether intentionally or unintentionally hold back the release of new land. The inherent lead time required for the release of land may also cause shortages during periods of rapidly rising housing demand.

In light of that, my questions are:

1. Does the minister agree with the assertion that surging land prices are a consequence of an artificial shortage of land created by state governments holding back the release of new land?

2. Does the government have any policy to reduce the cost of housing for the young or other non home owners, such as the recently divorced, in the immediate future?

3. Does the minister agree that the primary focus of the Land Management Corporation should not be simply the 'tens of millions of dollars profit' as stated by the Premier?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I will refer those questions to the Minister for Infrastructure, although I think that the second part of his question might well be one for the Minister for Housing. I will refer those on for a response. I would make the comment that the honourable member has indicated that there is a downside arising from house prices. His federal leader, John Howard, made the comment on radio not long ago that no-one had ever complained to him about the price of houses going up. I think the honourable member quite rightly points out that there is another side to that.

MOUNT GAMBIER HOSPITAL

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Industry, Trade and Regional Development, a question regarding health funding for the Mount Gambier Hospital.

Leave granted.

The Hon. J.F. STEFANI: On 12 September 2003 the Hon. Rory McEwen MP, member for Mount Gambier, made a commitment to the people of his electorate that he would resign as a cabinet minister if he could not obtain the required funding to fix the Mount Gambier Hospital problems. Mr McEwen was quoted as saying, 'If I can't get this fixed then there is no point in me being in cabinet.' At the time Mr McEwen said that he was not asking Treasurer Foley for this money: 'I am demanding this money.' The member for Mount Gambier told his electors that this was a non-negotiable budget demand. Mr McEwen has vowed to resign from his cabinet position unless the state Labor government provided $1.5 million to the South-East Regional Health Service. Recently, the Minister for Health, the Hon. Lea Stevens, foreshadowed an allocation of $630 000 to the region. My questions are:

1. Does the minister admit that he failed to deliver on his promise to obtain $1.5 million for the Mount Gambier Hospital, particularly in view of his non-negotiable demands made of Treasurer Foley?

2. Is the minister prepared to fund the shortfall of $870 000 from his portfolio budget in order to keep his word and his promise to his electorate? If not, will the minister do the honourable thing and resign from cabinet, as promised?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I can see this getting a run in *The Border Watch*. I will refer those important questions to the Minister for Health in another place and bring back a reply.

The Hon. A.J. REDFORD: I have a supplementary question. Does the minister agree that the cost savings arising from the relinquishing of the position of minister, involving superannuation and a white car, would more than cover the $600 000 shortfall?

The Hon. T.G. ROBERTS: I will refer that question to the minister in another place and bring back a reply.

ENVIRONMENT PROTECTION AUTHORITY

The Hon. J. GAZZOLA: I seek leave to make a brief statement before asking the Minister Assisting the Minister for Environment and Conservation a question regarding the EPA.

Leave granted.

The Hon. J. GAZZOLA: I am aware that the Aquaculture Act 2001, which came into force in July 2002, is managed by PIRSA but requires the EPA to assess aquaculture licence applications as well as variations to licences and lease conversions. What measures has the EPA put in place to respond effectively to the current expansion in the South Australian aquaculture industry?

The Hon. T.G. ROBERTS (Minister Assisting the Minister for Environment and Conservation): I thank the honourable member for his question and his interest in this matter. As most of the aquaculture sites are in regional areas, I thank him for his continuing interest in the regions, as well. The member is correct in stating that the Aquaculture Act requires the EPA to assess aquaculture licence applications as well as variations to licences and lease conversions. That has resulted in a significant new workload for the EPA since the act came into force, and the EPA has responded by establishing a new three-person Aquaculture Unit. The new unit is a good example of the EPA responding to the state's changing economic base and ensuring that it has the skills and knowledge to meet the needs of this expanding sector.

In the first 12 months of its operation, the EPA Aquaculture Unit has handled 56 licence and licence variation applications and 28 development applications, and it has assisted PIRSA in the preparation of 10 operational zone policies. The unit is also a good example of the work that the EPA does with government agencies to ensure sound environmental outcomes. In this case the EPA and PIRSA work closely and cooperatively. The unit has developed a service level agreement with PIRSA which defines responsibilities, developed a draft memorandum of understanding of compliance response on aquaculture issues, and begun work on an environmental management system for the inland aquaculture sector.

The EPA is now also represented on the Aquaculture Advisory Committee, which advises the Minister for Agriculture, Food and Fisheries, who is responsible for the administration of the Aquaculture Act and is doing a fine job with it. We have been working to try to get a streamlined approach to applications but at the same time protecting the environment and facilitating the licences and applications without undue delay, but taking into consideration all other factors.

URANIUM MINING

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Mineral Resources Development a question about radioactive contamination and uranium mining.

Leave granted.

The Hon. SANDRA KANCK: The Senate Environment, Communications, Information Technology and the Arts Reference Committee report into the regulation of Australian uranium mining has been tabled in the federal parliament. The inquiry was established following numerous incidences of spills, leaks and fires at the Ranger, Jabiluka, Beverley and Honeymoon uranium mines. It did not have a reference to investigate the Olympic Dam operation. Among recommendations of this report are that full-scale mining at Honeymoon should not proceed until more conclusive evidence can be presented on the safety and environmental impact of the in situ leachate mining method and that Environment Australia become involved, as it has been in Kakadu, in overseeing South Australia's uranium mining operations. My questions are:

1. Will the state government move to immediately stop operations at Honeymoon until the independent inquiry that was announced this afternoon reports?

2. Will the minister discuss with the commonwealth how Environment Australia can be involved in overseeing the state's uranium mining operations?

3. Does the minister agree with the Senate committee that the Beverley Environmental Consultative Committee should be made responsible to Environment Australia?

4. How many meetings have been held in 2003 of the Beverley Environmental Consultative Committee?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): The honourable member would be aware that I made a statement earlier today in relation to the Senate report and, at the end, I indicated that the government will examine the Senate report but remains confident there is proper and rigorous regulation, legislation and oversight already in place. In relation to closing down or stopping activity that already has approvals, the government will not be doing that.

The second part of the question related to how Environment Australia could be involved. The Senate committee report is really a report to the Senate and it is a matter for the federal government to take up. Environment Australia and the commonwealth are obviously involved in the uranium mining industry because commonwealth approval is necessary before any mining can take place. What procedures the commonwealth puts in place to relation to the issuing of export permits is really a matter for the commonwealth, and I would not suggest to the commonwealth how it operates it business.

My department and other departments in this state are involved through various forums that have been set up not only for the Beverley mine but also Roxby Downs, so there is a regular forum where issues in relation to the mining of uranium at these sites are discussed between commonwealth and state offices. I am sure that, if any of these matters are raised there, the officers of my department will be cooperative in helping the commonwealth.

As I commented in my earlier statement, one of the recommendations of the Bachmann review is that the Chief Inspector of Mines should forward a copy of any incident report form received to the appropriate commonwealth agencies. So, as a result of that recommendation of the Bachmann committee report, the involvement with the commonwealth of PIRSA and other bodies that are responsible at a state level for regulating the uranium industry is increased. That was commented on within the Senate report.

The third part of the question concerned the Beverley Environmental Consultative Committee. The Senate report is in excess of 400 pages, and I have had a chance to look only briefly at those parts that refer to the South Australian operations and, as I indicated in my statement, the government will examine the report for any matters that might be relevant to us, but essentially it is a report to the Senate in relation to federal involvement. If the operations of the Beverley Environmental Consultative Committee and, for that matter, the one in relation to Roxby Downs, can be improved and reformed, then we are always willing to have a look at that.

Let me make one comment about community consultation in relation to uranium mining operations. A forum under the auspices of the commonwealth was to have been established but, unfortunately, environment groups have chosen not to be members of that forum. I can understand why those groups may not wish to be involved because they are opposed in principle to uranium mining. However, in terms of addressing the recommendations of the Senate committee, it is very difficult to improve public information about the operation of those mines if such a forum cannot operate because of lack of cooperation with relevant stakeholder groups in relation to that. I just make that comment as an aside.

As far as the BECC is concerned, I will have a look at that and other recommendations made by the Senate committee to see whether they have any relevance to or importance for this state. I can only reiterate the comments I made in my earlier statement. This government has taken a number of steps on coming to office to ensure that the regulation of uranium mining in this state is properly rigorous. That is what we have done, and we will continue to do that with the inquiry that my colleague the Minister for Environment and Conservation recently announced.

APPRENTICESHIPS

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the minister representing the Minister for Employment, Training and Further Education questions regarding traineeships.

Leave granted.

The Hon. T.G. CAMERON: The National President of the Australian Manufacturing Workers Union, Mr Julius Roe, recently called for a government crackdown on unscrupulous employers who get government training subsidies without the trainees receiving proper instruction. In a recent interview in *The Advertiser*, Mr Roe criticised some employers for abusing the incentive systems, stating:

> Some young people are just being used just as cheap labour by employers and it's not a tiny group—it is a significant one.

Apprenticeship schemes have a successful record of giving young people useful skills to help with future employment. For the last five years, my office has had a trainee each year, all of whom were a real asset and each of whom went on to obtain full-time work. Better schemes (such as those conducted at government offices) usually have a part of the training off-site at recognised institutions such as TAFE, but some conduct all of the training in-house and, in some cases, there has been a lack of recognised official development of skills.

Mr Roe has said that many young people were reluctant to speak up about training shortfalls for fear of losing their job. I have encountered evidence of that as well. The AMWU wants more government checks, including workplace inspections and interviews of trainees. My questions are:

1. How widespread are the concerns raised by the AMWU in South Australia, and is the minister satisfied with the way traineeships are currently conducted?

2. How many complaints has the minister's department received about this issue in the last 12 months? Have these been investigated and what were the outcomes?

3. Will the minister consider introducing more stringent government checks of employers receiving training subsidies as well as confidential interviews of trainees themselves to ensure they receive the best training possible?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer those important questions to the minister in another place and bring back a reply.

REPLIES TO QUESTIONS

HOME AND COMMUNITY CARE

In reply to **Hon. J.F STEFANI** (24 September).

The Hon. T.G. ROBERTS: The Minister for Social Justice has advised:

1. Will the minister urge the Premier, and the Labor government, to redress the decision and provide the much-needed $1.9 million from the contingency fund in the state budget to match the commonwealth HACC offer, as promised by the ALP during its election campaign?

2. Will the minister ensure that the Rann Labor government reverses its decision, which has caused the elderly to be given a low priority

On 25 August 2003 the state government wrote to the Commonwealth government and accepted to fully match the Commonwealth government's funding offer for the Home and Community Care (HACC) program for 2003-04.

3. Will the minister fulfil the social inclusion policy of the Rann Labor government by ensuring that the large number of elderly and disabled South Australians will receive the basic level of home care, in order that they can maintain their independence, dignity and choice?

The government's decision to match HACC will result in total recurrent program funding rising by 7.7 per cent to $102.362 million, with approximately $7.350 million in additional recurrent funding becoming available. After payment of cost indexation for current HACC projects, there will be $5.093 million in recurrent growth funding to provide new and expanded services. There will also be approximately $3.2 million in one off funds available for short-term projects. These increases are being directed to areas of known high need including personal care, domestic assistance and other basic services. There is also an emphasis on services for the frail aged living at home, Aboriginal people, and vulnerable adults.

HOSPITALS, ADVERSE EVENT REPORTING

In reply to **Hon. J.M.A. LENSINK** (17 September).

The Hon. T.G. ROBERTS: The Minister for Health has provided the following information:

1. In line with international literature and approaches, and the strategic directions of the Australian Council for Safety and Quality in Health Care, the Department of Human Services (DHS) is promoting the establishment of a safety culture that focuses on the improvement of systems as a sustainable approach to improving safety and quality in health care.

DHS has taken a multi-faceted approach to the prevention of adverse events and the improvement of patient safety. Specific initiatives include:

- the 'Patient Safety Framework', which outlines a statewide multi-faceted approach to improving patient safety within South Australian hospitals and health services. Major features of this framework include:
  - centralised incident reporting structures;
  - the implementation of root cause analysis in the investigation of incidents, with shared learning from this process;
  - notification of sentinel events;
  - monitoring of quality performance indicators;
  - communication of safety and best practice issues via the Safety and Quality website www.safetyandquality@sa.gov.au;
  - statewide and patient population specific patient satisfaction surveys;
  - a commitment to involving the consumer in the quality and safety agenda;
- the establishment of the South Australian Hospitals Safety and Quality Council, and its committee structure (the Metropolitan Clinical Subcommittee and the Country Subcommittee), to provide leadership for improving the quality of hospital care in South Australia and to support national efforts in promoting systemic improvements in the safety and quality of health care;
- the provision of education and training in relation to safety and quality;
  funding and support of multiple patient safety improvement projects; and
- implementation of the OACIS Clinical Information System to improve patient safety through the availability of timely and complete information across hospital sites.

2. The government has allocated approximately $1 million to the central rollout of the Advanced Incident Monitoring System (AIMS) for the 2003-04 financial year, and approximately $780 000 for ongoing use and support of the centralised statewide system for the 2004-05 financial year.

AIMS is a computerised system for collecting, classifying, analysing and learning about things that go wrong in health care.

AIMS has undergone continuous improvement since it was first developed in 1989, and has been progressively developed to accommodate the increasingly complex requirements of its users.

AIMS allows the capture of incident information from a wide variety of sources. Incidents that are collected in AIMS are not limited to sentinel events but any event or circumstance that could have, or did, cause unintended harm, suffering, loss or damage. That is, all adverse events and 'near misses' can be reported using the same system.

3. In 1997-98 DHS purchased AIMS on behalf of the public health system, and sites were encouraged to install the system and monitor incidents. Most sites joined over the following two years, with the exception of the small metropolitan hospitals and some country hospitals. AIMS+ is the current version in use in most South Australian hospitals and is a 'stand alone' version of the software.

Newer versions of the software have been subsequently developed, which allow greater flexibility in access to, and use of, the system across the state. A new version is currently in the final stages of beta testing prior to wider release. At present there are four country hospitals and five metropolitan hospitals that have been involved in implementing the new system across a number of wards in order to trial the new software. The trials have proved successful and it is planned to roll out the system to all public hospitals in the state over the next twelve months. In the interim, existing users of the AIMS+ system will continue to use that.

4. In addition to the four country and five metropolitan hospitals that are trialing the new software, three more metropolitan hospitals have undergone initial training in the new system ready for the statewide rollout. Information sessions have been held in each of the seven country regions. Further planning for the connection of country sites is required as part of regional implementation plans covering information technology, resource and training issues, which are being prepared by each region in conjunction with DHS.

5. The Australian Patient Safety Foundation (APSF), based in South Australia, developed the AIMS software. Patient Safety International (PSI), a subsidiary company of APSF, is responsible for the provision of client support and training services.

The training is being undertaken using a train-the-trainer approach, whereby nominated people from each organisation are given detailed training in each component of the system and are provided with extensive training materials prepared by PSI for use in their own organisations. PSI will also provide data quality checks and help desk support for consistent use of the system.

6. Planning has proceeded on the basis of having the new centralised AIMS system fully operational and having public hospitals connected by a target date of 1 July 2004. This is subject to further consultation with individual hospitals and preparation of regional implementation plans.

7. There are several actions that DHS is taking to ensure adverse event reporting by public hospitals in South Australia:

- committing to the funding of the new AIMS software system for an initial two year period until the end of the 2004-05 financial year, including the provision of centralised support;
- the inclusion of the reporting of adverse events in health care service agreements with country and metropolitan hospitals;
- the requirement to separately report de-identified details of eight listed sentinel events directly to DHS;
- the promotion of safety and quality 'no-blame' cultures to reduce fear and uncertainty and encourage reporting of adverse events; and
- reviewing the barriers to reporting.

8. The APSF classification system for incident reporting has recently been adopted by the state Quality Officials Forum of the Australian Council for Safety and Quality in Health Care for national use. The inclusion in health service agreements of requirements for health services to report on incidents by type as reported in AIMS and to notify sentinel events makes the systems of reporting essentially compulsory. However, making reporting compulsory does not ensure improved safety and quality. The identification of the barriers to reporting, and facilitating the desire and processes for reporting, are more powerful in ensuring improvements. This is in line with DHS's approach to developing a safety culture that will promote the inherent need to report. Additionally, incident reporting, while valuable, is just one of the tools that are used to identify areas for quality improvement. A multi-faceted approach to addressing safety and quality in healthcare provides a more comprehensive framework for improvement.

TAMMAR WALLABIES

In reply to **Hon. CAROLINE SCHAEFER** (18 September).

The Hon. T.G. ROBERTS: The Minister for Environment and Conservation has advised:

1. The Department for Environment and Heritage is working through a rigorous risk assessment process to ensure these animals do not impact on other land management objectives. This recovery program is a national priority and significant resources have been allocated to ensure the best outcome for the wallabies and the natural areas where they will be re-introduced.

2. It is important to remind the Honourable Member that Tammar Wallabies are indigenous to the area, but were effectively made extinct due, amongst other things, the introduction of European foxes. Foxes do not provide 'environmental balance', but rather, they have significant and harmful impact in native fauna. I have been informed of the longer-term objective of releasing these animals to the wild. However, they will not be released for at least six months, after quarantine requirements and threat abatement works have been completed. Thus, there is no imminent release, but candidate release sites have been identified to enable targeted community consultation.

3. The predator control program underway within Innes National Park will not be reduced. Fox baiting will need to be increased and maintained to ensure the successful re-establishment of a viable population of the wallabies as well as ongoing protection of other species such as Malleefowl.

GAMBLERS REHABILITATION FUND

In reply to **Hon. NICK XENOPHON** (17 September).

The Hon. T.G. ROBERTS: The Minister for Social Justice has advised:

1. Will the minister advise, as soon as possible, what the increase in calls and demand for services to the Breakeven network has been since the introduction of the media campaign of 15 June?

Since the introduction of the media campaign on 15 June 2003, calls to the helpline have increased from 179 target calls during May 2003 to 399 target calls during July 2003. The Break Even services are reporting increased inquiries and increased demand for services. The Break Even agencies third quarter data report, due in October 2003, will provide information on the number of new clients registering since the campaign began.

2. Was the government aware of the increase in demand for gamblers' rehabilitation services in Victoria as a result of the campaign which this government has emulated, and did the government make any contingency plans for the increased demand in services that was anticipated as a result of the campaign in South Australia, again mirroring the Victorian campaign?

The government was aware that during the Victorian problem gambling campaign inquiries to both the helpline, and the services, increased. Increased funding to services and to the helpline was part of the overall campaign plan in South Australia.

3. Was the minister aware of concerns of gambling counsellors, prior to the introduction of the South Australian campaign, that they would have difficulty in coping with increased demand without additional resources, and was that communicated to her in any way?

I was advised that the Break Even services would have difficulty meeting increased demand without additional resources. The Honourable member also raised this point on the 29 April 2003, to which a response was tabled on 15 September 2003.

4. Will the government undertake to immediately increase funding for the Breakeven network that is commensurate with any increase in demand for services?

I approved a funding increase of $280 000 to ten Break Even agencies allowing for an additional 140 face-to-face counselling sessions per week. Additional funding of $20 000 was also provided to the helpline to field the anticipated increase in calls.

The government will continue to monitor the data received from Break Even services and the helpline and assess the demand pressures on services generated by the media campaign.

BAROOTA AQUIFER

In reply to **Hon. IAN GILFILLAN** (16 September).

The Hon. T.G. ROBERTS: The Minister for Environment and Conservation has advised:

1. I am aware of the draw down on the groundwater at Baroota and of the need to regulate that resource for its long term sustainability. Indeed it was for this reason that I invoked a second Notice of Prohibition on Water Use in the Baroota Area in June

2002, and at the same time commenced the prescription process by issuing a Notice of Intent to Prescribe the Watercourses, Wells, and Surface Water in the Baroota Area.

2. As a part of the Notice of Intent to Prescribe the Watercourses, Wells, and Surface Water in the Baroota Area, interested persons were invited to make written submission on the proposal to prescribe these water resources.

In the interim, the Notice of Prohibition on Water Use in the Baroota Area will remain in place. Under the current authorisations for the taking of water, irrigators are required to install a water flow meter on all irrigation wells. Every irrigator now has a meter in place, and these meters will be read at least annually. Following prescription, water use will be regulated to a level that is sustainable in the long term.

INDEPENDENT GAMBLING AUTHORITY

In reply to **Hon. NICK XENOPHON** (15 July).

The Hon. T.G. ROBERTS: The Minister for Gambling has advised:

1. The Authority is not required, and has not hitherto disclosed to persons outside the Authority, either the nature or the content of legal advice which it seeks or obtains in relation to relevant matters. There are legal and policy reasons for this. Nevertheless, the Authority is aware of the issue of liability raised by Mr Xenophon.

2. The Authority has not to date encountered anything in section 11 which has restricted the extent to which it has wanted to exercise its functions under the section. If Mr Xenophon is of opinion that the Authority would be assisted by advice about a particular aspect of the meaning and operation of section 11 of the Independent Gambling Authority Act, the Authority would certainly give consideration to that question.

GAMBLERS, PROBLEM

In reply to **Hon. NICK XENOPHON** (10 July).

The Hon. T.G. ROBERTS: The Minister for Gambling has advised:

1. Many of the recommendations of the South Australian Centre for Economic Studies (SACES) report are already in place in South Australia or do not apply.

Other recommendations of the SACES report refer to smartcard type identification and pre-commitment schemes. The issue of smartcard technology is scheduled for research by the Ministerial Council on Gambling research program.

2. I am advised the issue of smartcard technology is scheduled for early research by the Ministerial Council on Gambling research program. I am aware that work has commenced on a project brief for this research.

3. In December 2002 the AHA provided a copy of its smart card technology position paper to the former Minister for Gambling's Office. I understand the AHA position paper on smart cards is a public document.

4. The Office of the Liquor and Gambling Commissioner has advised that there were 173 persons subject to an exclusion order under the Casino Act in 2002-03.

The Gaming Machines Act does not require licensees to report the making of barring orders and I am not aware of any systematic collection of this data. I can however advise that a venue survey conducted for the Independent Gambling Authority in late 2002 reported the mean average number of venue-barred persons as 3.6 per venue over 429 responding venues.

CORRECTIONAL SERVICES, WORKPLACE CONDITIONS

In reply to **Hon. R.D. LAWSON** (1 May).

The Hon. T.G. ROBERTS: I advise:

1. What will be the annual cost to the budget of the Department for Correctional Services to comply with the decision of the tribunal?

The long-term solution to the meal break implementation requires the recruitment of part-time relieving staff with a predicted annual cost of $279 186.00.

The Minister for Industrial Relations has provided the following information:

2. Did the Minister authorise the lodgement of an appeal against the decision?

The Commissioner for Public Employment is the employer for the purposes of the Industrial and Employee Relations Act 1995. The Commissioner lodged an appeal to the Full Court of the Industrial Relations Court of South Australia.

3. Does this decision have wider ramifications across the whole of the public sector and, if so, could he provide council with an estimate of the costs to government of complying with this decision?

I am advised that the decision is about the interpretation of a particular award clause that applies specifically to Correctional Industry Officers and Correctional Officers and is not expected to have wider ramifications across the whole of the public sector.

EMPLOYEE OMBUDSMAN

In reply to **Hon. T.G. CAMERON** (3 June).

The Hon. T.G. ROBERTS: The Minister for Industrial Relations has provided the following information:

1. As the Office of the Employee Ombudsman is successfully meeting its objectives, why has the government decided to cut its budget?

The budget of the Office of the Employee Ombudsman for the year 2003-04 is $481 000 exclusive of the salary of the Employee Ombudsman which is funded from Special Acts. This includes the savings required as published in Budget Paper 3 of $15 000 for 2003-04.

All parts of government have been asked to contribute to savings targets, which have been redirected into funding the government's priority areas of health and education.

The $50 000 saving identified for the Employee Ombudsman in 2004-05 represents a contribution from this area which is comparable to the level of savings being made by the Department for Administrative and Information Services, of which the Employee Ombudsman's office is a part.

2. Considering that the Office is under more pressure now than ever to assist employees, with union membership at record lows, will the government consider not only reinstating its budget but also giving it the necessary resources required to handle its increasing workload; if not, why not?

The savings achieved will not be reinstated at this stage, and the office will need to prioritise the issues put before it in the context of the current budgetary position of the government.

SMOKING BAN

In reply to **Hon. NICK XENOPHON** (24 March).

The Hon. T.G. ROBERTS: The Minister for Industrial Relations has provided the following information:

In relation to the Minister for Industrial Relations, has the government undertaken any study to estimate the savings in respect of WorkCover claims related to passive smoking amongst workers in the hospitality industry in poker machine venues and in the casino? If so, what are the savings and, if not, when will the government undertake such a study?

As at 30 March 2003, there have been twenty-two accepted workers compensation claims (from exempt and non-exempt employers) for injuries or diseases where exposure to environmental tobacco smoke (passive smoking) is mentioned. The total cost of these claims to date is over $190 000.

Six of these claims have related to the hospitality industry. These claims have had a cost as at 30 March 2003 of $48 000.

This information is apparent from an analysis of existing claims data, rather than a separate study.

NUCLEAR WASTE

In reply to **Hon. J.F. STEFANI** (20 February).

The Hon. T.G. ROBERTS: The Minister for Environment and Conservation has advised:

1. The documents requested may span over several years . These can not be tracked via electronic data files, as they do not exist. To track the paper files that are now stored in archives will take an enormous amount of time. However, I may be able to provide documentation that is readily available and in accordance with Section 19 of the Radiation Protection and Control Act 1982, if the honourable member will provide more specific dates.

2. If the Honourable member wishes to make a request for information the Minister for Environment and Conservation will endeavour to table the information consistent with the amended provisions in the Radiation Protection and Control Act 1982.

VICTORIA SQUARE

In reply to **Hon. DIANA LAIDLAW** (24 October 2002).

The Hon. T.G. ROBERTS: The Minister for Transport has provided the following information:

1. The state government has been working closely with the Adelaide City Council during the development of their draft Urban Design Master Plan for Victoria Square, including providing information and advice on public transport operations in Victoria Square. The government is participating in the consultation processes set out by Council for the Central West Precinct. The consultation processes are considered quite satisfactory. Since the question was asked, the Adelaide City Council has determined that proposed closure of the east/west link though Victoria Square will not proceed

2. Cabinet has authorised that the Minister for Transport and the Minister for Local government agree on details of the proposal, including impacts upon government service delivery, with Council. The government and Council also have established a joint working group to make recommendations on strategic transport issues within the Adelaide CBD. This group also will consider other transport issues apart from the proposal for Victoria Square. Given that Victoria Square will be an Adelaide City Council project, without state government investment, MPIC will not be required to approve the project.

That state government and the Adelaide City Council continue to enjoy a strong collaborative relationship through the Capital City Committee, where issues such as this can be discussed, if necessary. A high level of collaboration at an officer level is encouraged, and the existence of the Capital City Committee provides a strong point of reference for any significant issues that arise.

3. The funding for the proposed realignment of the tram in Victoria Square has not been sought or agreed with the Adelaide City Council.

4. As mentioned above, the state government has been working closely with the Adelaide City Council on the proposal. This includes all the transport agencies. Specific concerns raised by these agencies are being addressed by Council. It is emphasised that this is a Council initiative, however, there has been a collaborative approach adopted throughout the planning process.

RAILWAY LEVEL CROSSINGS

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I table a ministerial statement on rail safety made by the Hon. Michael Wright in the other place on this day.

MATTERS OF INTEREST

HISCOL

The Hon. CARMEL ZOLLO: Today I would like to mention the work of HISCOL. For members who may not be familiar with the acronym HISCOL, the Herd Improvement Services of SA Cooperative Limited is a cooperative owned by herd recording dairy farmers of South Australia. HISCOL's annual general meeting last August was a special one to mark its 25th anniversary. It was also an occasion to acknowledge the work and commitment of the many people involved with the cooperative over those years. The special day and important milestone acknowledging 25 years of operation was presided over by the chairman, Mr Brian Wilson. Some 50 people attended on the day: shareholders, dairy farmers and certificate recipients.

The history of HISCOL is interesting. The cooperative was incorporated on 4 February 1977 by dairy farmers in South Australia for the purpose of conducting herd recording services previously undertaken by the then department of agriculture. The department no longer wished to be involved in this service and the herd recorders who worked for the department established a way to continue the service of herd recording for dairy farmers, thus HISCOL was born.

As a cooperative, HISCOL is owned by the dairy farmers who use its herd recording services. One of the requirements of herd recording is that the farmer become a shareholder of the cooperative by purchasing a minimum of 50 one dollar shares. Herd recording has been the core business of the cooperative since its inception, but now many other services are offered to dairy farmer members. Semen sales and associated hardware (together with chemicals) have been added to the range of services. Artificial insemination services (especially synchronisation programs) is another service provider to farmers. Also, calf dehorning, freeze branding and pregnancy testing have been added to the range of products and services available.

I understand that in recent times an alliance with Elders Limited has given HISCOL shareholders an alternative way to sell their stock and also benefit the cooperative. As is to be expected, the management of HISCOL is constantly looking for further areas of expansion for the cooperative and opportunities to provide greater services for its members. I note that HISCOL's mission statement aims to provide specialised expertise and to maximise the knowledge that breeds success. Chair, Brian Wilson, pointed out that part of the process of maximising knowledge was to join together to face new challenges. I would say that the challenge, of course, is one which involves recognising new directions, but I know that we would all agree that in any organisation it is also important to acknowledge the past and its successes and the contributions of those members who have brought the cooperative to this point.

It was my pleasure to represent minister Holloway and to present special service certificates to previous chairpersons of HISCOL and staff and board members who have attained 10 or more years of service. Those people were: Frank Beauchamp, CEO for 10 years; Bronte Woodman, HISCOL's first chairman from December 1976 to October 1977 and board member for 14 years; Don Zweck, chairman from October 1977 to July 1984 and board member for 7½ years; Betty Hall, chairman from August 1984 to August 1985 and board member for four years; Vern Kerber, chairman from May 1986 to July 1992 and board member for 11 years; Jack Bramley, chairman from 1992 to 1998 and board member for 12 years; Peter Maxwell, chairman from August 1998 to August 1999 and board member for three years; Eric Stewart, board member for 17½ years; and Max Duell board member for 16 years.

Staff members were also recognised for their long years of service with the first group still being current employees. They are: Chris Maidment, 26 years; Paul Rufus, 25 years; Melinda Fogden, 16 years; Chris Ranger, 14 years; Derryl Payne, Pam Eicher and Bob Butler, all 12 years; Brian Martin, past staff member for 24 years; Joe Jackson, 15 years; John Maidment, 13½ years; Merv Hancock, 12 years; and Bob Schwarz, 11 years. I again congratulate HISCOL on its significant milestone of 25 years of very successful operations, and I wish it well in all its future endeavours.

HOME OWNERSHIP

The Hon. A.J. REDFORD: I would like to talk today about the issue I raised during question time which is the

important issue of housing affordability. One of the most important decisions and steps a young person can take is the purchase of their first home. One of the most significant post-divorce or post-marriage decisions is the purchase of a new house or home. Home ownership has been absolutely fundamental to the fabric of our Australian society. Unfortunately, affordability is now at an all-time low. Indeed, it has been pointed out by the Housing Industry Association that it is ironic that when housing interest rates are at their lowest level in 40 years, taxes and other costs in relation to housing are at a 40-year high.

It is now harder to buy a house than at any time in my lifetime and that, in my view, poses a unique and difficult challenge to governments. I note that in its annual report the Land Management Corporation is responsible for 1 515 hectares of land suitable for residential or future residential development in areas such as Craigmore, Penfield, Evanston South, Northfield, Seaford, Hackham and, of course, Aldinga. We all know that the Aldinga proposal is currently being delayed by this government as a consequence of perceived lack of infrastructure.

The difficulty associated with housing affordability has been recognised by many governments and, in particular, the federal government. It is pleasing to see that the Productivity Commission has released an issues paper in regard to first home affordability. I note that the Productivity Commission is seeking submissions from various interested parties in relation to home affordability. I note in a recent media release issued by the Productivity Commission that submissions to the inquiry are due by 17 October. I can warn the government that I am in the process of preparing a freedom of information application to secure a copy of the government's submission to the Productivity Commission on this extremely important issue.

The issues paper released by the Productivity Commission makes a number of observations. The Land Management Corporation's report also makes a number of important observations. In particular, I am concerned that the Land Management Corporation's focus appears to be entirely profit driven and there does not appear to be any attempt on the part of the Land Management Corporation to support any form of social outcome. The annual report also talks about the joint venture at Mawson Lakes; and, Mr Acting President, you were with me when we visited Mawson Lakes the other day.

That development could hardly be described as a working man's or a first home buyer's paradise when the starting price for a home in that particular joint development in which the government is involved is about $400 000—well beyond the capacity of a young person. The issues paper identifies this, and a graph appears at page 6 in relation to Sydney, Melbourne and Brisbane (although nothing is mentioned about Adelaide) in respect of the increasing difficulty on the part of people to buy housing. One of the issues identified at page 16 of that report is the failure on the part of state governments to release land in order to ensure that prices do not increase out of the reach of ordinary people.

It is time that the Land Management Corporation and the government developed a strategy to ensure that ordinary people can have access to homes, just as you and I did, Mr Acting President, when we were in our 20s and early 30s. There should be no more important or significant challenge confronting the housing minister and the Minister for Infrastructure over the next 12 months to ensure that we do not raise or live with a disaffected generation in so far as—

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! The honourable member's time has expired.

The Hon. A.J. REDFORD: Am I allowed to finish my sentence?

The ACTING PRESIDENT: I gave the honourable member a bit of time.

The Hon. A.J. REDFORD: You cut me off mid sentence, and I do not think that is very well mannered.

The ACTING PRESIDENT: I call the Hon. Ms Gago.

INVESTIGATOR SCIENCE AND TECHNOLOGY CENTRE

The Hon. G.E. GAGO: Some time earlier this year, on behalf of the Minister for Environment and Conservation (Hon. John Hill), I was privileged to attend the launch of the Investigator Science and Technology Centre's latest exhibition, The Greenhouse. The exhibition comprised a number of interactive displays that focused on the theme 'sustainable living'. The aim of The Greenhouse is to show the people of South Australia that, in fact, it takes very little to make decisions in their day-to-day life that impact more favourably upon the environment.

Consisting of 14 different displays, the exhibit covered considerable ground in showing how to reduce environmental impact by utilising the low impact designs and products. The displays included energy bikes, which show visitors how much energy is needed to light up different light bulbs; spot the difference asks the visitor to look at two lounge rooms and pick which one has a more environmentally friendly aspect; and, the solar angle simulator simulates the effect of the sun on a house during different seasons. It was a very impressive exhibit, and I certainly recommend it to members in this place. This exhibit will be featured at the Home Show on 23-26 October.

I would now like to talk a little about the recent developments at the centre. Broadly speaking, the Investigator aims to increase our community's understanding of the relevance of science and technology in our every-day life, and the way in which it can be used to achieve favourable economic and environmental outcomes. The Investigator Science and Technology Centre is currently in the process of moving to interim accommodation. I believe that the move commenced last Monday.

The new accommodation is at the Regency Park campus of the Regency Institute of TAFE. In a recent media release, Investigator Chairman Mike Hannell said:

> The new premises will provide a very sound and relevant base for the centre while work continues to identify and develop a long-term model for the provision of science, engineering, technology and education resources.

The change in accommodation for the Investigator coincides with the refocussing of the centre's activities to bring it closer in line with the South Australian Curriculum Standards and Accountability (SACSA) framework. Part of this includes stronger emphasis being placed on its outreach programs. The outreach programs run by the Investigator include Science on the Go! and Science @ Work. Science @ Work aims to expand students' concept of science-related occupations in South Australia, thereby encouraging them to continue on with science-based studies, something that is particularly relevant to young girls.

The program includes workshops and tours of local industries and workplaces. Possible sites to visit include Codan, a satellite and high frequency communication

company. It also includes the University of Adelaide, Flinders Ports and CSX World Terminals. Science on the Go! is the travelling arm of the centre, which visits both metropolitan and country areas with different science-based programs. The Investigator will maintain its interactive gallery (albeit a smaller version), but it will also run a number of workshops in which students can participate, involving a variety of topics, including robotics and multimedia.

In strengthening its links with the SACSA framework, the Investigator Science and Technology Centre will become an even more valuable science and technology resource for schools and teachers. As a result, the Investigator's ability to achieve its goal of spreading the message of the relevance of science and technology to our lives will be enhanced. I look forward to future developments in the Investigator's educative role, and I am confident that many past and present school-aged people—and also older people—have many fond memories of valuable Investigator experiences; so, too, will future generations.

SALISBURY COUNCIL

The Hon. T.J. STEPHENS: Today I want to inform the council of a tour of the Salisbury council region undertaken by me and a number of my colleagues last Thursday. There were several interesting aspects of this visit on which I will expand later. However, initially, I will provide the council with some background. First, I was impressed with the 'can do' attitude of the City Manager, Mr Stephen Hains, Mr Colin Pitman, the Contracts Manager, and the Mayor, Tony Zappia. One area of significant economic value that has grown at a rapid pace is information technology and high value products.

Recently the city has experienced shortages for skilled local labour. I am sure that members would be somewhat surprised that Salisbury would be in demand for such labour, but it is a measure of how far the city has recently come and that there has been such a transformation. The City of Salisbury is also a rapidly expanding area with 45 new subdivisions being created in the city and approximately 17 kilometres of new roads being laid. In total, there is approximately $240 million worth of investment being undertaken this year. This is expected to continue for at least the next two or three years.

I particularly want to bring to the attention of the council the City of Salisbury's most important program, its stormwater conservation program. I am sure the council is aware that South Australia faces serious challenges, both now and into the future, in regard to water conservation and usage. Today, the minister stated that by 2070 there will be significant climate change that will leave South Australia drier and hotter than at any time in the past. The City of Salisbury has developed a sustainable system of water conservation that will provide water for the residents of the city and for businesses in Salisbury.

Essentially, stormwater collected during periods of high rainfall is filtered and cleansed by wetlands such as those located at Greenfields, which we visited last Thursday. It is then pumped into aquifers located 164 metres underground. It is stored there until it is needed in the dry summer months and used to irrigate Salisbury's sports fields and garden nurseries and to provide water for local business.

Stormwater is passed through trash tracks and treated and harnessed through 36 wetlands along urban stormwater paths covering, in total, an area of 250 hectares. These wetlands supply, through the Parafield Partnerships Urban Stormwater Initiative, Michell Australia, which absorbs some 11 000 million litres of water annually. Interestingly, the salinity of the water is 250 mgs per litre, as compared to Murray River water which has a salinity level of 400 mgs per litre. In the future, Edinburgh Parks is expected to provide the same service to Holden which will use this water in its automotive paint shop and in several component manufacturers. Eventually, this is expected to extend to the DSTO and RAAF, Edinburgh. This is truly an inspirational council initiative.

As members can see, the City of Salisbury is being transformed not only economically but also environmentally and I think that all members would applaud that. It is important that new urban developments be supported with the appropriate infrastructure, including schools, hospitals and police. In this case it is now over to the state government to assist.

The other feature I would like to mention is the major link road to be constructed that will give access to the 7 200 business people, students, residents of Mawson Lakes, the rest of Adelaide and also to the other major developments in and around that area.

Again, I would like to thank the CEO of the council and the local business and project managers who gave us a detailed look at the progress being achieved in Salisbury and who gave up their valuable time. My colleagues and I would sincerely like to congratulate the staff and councillors for their drive and enthusiasm for these projects and, obviously, for the betterment of Salisbury, for which they so deeply care.

SAMAKI, Mr I.

The Hon. KATE REYNOLDS: An Iranian born man, Mr Ibrahim Samaki, is currently being held at the Baxter Detention Centre following his application for asylum, some two years ago, while his two children, Sara and Sabdar, are being cared for in Indonesia following their mother's death in the Bali massacre, one year ago. Ibrahim was given permission to travel to Adelaide to take part in one of the memorial services for Bali victims. At the private service on Sunday, he met and spoke with the Premier, numerous ministers and the Governor who all expressed their sorrow at the death of Ibrahim's wife, Endang. You will remember that in the parliament on Monday, the Premier and I acknowledged Ibrahim's loss during our speeches on the condolence motion. Ibrahim and Endang's children are currently being cared for by an Indonesian woman, Sri Kebon, who went to school in Adelaide.

Magistrate Brian Deegan, Senator Natasha Stott Despoja and I applied to sponsor the children to come to Australia for a two week visit with their father, whom they have not seen for two and half years. Our applications were refused. Magistrate Deegan met, some months ago, with the Minister for Immigration and is still waiting for a response. He has since appealed against the minister's decision to refuse the children's applications for a visitors visa and the matter will be heard in the Federal Court next month. Senator Stott Despoja and I have lodged separate appeals with the Migration Review Tribunal.

I have received hundreds of calls, letters and emails applauding our attempts to reunite this family, even if for only a short time. As a wife, mother, daughter and sister, I know that I would want to take any opportunity available to

see my family if we had been forcibly separated, especially by such shocking and tragic circumstances as the Bali bombings.

Everyone who has met Ibrahim Samaki has been deeply moved by his patient and calm determination to keep fighting for his family to be reunited. The children, especially Sabdar, miss their dad desperately, and Sri, who is the family breadwinner and mother of a young baby, is finding it increasingly difficult to support two extra children in a community which is still reeling from the effects of the bombing.

So, you can imagine how my hopes for the children's visit lifted yesterday when I was sent a photograph, taken just four days ago, of the Prime Minister holding the hand of four year old Sara. The Prime Minister met Sabdar and Sara at the weekend's memorial services in Bali. The photograph shows him with both children, posing and smiling for the cameras, when the Geckos Football Club presented a cheque to the Bali Widows Group.

Following international media coverage, when their plight was first revealed, Sara and Sabdar are not reticent in front of a camera when they are with people they know and trust. Honourable members who saw the *Compass* program on ABC television on Sunday night would have seen footage of the children playing happily with Magistrate Deegan when he drew attention to their plight back in May; but, in this latest photograph with the Prime Minister, the children are not smiling. These two small children who lost their mother in tragic circumstances a year ago do not understand why they cannot see their father. They have heard many Australians, including our Prime Minister, expressing care and concern for the living victims of the Bali bombings—the very same event that took their mother.

The Samaki children heard the Prime Minister singing 'for those who come across the seas, we've boundless plains to share'. They have heard him speak about the compassion we as a nation have felt in the aftermath of the bombings; but I do not imagine that they feel that much compassion has been shown to them or their father by the Australian government. However, perhaps that will all change now. Perhaps now that our Prime Minister has met the children, held their hands, talked and laughed and joked with them, he will allow Sara and Sabdar to be entrusted to the care of two parliamentarians and a magistrate, to be given the opportunity to talk, laugh and joke after they have shared tears with their only surviving parent.

We do not know what the future holds for this fragile family unit but the Democrats renew their appeal to the Prime Minister's sense of decency and look forward to him allowing Ibrahim, Sara and Sabdar to spend a few precious days together.

VERGINA GREEK WOMEN'S CULTURAL SOCIETY

The Hon. J.F. STEFANI: Today I wish to speak about the Greek Women's Cultural Society of the Pan Macedonian Association of South Australia, known as Vergina. Established in July 1991, the Vergina Women's Committee of the Pan Macedonian Association of South Australia was formed to support and bring together women from different regions of Macedonia and in particular northern Greece. The society is comprised of three representatives of each of the eight organisations that form the Pan Macedonian Association of South Australia.

Since its inception, Vergina has actively been involved in maintaining and promoting the rich hellenic culture within the Greek and broader South Australian multicultural community. The society has provided valuable service and support to many Greek organisations through its involvement with numerous educational and cultural activities. The society relies on the strong support of its volunteers and actively participates in two major South Australian Greek festivals, the Glendi and Dimitria.

As a close friend of the South Australian Greek community, I am privileged to share a personal friendship with the members of the Vergina Greek Women's Society of the Pan Macedonian Association of South Australia. I am conscious of the enormous contributions that the Vergina women volunteers have made, and continue to make, for the benefit of our people through their wonderful support of many community projects. In acknowledging the invaluable work of the Vergina Women's Society, I pay tribute to their strong love and affinity of the hellenic culture and to their enduring commitment to Macedonia and Vergina, the burial place of Philip II. I was very privileged to visit the tomb of Philip II at Vergina in Greece and I know that the Royal Macedonian emblem, the sixteen pointed star on the gold larnax found in the tomb of Philip II, and proudly displayed on the society's letterhead, has a great significance to the Greek people.

On Sunday 12 October 2003, I was privileged to attend a special annual presentation of the Vergina Award for 2003, which was presented by Mr John Kiosoglous, the Chairman of Multicultural SA, Multicultural and Ethnic Affairs Commission. The award recognises the community contributions made by women, particularly those from the second Greek generation.

Many Greek migrant women struggled to overcome great difficulties and hardships during the settlement period of their families in Australia. Many others endured the challenges of a new life with a different language, customs and traditions. They made great sacrifices to give their children a strong religious foundation, a good education and the importance of family values.

Many Greek migrant women relied on their young children, particularly their daughters, for assistance with the English language in order to access various services. This year, the Vergina Women's Society acknowledged the work of Mrs Maria Genimahaliotis, a second generation Greek woman, for her significant contributions. I personally know Mrs Genimahaliotis and her husband, George, both of whom have been involved with many activities within the South Australian Greek community. They have given extraordinary service, through their voluntary community work, over many years. I take this opportunity to express my sincere congratulations to Mrs Maria Genimahaliotis as the recipient of this prestigious award.

Finally, I pay tribute to the valuable contributions that members of the Vergina Greek Women's Cultural Society have made, and continue to make, and I extend to the President, Mrs Nina Giagtzis, the inaugural President, Mrs Stella Karanastasis, and all the members of Vergina my heartfelt congratulations and my very best wishes for the future.

FATHERS

The Hon. T.G. CAMERON: One of the greatest challenges facing our community today is the social problems

being caused as a result of fatherlessness. Each year, 55 000 children are being separated from their parents through divorce. It is possible for boys to grow into men without having other male influences in their lives, whether living in their homes, teaching in schools, or in sports or other activities. Male teachers have all but disappeared from primary schools, and boys are growing up without male role models or male mentors, and this is having dire consequences for them and society.

The problem of fatherlessness has been estimated to cost this country over $13 billion each year. Social and psychological problems resulting from fatherlessness include poverty, lower educational performance, increased crime, increased drug use and abuse, increased mental health problems and child abuse.

In Rex McCann's book, *Boys Growing Up Unfathered, 2000*, he stated:

Boys from fatherless homes are:

- 5 times more likely to commit suicide
- 14 times more likely to commit rape
- 9 times more likely to drop out of high school
- 10 times more likely to use abusive chemicals
- 9 times more likely to end up in a state operated institution, and
- 20 times more likely to end up in prison.

There are also socioeconomic problems as a result of the growing crisis in male identity and male unemployment. Evidence suggests that, as a result of the increase in male unemployment, particularly among young and middle aged men, several unwanted socioeconomic impacts have arisen. These include: fathers, and therefore families, are put under severe pressure when dads are unemployed or under-employed; many men in lower socioeconomic circumstances will not marry and have children; and unemployed younger men are not attractive potential partners amongst their female peers.

I note at this time the Hon. Andrew Evans' motion for a select committee to investigate the role of fathers and fatherhood, and other matters, and I place on record that I will be supporting his motion. I congratulate him on his introducing that motion into this place.

What we need is a rethink about parenthood and the valued role of both mother and father, because each role is equally important. Kids need both a mother and a father in their lives to become balanced and happy adults. That is why I was pleased to receive a letter recently from Mr Warwick Marsh of the Fatherhood Foundation informing me of the inaugural National Strategic Conference on Fatherhood, which was held in August at Parliament House, Canberra. The aim of the conference was to turn the tide of fatherlessness and to strengthen the role of Australian fathers.

The conference engaged speakers from a wide spectrum and was given support by all political parties. The conference released a 12-point plan which was divided into three categories: government, education and training, and the education of fathers. The plan recognised that changes need to occur at all levels of government; it also recognised the positive partnerships forged between government, business, church, community, and faith based and secular charities to redress the imbalance we are currently witnessing. Further information on the 12-point plan can be obtained from the foundation's website at www.fathersonline.org.

The last thing we need is a men's movement that blames women or is anti-women, or a men's movement that seems to have an unhealthy preponderance of misogynists. We need a men's movement that works with men and women to develop better identity and relationships and a stronger fathering role in our society. That is what the Fatherhood Foundation is attempting, and it deserves to be recognised and applauded.

VICTIMS OF CRIME

The Hon. J. GAZZOLA: I move:

That the general regulations under the Victims of Crime Act 2001, made on 24 July 2003 and laid on the table of this council on 16 September 2003, be disallowed.

These regulations deal with the payment of costs for claims under the Victims of Crime Compensation Scheme. The Legislative Review Committee took evidence on the regulations from the Attorney-General (Hon. Michael Atkinson) on 17 September 2003. At that meeting the Attorney-General advised that he would reconsider the current policy on reimbursement for specialist medical reports obtained by victims in support of a compensation claim.

On 24 September 2003, a motion to disallow the regulations was moved and supported by the majority of non-government members of the committee present. The committee believes that this action will enable new regulations outlining the modified policy to be tabled in parliament and, in turn, scrutinised further.

Motion carried.

CROWN LANDS (FREEHOLDING) AMENDMENT BILL

The Hon. IAN GILFILLAN: I move:

That this council respectfully requests the President to reconsider his ruling and opinion regarding laying aside of the Crown Lands (Freeholding) Amendment Bill given on 24 September 2003.

This is an issue which really has assumed a bigger proportion than purely the identified bill which, as members would recall, I introduced into this place and which relates to the issue of freeholding of perpetual leases. Although the bill itself had value and I was quite keen for its intention to be supported, the issue of whether this chamber was entitled to deal with it is I believe a relatively bigger issue. Members will know that we are a house under siege. We have been constantly sniped at by people outside this place and members of parliament in the other house and, from time to time, the media have been known to be less than complimentary.

That concerns me because, the more belittling of the significance and integrity of this place that occurs, the less significance the public can be expected to place on it and the less the public can expect in initiative and valuable contribution from this chamber, both of which are unjustified. It is interesting that the Constitutional Convention, comprising an assembly of ordinary citizens who had no political contact or involvement, strongly endorsed the continuation of the Legislative Council. They may have had some ideas in respect of varying its operation, but they supported it.

The Hon. T.G. Roberts: More power to the citizens!

The Hon. IAN GILFILLAN: More power to the citizens under certain circumstances, but not in initiated referenda. I must not be diverted. I am very vulnerable to the interjections of the minister, Mr Acting President, and I hope you can protect me from time to time when needed.

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): I will do my best to protect you.

The Hon. IAN GILFILLAN: Thank you very much. The bill was drafted by the senior parliamentary counsel, Mr Geoffrey Hackett-Jones, who in the drafting and consequent conversation expressed the opinion that he did not see any reason why the contents of the bill should not be debated and dealt with by this chamber. I had the opportunity, for which I am very grateful, to have a discussion with Professor Geoffrey Lindell, who is currently Adjunct Professor of Law at the University of Adelaide and the Australian National University and Professorial Fellow in Law at the University of Melbourne. I am advised that he is quite highly regarded and experienced in the area of constitutional law.

Upon my request (and I will make that plain in what I read now), he has given me an opinion on the ruling of the President, and it is my intention to read this ruling into the record. I repeat: the reason I am doing this and am putting considerable energy into it is that I believe that this chamber should not be constrained in the matters it can deal with by a precedent or precedents which may have been erroneously set in place at the time they were determined. It is therefore with that in mind that I believe the opinion that I will put before the chamber is very much worth our serious consideration so that, if it is shown to be so, we do not continue to unnecessarily restrict the areas of legislation that we can quite properly and constitutionally deal with.

Professor Lindell's paper is entitled 'Crown Lands (Freeholding) Amendment Bill 2003 (SA) President's ruling regarding the non-initiation in the bill in the Legislative Council', and it reads as follows:

Introduction

1. As requested by the Mr Ian Gilfillan MLC, I have examined the ruling of the President of the Legislative Council on 24 September 2003 under which he decided that the initiation of the Crown Lands (Freeholding) Amendment Bill 2003 (SA) ('the Bill') in the Legislative Council contravened the practice of the same House regarding the non-initiation of money bills in that House of the Parliament.

2. Subject to the minor reservation stated at the end of this paper, the result of my examination can be briefly summarised as follows:

(i) Neither the bill nor the practice stated by the President appear to me to fall within the restrictions contained in the Constitution Act 1934 (SA) ss 59 and 61 ('Constitution Act') when those restrictions are read with the interpretation provisions of s 60. In short those restrictions are in my view directed only at bills which either impose taxation or appropriate (ie authorise) the expenditure of public moneys.

(ii) It is legally and constitutionally open to the Council not to follow any previous practice followed by it as long as the practice is not required to be followed by (a) the Constitution or (b) any Standing Orders.

(iii) There are therefore adequate grounds for asking the Legislative Council to either not follow or at the very least revisit the practice followed in relation to money bills and upon which the President based his ruling.

Legislative Council practice regarding money bills

3. I am prepared to assume that the Bill deals with or affects the raising of revenue derived from rent payable under Crown leases and fees payable for their conversion into freehold title land. According to the practice identified by the President any legislation which materially affects Crown revenues including those derived from Crown leases is treated as a money bill. Any legislation regarding Crown lands is apparently regularly treated as a money bill which should only originate in the House of Assembly.

Footnote 2 quotes *Hansard* (Legislative Council) of 24 September 2003. Professor Lindell continues:

4. I also note that the dated works on South Australian Parliamentary Practice disclose an example of a bill which dealt with the disposal of Crown lands being laid aside by the House of Assembly because it originated in the Legislative Council.

Footnote 3 states:

The legislation was the Working Men's Holdings Bill which was described as 'dealing with the Public Estate and seeking to alienate Crown lands': E Blackmore, *Manual of the Practice, Procedure, and Usage of the House of Assembly of the Province of South Australia* (2nd ed, 1890). p.278.

The paper continues:

On the other hand, and for is its part, the Legislative Council is recorded as having asserted its right in 1857 to alter or modify a Bill to Regulate the Sale of Waste Lands in the Crown in South Australia inasmuch as the amendments made by it 'did not interfere with or alter in any essential manner the money clauses of the bill.'

Footnote 4 quotes E Blackmore, *Manual of the Practice, Procedure and Usage of the Legislative Council of South Australia* (2nd ed, 1915) at page 267. The paper continues:

On this view not all provisions contained in such legislation are assumed to be parts of a money bill by virtue of that fact alone.

Restrictions on the enactment of money bill by the Legislative Council

5. Both Houses of the Australian Parliament enjoy equal and coordinate powers of legislation subject to certain restrictions in regard to the origination and amendment of money bills. The only such restrictions created by the Constitution Act in regard to the origination of legislation by the Legislative Council of which I am aware are those contained in sections 59 and 61. Both of those provisions read as follows.

> 59. It shall not be lawful for either house of the parliament to pass any vote, resolution, or Bill for the appropriation of any part of the Revenue, or of any tax, rate, duty, or impost, for any purpose which has not been first recommended by the Governor to the House of Assembly during the session in which such vote, resolution, or bill is passed.
>
> 61. A money Bill, or a money clause, shall originate only in the House of Assembly.

Those provisions should be read with the interpretation provisions contained in s.60 which read as follows:

> 60(1) In this and the next three sections the expressions 'revenue', 'public money', 'taxation', and 'loan' respectively do not include any revenue money, taxation, or loan raised by local authorities or bodies for local purposes.
>
> (2) For the purposes of this and the next three sections a bill, or clause of a bill, shall not be taken to appropriate revenue or public money, or to deal with taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences or fees for services under the proposed act.
>
> (3) For the purposes of the said sections a bill, or a clause of a bill, shall be taken to deal with taxation if it provides for the imposition, repeal, remission, alteration or regulation of taxation.
>
> (4) In the said sections—
>
> 'appropriation bill' means a bill for appropriating revenue or other public money;
>
> 'money bill' means a bill for appropriating revenue or other public money or for dealing with taxation, or for raising or guaranteeing any loan, or for providing for the repayment of any loan;
>
> 'money clause' means a clause of a bill, which clause appropriates revenue or other public money, or deals with taxation, or provides for raising or guaranteeing any loan or for the repayment of any loan;
>
> 'previously authorised purpose' means—
>
> (a) a purpose which has been previously authorised by act of parliament or by resolution passed by both houses of parliament; or
>
> (b) a purpose for which any provision has been made in the votes of the Committee of Supply whereon an appropriation bill previously passed was founded.

Similar restrictions exist in the constitutions of other states that have retained their upper houses with the power to reject money bills.

Footnote 5: this included Victoria until that power was removed earlier this year. See generally Hanks and Cass (eds), *Australian Constitutional Law: Materials and Commentary* (6th ed, 1999) at pages 242-3 para 5.2.5.

6. It will be seen that the restrictions on the origination of money bills will turn on:

- whether a bill or a clause of a bill can be taken to appropriate revenue or public money or to deal with taxation within the meaning of those terms in subsection 60(2); and
- the definitions of money bill and money clause contained in subsection 60(4).

When examined closely, these restrictions are directed and confined to provisions that impose taxation or appropriate (ie authorise) the expenditure of public funds and revenues. This is consistent with the following description of the restrictions on the exercise of the power of the Legislative Council to originate money bills:

'A bill for the appropriation of the revenue or for raising or varying any tax or charge can only originate in the House of Assembly where the government has its majority.'

(Constitution Act 1934, section 61; Legislative Council standing order 278).

Footnote 6: B Selway, *The Constitution of South Australia* (1997) at page 53. The word 'charge' should for the reasons stated below in para 8 of this paper be interpreted as a compulsory levy rather than a voluntary fee for service for the use of property.

It is also supported by what was stated in relation to corresponding Victorian provisions:

'It will be observed that these sections place the parliamentary initiative both in taxation and expenditure in the hands of the assembly, subject to the proviso that its use of the initiative in the latter capacity can only be exercised on the recommendation of the executive.'

Footnote 7: Jenks, *The Government of Victoria* (1891) at pages 255-6 and see also to a similar effect in relation to states in which such restrictions exist Hanks and Cass above in footnote 5.

7. Clearly the receipt of government revenue from whatever source cannot amount to an appropriation of such funds. Nor does the receipt of revenue derive from the rent payable under a crown leasehold interest in land or fees payable for the conversion of such interests into freehold land amount to taxation. It lacks the involuntary element necessary to characterise it as a compulsory levy necessary to make it a tax. It is clear that a charge for the acquisition or use of the property is an example of 'a special exaction[s] of money which are unlikely to be properly characterised as a tax'.

Footnote 8: Air Caledonie Internationale v. The Commonwealth (1988) 165 CLR 462 at page 467.

8. In the latter connection it is instructive to note that this view was accepted as regards the corresponding restriction which existed under the Victorian Constitution Act 1855 (UK) section 56, despite the explicit reference made to rental payments in provisions which read:

'All bills for appropriating any part of the revenue of Victoria and for imposing any duty, rate, tax, rent, return or impost shall originate in the assembly and may be rejected but not altered by the council.'

Footnote 9: emphasis added and now the Constitution Act 1975 (Vic) s 62 and see generally sections 62 to 65 for provisions which are similar to but not identical with those of sections 59 to 64 in the South Australian Constitution Act.

Thus it was stated:

'Even if the land bill were a bill imposing a rent it would not, I think, come within the operation of the 56th section: but I am clearly of opinion that the rent reserved by that bill as an equivalent for land demised by the Crown to persons who, of their own free will apply for and receive leases, is not a rent within the meaning of that section. The word rent as it occurs there must, according to the ordinary rules of construction, be read with reference to the surrounding words—duty, rate, tax, return and impost—none of which import voluntary payments; and also with reference to the word "impose", which governs the whole sentence and cannot be extended to a transaction where the Crown receives an annual payment as a consideration for the use of its land.'

Footnote 10: opinion of the Solicitor-General dated 7 July 1860, *British Parliamentary Papers Relating to Australia 1878-79*, volume 28 at pages 79-80, and see also opinion of the Attorney-General relating to the same matter at page 77.

9. The only argument that I can conceive to the contrary relates to the failure of subsection 60(2) to expressly exempt from the definition of legislation which deals with taxation prices and rental payments in respect of the sale and rental of land. On the other hand, the same definition does exempt another form of voluntary payment, namely, 'fees for services'. The failure in question is then read as implying an intention to bring within the definition of money bill or clause a kind of payment not expressly exempted. This kind of argument is based on the principle of interpretation known as expressum facit cessare tacitum (when there is express mention of certain things then anything not mentioned is excluded) and the related principle of expression unius est exclusio alterius (the express mention of one person or thing is the exclusion of another). It must however be considered a weak argument given the judicial warnings which indicate the need for caution in applying these principles. It has been said that the first of those principles 'whilst a valuable servant is apt to be a dangerous master and that it is necessary to seek confirmation [of the result of its application] in the broader context of the whole act [to which it is applied]': Balog v. Independent Commission Against Corruption (1990) 169 CLR 625 at page 632 and generally D Pearce and R Geddes at para 4.20 at pages 103-4 and 4.23 at pages 108-9. I am unable to obtain the necessary confirmation from the broader context of the Constitution Act and, in particular, the provisions of sections 59 to 64 when taken as a whole.

The status of a practice adopted in the legislative process

10. It is clear that both Houses enjoy control of their own proceedings and procedure as is made clear by their powers to adopt Standing Orders to regulate the orderly conduct of their respective proceedings in section 55 of the Constitution Act. The only qualification of that control relates to the outdated requirement that those Standing Orders and any changes made to them must be approved by the Governor. Such a requirement does not exist in relation to the Houses of the Commonwealth Parliament.

Footnote 11: Commonwealth Constitution section 50 and see generally G. Lindell, 'Lessons to be Learned from the Australian Capital Territory Self-Government Model' in C. MacIntyre and J. Williams (eds) *Peace, Order and Good Government State Constitutional and Parliamentary Reform* (2003) at page 52.

This seems to be an unwarranted interference with the independence of the Legislative Council from Executive control given that in approving any such Orders and their amendment the Governor would be almost certain to act in accordance with the advice of the Government of the day.

11. Leaving that qualification aside the Legislative Council is free to alter or vary any procedure it has followed in the past which is not required to be followed by the Constitution Act or any provisions of the Standing Orders.

12. I should clearly indicate that I have not had the opportunity to check whether there are any other provisions in the Standing Orders of the Legislative Council to require the observance of the practice relied on by the President. In particular I have not been able to check whether the terms of Standing Order 278 merely restate the effect of the relevant provisions of the Constitution Act.

13. It is possible to speculate that the practice of requiring any Bill which deals with or affects the receipt of government revenue, including that derived from the sale or renting of Crown land, to originate in the lower House, was first developed at a time when the franchise for the Council and the voting system used to elect its members was not as democratic as it is today. This would have made it easier to understand why the view may have been taken that such measures should originate in the lower and what was then the more popularly elected House of the Parliament.

That does not apply today. It continues:

Future courses of action

14. The foregoing suggests that it is open to the Legislative Council to:

(a) discontinue its observance of the practice relied on by the President if it was not prescribed by the Standing Orders; or

(b) at the very least revisit whether the practice should continue to be observed in the future.

15. In the latter connection I would respectfully suggest that legal opinions be sought from eminent counsel specially appointed for that purpose by the Legislative Council in addition to those obtained from the Government's own law officers.

16. Earlier in this paper I foreshadowed a reservation. This is that I would be prepared to reconsider the views expressed in this paper (without necessarily altering them) if there can be found a contrary opinion expressed by the law officers of the Crown (ie the Attorney-General or Solicitor-General). The reason for this is that opinions given by those officers are accorded greater weight than usual because the effect of breaching the restrictions regarding the enactment of money bills contained in sections 59 and 60-63 of the Constitution Act does not affect the validity of such legislation as a result of section 64 of the same Act. This makes it unlikely that compliance with those restrictions will be the subject of judicial

review. This in turn makes it unlikely that the courts could provide an authoritative interpretation of the relevant provisions in the Constitution Act.

As I indicated earlier, this opinion has been provided to me by Geoffrey Lindell, Adjunct Professor of Law, the University of Adelaide and the Australian National University, and Professorial Fellow in Law, the University of Melbourne, and it is dated 13 October 2003.

I realise that a lot of that would have been somewhat difficult to follow and maybe tedious for those who were not following it in detail, but I repeat that I do not apologise in the least for introducing the motion and, with respect, asking that it be considered, because the issue is not a matter of confrontation with anyone who has been previously involved in analysing what are their rights and the extent of the powers of the Legislative Council.

I hope it will encourage some discussion by members and, in due course, Mr President, it may be that you make a determination. I give my firm assurance that whatever your deliberations or opinion on the motion may be, I will treat it with full respect, because I repeat: this is not a move to contradict or be aggressive in response to your particular ruling; it is just that I am very concerned that this council retains the full extent of its sovereignty. If this motion has some validity, it may well be that we as a house can properly deal with legislation in the future, which precedent, if the legislation was just carried through, would unnecessarily prevent us from doing. I recommend support for the motion.

The Hon. CARMEL ZOLLO secured the adjournment of the debate.

TOBACCO PRODUCTS REGULATION (SMOKING IN THE CASINO AND GAMING VENUES) AMENDMENT BILL

The Hon. NICK XENOPHON obtained leave and introduced a bill for an act to amend the Tobacco Products Regulation Act 1977. Read a first time.

The Hon. NICK XENOPHON: I move:

That this bill be now read a second time.

Almost 40 years ago, the US Surgeon-General issued a pronouncement about the risks of smoking to public health. It was acknowledged worldwide as a seminal statement about the risk that tobacco posed to the public health of not only Americans but all consumers of tobacco. Twelve years ago, in a landmark decision, the Full Court of Australia made findings against the Tobacco Institute of Australia in relation to an action brought by the Australian Federation of Consumer Organisations. In that decision the Federal Court in effect found that passive smoking posed a health risk on the basis of the available evidence. It was a landmark decision in a case on which the lead counsel for the Federation of Consumer Organisations, Mr Neil Francey, a barrister at the Sydney bar, worked tirelessly for a number of years.

Two-and-a-half years ago the New South Wales Supreme Court handed down a decision in favour of Mrs Marlene Sharpe, a hospitality worker in Port Kembla, who contracted laryngeal cancer as a result of being exposed to environmental tobacco smoke. In other words, she was awarded close to half a million dollars as a result of contracting a very serious cancer—laryngeal cancer—by being exposed to tobacco smoke at a Port Kembla hotel and also at a Port Kembla club where she was employed.

Some 2½ years ago both houses of this parliament considered the issue of environmental tobacco smoke in poker machine venues and the Adelaide Casino. There was a spirited debate at that time. It is again worth reflecting on what was said by the then shadow health minister, Hon. Lea Stevens. On 15 May 2001, Lea Stevens said:

> This is the beginning of the end in terms of smoking in enclosed spaces, where people have to work and have to endure passive smoking. Essentially, the danger of passive smoking is undeniable. The health effects are significant and life-threatening, and this is well documented. In fact, the hospitality industry may be one of the last remaining workplaces where, every minute that they are working, workers are exposed to significant health risks leading to early death. There is a fundamental right of all workers to work in a safe environment, and I would expect that every member of this house would agree with that statement.

The then shadow minister further said:

> One of the most outrageous and disgraceful things said a few days ago in the media in relation to this matter was made by Mr John Lewis, the Executive Officer of the Australian Hotels Association, who said on television on the night of the decision in New South Wales that passive smoking was part of the job. I think that is a most disgraceful statement.

Of course, that was referring to the decision of the New South Wales Supreme Court with respect to the case brought by Mrs Marlene Sharp and her contracting laryngeal cancer by being exposed to environmental tobacco smoke. I note that the government established a Smoke Free Hospitality Task Force in relation to this issue. I also note with interest that, whilst the task force quite rightly included representatives of the industry, namely, union representatives and hoteliers and, as I understand it, club representatives, on my understanding it did not include representatives from the health lobby—those who are at the front line dealing with these issues.

At the very least that omission appears to be curious. I stand to be corrected on that point, but that is my clear understanding. This is an issue for which the evidence is absolutely clear. Being exposed to environmental tobacco smoke poses a serious health risk to those exposed to it, particularly those who work in that industry on a day-to-day basis. It is an issue that ought to be dealt with sooner rather than later. I note that the government's task force, headed by Ms Gay Thompson MP, has been looking at this issue, and that it is yet to report on the numerous submissions made to it.

However, I urge the government to acknowledge the existing clear and overwhelming evidence about the risks posed by environmental tobacco smoke. This issue ought to be dealt with sooner rather than later. I was quite disturbed to read a report in the Adelaide *Advertiser* of 3 October this year which was written by state political reporter Greg Kelton and which was headed, 'Hotels avoid smoking ban', with a sub-heading, 'Labor puts off new law.' The article commences:

> Potential tax losses of up to $70 million a year and job losses are set to delay smoking bans in South Australian hotels and gaming rooms for up to seven years.

The article talks about matters being considered by the Treasurer, the Hon. Kevin Foley; negotiations and lobbying with the Australian Hotels Association; and the concern of others about any delay in such a ban being implemented. I challenge the budget estimates of up to $70 million a year. I appreciate that the budget estimate papers of May this year talked about losses of between $45 million to $70 million a year if smoking bans were implemented. However, since that time we have seen figures from Victoria indicating actual losses in revenue as a result of smoking bans.

Those figures, which were referred to in *The Age* some seven to eight weeks ago, indicated that there was a loss of revenue of some 8.9 per cent for that period. My understanding is that the losses would be of the order of 10 per cent; and we know now, as a result of leaked documents from Tattersalls, that a report prepared by the Barrington group revealed how Tattersalls was looking at the interrelationship between problem gambling and heavy smokers; that there is a clear link; that smoking bans not only have a clear health benefit in terms of people not being subjected to passive smoke but also provide a valuable break, particularly for those problem gamblers, in terms of people going outside the venue.

Whilst they are outside having a cigarette they will, perhaps, reconsider whether they should keep playing or keep losing to the extent that they are. In the surveys that I have seen from gambling counsellors and agencies, such as Relationships Australia, there appears to be a clear link between problem gambling and heavy smoking, So, such bans would have a double whammy effect in terms of the public health benefit. The cost to the health dollar of smoking-related disease is very significant, so that there will be benefits in the short to medium to longer term of people not being exposed to passive smoke.

It would also have an impact on problem gambling levels in that those people who are most severely affected have an opportunity to have a break and to reconsider their position. This legislation is quite straightforward. It provides for bans to be put in place within three months of the passage of the legislation. It provides for no exemptions within the casino, unlike the Victorian legislation (which has been in force since 1 September last year) where the high rollers' room is exempted. My understanding of the medical knowledge is that you can be affected by passive smoke irrespective of how big your wallet is, and that is an issue that ought not be the subject of exemptions.

If the ban is going to be in place, the fair thing is that it be across the board and that there not be exemptions for high rollers' rooms. It is worth reflecting on what Professor Simon Chapman said. Professor Chapman is the Professor of Public Health at the University of Sydney and, as at May 2001, Chairman of Action on Smoking and Health. In an article in *The Sydney Morning Herald* of 11 May 2001 headed 'Lets give smokers all the space they deserve', the professor talks about the surveys carried out in New South Wales. In fairness to the AHA in South Australia, I emphasise that the surveys were carried out by the AHA in New South Wales.

However, I believe that those findings would be equally applicable here in South Australia. In that article, Professor Chapman said:

> Thankfully, many smokers are only too conscious that their freedom stops at other people's noses. Here the role of the Australian Hotels Association in opposing smoking bans is particularly interesting. Its own polling last year found that the leading complaint of pub attenders was tobacco smoke (25 per cent). There was daylight between the next concern (too many pokies) with 16 per cent. According to ABC radio's *PM*, the AHA publicly dumped on its own study saying that it included many infrequent pub patrons. So why did it bother interviewing them? And a Phillip Morris study in Victoria also found a large majority of the community said a pub and club smoking ban would either make no difference or would increase their attendance.

In terms of the views of those who work in the hospitality industry and the views of patrons there appears to be a very significant body of opinion that indicates that people would prefer that areas be smoke free; that they not be subjected to environmental tobacco smoke. I point out that South Australia was a national leader in establishing smoke-free dining rooms, and that was implemented as a result of reforms instigated a number of years ago by the former health minister the Hon. Michael Armitage.

These reforms came into place on 1 January 1999. It has been almost five years since smoke free dining rooms have been in place. It seems illogical that gaming rooms and the casino are not smoke free. This is an issue where the priority ought to be the health of South Australians rather than the bottom line of the budget. For the government not to implement these reforms is short-sighted. It shows a dereliction of its duty in terms of those who work in the hospitality industry and those who are patrons of that industry. There is a greater good to be had by implementing these bans. No amount of tax revenue is worth it if it means that South Australians are subject to the risk—and not just an apparent risk, but subject to the actual reality—of becoming ill, and in some cases seriously or fatally ill because they have been exposed to environmental tobacco smoke.

There is a broader long-term benefit in terms of the public health dollar and in terms of fewer people seeking the help of our public hospitals and health system because fewer people will get ill from being subjected to environmental tobacco smoke. It will have a benefit in terms of fewer individuals being hit as hard as a result of problem gambling behaviour and it will make a difference in terms of fewer individuals seeking assistance because a smoking ban in gaming rooms and the casino will mean fewer problem gamblers. The research indicates that there are in excess of 20 000 problem gamblers in this state: that is an unacceptably high figure and this measure will make a difference in relation to that.

I urge honourable members to look at the available evidence, which is voluminous, and I am prepared to provide them with the evidence provided to me by various health groups. In particular, I am indebted for the assistance of Ms Anne Jones, the Executive Director of ASH (Action on Smoking and Health) based in Sydney. It is a national lobby group, a national organisation, which is at the coal face of dealing with these issues of reform.

It is worth reflecting upon the leaked report that Tattersall's commissioned by the Barrington Group of Psychologists—although I acknowledge that Tattersall's, which commissioned the report, disassociated itself double quick once it became public. That report states:

> Smoking bans cut revenue because a cigarette break upsets the playing routine and allows the punter to consider that playing poker machines is a waste of money. . . smoking is a powerful reinforcement for the trance inducing rituals associated with gambling.

Not my words, but the words of consultants and psychologists retained by one of the leading players in the gambling and poker machine industry in this country. I urge honourable members to consider this seriously. I am not sure whether my colleagues on the other side of the chamber have a free or consience vote on this issue. If that is the case, I can only hope that members of the Labor Party, at the very least, have a similar opportunity, so that this can be considered with a view to doing the right thing by the health of South Australians and to make a very real difference as well in relation to problem gambling. I urge honourable members to support the bill.

The Hon. CARMEL ZOLLO secured the adjournment of the debate.

MUTUAL COMMUNITY AND HEALTHSCOPE LIMITED

The Hon. NICK XENOPHON: I seek leave to move my motion in an amended form.

Leave granted.

The Hon. NICK XENOPHON: I move:

I. That a select committee of the Legislative Council be appointed to investigate and report upon the current dispute between Mutual Community (the trading name of BUPA Australia Health Pty Ltd in South Australia and Healthscope Limited, and in particular:

(a) The management structure of the Adelaide Community Healthcare Alliance (ACHA) with respect to the Ashford Hospital, Flinders Private Hospital and Memorial Hospital.

(b) The decision of the ACHA Board and contractual arrangements entered into by the ACHA Board for Healthscope Limited to operate and manage the Ashford Hospital, Flinders Private Hospital and Memorial Hospital, including performance measures and future options given under the contractual arrangements.

(c) The contractual dispute between Healthscope Limited and Mutual Community in relation to contractual payments for services provided to Mutual Community members at the Ashford Hospital, Flinders Private Hospital and Memorial Hospital.

(d) The impact (including potential impact) of this dispute on South Australian consumers of health services in South Australian private hospitals.

(e) The powers available to the Minister for Health to protect South Australian health consumers during the dispute, and in particular the powers pursuant to Part 4A of the South Australian Health Commission Act 1976.

(f) Any other matter.

II. That standing order 389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only.

III. That this council permits the select committee to authorise the disclosure or publication, as it sees fit, of any evidence or documents presented to the committee prior to such evidence being reported to the council.

IV. That standing order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

At the outset, I should disclose that, along with 340 000 other South Australians, I am a member of Mutual Community and that my private health cover is with Mutual Community. I should also say that this is a dispute very much about icons in this state. Mutual Community is very much an iconic institution in this state, as are the three hospitals that are the subject of this motion—Ashford Hospital, Memorial Hospital and Flinders Private Hospital—in terms of their role and importance as private hospitals in this state.

One of the matters that I wish to deal with at the outset is whether this parliament should be involved in a matter that some, including the federal health minister—in earlier statements and media reports that I have seen—and, indeed, our health minister, the Hon. Lea Stevens, say is, on the face of it, a dispute between two private entities which should be sorted out by the Private Health Insurance Ombudsman or by other mechanisms such as mediation and the like. On the face of it, that seems to make sense; but if you scratch below the surface, we are talking about a dispute that potentially does have an impact on taxpayers in this state, both at a federal and state level.

I understand that the federal government's private health rebate, of which I, along with every other person who has private health cover, am a beneficiary, costs something like $2.4 billion a year. I imagine, on a pro rata basis, it would be something like $200 million a year here in South Australia.

We can have a dispute as to what the effectiveness of that is and whether there are better ways of encouraging people to stay in the private health system, but the fact is that there are significant taxpayer funds put towards encouraging people to stay in the private system. The consequence of this dispute is that if people, as a result of this dispute, stop getting private cover, or allow their private cover to lapse, there will be more people in the public system. It will have a very direct effect on our state health system. Further, if Mutual Community ends up paying a higher fee (in terms of the tone of the arguments they have put to me), the federal government, by virtue of the private insurance health rebate, would have to pay an additional 30 per cent of that increase. So, this is something that affects all of us.

I have said that this committee should be a last resort. I hope that this dispute will be resolved sooner rather than later, and that this committee will not have to sit. However, I believe that we have an obligation to deal with this issue. I respectfully disagree with our state health minister on this issue, given that Part 4A of the South Australian Health Commission Act relates to private hospitals and sets out a licensing regime for private hospitals, which the minister must issue. The granting of licences under section 57D of the legislation is quite broad in respect of a whole range of conditions about the suitability of an applicant. Section 57D provides:

(c)the scope and quality of the health services to be provided in pursuance of the licence . . . .

(e)the adequacy of existing facilities for the provision of health services to persons in the locality; and

(f) any proposals for the provision of health services to persons in the locality through the establishment of new facilities or the expansion of existing facilities.

It also talks about regional issues, which, of course, are very important, and any other relevant matter. So, section 57D is very broad in its scope, and it gives the minister a very broad discretion in terms of dealing with these issues. Section 57E(2) does not limit the minister in terms of the various conditions that may be imposed on licences. Section 57E(2) provides:

The Minister may, by notice in writing given to the holder of a licence, vary or revoke a condition of the licence or impose a further condition.

Clearly, under Part 4A of the legislation, the minister has power that can be exercised in relation to this matter, and I believe that that is something that this select committee, if it is established, ought to explore.

I will now give a brief snapshot of this dispute. I disclose at the outset that I have had numerous discussions with Mr Eric Granger, the State Manager of Mutual Community in South Australia, and today I have also had two constructive discussions with Dr Michael Coglin, the Chief Medical Officer of Healthscope Limited. Obviously, their views are very different. That is why I think a select committee is important to separate fact from the hyperbole and to get to the bottom of a dispute that is causing a lot of distress to many South Australians, particularly those South Australians with ongoing serious health problems who really feel that they are in limbo as a result of this ongoing dispute and for those 340 000 South Australians covered by Mutual Community and the potential impact it has on them. Indeed, it goes further than that, because, if Mutual Community's argument that it has a flow-on effect if increases are agreed to is accepted, this could impact on private health cover generally in terms of increased cost pressures on the private health system.

I believe that this dispute has, in its genesis, matters relating to the Adelaide Community Health Care Alliance (ACHA). My understanding was that Ashford was an

independent hospital until the end of 1999 when it decided to form an alliance with Western Community Hospital and the Memorial Hospital. The basis of the alliance was that it would be more cost efficient by having more hospital beds and, therefore, greater leverage in terms of negotiating, presumably including its negotiations with health funds.

Within that structure, two main things happened. First, I understand there was a drift of doctors from the Ashford to the Flinders Private Hospital, mainly in obstetrics and cardiology, and that ACHA decided it would bid for the lease of Flinders Private Hospital, because the hospital itself is owned by the state government. My understanding is that that lease was signed when the Hon. Dean Brown was health minister and that ACHA went into significant debt to purchase the lease for something like a 30 year period. It was about this time that Western Community Hospital had problems getting specialist anaesthetists for emergency services, particularly for emergency obstetric services. As a consequence, the indemnity insurance rose significantly, turning Western Community into a loss making entity.

ACHA decided to close that hospital early last year, I think, and there was some considerable consternation about that. I understand that the hospital has since re-opened with a group of western suburbs doctors and it is now trading profitably and is a Member's First hospital for Mutual Community. So, that hospital is again providing services to the western suburbs community.

I have obtained information about ACHA's financial statements, which shows that ACHA's debt increased significantly, apparently as a consequence of its buying the Flinders Private Hospital lease. I believe this relates to the underlying cost base of the actual hospitals and the impact they have on other hospitals.

I understand that there was a loss—not in the most recent financial year; we are still waiting for those financial statements—in the 2001-02 financial year of some $7 million for the ACHA group of hospitals. Since that time, the ACHA board has entered into an agreement with Healthscope Limited to manage those hospitals and, as I understand it, since March this year, Healthscope has managed the three ACHA hospitals on behalf of the ACHA board and there is a two year performance based contract and a performance based management fee. Clearly, Healthscope has powerful incentives to save moneys and to have cost efficiencies.

Healthscope has said publicly that it has managed to make significant cost savings in respect of these hospitals. In January this year, I received information that the Managing Director of BUPA Australia Health, Mr Richard Bowden, spoke to the Healthscope board, because Healthscope was, at that stage, looking at taking over the contract of ACHA hospitals. There was a discussion (it may well have been a robust discussion) about their respective increases in health charges that Healthscope was looking at in the order of some 11 per cent, and that Mr Bowden, as Managing Director of BUPA Australia Health Pty Ltd, warned the board that these charges would not be acceptable.

In terms of the broader picture, Mutual Community has something like 45 per cent of the privately insured market in South Australia, and South Australia makes up some 25 per cent of the market of BUPA Australia nationally. I also note that Healthscope has, on varying reports, between 30 to 40 per cent of private hospital beds in South Australia, making it a major player in terms of its role and market power in relation to private hospital beds. The claim made by Mutual Community is that all other private hospitals have contracted with Mutual Community at rates that are the same or below that offered to Healthscope but that Healthscope has not accepted that. Healthscope has said that it believes Mutual Community should pay an increased level, and that there is no cost differential between Healthscope hospitals here in South Australia and other states. That appears to be a key area of dispute between Mutual Community and Healthscope in terms of cost bases here in South Australia.

Material that I have seen, in terms of its presentations and the like, indicates that Healthscope aims to have greater market leverage, and there are obviously advantages with respect to that. I think that is a fair precis of its position, and it is not an unreasonable position to have.

It concerns me that this matter has been the subject of litigation in the Federal Court of Australia in the Victorian District Registry and that that dispute is between BUPA Australia Health Pty Ltd as the applicant and Healthscope Limited as the first respondent. Mr Bruce Dixon, who I understand is the CEO of Healthscope Limited, is the second respondent.

As I understand it, the material I have obtained from the Federal Court Registry indicates that various interim orders were made pursuant to an action under the Trade Practices Act with respect to false and misleading conduct. In fairness to Healthscope, I emphasise that these are interim orders and that, as I understand it, these matters will be ventilated at a full trial early next year. Recently, Mr Dixon undertook to the Federal Court:

> 1. Until 4 p.m. on 22 October 2003, to refrain from representing in any State or Territory of the Commonwealth of Australia, whether by way of press release, television transmission, radio broadcast, print or internet publication or otherwise:
>
> (a) that after 1 October 2003 any person insured pursuant to a BUPA Australia Health Pty Ltd (BUPA) health insurance policy who is treated at any hospital owned by Adelaide Community Healthcare Alliance Incorporated (ACHA) will be required to pay:
>
> (i) around 50% of the cost of treatment; or
>
> (ii) the gap between 'default rates' and the actual cost of hospital treatment;

It goes on to indicate the terms of some of the other undertakings, such as undertaking (d) in regard to BUPA not increasing its level of payments to ACHA or Healthscope in the last two years in relation to hospitals owned by ACHA and managed by Healthscope. In other words, that is one of the matters that Healthscope is restrained from saying in that interim Federal Court order.

Clearly, this is a contentious dispute. It is a dispute where the 340 000 South Australians covered by Mutual Community are the meat in the sandwich in some respects. Mutual Community's argument appears to be that what they have offered is similar to what they pay to other private hospitals and therefore what is asked by Healthscope is unreasonable. In his announcements in the media, Healthscope's Dr Michael Coglin has articulated Healthscope's position very well that that is not the case, and in my discussions with him earlier today he said that it is not the case. Earlier today I had the opportunity to speak to Mr Stephen Walker, CEO of St Andrews Private Hospital on South Terrace. He has been the CEO for 2½ years. That hospital contracts with Mutual Community, and I will cite as fairly as possible what Mr Walker told me earlier today. He said they have an excellent relationship with Mutual Community and have worked with them to negotiate contracts. He said that it had been absolutely on a satisfactory basis and that, of course, in terms of a private hospital, it is

a matter of managing your resources very efficiently. There is no question of that, but Mr Walker is someone who has been able to negotiate an agreement with Mutual Community on behalf of St Andrews hospital, a major private hospital in this state, and has found that satisfactory.

One of the matters that has concerned me, and one of the reasons I have brought this motion, is that a staff member at one of the ACHA hospitals raised concerns with me about the pressure they were under. In fairness to Dr Michael Coglin, I raised these concerns with him. In the genesis of this issue, a caller named Cathy rang the Leon Byner program on 22 September 2003. I will read from a precis of the transcript from Media Monitors. Cathy said she was a nurse at Ashford and she felt upset talking about the Mutual Community issue. She said Byner had not heard the other side of the story, because nurses are afraid of calling up and losing their jobs. She said that at the moment they are working double shifts. She said Healthscope will not pay them the casual rate and that they have got rid of their contracts. She said she is extremely sick and stressed. Cathy went on to say that they have to work in a team in a specialised area, and morale is very low. She said she felt scared now that she had spoken out.

They are serious concerns raised in relation to that hospital, and I have raised with Dr Michael Coglin of Healthscope these concerns that patient care could be compromised. When I spoke to Dr Coglin this afternoon he told me—and this is pretty well word for word—that, unless hospital revenue increases, at least to match the growth in non-discretionary costs, it has the potential to compromise standards of patient care. Dr Coglin made very clear to me that, in terms of ratios of clinical nurses and patients haven't been cut, where they have cut costs and cut staff has been in relation to those dealing with research matters and office administration. The allegation contained in the Leon Byner program is serious and raises concerns. It indicates that, unless this dispute is resolved, patient care could well be compromised and that nursing staff are stressed and upset about what they consider to be the pressure they are under. This is not necessarily a direct criticism of Healthscope. It may well be that Healthscope has inherited a very difficult position as a result of previous decisions made by the ACHA board. That is why a select committee looking at these issues is essential in getting to the bottom of this matter.

Most recently—in the last 24 hours—Mutual Community has announced a five-point plan to end the impasse. In its media release I have in front of me from 14 October 2003 it put a plan to the ACHA board that there be a grace period to enable Mutual Community members to be fully covered at ACHA hospitals until a new arrangement is established. My understanding is that initially only those with a life threatening condition who happen to be Mutual Community members would not be turned away from the three hospitals involved. I understand that since that time the criteria have been broadened, but that is a very real issue, and Mutual Community members experience real uncertainty over where they stand in getting treatment at those three icon hospitals, Ashford, Memorial and Flinders Private Hospital.

The media release from Mutual Community goes on to state that the ACHA board take responsibility for their South Australian hospitals in order to end the impasse caused by Healthscope's 'one in, all in' national fee increase demands. In relation to that, my understanding is that there was further mediation or negotiation with the Private Health Insurance Ombudsman only yesterday and, from information I have received, I understand that the talks broke down because Healthscope's approach was that concerns in relation to Victorian hospitals had to be part of an overall package of settlement. In other words, it was not agreed that the South Australian crisis be separated from the overall national negotiations.

Further, Mutual Community states in its media release that in the interests of patients ACHA must remove the 'outrageous up-front fees introduced by Healthscope'; that Mutual Community will in the utmost good faith attempt to reach an agreement with ACHA representatives that will provide members with the realistic option of choosing to be a patient at any ACHA hospital; and, finally, that Mutual Community engage in direct discussions with ACHA representatives who are not employees of Healthscope and thus do not have divided loyalties. In relation to that final point, I think the ACHA board may well be in a difficult position by virtue of the fact that it has entered into a management agreement with Healthscope and that it may well be constrained in terms of what it can do or say. I do not know that, without looking at the whole agreement.

In fairness to ACHA, in a media release today the ACHA health board reiterated its support for Healthscope and said that in recent weeks Healthscope has successfully concluded contract negotiations with 27 health funds on behalf of ACHA Health. Mr Creagh O'Connor, the Chairman of the ACHA board, made a statement that the board is strongly supportive of the stand taken by Healthscope in attempting to secure a fair deal from BUPA for its community hospitals. He also said that the board believed that Healthscope had at all times acted in the best interests of the hospitals under management. He said that the ACHA hospital network operates on a not for profit basis, reinvesting any surplus funds to improve services and facilities for its patients. He said:

> The hospitals require adequate funding to ensure that we can continue to provide the very best care and most modern facilities and equipment to our patients. We urge BUPA to return to the negotiating table with Healthscope to resolve the dispute with respect to all the affected South Australian hospitals.

I do not question the good faith with which Mr O'Connor has said that, but the information that I have from the other side of the table is that they say that Healthscope is not willing to negotiate with them; that it has walked away from negotiations. There is an impasse here and it involves a significant amount of taxpayers' money. It is very concerning that we now have staff at one of these hospitals managed by Healthscope saying that they have serious concerns about their morale and the pressure that they are under, and my concern is that, unless this impasse is resolved, it could well have an impact on patient care, and that is something that I do not think anyone wants to see under any circumstances.

I agree that this committee should be set up only as a last resort, but I believe that we are fast coming to that because of the impasse. As members of parliament representing the community on such an important issue, we have an obligation to do whatever we can to help facilitate a resolution. The South Australian Health Commission Act gives very clear powers to our health minister, the Hon. Lea Stevens, under part 4A to deal with this issue, and the committee ought to investigate what those powers are. Again, I urge the federal and state health ministers to do all that they can to bring an end to this impasse, because clearly it is an untenable position

in which the 340 000 South Australian policyholders of Mutual Community have been placed.

It is potentially placing lives at risk unless this impasse is resolved and, to summarise Mutual Community's argument, if it pays the increases requested by Healthscope, it could have a flow-on effect to other private health funds, it could mean premium increases to other health funds and, as a consequence, it could mean more people going away from private health cover and that, in turn, will put increased pressure on our public hospital system, which is run by the state. That should concern all members.

If this matter is not resolved, I have undertaken to have further discussions with Dr Michael Coglin, in fairness to him, and I would be more than happy to put his point across when I summarise this debate, if there is still a need for this committee. I believe it is incumbent upon us as members of the Legislative Council to look into this matter sooner rather than later, given the very real concerns of the 340 000 South Australians who are affected by it and the potential harm this could do to the health of South Australians, particularly those who are vulnerable. This issue ought to receive the consideration of this council as a matter of urgency unless this dispute is resolved in the next few days. I commend the motion to members.

The Hon. CARMEL ZOLLO secured the adjournment of the debate.

VICTIMS OF CRIME (STATUTORY COMPENSATION FOR VICTIMS OF CERTAIN SEXUAL OFFENCES) AMENDMENT BILL

The Hon. R.D. LAWSON obtained leave and introduced a bill for an act to amend the Victims of Crime Act 2001. Read a first time.

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

That this bill be now read a second time.

This arises out of recent amendments to the Criminal Law Consolidation Act and, in particular, the Criminal Law Consolidation (Abolition of Time Limit for Prosecution of Certain Sexual Offences) Amendment Bill, which was assented to on 17 June and which has come into operation. Members will know that that legislation was introduced by the Hon. Andrew Evans following a proposal which he originally made last year and which was the subject of a joint committee report.

The joint committee recommended that a bar against the prosecution of certain sexual offences—which meant that offences committed before 1 December 1982 would not be prosecuted—was removed. The proposal of the Hon. Andrew Evans was supported by all members of the joint committee and was unanimously supported by all members of this parliament. However, the joint committee which examined the question and which recommended the repeal of the bar did not have within its terms of reference the power to investigate the question of compensation for the victims of sexual offences, and bear in mind that I am talking of the victims against whom offences were committed more than 20 years ago.

I should tell the council that the Director of Public Prosecutions, Paul Rofe QC, gave evidence to the joint committee and he also provided the committee with a written report. It was Mr Rofe's evidence that it would be very difficult for any person now to successfully prosecute a sexual offence committed before 1 December 1982. In making that statement, Mr Rofe acknowledged that these were very serious offences. He expressed great sympathy for the victims of the offences but it was his view that the impediments in the way of a successful prosecution were almost insurmountable and he expressed reluctance to give to the victims of such offences false hopes or expectations of seeing the perpetrators of these crimes now prosecuted. Notwithstanding the fact that that was Mr Rofe's view, the committee considered that it was appropriate, and subsequently the parliament considered that it was entirely appropriate, that the bar be removed.

However, mere removal of the bar and the possible bringing to justice of the perpetrators of some of these crimes is not sufficient. Without compensation to the victims there will not be complete justice. Bear in mind that these are victims who for many years were unable to see a prosecution of offences commenced. This bill provides these victims with the opportunity for compensation. Under the Victims of Crime Act there are presently three impediments that would prevent the victim of a sexual crime committed before 1982 from recovering compensation.

The first is the fact that our system of criminal injuries compensation is based on the recording of a conviction. It is true that there are certain circumstances in which compensation can be paid if there is no conviction but, by and large, it is necessary for there to be a conviction. Secondly, any claim for compensation must be made within three years of the date of the offence. Thirdly (and most significantly), the Victims of Crime Act applies only to offences committed since 1 July 1978. So, there may well be offences which can now be prosecuted (which could not previously be prosecuted) but for which no compensation could be paid.

I should acknowledge that the current act does enable the Attorney-General in his absolute discretion to make an ex gratia payment to a victim who fails to meet the eligible criteria. That power is usually exercised where it is not possible to obtain a conviction: for example, because of the mental incapacity of the offender who escapes conviction on the ground that, although the criminal act was committed, the offender did not have the requisite mental capacity to be found guilty of that offence under our criminal law. In those circumstances, the Attorney-General has the power to—and very often does—exercise his discretion to allow compensation to be paid. However, I emphasise that this is an absolute discretion provided under the act, and the Attorney-General does not exercise that discretion in every case.

It is my view that a claim for compensation for the victim of a sexual offence in circumstances where a conviction could not be obtained should not be a matter of grace and favour from the Attorney-General or any other minister. These victims of crime should be entitled as of right to the same compensation payable to other persons whose claims have not been adversely affected by the existence of a statutory bar which this parliament has now conceded to be entirely inappropriate. Of course, it is true that a victim of a sexual crime could bring a civil claim against the perpetrator of that crime and a civil action for trespass might lie. However, under the Limitation of Actions Act, a claim of that kind would have to be instituted within three years or within such further time as the court allowed in an application for an extension of time, based upon the discovery by the victim of a new material fact.

In my view, it would be very difficult to discharge that onus in most cases of this kind: namely, the discovery of a new material fact. Moreover, it is quite likely that the

perpetrators of some of these crimes will not have the necessary financial means to satisfactorily compensate their victims. Also, they may have died, left the state or are be longer available for the service of process. I think it would be inappropriate to say to victims of sexual crimes that they can forget about their statutory right to compensation, but that they can pursue an ordinary common law right; in other words, say to a victim of crime, 'You will have to go to the expense, the trauma and the difficulty of mounting a civil case.' We all know that the barriers to the institution of legal proceedings of that kind are considerable. Those barriers are not only financial but also social and psychological. In my view, it would be very heartless to leave these victims to that particular avenue for compensation.

I emphasise that the victims about whom I am speaking and whom this bill seeks to assist are in an unusual and limited class. They are unique by virtue of the fact that they were the victims of crimes that were, of all the offences on the criminal calendar, not prosecutable after the expiration of the period of limitation. This bill will give them a right to compensation under the Victims of Crime Act. Under the bill it will be necessary for the victim to make an application to the court and to satisfy the court of certain matters. I will come to those in a moment.

I do not believe that victims should be deprived of their opportunity to apply for an ex gratia payment to the Attorney-General by the usual means. The victim should be able to apply to the Attorney-General for compensation by way of an ex gratia payment but, if the Attorney refuses to make an offer or if they are dissatisfied with the result of their application under this bill, they will be permitted to apply for statutory compensation, and they must do so within three months of the notification of the Attorney-General's response to their application.

The sexual offences in respect of which an application may be made under this bill are those for which immunity from prosecution for the offence existed immediately before the commencement of section 72A of the Criminal Law Consolidation Act. That is the section which was introduced as a result of the bill to which I referred in the opening paragraphs of my contribution. These particular victims, because of the circumstances and the introduction of time, will not be required to establish proof of the offence beyond a reasonable doubt. To impose that very stringent standard of proof is unreasonable. Under the bill, these victims will have to satisfy the court on the balance of probabilities that they are the victims of a relevant sexual offence.

Like other victims they will be required to show that they suffered injury as a result of the commission of a relevant offence, and all of the other provisions will have to be complied with. For example, a claimant will still have to explain to the court why they failed to report the offence to the police within a reasonable time (if that is the case) and proof that the conduct was reasonable in the circumstances. I think most people would accept—as I am sure the court will accept—that many victims of sexual crime do not (through fear of the offender, fear of recrimination, or unreasonable feelings of shame, feelings that many victims of crime say they have after suffering a sexual crime) report offences of this kind.

I emphasise that the injury for which a victim can receive compensation will be either physical or psychological. I urge the support of members for this bill. I make the claim that there is no true justice in this area without appropriate compensation. If this bill is supported by the council and the parliament it will ensure that an unhappy chapter in our criminal law can be closed with compensation being provided to those people who have been the victims of an inappropriate limitation of action which existed for far too long. I urge members to support the bill.

The Hon. G.E. GAGO secured the adjournment of the debate.

MOUNT GAMBIER HEALTH SERVICE

Adjourned debate on motion of Hon. A.J. Redford:

1. That a select committee of the Legislative Council be appointed to investigate and report upon the operation of the Mount Gambier Health Service since July 2002 and, in particular, the following issues—

(a) the negotiation of the contracts with resident specialist doctors;
(b) the actions of the Chief Executive Officer of the hospital in dealing with medical specialists;
(c) the impact on Mount Gambier Hospital of financial cuts to other hospitals within the region in the years 2002-03 and 2003-04;
(d) the involvement and actions of the Department of Human Services in the management of these issues;
(e) the selection process and appointment of Mr McNeil as Chief Executive Officer of the hospital;
(f) the impact on health services in the Mount Gambier region of these issues; and
(g) any other matter.

2. That the committee consist of six members and that the quorum of members necessary to be present at all meetings of the committee be fixed at four members and that standing order 389 be so far suspended as to unable the chairperson of the committee to have a deliberative vote only.
3. That this council permits the select committee to authorise the disclosure or publication, as it sees fit, of any evidence or documents presented to the committee prior to such evidence being reported to the council.
4. That standing order 396 be suspended so as to unable strangers to be admitted when a select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

(Continued from 24 September. Page 227.)

The Hon. G.E. GAGO (on behalf of Hon. Paul Holloway): I move:

To amend the motion as follows:

Paragraph 1.

Leave out all words after 'that' in line 1 and insert:

a joint committee be appointed to investigate and report on the operation of the Mount Gambier District Health Service and, in particular, the following issues—

(a) the negotiation of contracts with resident specialist doctors and other staffing issues;
(b) the funding of the South-East Regional Health Service and the Mount Gambier District Health Service;
(c) the involvement and actions of the Department of Human Services in the management of these issues;
(d) regional service planning as it relates to the health needs of the community and the government's health reform agenda;
(e) the impact on health services in the Mount Gambier area of these issues; and
(f) any other matter.

Paragraphs 2, 3 and 4.

Leave out these paragraphs and insert:

2. That, in the event of a joint committee being appointed, the Legislative Council be represented thereon by three members, of whom two shall form a quorum of council members necessary to be present at all sittings of the committee.
3. That this council permits the joint committee to authorise the disclosure or publication, as it thinks fit, of any evidence or documents presented to the committee prior to such evidence being reported to the council.

4. That a message be sent to the House of Assembly transmitting the foregoing resolution and requesting its concurrence thereto.

The government believes that the motion before us as it currently stands is nothing short of a political stunt, and therefore the nature of the committee and the terms of reference need to be changed. If we are going to have an inquiry, let us have a real inquiry. We are not interested in stunts or show trials, and neither is the community. The government's amended motion calls for an expanded inquiry into the Mount Gambier District Health Service to include members from both houses. The government wants this inquiry to be conducted by a joint parliamentary committee.

We want everyone to have a say about the operation of the Mount Gambier District Hospital Service, and we are moving to expand the terms of reference of the proposed parliamentary investigation. This government has made a genuine and concerted effort to improve health services in Mount Gambier and to find positive solutions to the challenges faced there; and we are all aware that, over the years, there have been many challenges at Mount Gambier. The government is committed to sustainable specialist medical services, and it has increased the fee for the service surgery budget as well as the overall budget.

An accrued debt of several million dollars at Mount Gambier Hospital has been waived. This frees up funds to provide additional health services. Last month extra money of $1.5 million was allocated to the region for services, debt relief and much needed reforms. These reforms should impact on the recruiting issue of budget overruns and accrued debt at the hospital. The government is committed to providing the full range of health services to the South-East. This includes mental health, health promotion and primary health care, as well as a commitment to resident medical services.

We have recruited a new physician, a new obstetrician/gynaecologist, a new CEO and a new Medical Director, and there will be more positive changes to come as the government rolls out its health reform program across the state. Local people expect and have told us that what they want is a genuine investigation. The government is moving to set up a joint committee made up of members of both houses of parliament, and this was reiterated by the local elected representatives from Mount Gambier. As I have already stated, a real inquiry is called for.

We would expect both the Minister for Health and the member for Finniss (the former minister) to be on the joint committee, and that members would visit Mount Gambier Hospital to take evidence. This membership will ensure that the committee will hear the complete facts without fear or favour. With this committee structure there will not be people on the sidelines distorting the evidence and the work of the committee for political gain. The onus will be on the committee to uncover and tell the full story, not just a part of it.

The original motion for only an upper house inquiry to look at events only over the past few months is plainly silly and would achieve absolutely nothing. Such a limitation is motivated not by genuine interest in the people of Mount Gambier but by base political point scoring. We all know that these problems go back many years. In fact, as a result of my previous professional life, I am aware of the longstanding nature of these problems. Local people have said that they want the full extent of the problems explored.

Party posturing is the last thing the people of Mount Gambier or the dedicated staff at the hospital need. On a recent visit, the Minister for Health was shown the first-class service that is available at the Mount Gambier District Health Service. The staff are justly proud of this service, where waiting times for surgery are as low as two weeks. There are excellent public and private facilities and some outstanding programs. This is a serious matter which has been going on for many years, as I have already said. A joint committee with a wider scope of reference will allow us to drill down to the root causes of the varied and many issues that have impacted on health services in Mount Gambier, and more broadly the South-East. We need to go back a number of years. We need to give everyone a say. Our focus has always and will always be on maintaining and improving health services, not political point scoring.

The Hon. SANDRA KANCK: The Democrats will be supporting this motion but we will be amending it. The situation at Mount Gambier did not happen overnight, and the Hon. Gail Gago has indicated her knowledge of it from her earlier life. These events occurred under the watch of Liberal health ministers Michael Armitage and Dean Brown. It may in fact have been earlier, but I certainly did not become aware of these matters until about 1995. I propose to move an amendment that allows the committee to examine events in the historical context going back to the beginning of 1995.

The remarks that I make now will address two major contributing factors in this whole fiasco. I am a little sorry to have heard the Hon. Gail Gago say that this is merely a stunt, because this issue has been going for so long and it needs resolution. In the first instance there is a history that needs to be looked at. This includes the fact that the stand-offs between the local doctors and the hospital are part of a long running industrial dispute—and I emphasise the word 'industrial'—between local privately operating GPs and ministers of both Liberal and Labor persuasion.

The second factor that I believe is important to address is the systemic nature of the problems at Mount Gambier, which can be observed not only in Mount Gambier but throughout the South-East and across the state in the Department of Family and Youth Services and Disability Services, and the country health division of DHS. There is a culture of bullying, nepotism and interference from and in head office that underlies so much of what is happening in Mount Gambier. Without all these things being considered and understood, an inquiry such as this could become something of a witch hunt.

I listened to the contribution of the Hon. Angus Redford and it appears to me that the opposition sees the establishment of this committee as, at least in part, being a way to hit back at the Hon. Rory McEwen for having had the temerity to accept an offer to be a minister in the Rann government; or, alternatively, as a way perhaps of claiming the scalp of the current health minister. I argue that the current health minister has inherited a problem, although she does bear responsibility now in tolerating the unacceptable behaviour from her departmental officers, and she has allowed that sort of behaviour to continue unrestricted.

In agreeing to the setting up of this select committee, it will not be an objective of the Democrats to damage any ministers: rather, it will be to allow this weeping sore to be dressed and healed. I first became involved in the matter of GPs versus the then Health Commission in the South-East in 1995. Medical indemnity insurance was the catalyst, although it was not necessarily the cause of that dispute. When medical indemnity premiums began to rise, GP obstetricians threat-

ened to withdraw their labour, so to speak, in relation to assisting births in hospital in the region.

The doctors argued that they should not have to pay more for their premiums than a GP who did not provide obstetric services. I must say that, as a woman, I was incensed at their threat, because it would have left pregnant women with little option but to leave their homes and families and come to Adelaide in preparation for birthing in about the eighth month of their pregnancy. I visited the South-East at the time to speak with some of those affected by this intended action and, at a public meeting at Naracoorte, I can only describe the treatment I received at the hands of these GPs for daring to criticise them as being savaged. I had already publicly stated that these doctors were holding these pregnant women to ransom. But when I said at the meeting that premiums paid by the doctors would be a tax deduction, there was voluble outrage from the doctors present—they were almost apoplectic.

I had numerous phone conversations with health minister Armitage in the month leading up to the resolution of the dispute, in July 1996. Minister Armitage told me that the South-East doctors had 'shifted the goalposts' since discussions of the previous year. He said that in the previous year, the doctors had paid $3 500 of their then $8 000 annual medical indemnity premium. The government had paid the other $4 500 but, in 1996 the obstetrician GPs were insisting that they pay no more than $1 500. I gave the then minister the Democrats' backing, to stand his ground but, in the end, he gave in to the pressures of private sector doctors in the South-East.

Minister Armitage gave an undertaking to those doctors that a senior obstetrics registrar would be placed at the Mount Gambier Hospital—it must have been something of a surprise for the hospital CEO to suddenly have to deal with that in his budget—and guaranteed continuing government subsidies for their indemnity premiums for the next three years with the only increase being for CPI.

The minister for health effectively became an insurance broker for GP obstetricians in this state. The Democrats did not consider that this was an appropriate role for him to play. This was an unashamed industrial dispute and the South Australian taxpayer met the bill. It is interesting to look at that in terms of other industrial disputes: imagine if the government played a role like this with bus drivers at the present time.

Meanwhile, with this agreement in place, we had a situation of inequity emerging, where the resident doctors at Mount Gambier Hospital who were involved with assisting at births were paid on a sessional basis with no fee for service, while the local private GPs, with admitting and visiting rights to the hospital, were charging fee for service with taxpayers subsidising their premiums. To add insult to injury, the health commission agreed that more money would be paid to the visiting GPs for performing caesareans—money that would also have to come out of the hospital's budget. The stage was set: we see inequity, increased budget costs for the hospitals in the South-East and the first step in a pattern of head office interference. Minister Armitage purchased a temporary truce but did not stop the war.

On 3 July 1996, I raised it in parliament by moving a motion of referral about rural obstetrics in general, and the Mount Gambier dispute in particular, to the Social Development Committee. However, it had to take its place in a queue for treatment by the Social Development Committee and it took another three years from my moving that motion to its being investigated. By that time, it had lost a lot of its fire. As a member of the Social Development Committee, I amended that motion to a more general reference on rural health which encompassed only some of what had been in the original terms of reference.

When the Social Development Committee finally reported, it was four years on from when I had moved the original motion. Apart from a few regional media outlets, no one was particularly interested. Despite that lack of media interest, the inquiry revealed other seeds that had been sown, that may well have much to do with the current crisis in the Mount Gambier health services. In those revised terms of reference, I was successful in including one item about the impact of regionalisation. Unfortunately, at the time we were considering the recommendations, the Liberal Party had the numbers on the committee and it was such that wherever there was a vote we would have had three-all, with the chair being able to use a casting vote to have it the then government's way.

So the consequence of the Liberal Party's having the numbers on the committee was that the committee did not properly investigate the concept of regionalisation and would not agree to any criticism, even implied, of the system of regionalisation that the Liberals had implemented.

I think it is very ironic now that the Liberals are moving a motion about a problem the roots of which go back to decisions made while they were in government. When they had the opportunity, through the Social Development Committee, to properly examine the matter and make recommendations that might have gone some way to addressing the problems now being faced, their party political loyalties got in the way. So, as I say, it is a huge irony that the opposition is now grandstanding on this issue. I am convinced that it may well be that the implementation of regionalisation as a concept in health planning and delivery was a precursor for some of the resulting problems that have emerged in country health units.

There are now being circulated amendments that the government is moving. I have further comments to make about the situation that we are facing, but I also need further time to look at these amendments and decide how the Democrats are going to respond to them and to come up with any alternative amendments. On that basis, I seek leave to continue my remarks later.

Leave granted; debate adjourned.

WOMEN JUSTICES

Adjourned debate on motion of Hon. J.M.A. Lensink:

That this council congratulates the government on its appointments of Justice Ann Vanstone, Judge Trish Kelly, and Magistrates Maria Panagiotidis and Penny Eldridge to greatly enhance the representation of women in the South Australian judiciary.

(Continued from 24 September. Page 194.)

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I rise to support this motion which acknowledges the achievement of this government in its appointment of women to the judiciary. It is important to note that since March 2002, six women have been appointed to judicial positions. In addition to the four women noted in this motion, Judge Susan Cole has been appointed to the District Court and Cathy Deland to the Magistrates Court.

In March 2002, ten of 79 members of the judiciary were women, that total is now 14 of 78; still, I would point out, a low percentage but it is getting a lot better. The appointment

of more women to various branches of the judiciary is long overdue. I am proud of the fact that this government has appointed the most women to the bench at any one time in South Australian history. I was particularly pleased that I had the opportunity of being Attorney-General at the time that these appointments were made.

It demonstrates this government's commitment to making the various public officers of the state more representative of the diversity of our community. I commend the four women noted in this motion—Justice Ann Vanstone, Judge Patricia Kelly, and Magistrates Penelope Eldridge and Maria Panagiotidis. All achieved their appointments because of their exceptional skills. The appointments have been widely acclaimed within the legal profession and the public generally.

Justice Vanstone has had a distinguished career and has experience in criminal, administrative and family law, and commercial matters, in both South Australia and Western Australia. She was admitted to practice in 1978 and has served as South Australia's deputy Crown prosecutor, and associate director of public prosecutions. Justice Vanstone was appointed as a Queen's Counsel in 1994 and was appointed to the District Court in 1999. The appointment of Justice Vanstone creates history in itself. It is the first time in our state's history that two women have sat on the Supreme Court at the same time. Justice Vanstone is only the third woman in South Australia to be appointed to the Supreme Court.

Trish Kelly has worked in South Australia, the Northern Territory and Queensland, as well as at the federal level, since being admitted to practice in 1974. She was appointed as a Queen's Counsel last year and brings to her appointment a wealth of knowledge derived from her experience in both public and private law, and her involvement with indigenous people. She has experience as a senior legal officer with the Equal Opportunity Commission, the Crown Solicitor's office and the Crown Prosecutions office and will be a significant asset to the District Court.

Magistrates Penelope Eldridge and Maria Panagiotidis have both held the office of Managing Solicitor in the Crown Solicitor's Office, and they both possess a wide range of experience in both public and private spheres. These appointments contribute to the changing landscape of the judicial system. By making the judiciary more representative of our community, we hope to strengthen the confidence and esteem the general public have for our judicial system. So, the government is pleased to receive commendation for these appointments. Therefore, I am very happy, on behalf of the government, to support the motion.

The Hon. T.J. STEPHENS secured the adjournment of the debate.

STATUTORY AUTHORITIES REVIEW COMMITTEE: ANNUAL REPORT

Adjourned debate on motion of Hon. R.K. Sneath:

That the report of the committee, 2002-03 be noted.

(Continued from 24 September. Page 195.)

The Hon. T.J. STEPHENS: I rise to support the motion of the Hon. R.K. Sneath, in what is probably a rare form of bipartisanship. It is not often that I agree with the Hon. R.K. Sneath, but today it is a pleasure to do so. The eighth annual report of the committee is a comprehensive summary of the committee's activities for 2002-03. On 19 March 2003, the committee tabled its 32nd report, an inquiry into the Passenger Transport Board. On 8 May 2002, on a motion by the previous minister for transport (Hon. Diana Laidlaw MLC), the committee received a request from the Legislative Council to inquire into the effectiveness and efficiency of the Passenger Transport Board under the Passenger Transport Act 1994. On 29 August 2002, the committee received the terms of reference to inquire into the South Australian Housing Trust, on a motion of the Hon. Nick Xenophon MLC.

In September 2002, the committee placed advertisements in all South Australian newspaper, inviting written submissions. We received 98 submissions and a large number of verbal inquiries. The committee commenced receiving verbal evidence on 27 February 2003, and these hearings continued until 1 July 2003. The inquiry was high profile and received a great deal of interest from the general public and the South Australian media. It is anticipated that the final report and recommendations will be tabled in late October or early November 2003. During the past 12 month period, the committee visited the regional towns of Murray Bridge, Port Augusta, Port Pirie and Whyalla to take evidence in relation to the inquiry into the Housing Trust.

I also report that the Hon. Bob Sneath, Mr Gareth Hickery (committee secretary) and I attended the bi-annual Australasian Council of Public Accounts committees in Melbourne. In terms of the activities planned by the committee for the financial year 2003-04, the committee expects to report to the parliament on its inquiry into the South Australian Housing Trust.

On 15 July 2002, the committee established the terms of reference for an inquiry into HomeStart Finance. The committee has taken initial evidence from the Chief Executive Officer of the authority and expects this inquiry to be finalised this financial year. On 16 July 2003, the committee also received a motion to inquire into WorkCover Corporation of South Australia, and the terms of reference were adopted on 17 July 2003. It is anticipated that the inquiry will commence before the end of 2003. I take this opportunity to thank the other members of the committee, our extremely competent committee secretary, Mr Gareth Hickery, and our very competent research officer, Mr Tim Ryan.

The Hon. R.K. SNEATH: I thank honourable members for their contributions, and I commend the motion to the council.

Motion carried.

[Sitting suspended from 6 to 7.45 p.m.]

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE: STORMWATER MANAGEMENT

Adjourned debate on motion of Hon. J. Gazzola:

That the report of the committee on stormwater management be noted.

(Continued from September 24. Page 199.)

The Hon. D.W. RIDGWAY: I rise to speak to the 49th report of the Environment, Resources and Development Committee on stormwater management. I only recently joined the Environment, Resources and Development Committee,

and the evidence for this report was taken prior to my joining the committee. However, I am very happy to contribute to the tabling of this document. Due to South Australia's long-term water supply problems, the Environment, Resources and Development Committee instigated an inquiry into the current and possible uses of stormwater in South Australia. The average household uses some 300 000 litres of water per year, and the re-use of urban and suburban stormwater would lessen the drain on our finite water resources, such as the River Murray. The ERD Committee recommends placing the management of all stormwater into the hands of a centralised body. Urban stormwater management is particularly important due to the dense urban areas retaining as little as 10 per cent of all precipitation as roads, paths and pavement prevent its absorption.

It is difficult to ascertain the exact amount of stormwater run-off in Adelaide, but the CSIRO and the state water planning reports place the estimates at approximately 80 to 150 gigalitres. Codes of practice have vastly improved the quality of the state's stormwater, reducing litter and other pollutants. This cleaner stormwater can be reused at fairly low cost in place of mains water to water lawns, parks and gardens etc. The ERD Committee recommends that SA Water tailor the quality of its water to its anticipated usage, for example, using top quality water for drinking and recycled stormwater for other uses, such as flushing toilets.

The ERD Committee has explored many different possibilities for increasing the availability of stormwater and thus reducing the drain on other sources of water. Implementing the recommendations of the ERD Committee will provide solutions for the future, such as building rooftop gardens in inner city buildings to use and filter stormwater (or this water could probably be stored somewhere else and put to better use), supporting the use of permeable pavers to reduce the stormwater run-off in pavements and roadways, and promoting the growth of grassy swales on urban roadsides to filter stormwater run-off.

The storage of stormwater was another issue that the ERD Committee looked at. The three main storage systems for stormwater are rainwater tanks, infill trenches and aquifers. The ERD recommendations support the use of these storage mechanisms to preserve stormwater for both the long and the short term. Particularly important is the recommendation that all new homes be built with plumbing that supports the use of rainwater tanks. Similarly, the committee recommends that all new developments include infrastructure that promotes the use of shared rainwater tanks and that all new houses be equipped with adequate guttering so as to prevent the loss of stormwater.

Also, it recommends the implementation of a policy that encourages government departments such as the Housing Trust to evaluate their current rainwater policy. The need for public education with regard to the use and conservation of stormwater was raised at ERD Committee meetings. The committee agreed that funding should be provided to government departments to raise the awareness of water conservation. This, along with council participation, would enhance community awareness. Likewise, the committee recommends that a variety of government departments, such as the Department for Environment and Heritage and the Department of Water, Land and Biodiversity Conservation, become involved in education about water conservation and management.

Many of the committee's recommendations centred on preventive measures and plans for future stormwater usage in South Australia. However, the committee also evaluated the performance of councils in Adelaide regarding their stormwater policies. Many of the councils are implementing stormwater policies at the moment. The City of Salisbury has between 20 and 40 wetlands that replace ground or mains water with recycled stormwater. The City of Port Adelaide Enfield has an aquifer that is recharged with stormwater and used in irrigating an adjoining reserve during the summer months. The City of Onkaparinga has a development which features a dam using reclaimed effluent to irrigate the surrounding roadsides and vegetation during summer. The City of Adelaide has a development that recaptures the stormwater to irrigate the site and flush toilets. In the City of Burnside a reserve has been improved to allow the watercourse to flow through at its natural pace, thus regenerating the surrounding vegetation.

Adelaide City Council has a historic agreement with the government of South Australia where the council does not have to pay for its water under the Waterworks Act 1932. This act also provides that the Port Adelaide Enfield Council does not have to pay for a portion of its water in a small part of its council area. This leaves the Adelaide City Council as the third highest water user, using in excess of 1 million kilolitres each year, behind Penrice Soda at nearly 1 million and Mobil at just a fraction under 1 million. All these could be significantly reduced, especially Adelaide City Council, if a bigger focus were placed on the reuse of stormwater.

Cost is a large factor in the implementation and management of any new program. It was suggested to the committee that costs are a disincentive to any conservation, as the price of water in Adelaide is relatively low. Thus, one of the committee's recommendations is that a study be launched into how the cost of water affects its potential conservation. The committee has heard from 33 witnesses during the inquiry, and I thank them all, as well as anyone who participated and all those who prepared submissions for the committee. I extend my sincere thanks to the current and former members of the committee, including the Hons John Gazzola, Sandra Kanck, Mike Elliott, Diana Laidlaw, Malcolm Buckby, Rory McEwen and Lynn Breuer and Tom Koutsantonis. I also thank the current and former staff, Mr Phil Frensham, Mr Knut Cudarans and Ms Heather Hill.

Motion carried.

FATHERS

Adjourned debate on motion of Hon. A.L. Evans:

1. That a select committee of the Legislative Council be appointed to investigate and report upon—
   (a) The status of fathers in South Australia by reference to the current level of recognition of their role in family formation and child rearing and in the support given to them by the public and private sectors and the community in general.
   (b) The current difficulties facing fathers in South Australia from an economic, social, financial, legal and health perspective in the formation and maintenance of the family unit.
   (c) The nature and availability of government and non-government support and services for fathers in crisis in South Australia.
   (d) The ways in which the status of fathers and the level of support given to them in times of crisis can be improved.
2. That standing order 389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only.
3. That this council permits the select committee to authorise the disclosure or publication, as it sees fit, of any evidence or documents presented to the committee prior to such evidence being presented to the council.
4. That standing order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless

the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

(Continued from 24 September. Page 205.)

The Hon. J.S.L. DAWKINS: I rise on behalf of Liberal members to support this motion.

The Hon. R.I. Lucas interjecting:

The Hon. J.S.L. DAWKINS: On behalf of all fathers, I am told. In commencing my contribution I will quote from the Hon. Andrew Evans' speech when he moved this motion. He made some comments relating to parenting roles, as follows:

> We as a community cannot say that one role is more important than the other—both are equally as important. Women play an enormous part in verbally stimulating their children, in teaching them intimacy, in caring and nurturing. Men equally play an important role in giving confidence and meaning to a child, in helping them to come to terms with their identity and in encouraging them to take risks. Children are suffering in Australia because of the absence of fathers. According to the findings of Bruce Smyth and Anna Ferro from the Australian Institute of Family Studies, more than one million children in Australia live separately from their fathers. More than one-third of children who still see their dad never spend a night with him.

The Hon. Mr Evans also said later in his contribution:

> The status of fatherhood in our society must be examined if we are to move forward. Clearly, its status is impacted by government and private sector policy and attitudes. There is an obvious inequity in funding for men's issues. I find it rather curious that there is an Office for the Status of Women with its own minister, yet there is no similar office for men. Last year the Premier established a Premier's Council for Women. I am not aware of any similar council for men. Men's services, and particularly services for fathers in South Australia, are sadly lacking.

Like many others in this place, I am well aware of the efforts of a number of community groups which focus on assisting men, particularly fathers. There is some government assistance but predominantly this work is done by community organisations and volunteers. I have in the past had some involvement with the Men's Information and Support Centre, formerly known as the Men's Contact and Resource Centre, which began operating in 1982 and was registered two years later. Volunteers working through this group, with limited government support, and other groups have provided excellent assistance to men, particularly in referring them to other organisations both government and non-government.

It is also appropriate to mention that assistance for men and fathers does not come only from their own gender. I am aware of the efforts of women in the community who recognise and value the importance of supporting men, particularly in times of stress and crisis. In a letter to me in 1999, the then chairperson of the Men's Contact and Resource Centre, Mary Gallnor, spoke of the benefits to the whole community from organisations which assist men. I quote from that letter, as follows:

> This encompasses women, children, young and old, disabled, rural and urban. Not only men benefit because men belong to the society in which we all live. Men's emotional, psychological and physical wellbeing is essential for the common good and it needs more attention and help.

I feel that that sentiment expressed by Mary Gallnor is most appropriate to the debate on this motion. As such, I reiterate the support of the Liberal Party for the establishment of a select committee into the status of fatherhood and the availability of services for fathers in crisis.

The Hon. G.E. GAGO secured the adjournment of the debate.

LOCHIEL PARK

Adjourned debate on motion of Hon. Carmel Zollo:

That the Legislative Council congratulates the government on retaining 100 per cent of the open space at Lochiel Park.

(Continued from 24 September. Page 202.)

The Hon. A.L. EVANS: The issue of Lochiel Park remaining as a community recreation centre has been debated for some time. Just prior to the last election, the now Premier, the Hon. Mike Rann, wrote to constituents as follows:

> We will place a one-year moratorium on the Land Management Corporation's plan to develop Lochiel Park, immediately halting housing development. In that time, Mr Black will chair a thorough community consultation process with local residents, community groups, council and key stakeholders to decide how the space can best be preserved and used for the benefit of everyone in the community. We intend to save 100 per cent of Lochiel Park for community facilities and open space, not a private housing development as the Liberals have proposed.

The total Lochiel Park site is 15 hectares. At the time that that letter was written, the site comprised open space and two sets of buildings, being the TAFE and Metropolitan Fire Service. The government, true to its word, went through a consultation process with local residents, the City of Campbelltown and other stakeholders. The government even commissioned a report by an independent company, Connor Holmes Consulting. I understand that the report recommended the subdivision of most of Lochiel Park. However, the Premier chose not to adopt that recommendation but instead chose to keep 100 per cent of the existing open space as a community and recreational facility. It has also added 1 000 square metres of River Torrens frontage to the amount of open space.

Last year the government demolished the MFS and TAFE buildings. I understand that that was for safety reasons. The area demolished was 4.25 hectares and residential development is proposed for that area. Based on simple arithmetic, it follows that, if 70 per cent of the entire area is to be kept as open space, the remaining area (the 4.25 hectares) will be used for residential development or private housing. The government issued a media release last month which stated:

> Last year the government demolished TAFE and the MFS buildings on the site and residential development will be allowed around that 4.25 hectare area only. The total Lochiel Park site is 15 hectares and 70 per cent will be left as open space.

The government through its own press release admitted that it did not keep 100 per cent of the open space.

I acknowledge the statement made by the Hon. Carmel Zollo that the area where the building stood was never in the equation as open space and that on that basis the government has kept its promise, but I do not quite see it in that way. The promise was, in essence: 'We will keep all of Lochiel Park as open space and not develop.' Quite clearly, that has not happened; some of it will be turned into housing.

I should point out that Family First does welcome the government's decision to retain 70 per cent of the park as open space. Indeed, the key campaigners in the community who form the group, Supporters Protecting Areas of Community Environment (SPACE), are very supportive of the government's decision. It would be absurd to object to the government's decision when the key constituents and community groups are in favour of it. Family First fully supports the decision of the government concerning the park but, as a matter of conscience, I cannot vote in favour of this motion because it is simply not supported by the facts.

The Hon. G.E. GAGO secured the adjournment of the debate.

MEMBERS, TRAVEL REPORTS

Adjourned debate on motion of Hon. Nick Xenophon:

That travel reports of members of this council be made available on the parliamentary internet site within 14 days of any such reports being provided to the President as required under the Members of Parliament Travel Entitlement Rules.

(Continued from 24 September. Page 203.)

The Hon. A.L. EVANS: I rise to indicate Family First's support for the motion of the Hon. Nick Xenophon concerning members' travel reports. The Members of Parliament Travel Entitlement Rules currently provide for members to incur expenditure for travel either within Australia or overseas. The expenditure may be incurred for the purpose of undertaking studies and investigations of matters of interest, attending conferences, meetings or events related to his or her duties and responsibilities as a member of parliament or which involve a member because he or she is a member of parliament.

Under rule 15, a member is required to deliver a report to the President if the member has claimed a per diem allowance for overseas travel or has travelled for more than three nights' duration in respect of any travel. The report must be provided within 90 days of the travel having been completed. Rule 15 outlines those matters which must be included in the report.

Family First believes that openness and transparency on the part of members of parliament are issues of fundamental importance. Last year, my office prepared a travel report for the President concerning some travel that I undertook with a staff member. I would have been more than happy for a copy of that report to be placed on the internet. I have nothing to hide and I am confident that all the members in this place and the other place would say the same thing. In fact, it is my preference that members of the public have ready access to this type of information—after all, our travel is funded by taxpayers' money.

One of the reasons members of parliament are provided with a travel allowance is to overcome the tendency to become parochial and introspective. By travelling overseas and around Australia, members of parliament bring back fresh, innovative ideas and recommendations that advance and prosper South Australia. Part of the process of advancing the state in this way ought to include informing the public of those matters that are outside of our state. It makes sense that if there are good ideas out there, then members of parliament and the public alike ought to be aware of them.

This motion moves the parliament one step closer towards honesty, accountability and openness and towards pulling down the veil that I believe exists between members of the public and politicians. I commend the Hon. Nick Xenophon for its introduction.

The Hon. R.D. LAWSON secured the adjournment of the debate.

SUMMARY OFFENCES (LOITERING) AMENDMENT BILL

The Hon. R.D. LAWSON obtained leave and introduced a bill for an act to amend the Summary Offences Act 1953. Read a first time.

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

That this bill be now read a second time.

This bill will enhance the powers of the police to provide greater security for law-abiding citizens. This government has been big on law and order rhetoric but it has delivered little that will provide greater security and protection for law-abiding citizens. The Premier's response inevitably to any law and order issue is to announce increased penalties. That is good television, and it sounds good on talkback radio, although I am delighted to see that a number of talkback radio hosts are now challenging the Attorney-General and his frequent appearances and saying that the rhetoric has not been delivered. We believe that it is appropriate to give the police the necessary tools to ensure that we have a safer community. We also believe it is necessary to appoint more police and to give them additional resources. This government has singularly failed in those matters.

This is a modest measure, but a very important one. It will give to the police a power which they once enjoyed but which was taken away from them in the 1970s zeal for so-called civil liberties. At that time, the Summary Offences Act was amended to remove from police the power to move on certain people, and the law relating to those police powers was codified and limited. Section 18 of the Summary Offences Act is the result of that process. It presently provides that there are only four circumstances in which a police officer can request a person to cease loitering. First, the officer believes on reasonable grounds that an offence has been or is about to be committed. Secondly, the officer believes on reasonable grounds that a breach of the peace is occurring or is likely to occur.

Thirdly, that pedestrian access is being obstructed or is about to be obstructed. Fourthly, that the police officer believes on reasonable grounds that the safety of a person is in danger. Over the years a number of police officers have complained that these powers are inadequate to deal with the situation commonly encountered. That situation is gangs and groups of people hanging about in malls or in darkened laneways, outside hotels or anywhere where people lurk, and where their very presence creates in the minds of reasonable people distress or fear of harassment.

There are parts of Adelaide where, at various times, it is unsafe to walk about. The fears of people when they see loiterers, usually young men hanging about in a mall or in the laneways off Hindley Street and in Hindley Street itself, are not unfounded. These are reasonable fears. Members would frequently hear complaints by people that, at certain times and in certain places, the presence of people loitering or just hanging about does create in them a reasonable fear. Accordingly, many citizens will not go out, for example, to bus stations, railway stations and other public places because loiterers are hanging about.

They have to change their lifestyle and they abandon going out—especially older people—altogether because they fear going out; and, as I said before, those fears are reasonable. At the moment police do not have specific powers to ask people in this situation to move on unless one of the conditions that I have described above exists. In other words, a policeman must be able to satisfy, to a court if necessary, that he had reasonable grounds for believing that an offence was being or was about to be committed. A police officer does not have the power to go up to a group, the very presence of which will cause reasonable fear of harassment, and say, 'Would you move on.' He has no power to do that.

The Hon. Ian Gilfillan interjecting:

The Hon. R.D. LAWSON: The Hon. Ian Gilfillan, as is well known and he is proud of the fact, is a champion of civil liberties, and all power to him. But the fact is that the police do not have the power to ask anyone to move on who is, simply by their presence, representing a fear of harassment. They have to be able to satisfy a court, if necessary, that an identifiable offence is or is about to be committed: 'What, constable, were the grounds upon which you believed an offence was being committed? What offence did you believe was about to be committed?' And unless the policeman can say, 'Well, he [the person asked to move on] had made some threatening gesture, pulled a knife and made some utterance,' the police officer has no power under our existing law.

That power was taken away from police because it was said 20 years ago that police were misusing this power. They were getting bodgies and widgies to move on, or asking Aboriginal people to move on and, when they refused to move on, they would simply book them. It was said to be lazy policing at that time. But we threw out the baby with the bath water. We removed from police the power to say to people whose presence in a laneway or in a mall would cause reasonable apprehension or fear of violence in any ordinary member of the community 'move on'. We took away the power of the police to say, 'Would you move on,' and we believe that power should be restored.

This bill was introduced by me in November last year. It did not progress. I am introducing it again so that there can be a full debate on the matter. This is not some retrograde or regressive step: it is a step that will be a positive measure. Unlike those of this current government, this will be a positive measure to restore to police some of the powers that are necessary to enable them to provide a safer community, a community in which people will feel safer about going about their ordinary and legitimate business. When the matter was previously introduced by me on 20 November 2002 I outlined the history of provisions of this kind.

I went through the recommendations of the Mitchell committee on penal methods in the 1970s, as well as more recent incidents, such as those posed by the 'black shirts'—a group of agitators who were creating fear and harassment amongst certain people, mainly women, who had been litigants in the Family Court of Australia. The suggestion of the Attorney-General at that time was that if anyone was in the situation of, say, a woman who was afraid to go out into the street because of the presence of people, such as the black shirts, they could apply to the court for an apprehended violence order and by that means obtain some protection from our judicial system.

What piffle to expect that a woman would have to apply to the court for an apprehended violence order against people standing in the street with black masks on creating fear and harassing people. What nonsense that this Attorney-General would suggest that the appropriate thing is to apply to the court for an apprehended violence order. Would it not be better for the police simply to be called, for a police officer to say, 'On reasonable grounds, your very presence here is causing fear of harassment to these people. Move on or I will arrest you.' That is why we are introducing this measure.

It is a measure for which the police have been calling for sometime. There is a need in our community for legislation of this kind. The intention of this legislation is not to return to the 19th century but to give police the powers they need in the 21st century to provide us with a safer community. I commend the bill.

The Hon. CARMEL ZOLLO secured the adjournment of the debate.

LAW REFORM (IPP RECOMMENDATIONS) BILL

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries) obtained leave and introduced a bill for an act to reform the law as it relates to torts; to amend the Wrongs Act 1936, the Limitations of Actions Act 1936 and the Motor Vehicles Act 1959. Read a first time.

The Hon. P. HOLLOWAY: I move:

That this bill be now read a second time.

This bill represents the second stage of the government's legislative response to the crisis in the cost and availability of insurance. As members recall, the first stage was completed in August last year, with legislation to apply to all personal injury damage claims the same caps, thresholds and other limits as applied in motor accident claims, as well as legislation to permit structured settlements and legislation to provide for codes governing liability for injuries sustained in the course of risky recreations.

Those reforms included measures to restrict the size of awards for damages for personal injury, including a points scale for non-economic loss, a cap on economic loss and like measures. This second stage implements the key liability recommendations of the Ipp Committee.

Members will be aware that, in July 2002, the commonwealth Minister for Revenue and Assistant Treasurer, with the agreement of Treasurers nationally, appointed the Ipp Committee to report on comprehensive reforms to the law of negligence designed to reduce the cost of injury claims and, hence, the cost of insurance.

The committee comprised the Hon. Justice Ipp, now of the Court of Appeal, Supreme Court of New South Wales and formerly of the Supreme Court of Western Australia; Professor Peter Cane, a professor of law at the Research School of Social Sciences, Australian National University; Associate Professor Dr Don Sheldon, Chairman of the Council of Procedural Specialists; and Mr Ian Macintosh, the Mayor of Bathurst City Council and Chairman of the New South Wales Country Mayors Association.

The committee reported initially in August 2002 and, finally, on 30 September 2002. Its report made wide-ranging recommendations dealing with liability and damages for negligently caused personal injury. The report covered medical negligence, amendments to the Trade Practices Act, limitation of time to bring injury claims, liability in negligence including standard of care, causation and foreseeability, contributory negligence, mental harm, liability of public authorities, proportionate liability and restrictions on damages.

The interim and final reports of the Ipp committee have been considered by the Commonwealth government and by treasurers nationally. At a meeting on 15 November 2002, treasurers agreed in principle on nationally consistent legislation to be enacted separately by each jurisdiction to implement the key recommendations of the Ipp committee on liability for personal injury. Treasurers noted that, as to awards of damages, most jurisdictions had already legislated such measures as thresholds and caps. Since then, all jurisdictions have been working towards legislation.

New South Wales has already legislated to implement most of the Ipp recommendations on liability. The Civil Liability Amendment (Personal Responsibility) Act 2002 passed the New South Wales parliament in November 2002.

It deals with duty of care, causation, obvious risks, contributory negligence, mental harm, proportionate liability, the liability of public authorities, and some matters on which South Australia has already legislated, for example, intoxication, claims by criminals, good Samaritans, volunteers' protection and apologies.

Queensland also legislated to implement most of the Ipp recommendations on liability. The Civil Liability Act 2003 deals with, in particular, obvious risks, medical negligence, risky recreational activities, proportionate liability and the liability of public authorities. The Queensland act also covers some measures already legislated in South Australia, such as a cap on general damages in injury cases, limits on liability for injuries to criminals, mandatory reductions in damages where the plaintiff was intoxicated and exclusion of interest on pre-judgment non-economic loss.

In Victoria, the Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003 has recently passed. That act restricts damages for personal injury by setting thresholds for damages for non-economic loss and limiting damages for gratuitous attendant care. It provides for proportionate liability in claims for economic loss. It also adopts the Ipp recommendations for a new regime of limitation periods.

Tasmania has passed the Civil Liability Act 2002, based on the Ipp recommendations about the standard of care, causation, obvious risks, mental harm and liability of public authorities. It has also enacted restrictions on damages, and measures dealing with intoxication, recovery by criminals, structured settlements, volunteers' protection and apologies.

Western Australia has also introduced the Civil Liability Amendment Bill 2003, which deals with the principles of negligence, obvious risks of recreational activity, mental harm, public authorities and proportionate liability. It also covers some measures already legislated here, such as a presumption of contributory negligence in case of intoxication, protection for good Samaritans, and apologies.

The ACT has passed the Civil Law (Wrongs) Amendment Act 2003, which includes provisions dealing with general principles of negligence, mental harm, liability of public authorities, structured settlements, apologies, protection of good Samaritans and other matters.

The government has undertaken extensive consultation in preparing this bill. A discussion paper was published in February and attracted submissions from a wide range of groups representing the professions and business, the sporting and recreation sector, volunteer groups and others. Meetings were held with several interested parties. In general, the government has been encouraged by the response. Some particular measures were criticised, and the government has taken these criticisms into account, departing from its original intentions in some respects.

The chief purpose of the bill is to amend the Wrongs Act to reform some aspects of the law of negligence in the expectation of moderating the cost of damages claims and thus the cost of insurance. The bill does not attempt a complete codification of the law of negligence, which members would recognise to be an immense task, but simply focuses on some specific aspects identified by the Ipp Committee as being in need of either restatement or reform. The bill proposes that these new laws are to apply to any claim for damages resulting from a breach of a duty of reasonable care or skill, regardless of whether the claim is brought in tort or contract, or under a statute. It does this by defining 'negligence' to include any failure to exercise reasonable care or skill, including a breach of a tortious, contractual or statutory duty of care.

This accords with Ipp recommendation 2, and is necessary because the same event might give rise to several different causes of action. For example, a patient might sue a doctor both in negligence and for a breach of a contractual duty of care. If the new laws were to apply to negligence alone, then it would be possible to evade them by the choice of the cause of action. If that happens, the desired benefit of reduced insurance premiums will be lost. Rather, the bill is intended to apply to all claims for damages for failure to exercise reasonable care or skill, whether they are brought in tort, say, as a negligence claim, or a claim for a breach of a non-delegable duty of care, or in contract as a breach of a contractual duty of care, or as an action for breach of a statutory duty or warranty of reasonable care.

The bill applies to all kinds of harm, not just to personal injury. This is the approach taken in New South Wales, Queensland and Tasmania, and proposed in Western Australia. The terms of reference of the Ipp Committee confined its report to personal injury claims, but it is desirable that the same basic principles of negligence, such as the rules about causation or standard of care, apply regardless of the type of damage claimed.

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! There is too much conversation in the chamber, which is making it difficult to hear the minister.

The Hon. P. HOLLOWAY: To some extent, the Ipp recommendations proposed to codify the common law rather than to change it. Some of the provisions of the bill, such as those dealing with causation, foreseeability and standard of care, are restatements of the law designed to bring clarity and to make more explicit the reasoning processes that courts should apply in reaching conclusions about liability.

The bill also makes some important changes to the present law. By clause 27 (proposed new section 41) it adopts Ipp recommendation 3 dealing with the liability of medical practitioners for professional negligence resulting in injury. Because the terms of reference of the Ipp Committee were limited to personal injury, its recommendation is focused on the medical profession. However, consistently with comment received from many sources, the bill covers all professionals not just medical practitioners; there is no reason for a different standard of care to apply to doctors.

Under our current law, it is up to the court to determine whether a professional person has been negligent. The court hears evidence from other professionals and forms its own view as to whether the defendant has departed from the standard required of the reasonably competent practitioner. The Ipp Committee noted that the court is never required to defer to expert opinion, although in the court normal course it will. It found that 'a serious problem with this approach is that it gives no guidance as to circumstances in which a court would be justified in not deferring to medical opinion'.

As a solution, the Ipp Committee concluded that the test for determining the standard of care in treating patients should be that 'a medical practitioner is not negligent if the treatment provided was in accordance with an opinion widely held by a significant number of respected practitioners in the field, unless the court considers that the opinion was irrational'. Accordingly, proposed new section 41 would entitle a professional person to defend a negligence action by proving that there is a widely accepted professional opinion that the action taken in the particular case was competent professional practice. The opinion must be widely accepted.

A professional will not be able to avoid liability for a negligent choice of action or a negligently performed procedure by mustering a handful of friends to say the action was acceptable. Rather, it will be necessary for the defendant to prove, on the balance of probabilities, that there is in Australia a substantial body of professional opinion that supports the action. This is as it should be. If a practitioner has, in fact, acted in accordance with widely held professional opinion, then he or she has acted reasonably and has not been negligent, even if the action taken has produced adverse results, and even if someone else might have acted differently. No-one can guarantee a perfect result from any professional procedure. However, on Ipp's recommendation, the bill recognises that, from time to time, an opinion might be widely held by respected practitioners and yet be irrational. If the court thinks that is the case, it may nonetheless find negligence.

Of course, this proposed defence is not the only defence available, and one could imagine many cases in which it will not be available. To use medical examples, there may be cases of mistake, for instance, where the wrong dose of a drug is given, where blood of the wrong type is transfused, or where the operation is performed on the wrong limb. The defence will be relevant chiefly in cases where it is alleged that the action chosen was unsuitable to the case or was carried out in the wrong way. Note, in particular, that the defence will not be available in medical cases based on alleged failure to warn of risks. In those cases, the rule in Rogers v. Whitaker will continue to apply.

The New South Wales, Queensland and Tasmanian acts each incorporate similar provisions, although other jurisdictions have not as yet done so. The Ipp Committee proposed by recommendation 4 that, in a negligence action against a person professing a particular skill, the standard of care should be stated to be what could reasonably be expected of a person professing that skill in all the circumstances at the time. This, in effect, restates the common law. It is intended, particularly, to draw attention to the fact that courts must resist the temptation to be wise in hindsight. They are to determine what could reasonably have been expected of a professional person, given the circumstance prevailing at the time. Proposed new section 40 gives effect to this recommendation.

Based on submissions received, the government has decided not to adopt Ipp recommendations 5 to 7, dealing with doctors' duties to warn patients of risks of treatment. It appears that the present law is well understood by doctors and a practice of warning patients using standard form information, signed consents and other methods is in wide use. Neither New South Wales nor Victoria has adopted these recommendations, and neither does the Western Australian bill propose to, although Queensland has done so.

On the topic of the liability of professionals and, in particular, doctors, I point out to members a new addition to this bill. In July this year, the High Court handed down its decision in the case of Cattanach v. Melchior, which attracted some attention. That decision held that a doctor, whose negligence led to the conception of a child, was liable to pay to the parents damages for the cost of raising that child. The Queensland government immediately announced its intention to reverse the decision, and there is legislation before the Queensland parliament to this effect.

This government agrees with the Queensland government that, in this case, the law of negligence has gone too far. The government does not believe that most people would think it fair or reasonable that parents, who make a decision to keep their child and who, no doubt, love and treasure him or her, should be able to sue another person for the cost of raising the child, even if there has been negligence. The costs of raising the child are no doubt real and burdensome, but how can the law weigh these against the inestimable benefits that a child also confers?

The law does not generally consider human life a loss or damage to be compensated but rather a value. Accordingly, the bill includes a provision extinguishing this entitlement to damages. Note that this provision is not limited to cases of medical negligence. It extends to any case of negligence that leads to the conception of a child, as well as breaches of statutory warranties and statutory provisions about misleading conduct. This is because, logically, there is no reason to confine the provision to one kind of negligence only, and also because, otherwise, there is a risk that the provision could be circumvented by the choice of cause of action.

The provision does not change the law in the case where a child is born with a disability as a result of negligence. The common law has permitted the parents in that case to claim for the extra costs of the child's care and treatment necessitated by the disability. This provision does not change the common law on that point.

The Ipp Committee made a number of recommendations about legal liability where a person is harmed in the course of taking an obvious risk. Initially, the government had proposed to adopt those recommendations. There is much to be said for the view that, if a person chooses to engage in a dangerous recreation and is hurt when one of the obvious dangers come to pass, he or she should not be able to blame others. However, the government has been persuaded by submissions to abandon the proposal to enact Ipp recommendation 11.

The Recreational Services (Limitation of Liability) Act 2002 already provides an avenue by which providers of dangerous recreations will be able to limit their liability. Also, more recent common law developments suggest that the pendulum has swung away from the extreme reached in the case of Nagle v. Rottnest Island Tourist Authority. Further, the proposal could have had unintended effects in relieving providers of the duty to provide safe equipment and conditions.

The bill does not, therefore, make any provision about liability for the materialisation of obvious risks of recreational activities. The government still believes, however, that the Ipp committee is right in recommending that the law specifically state that there is no liability for failure to warn of obvious risks in any context. The bill so provides by clause 27 (proposed new section 38). It is important to understand that this is not limited to recreational services. It can apply to occupation of land, for example. If a risk is obvious, then it is reasonable to expect the plaintiff to detect it and to take reasonable care against it. In large part, this probably reflects the common law.

In considering whether a person was negligent in failing to give a warning, the court will consider, among other things, whether, in the circumstances, the danger was so obvious that there was no duty to warn. For example, in Romeo v Conservation Commissioner (1998), 192 CLR 431, Justice Kirby observed that 'where a risk is obvious to a person exercising reasonable care for his or her own safety, the notion that the occupier must warn the entrant about that risk is neither reasonable nor just.' This seems to the government to be plain commonsense. The more recent case

of Woods v Multi-Sport Holdings Pty Ltd also illustrates this point. A statutory statement is, however, useful in sending a message.

Whether a risk is obvious is a matter for the court. It is to consider whether the risk would have been obvious in the circumstances to a reasonable person in the position of the person harmed. This is a 'reasonable person' test and so is objective. It is, however, intended to allow the court to consider the plaintive's position, and so allows the court to take into account, for example, that the plaintiff is a child, or for example that he or she is blind or deaf so could not detect a danger that might have been obvious to sighted or hearing persons.

There are some important exceptions to this general principle. One is where there is an act or regulation requiring a warning. Another is the duty of a health care practitioner to warn about the risk of injury from the provision of a health care service. The effect of this exception is that no medical risk can be an obvious risk. This is reasonable because, in general, medical knowledge is needed to appreciate such risks. The other exception is where the plaintive asks the defendant about the risk.

These recommendations have also been considered in the context of the sporting use of registered motor vehicles. At present, the CTP insurance scheme covers bodily injury sustained in the course of a race or rally on a road if the defaulting driver is driving a South Australian registered vehicle. This is so, even though the road has been closed off officially for the race and the road rules, including the speed limit, suspended. Consistently with the spirit of the Ipp recommendations, the government believes that those who choose to participate in road races and rallies, knowing that the road rules will not apply, should not be able to claim on the CTP fund if they are injured as a result. Accordingly, the bill would amend the Motor Vehicles Act to exclude coverage for this situation, and also for the situation where a registered vehicle is raced on a race track. Further, although CTP cover will still apply if a spectator is injured by a driver's negligence, the bill would give the Motor Accident Commission a right of recovery against the race organisers.

The bill also deals with some of the principles to be applied by the court in negligence cases. Here it closely follows the recommendations of the Ipp committee about foreseeability, causation and remoteness of damage, and is similar to the measures taken in New South Wales, Queensland and Tasmania and proposed in Western Australia.

Clause 27 (proposed new section 32) sets out how the court is to decide whether the defendant ought to have taken precautions to reduce or avoid a risk. This is based on Ipp Recommendation 28. The present law uses the concept of 'foreseeability'. If a risk is 'far-fetched or fanciful', then there is no duty to take action to reduce or avoid it (Wyong Shire Council v Shirt). If it is otherwise, then it may be that precautions should have been taken. The bill proposes to codify the law by providing that the threshold for liability in respect of a risk is that the risk is 'not insignificant'.

This is intended to set a standard higher than the present 'far-fetched or fanciful' rule and yet not as high as 'significant'. That is, the risk does not have to be a major or important risk before the defendant will be required to take it into account. However, this does not mean that a person must always take precautions against any risk that is 'not insignificant'. Instead, once the risk is so identified, the 'negligence calculus' applies. This involves an assessment of whether a reasonable person would have taken precautions against that risk, having regard to:

- the probability that the harm would occur if care were not taken
- the likely seriousness of that harm
- the burden of taking precautions to avoid the harm, and
- the social utility of the risk-creating activity,

amongst other things. The court is to weigh up all these factors in each case to decide whether the defendant should have taken action to reduce or avoid the risk.

Proposed new sections 34 and 35 deal with causation and are based on Ipp Recommendation 29. Again, what is proposed is, to some extent, a codification. It is provided that the plaintiff always bears the burden of proving any fact relevant to causation, and that the standard of proof is the balance of probabilities. The bill goes further, however, and makes express the fact that, to some extent, when deciding questions of causation, courts make judgments about whether a defendant should be held liable. It does this by distinguishing 'factual causation' from 'scope of liability'.

'Factual causation' involves answering the question whether the negligence was a necessary condition of the occurrence of the harm. However, in addition, the court must consider 'scope of liability', that is, whether it is appropriate for the scope of the negligence personal liability to extend to the harm. Ipp proposes this test because he says that findings of causation involve a normative as well as a factual element. Ipp says that a finding that negligence was a necessary factual condition of the harm does not of itself support a finding of liability, and that courts in fact make judgments about when liability should be imposed. The reasoning behind these judgments, he says, is not elucidated by such terms as 'commonsense causation' or 'effective cause'. He intends that courts should expressly consider in each case whether and why responsibility for harm should be imposed on the negligent party.

Ordinarily, factual causation must be established as a precondition for liability. However, the bill proposes an exception for certain cases where factual causation cannot be established because it is not possible to prove which of several negligent acts was, in fact, causative. In that case, factual causation can nonetheless be found, but it will be necessary for the court to make a judgment as to whether and why a defendant is to be held responsible for the harm.

Proposed new Part 7 deals with contributory negligence and is based on Ipp Recommendation 30. It provides that the same rules should apply to determine whether the plaintiff was contributorily negligent as would apply to determining whether the defendant was negligent. Again, this re-states the common law. This general provision, of course, does not derogate from specific statutory provisions about contributory negligence, such as the rule that a person who is intoxicated automatically loses at least 25 per cent of his or her damages.

Proposed new section 37 deals with the offence of voluntary assumptions of risk and is based on Ipp Recommendation 32. It is a defence to a negligence action that the plaintiff willingly chose to take a risk. He or she therefore cannot complain when the risk eventuates. The defence rarely succeeds. The court is more likely to deal with such a case by holding the plaintiff to be contributorily negligent. One reason why success is so rare, Ipp argues, is that courts are unwilling to find that the plaintiff actually knew about the risk so as to assume it. Another, he says, is that courts tend to define risks narrowly and at a high level of detail, and so require the defendant to prove that the plaintiff knew not only

of the risk of bodily harm from the activity, but also of the risk of suffering injury in a particular way.

Accordingly, this clause would make it easier to establish a defence of voluntary assumption of risk by two means. First, where the risk is obvious, the plaintiff will be presumed to have known of it. That is, the defendant does not need to prove that the plaintiff actually knew, but only that the risk was obvious. It is, however, to be open to the plaintiff to show that, even though the risk was obvious, he or she did not in fact know of it. Second, the clause provides that it is not necessary to show that the plaintiff knew of the exact nature or manner of occurrence of the risk. It is enough to show that he or she knew of the type or kind of risk (or that a risk of this type was obvious).

Proposed new sections 33 and 55 deal with liability for mental harm and relate to Ipp recommendations 34 and 37. For the most part, they restate the existing law, but there is a departure. At present, if a person suffers bodily injury and, in consequence, also suffers mental harm, damages are payable for the effects of both, regardless of whether the mental harm amounts to a psychiatric illness or is merely mental distress. On the other hand, if the person suffers no bodily injury but only mental shock (for instance, as a bystander at an accident), there is no claim unless the shock can be diagnosed as a psychiatric illness. Ipp proposed that, in the case of consequential mental harm, damages for economic loss should be recoverable only if the mental harm amounted to recognised psychiatric illness. Proposed new section 54 embodies this rule.

Proposed new section 42 deals with the liability of highway authorities. It is intended to restore the highway immunity rule. As is well known, the High Court in Brodie v. Singleton Shire Council held that the former rule that protected highway authorities from liability for harm resulting from mere inaction was no longer good law. This decision overturned the legal basis on which highway authorities had, until 2001, made their risk management plans and arranged their roadside maintenance activity. The government had proposed in its discussion paper to restore the highway immunity rule temporarily but also to adopt Ipp recommendations 39 and 40 for a policy decision defence for all public authorities. As a result of comment, and also of the High Court's decision in the case of Ryan v. Great Lakes Shire Council, the government has decided not to proceed with a policy decision defence for public authorities. Accordingly, the highway immunity rule is to be restored indefinitely. In the longer term, however, it may come to be replaced by a defence based on adherence to objective road maintenance standards.

I would like to make clear that the intention of this provision is to restore the common law, in particular, as at common law a structure associated with a road is to be considered part of the road. This is not a new concept. There is a body of well-established common law as to what are structures associated with a road as distinct from artificial structures that are not part of the road. By using the term 'structure associated with a road' the bill intends to refer to and draw on the common law.

Some other jurisdictions have restored the rule. Under section 45 of the New South Wales act, a road authority is not liable for failing to carry out or to consider carrying out road work unless the authority actually knows of the danger. The Queensland and Tasmanian provisions are similar. Victoria has also restored the immunity but only on a temporary basis until 1 January 2005. It intends that, in the meantime, road maintenance standards be devised. It has mooted legislation to provide that compliance with standards will be a defence to a negligence action. The Western Australian bill would not, however, restore the rule. It deals with the liability of public authorities in accordance with the Ipp recommendations.

Previously, this bill included a provision dealing with non-delegable duties. This followed Ipp recommendation 43, the aim of which was to prevent the bill being circumvented by the choice of this cause of action. This provision has been omitted from the present form of the bill. The decision has been made that it is no longer necessary as a result of the High Court's decision in the case of Lepore v. State of New South Wales. In that case, the High Court made it clear that a non-delegable duty is nonetheless a duty of reasonable care, not an automatic liability if a person comes to harm. The duty is not breached if reasonable care has been taken. Hence, the non-delegable duty will be a duty to take care or exercise skill within the meaning of this bill and no special reference is needed.

The bill also amends the Limitation of Actions Act. It does not adopt the recommendations of the Ipp report in this respect although New South Wales and Victoria have done so. The government was concerned that these were complex and difficult to apply. They also had the potential to prejudice the rights of children whose parents neglected to take action in time and thus to lead to litigation between parents and children. Several submissions urged the government not to adopt the Ipp recommendation that time should run against a minor. Further, there has not been national support for the Ipp recommendations dealing with limitations of action. Instead, taking up suggestions presented in some submissions, the bill makes three main reforms to the law relating to limitation of liability.

First, it amends section 48 of the Limitation of Actions Act to restrict extensions of time. Evidence presented in submissions suggests that extensions are, at present, readily available and that the necessary new material fact can readily be found, often in the form of a new medical report. The government thinks it desirable to refocus the law so that extensions are not granted just because a new relevant factor has been discovered but are only available if the plaintiff can show that the fact forms an essential part of the plaintiff's claim or would have a major significance on an assessment of the plaintiff's loss.

Second, the bill provides that the parent or guardian of a child under 15 years of age is to give notice of a claim to the prospective defendant within six years after the accident. If a parent fails to give a notice, the child does not lose the right to sue. This endures until the child turns 21. However, in that case, the cost of medical treatment and legal work incurred by the parents and the gratuitous services rendered by them before the date of commencement of the proceedings are not claimable from the defendant unless the court finds that there was a good reason excusing the non-compliance with the notice requirement. This bears some analogy with the Queensland Personal Injuries Proceedings Act.

Once the prospective defendant is served with this notice, he or she is entitled to have access to the child's medical and other relevant records, such as school records, and to have the child medically examined at reasonable intervals at the defendant's expense.

Further a defendant who has been served with a notice can require the child's parent or guardian to apply for a declaratory judgment on liability. After six years it should be

possible to deal with the issue of liability even though final assessment of damages may need to await the child's maturity. The government thinks this is fair because of the risk that evidence relevant to liability may deteriorate with time. For example, if the case is one of birth injury, the hospital staff who were involved in the incident may leave, retire or die if the case is left too long. Records of what happened may be lost or destroyed. All of this reduces the chance of the court establishing whether there has been negligence and by whom. It is fair that in this case the prospective defendant be able to ask the court to decide whether it is legally liable or not.

Note that the notice requirement does not apply if the defendant has intentionally harmed the child. In that, case insurance is unlikely to exist and there is no justification for notice. A third person who is liable for the actions of that wrongdoer, however, remains entitled to notice.

The amendments made by this bill are intended to operate prospectively and thus, if a course of action is based wholly or partly on an event that occurred before the commencement of the legislation, the case will be determined as if these amendments had not been made. The transitional provision of the bill is intended in particular to address the concerns of the Asbestos Victims Association about long-latency diseases. If the event that has already occurred then the case will not be affected by this bill.

The Ipp Committee also made recommendations about damages awards, legal costs and other matters. For the most part, the government considers that concerns about the quantum of damages claims have been adequately addressed by the amendments to the Wrongs Act that passed this parliament last August. There are, however, two measures that have been considered necessary to ensure that the law achieves its intended results. In a loss of dependency claim, the damages recoverable by the dependants are to be reduced for any contributory negligence of the deceased. Further the cap imposed on damages for economic loss also applies to those claims. There is no reason why they should be treated differently from other claims.

The government believes this bill strikes a fair balance between the interests on the one hand of defendants and their insurers and on the other of plaintiffs who have legitimate and proper claims. It is important to protect the rights of persons injured through the wrongdoing of others. Equally it must be recognised that those rights may be worth very little in many cases if the wrongdoer is not insured. I hope that all members will recognise this practical reality and will understand the need to balance these competing interests.

I commend the bill to the council and I seek leave to have the explanation of clauses incorporated in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

General explanation

The main purpose of this Bill is to bring the law in South Australia relating to civil liability into line with the national Ipp Review of the Law of Negligence. As a result of adopting certain recommendations, the *Wrongs Act 1936* is to be renamed as the *Civil Liability Act 1936* and the Act is to be-ordered. Over the years, the *Wrongs Act* has been amended numerous times and this opportunity has been taken to simplify the numbering and to put the Act and all of its amendments into a logical sequence.

Part 1—Preliminary

Clause 1: Short title

Clause 2: Commencement

Clause 3: Amendment provisions

These clauses are formal.

Part 2—Amendment of Wrongs Act 1936

Clause 4: Insertion of heading

This clause inserts the heading "Part 1—Preliminary" before section 1 of the *Wrongs Act 1936* (in Part 2 of the explanation of clauses referred to as the principal Act).

Clause 5: Substitution of section 1

1.Short title

The name of the principal Act is to be changed to the *Civil Liability Act 1936*.

Clause 6: Substitution of section 2

2.Act to bind the Crown

The principal Act binds the Crown.

Clause 7: Repeal of section 3

This section has been enacted in section 2 (*see* clause 6).

Clause 8: Amendment and redesignation of section 3A—Interpretation

Definitions formerly enacted just for the purposes of that Part of the principal Act dealing with personal injuries have been re-enacted here so that they apply for the purposes of the whole of the principal Act. A number of new definitions have also been inserted and the section is to be redesignated as section 3.

Clause 9: Insertion of section 4

4.Application of this Act

This Act applies to the exclusion of inconsistent laws of any other place to the determination of liability and the assessment of damages for harm arising from an accident occurring in this State but does not derogate from the *Recreational Services (Limitation of Liability) Act 2002* or affect a right to compensation under the *Workers Rehabilitation and Compensation Act 1986*.

Clause 10: Substitution of heading to Part 1

What was formerly designated as Part 1 of the principal Act will be designated as Part 2 (but this Part will still deal with defamation). No substantive changes are proposed to this Part.

Clause 11: Substitution of heading to Part 1A

What was formerly designated as Part 1A of the principal Act will be designated as Part 3 (but this Part will still deal with liability for animals). No substantive changes are proposed to this Part.

Clause 12: Redesignation of section 17A—Liability for animals

This section is to redesignated as section 18.

Clause 13: Substitution of heading to Part 1B

What was formerly designated as Part 1B of the principal Act will be designated as Part 4 (but this Part will still deal with occupiers liability). No substantive changes are proposed to this Part.

Clause 14: Redesignation of section 17B—Interpretation

Clause 15: Redesignation of section 17C—Occupier's duty of care

Clause 16: Redesignation of section 17D—Landlord's liability limited to breach of duty to repair

Clause 17: Redesignation of section 17E—Exclusion of conflicting common law principles

These sections (all contained in the Part dealing with occupiers liability) are to be redesignated as sections 19 to 22 respectively.

Clause 18: Substitution of heading to Part 2

What was formerly designated as Part 2 of the principal Act will be designated as Part 5 (but this Part will still deal with wrongful acts or neglect).

Clause 19: Redesignation of section 19—Liability for death caused wrongfully

Clause 20: Amendment and redesignation of section 20—Effect and mode of bringing action, awarding of damages for funeral expenses etc

Clause 21: Redesignation of section 21—Restriction of actions and time of commencement

Clause 22: Redesignation of section 22—Particulars of person for whom damages claimed

Clause 23: Amendment and redesignation of section 23—Provision where no executor or administrator or action not commenced within 6 months

Clause 24: Redesignation of section 23A—Liability to parents of person wrongfully killed

Clause 25: Redesignation of section 23B—Liability to surviving spouse of person wrongfully killed

Clause 26: Amendment and redesignation of section 23C—Further provision as to solatium etc

These sections are to be redesignated as sections 23 to 30 respectively. The amendments proposed to these sections are consequential only.

Clause 27: Insertion of Part 6

Part 6—Negligence

Division 1—Duty of care

31.Standard of care

For determining whether a person (the defendant) was negligent, the standard of care required is that of a reasonable person in the defendant's position who was in possession of all information that the defendant either had, or ought reasonably to have had, at the time of the incident out of which the harm arose.

32.Precautions against risk

A person is not negligent in failing to take precautions against a risk of harm unless—

- the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known); and
- the risk was not insignificant; and
- in the circumstances, a reasonable person in the person's position would have taken those precautions.

33.Mental harm—duty of care

A person (the defendant) does not owe a duty to another person (the plaintiff) to take care not to cause the plaintiff mental harm unless a reasonable person in the defendant's position would have foreseen that a person of normal fortitude in the plaintiff's position might, in the circumstances of the case, suffer a psychiatric illness. This proposed section does not affect the duty of care of a person (the defendant) to another (the plaintiff) if the defendant knows, or ought reasonably to know, that the plaintiff is a person of less than normal fortitude.

Division 2—Causation

34.General principles

A determination that negligence caused particular harm comprises the following elements:

- that the negligence was a necessary condition of the occurrence of the harm (factual causation); and
- that it is appropriate for the scope of the negligent person's liability to extend to the harm so caused (scope of liability).

35.Burden of proof

In determining liability for negligence, the plaintiff always bears the burden of proving, on the balance of probabilities, any fact relevant to the issue of causation.

Division 3—Assumption of risk

36.Meaning of obvious risk

An obvious risk to a person who suffers harm is a risk that, in the circumstances, would have been obvious to a reasonable person in the position of that person. A risk can be an obvious risk even if the risk (or a condition or circumstance that gives rise to the risk) is not prominent, conspicuous or physically observable.

37.Injured persons presumed to be aware of obvious risks

If, in an action for damages for negligence, a defence of voluntary assumption of risk (*volenti non fit injuria*) is raised by the defendant and the risk is an obvious risk, the plaintiff is taken to have been aware of the risk unless the plaintiff proves, on the balance of probabilities, that he or she was not aware of the risk.

38.No duty to warn of obvious risk

A person (the defendant) does not owe a duty of care to another person (the plaintiff) to warn of an obvious risk to the plaintiff. This does not apply if—

- the plaintiff has requested advice or information about the risk from the defendant; or
- the defendant is required to warn the plaintiff of the risk—
  —by a written law; or
  —by an applicable code of practice in force under the *Recreational Services (Limitation of Liability) Act 2002*; or
- the risk is a risk of death or of personal injury to the plaintiff from the provision of a health care service by the defendant.

39.No liability for materialisation of inherent risk

A person is not liable in negligence for harm suffered by another person as a result of the materialisation of an inherent risk (that is, a risk of something occurring that cannot be avoided by the exercise of reasonable care and skill). This does not operate to exclude liability in connection with a duty to warn of a risk.

Division 4—Negligence on the part of persons professing to have a particular skill

40.Standard of care to be expected of persons professing to have a particular skill

In a case involving an allegation of negligence against a person (the defendant) who holds himself or herself out as possessing a particular skill, the standard to be applied by a court in determining whether the defendant acted with due care and skill is (subject to proposed Division 4) to be determined by reference to—

- what could reasonably be expected of a person professing that skill; and
- the relevant circumstances as at the date of the alleged negligence and not a later date.

41.Standard of care for professionals

A person who provides a professional service incurs no liability in negligence arising from the service if it is established that the provider acted in a manner that (at the time the service was provided) was widely accepted in Australia by members of the same profession as competent professional practice.

Division 5—Liability of road authorities

42.Liability of road authorities

A road authority is not liable in negligence for a failure—

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

Division 6—Exclusion of liability for criminal conduct

43.Exclusion of liability for criminal conduct

This is the re-enactment of current section 24I with an addition as a consequence of relocating the section from the Part dealing with personal injuries to the Part dealing generally with negligence.

Part 7—Contributory negligence

44.Standard of contributory negligence

The principles that are applicable in determining whether a person has been negligent also apply in determining whether a person who suffered harm (the plaintiff) has been contributorily negligent. This proposed section is not to derogate from any provision for reduction of damages on account of contributory negligence.

45.Contributory negligence in cases brought on behalf of dependants of deceased person

In a claim for damages brought on behalf of the dependants of a deceased person, the court is to have regard to any contributory negligence on the part of the deceased person.

Clause 28: Substitution of heading to Part 2A

What was formerly designated as Part 2A of the principal Act will be designated as Part 8 (but this Part will still deal with personal injuries) but will no longer be divided into Divisions.

Clause 29: Repeal of heading to Part 2A Division 1

This heading is otiose.

Clause 30: Repeal of section 24

The definitions set out in this section have been re-enacted in the redesignated section 3.

Clause 31: Redesignation of section 24A—Application of this Part

This section is to be redesignated as section 51.

Clause 32: Repeal of heading to Part 2A Division 2

This heading is otiose.

Clause 33: Redesignation of section 24B—Damages for non-economic loss

This section is to be redesignated as section 52.

Clause 34: Substitution of section 24C

53.Damages for mental harm

The substituted provision uses the previous provision as a basis but amends it in keeping with the Ipp recommendations. Damages may only be awarded for mental harm if the injured person—

- was physically injured in the accident or was present at the scene of the accident when the accident occurred; or
- is a parent, spouse or child of a person killed, injured or endangered in the accident.

Damages may only be awarded for pure mental harm if the harm consists of a recognised psychiatric illness and damages may only be awarded for economic loss resulting from consequential mental harm if the harm consists of a recognised psychiatric illness.

Clause 35: Amendment and redesignation of section 24D—Damages for loss of earning capacity

This section as amended is to be redesignated as section 54. The amendment provides that in an action brought for the benefit of the dependants of a deceased person, the total amount awarded to compensate economic loss resulting from the death of the deceased person (apart from expenses actually incurred as a result of the death) cannot exceed the prescribed maximum and if before the date of death the deceased person received damages to compensate loss of earning capacity, the limit is to be reduced by the amount of those damages.

Clause 36: Redesignation of section 24E—Lump sum compensation for future losses

Clause 37: Redesignation of section 24F—Exclusion of interest on damages compensating non-economic loss or future loss

Clause 38: Redesignation of section 24G—Exclusion of damages for cost of management or investment

Clause 39: Redesignation of section 24H—Damages in respect of gratuitous services

These sections are to be redesignated as sections 55 to 58 respectively.

Clause 40: Repeal of heading to Part 2A Division 3

This heading is otiose.

Clause 41: Repeal of section 24I

See new section 43.

Clause 42: Relocation of sections 24J to 24N

These sections are to be redesignated as sections 46 to 50 respectively and relocated so that they follow section 45 in Part 7 (*see* clause 27).

Clause 43: Repeal of Part 2A Division 4

This section is otiose as the substance of the provision is now set out in section 4.

Clause 44: Substitution of heading to Part 3

What was formerly designated as Part 3 of the principal Act will be designated as Part 9 (but this Part will still deal with miscellaneous matters).

Clause 45: Substitution of heading to Part 3 Division 3

Clause 46: Redesignation of section 27C—Rights as between employer and employee

Clause 47: Repeal of Part 3 Division 4

Clause 48: Redesignation of heading to Part 3 Division 5—Remedies against certain shipowners

Clause 49: Redesignation of section 29—Remedy against shipowners and others for injuries

Clause 50: Redesignation of heading to Part 3 Division 6—Damage by aircraft

Clause 51: Redesignation of section 29A—Damage by aircraft

Clause 52: Redesignation of section 29B—Exclusion of liability for trespass or nuisance

Clause 53: Redesignation of heading to Part 3 Division 7—Abolition of rule of common employment

Clause 54: Redesignation of section 30—Abolition of rule of common employment

Clause 55: Redesignation of heading to Part 3 Division 8—Actions in tort relating to husband and wife

Clause 56: Redesignation of section 32—Abolition of rule as to unity of spouses

Clause 57: Redesignation of section 33—Wife may claim for loss or impairment of consortium

Clause 58: Redesignation of section 34—Damages where injured spouse participated in a business

Clauses 45 to 58 are "house-keeping" provisions. They redesignate the Divisions and sections so that they follow sequentially from the previous Part.

Clause 59: Insertion of new Division

The new Division 6 (Limitation on the award of damages for the costs of raising a child—new section 67) provides that in an action to which this section applies, no damages are to be awarded to cover the ordinary costs of raising a child. The *ordinary costs of raising a child* include all costs associated with the child's care, upbringing, education and advancement in life except, in the case of a child who is mentally or physically disabled, any amount by which those costs would reasonably exceed what would be incurred if the child were not disabled. New section 67 applies to—

(a) an action for negligence resulting in the unintended conception of a child; or

(b) an action for negligence resulting in the failure of an attempted abortion; or

(c) an action for negligence resulting in the birth of a child from a pregnancy that would have been aborted but for the negligence; or

(d) an action for innocent misrepresentation resulting in—

(i) the unintended conception of a child; or

(ii) the birth of a child from a pregnancy that would have been aborted but for the misrepresentation; or

(e) an action for damages for breach of a statutory or implied warranty of merchantable quality, or fitness for purposes, in a case where a child is conceived as a result of the failure of a contraceptive device.

Clause 60: Redesignation of heading to Part 3 Division 9—Abolition of actions of seduction, enticement and harbouring

Clause 61: Redesignation of section 35—Abolition of actions for enticement, seduction and harbouring

Clause 62: Redesignation of heading to Part 3 Division 10A—Unreasonable delay in resolution of claim

Clause 63: Redesignation of section 35B—Definitions

Clause 64: Redesignation of section 35C—Damages for unreasonable delay in resolution of a claim

Clause 65: Redesignation of section 35D—Regulations

Clause 66: Redesignation of heading to Part 3 Division 11—Liability for perjury in civil actions

Clause 67: Redesignation of section 36—Liability for perjury in civil actions

Clause 68: Redesignation of heading to Part 3 Division 12—Racial victimisation

Clause 69: Redesignation of section 37—Racial victimisation

Clause 70: Redesignation of heading to Part 3 Division 13—Good samaritans

Clause 71: Redesignation of section 38—Good samaritans

Clause 72: Redesignation of heading to Part 3 Division 14—Expressions of regret

Clause 73: Redesignation of section 39—Expressions of regret

Clauses 60 to 73 are also "house-keeping" provisions.

Part 3—Amendment of Limitation of Actions Act 1936

Clause 74: Amendment of section 3—Interpretation

This amendment inserts a definition of child.

Clause 75: Amendment of section 45—Persons under legal disability

This is consequential on the insertion of the definition of child.

Clause 76: Insertion of section 45A

45A.Special provision regarding children

If a child (the plaintiff) suffers personal injury and the time for bringing an action for damages is extended by the *Limitation of Actions Act* to more than 6 years from the date of the incident out of which the injury arose (the relevant date), notice of an intended action must be given within 6 years after the relevant date by, or on behalf of, the child to the person(s) alleged to be liable in damages (the defendant). An exception to this rule is if the injury arises from an intentional tort.

The defendant may, by written notice, require the plaintiff, within 6 months after the date of the notice, to bring an action so that the claim may be judicially determined (in relation to liability and/or assessment of damages, as the court thinks appropriate).

The effect of non-compliance with a requirement of this proposed section on the part of a plaintiff is that, unless the court is satisfied that there is good reason to excuse the non-compliance, damages will not be allowed in such an action to compensate or allow for medical, legal or gratuitous services provided before the date the action was commenced.

Clause 77: Amendment of section 48—General power to extend periods of limitation

This amendment describes what is to be regarded as a material fact.

Part 4—Amendment of Motor Vehicles Act 1959

Clause 78: Amendment of section 99—Interpretation

This clause inserts definitions of participant and road race.

Clause 79: Amendment of section 104—Requirements if policy is to comply with this Part

A new subsection is proposed that provides that a policy of insurance complies with this Part even though it contains an exclusion of liability of the nature and extent prescribed by clause 4 of Schedule 4.

Clause 80: Amendment of section 124A—Recovery by insurer

This provides that where an insured person incurs, as a participant in a road race, a liability against which he or she is insured under Part 4 of the *Motor Vehicles Act*, the insurer may, by action in a court of competent jurisdiction, recover from the organiser of the road race the amount of the liability and the reasonable costs incurred by the insurer in respect of that liability.

Clause 81: Amendment of Schedule 4—Policy of insurance

This amendment provides that the policy of insurance set out in Schedule 4 does not extend to liability arising from death of, or bodily injury to, a participant in a road race caused by the act or omission of another participant in the road race.

Schedule 1—Transitional provision

This provides that the amendments made by this measure are intended to apply only prospectively.

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

SUMMARY OFFENCES (OFFENSIVE WEAPONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 October. Page 314.)

The Hon. A.L. EVANS: In the lead-up to the last election, the government promised that it would introduce legislation that would prohibit the carrying of knives in or near licensed premises at night. The Summary Offences (Offensive Weapons) Amendment Bill has been introduced in an apparent fulfilment of that promise. The bill creates an aggravated offence for carrying an offensive weapon or possessing or using a dangerous article in or near the vicinity of licensed premises at night. The maximum penalty is $10 000 and/or two years imprisonment. The current penalties are six months imprisonment and/or a $2 500 fine for the carrying of offensive weapons and 18 months imprisonment and/or a $7 500 fine for carrying a dangerous article.

An offensive weapon is defined in the Summary Offences Act as including a rifle, gun, pistol, sword, club, bludgeon, truncheon, and other offensive or lethal weapons or instruments. The definition specifically states that it does not include a prohibited weapon. The current law under section 15(1) of the Summary Offences Act is that anyone who has possession of or uses a prohibited weapon is guilty of an offence punishable by two years imprisonment or a $10 000 fine. A prohibited weapon includes a knife.

The Hon. Ian Gilfillan in his entertaining and informative contribution has already provided the house with details of the types of knives that comprise prohibited weapons under the Summary Offences (Dangerous Articles and Prohibited Weapons) Regulations 2000. I note with interest the statement made by the Hon. Ian Gilfillan—and I agree with him—that it would seem that the list of knives described as prohibited weapons is exhaustive. It is difficult to imagine that there are any knives that would not be prohibited weapons and therefore fall within the category of an offensive weapon.

As such, this bill is a little farcical in that it does not do anything new when it comes to knives. Almost all offences involving the use of knives currently incur a maximum penalty of $10 000 and/or two years imprisonment. It is entirely inappropriate for the government to say that this bill will address the problem that we have with knives in and around licensed premises by increasing the penalty for this type of offence. It is entirely inappropriate because current legislation provides for this a higher penalty when it comes to the use of almost all types of knives. This problem is already being dealt with on the assumption that higher penalties are the way to deal with the problem.

However, Family First is not prepared to oppose the bill on this ground alone if the bill has some tangible benefits, and I think it does. Offensive weapons are specifically defined as not including prohibited weapons. Anything can be an offensive weapon if the carrier intends to use it offensively. I understand that some examples of things that have been treated as offensive weapons are: a baseball bat, a billiard cue, a picket, a length of pipe and a broken bottle. None of these items is a prohibited weapon. Under this bill they will experience more severe penalties if caught with these types of weapons near licensed premises between 9 p.m. and 6 a.m. which they would otherwise not experience.

Family First believes that longer prison sentences are not necessarily the answer to crime in this state. Studies have shown that prisoners who are locked up for longer periods become unskilled and desocialised. There should be a greater emphasis on rehabilitation if there is going to be an increase in prison terms. I am a great supporter of the work of Prison Fellowship International, which has based its rehabilitation programs on principles of restorative justice, and they are seeing a dramatic drop in the repeat crime rate. In Brazil, for example, where these programs are being used, the repeat crime rate is 5 per cent as opposed to 75 to 80 per cent in prisons where they are not being used. This bill clearly achieves far less than what the government is leading the community to believe, but arguably it has some benefit, at least with respect to offensive weapons that are not knives. Ultimately, if one life can be saved because of this bill, then it has been worth it. Family First supports the bill.

The Hon. G.E. GAGO secured the adjournment of the debate.

CROWN LANDS (MISCELLANEOUS) AMENDMENT BILL

Received from the House of Assembly and read a first time.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): 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 Crown Lands (Miscellaneous) Amendment Bill 2002 was introduced in the other place on 15 July 2002 and was intended to provide for the introduction of realistic rents for perpetual Crown leases and two minor administrative changes to the Crown Lands Act 1929.

A Parliamentary Select Committee was established in that place to consider the Crown Lands (Miscellaneous) Amendment Bill 2002 and to consider available alternatives. The Select Committee delivered an interim report on 26 November 2002 and a final report on 2 June 2003. In accepting the recommendations of the Select Committee, the Government introduced several amendments to the original Bill and those proposed amendments were tabled for the information of members in that place on 26 November 2002 when the final report of the Select Committee was presented to Parliament. Those amendments and a number put forward by the Opposition were debated in the other place on 13 October 2003.

The minimum rent proposal for leases intended to rectify an historical shortcoming of Crown lease administration that permitted lessees of the Crown to occupy land in perpetuity for, in some cases, minuscule rents. It also intended to provide sufficient rental revenue to cover the cost of administering of Crown leases. The Select Committee recommended that a program of accelerated freeholding be introduced as an alternative method of reducing ongoing administration costs. A program for voluntary freeholding of perpetual leases has been in place for more than 15 years but it has not adequately reduced the number of leases or reduced the cost of administration. The accelerated freeholding proposal, like the former minimum rent proposal, will cover the cost of administration by decreasing that cost and will provide funding for Crown land business reforms which will include streamlined and automated processes, and better systems for handling data leading to quicker and simpler means of undertaking Crown land transactions in future.

The Select Committee also proposed a number of administrative efficiencies that are reflected in the Bill, the most significant of which is replacing the power of the Governor to grant freehold title with a power of the Minister. This will relieve the Governor of the burden of personally signing the very large number of grants that will

result from the number of applications to freehold that have already been received.

The proposed amendments to the Crown Lands Act 1929 will now provide for—

- the replacement of the Governor's powers to sign grants with a power of the Minister in several sections of the Crown Lands Act 1929 (amendments to section 5AA, 5, 6A, 41D, 228B and 228C) as well as the Irrigation (Land Tenure) Act 1930 (amendments to sections 35A & 40)
- the extension of the Minister powers to delegate to include Part 2 of the Crown Lands Act 1929 (amendment to section 9A)
- the recovery of GST on lease rents (new section 47A)
- the continuance of the Lyrup Village Association by providing that owners can be members as well as lessees (amendment to section 85)
- the registration of surrenders for grant of freehold without the consent of registered interests if such consent is unreasonably withheld (new section 224, and
- the reintroduction of the requirement to obtain the consent of the Minister to the transfer of a lease under the Irrigation (Land Tenure) Act 1930 (new section 48E)
- minor changes to the application of regulations (amendment to section 288)

The Bill no longer contains provision for the introduction of a minimum rent or an annual service charge.

In addition to easing the burden on the Governor mentioned above, the various amendments that replace the powers of the Governor in granting freehold will lead to efficiencies in the freeholding process and position Crown land administration for the future introduction of computerised leases and automated registration processes. It will facilitate more timely conversion of perpetual leases to freehold by reducing the number of processes involved.

Significant productivity improvements in processing Crown land transactions have been achieved by delegation of powers of the Minister under the Act. However, the power to delegate contained in section 9A currently precludes delegation of powers under Part 2 of the Act that deals with dedication of reserves, issue of easements and Trust grants. Part 2 refers to joint powers of the Minister and the Governor and the restriction on delegation emanates from the Governor's powers with regard to Trust grants. The proposed amendment to section 9A will not affect or inhibit the powers of the Governor but will enable more effective delegation of Ministerial powers and assist improvement in the timeliness of service to clients.

Under Commonwealth GST legislation, GST is not payable on perpetual lease rents until 2005 because of the long term nature of the leases and the absence of a rent review opportunity. Rents on leases used for agricultural purposes, as is the case with the majority of perpetual leases, are exempt from GST. However, provision is made in this amendment, under proposed section 47A, for the recovery, as a charge against the lessee, of any amounts payable on lease rents by the Minister under GST legislation including those that may apply after 2005.

Historically, section 85 of the current Act has limited the jurisdiction of the Lyrup Village Association (the irrigation controlling body within the Lyrup Village District) to "lessees" of land within the District. It seems that legislators of the time never envisaged that landholders in the District would be anything other than "lessees". This requirement has created an artificial barrier to freeholding perpetual leases issued in the Lyrup Village District. A simple amendment to include "or owners" in the definition of members under section 85 will remove this barrier and enable 175 lessees in the Lyrup Village District to take advantage of the freeholding policy without the risk of losing membership.

Section 288 of the current Act provides for the Governor to make regulations to give force and effect to the object, purposes, rights, powers and authorities of the Act. It is proposed to extend the scope of those regulations to permit regulations to apply to in various fashions.

The Government looks forward to the support of the House in passing the Crown Lands (Miscellaneous) Amendment Bill 2002.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 5AA—Power of the Governor to resume certain dedicated lands

This clause amends section 5AA of the principal Act consequentially to proposed clause 4.

Clause 4: Amendment of s. 5—Minister's powers to grant or otherwise deal with Crown lands

Currently the power to grant the fee simple of Crown land or of dedicated lands lies with the Governor under section 5AA of the principal Act. This clause would have the effect of giving that power to the Minister (and clause 3 removes that power from the Governor). The current restriction on the Governor's power (which prevents granting the fee simple of any foreshore) is retained as a restriction on the Minister's power.

Clause 5: Repeal of s. 6A

This clause repeals section 6A of the principal Act which requires grants of Crown land to be signed by the Governor, the Minister and the Registrar-General and to have the seal of the State attached.

Clause 6: Amendment of s. 9A—Delegation by Minister and Director

This clause amends section 9A to allow the Minister to delegate functions and powers under Part 2.

Clause 7: Amendment of s. 41D—Purchase of fee simple of Whyalla town lands

This clause is consequential to clause 4.

Clause 8: Insertion of s. 47A

This clause inserts a new section in the principal Act allowing the Minister to recover GST from lessees.

Clause 9: Amendment of s. 85—Continuance of Lyrup Village Association

This clause amends section 85 to allow owners of land (as well as lessees) to be members of the Lyrup Village Association.

Clause 10: Amendment of s. 224—Saving of estates and interests in surrendered lands

This clause allows the Minister to accept a surrender even if a person fails to give consent, where the Minister is satisfied that the person is unreasonably withholding consent and that the person's interests would not be prejudiced by the surrender. The clause also clarifies that estates or interests may be carried over to a new lease or agreement of surrendered land, however the estate or interest was created.

Clause 11: Amendment of s. 228B—Grant of crown lands to certain Government or local government authorities

This clause is consequential to clause 4.

Clause 12: Amendment of s. 228C—Fee simple may be granted to licensee in certain cases

This clause is consequential to clause 4.

Clause 13: Amendment of s. 288—Regulations

This clause amends the regulation making power in the principal Act consequentially to proposed new section 47A. The proposed amendment would allow regulations to be of general application or limited application and to make different provision according to the matters or circumstances to which they are expressed to apply.

Clause 14: Amendment of Irrigation (Land Tenure) Act 1930

This clause makes a number of consequential or related amendments to the *Irrigation (Land Tenure) Act 1930*. Various references to the "Governor" are changed to references to the "Minister" (consistently with clauses 3 and 4 of the measure) and a requirement is introduced for the consent of the Minister to the transfer, assignment or subletting of leases of, and agreements to purchase, lands within an irrigation area under the Act or any other Act dealing with the disposal of Crown lands and land grants under the Act.

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

MOUNT GAMBIER HEALTH SERVICE

Adjourned debate on motion of the Hon. A.J. Redford (resumed on motion).

(Continued from page 345.)

The Hon. SANDRA KANCK: I sought leave before the dinner break to conclude my remarks so that I could examine the government's proposed amendments to this motion. As a consequence, I now propose alternative wording as I can see that the motion of the Hon. Angus Redford can be improved, but not all of what the government has moved is acceptable to the Democrats. That is being distributed at the moment so that members can examine my proposal. Before the break I mentioned the Social Development Committee's

investigation into rural health and how the political nature of that committee did not allow for any criticism of regionalisation as a concept.

We certainly had evidence that regionalisation was not proving to be particularly successful, although the committee's report did not reflect this. I want to talk about some of that evidence again because I think it has a bearing on what has occurred at Mount Gambier. As part of its submission, the Barossa Area Health Service tabled a briefing paper that it had earlier tabled at its board of directors' meeting on 27 May 1999. That service said the following about regionalisation:

> The implementation of regionalisation has resulted in the following for the Barossa Area Health Services Incorporated:
> (a) A loss of over $100 000 in 1998-99, from patient care, to support a regional bureaucracy.
> (b) An additional layer of bureaucracy has been implemented with a resultant slow down of decision making and reduction in delegations and autonomy for local health boards.
> (c) A reduction in local board and community input into the representation and development of local health services, i.e. the process has acted as a filter in the access and development of local health services.
> It is suggested that, as we have progressed a further two years on from the report time frame, it may be opportune that a subsequent evaluation is undertaken. To achieve a truly meaningful evaluation, it should be undertaken by an independent reviewer and have a broad input from all health care providers involved, including local health unit boards, non-government organisations, etc.

I turn to another piece of evidence that was given to that committee from people from Port Lincoln. That evidence states:

> It is the board's understanding that an internal evaluation of regionalisation was carried out by representatives from within the department shortly after it was implemented, but this was done by personnel who were directly involved in driving its original implementation. It is also the board's understanding that the evaluation did not extend beyond the regional level, which resulted in input not being received from local health units. The board therefore is of the view that a full independent evaluation of regionalisation should be carried out with the view to determining its success or otherwise, and this should include input being sought from local health units. The review should also include an evaluation of the current directions of the Department of Human Services,—

and I think that remains timely—

> and the cost and intended role of the new Country Services Division within the department. The impact of this needs to be assessed against regional and local budgets, the existing regional structural arrangements and the new approach that appears to have been adopted by the department in managing health services.

In regard to the benchmark price for casemix, the Wakefield region told the committee:

> Right from the outset that was undermined by the cost of regionalisation. The budget for a regional office comes from the budget given to a region, so every benchmark price in the Wakefield region was immediately 2.2 per cent underdone because of the cut we were taking in order to undertake regional services.

Now, as that happened in the Wakefield region, I am sure that it happens in the Mount Gambier region. In its report, the Social Development Committee observed:

> Some recurring criticisms of regionalisation were that it has caused bureaucracy to escalate rather than simplify funding and streamline services, and that full-time positions in the Country and Disability Services division of central office had proliferated as opposed to becoming smaller.

That report went on to quote Ms Roxanne Ramsey from DHS as proof that such criticisms were incorrect. As members might observe as I advance my contribution, I have little time for anything much that Roxanne Ramsey has to say. Casemix funding, as members will work out from those earlier quotes, did not get a positive reception from many regional health services at all to the committee. In his evidence to the committee, Chris Overland, the regional manager from Mount Gambier, said:

> What you have also seen, along with increasing dollars, is increasing obligations. In other words, a lot of those dollars that have gone into the budget are actually completely committed right from the word go. They do not represent discretionary dollars; they are committed to funding enterprise bargaining arrangements, to funding changes in payment systems for medical practitioners and a whole host of other types of commitments.

As I mentioned before the dinner break, the arrangements that had been made by Dr Michael Armitage when he was health minister put a lot of pressure on the health budgets in the South-East because of the industrial dispute that existed with the doctors. In his comments about casemix funding, Mr Overland said:

> The problem with casemix funding is that, especially in a state like South Australia where. . . there are not a lot of products. . . being produced—your averaging process can be wrong in itself. Certainly, the department tries to get round that by introducing product cost information from other states and national figures to attempt to ensure that the prices it pays are fair. The problem for hospitals like Mount Gambier (or Port Augusta, Port Pirie or Whyalla) is that they tend to produce a very narrow band of DRGs, certainly compared to the Royal Adelaide Hospital or the Queen Elizabeth Hospital.

He further states:

> The problem is that, if you produce a disproportionately large number of loss-making products, then you will get hurt by the casemix funding process. That is what I think explains most of the problems with the major regional hospitals. There is an upside to that: the evidence appears to be that if you are a subregional hospital,like Naracoorte or Millicent, or maybe a bit smaller, and you produce a very profitable but narrow range of products, you do quite well under casemix fundings. This helps explain why a lot of hospitals seem to do relatively well even though they produce a surprisingly small amount of workload, and why a lot of big hospitals like the Royal Adelaide do well because they have a huge range of DRGs; and then you typically find that the regional hospitals straddled in the middle do not produce a big enough range to average out the cost and tend to be focused on loss-making processes and procedures.

Although the terms of reference do not specifically mention regionalisation and casemix funding, they are important factors in what has occurred in the South-East. I am sure that when the committee takes evidence we will be hearing about casemix funding and regionalisation. I said at the outset of my contribution that there were two principal factors that needed to be understood if we are to deal properly with the South-East situation. Having spoken of the need to broaden this proposed inquiry so that the committee is able to consider the earlier history in the matter, I now turn to the other two factors, that is, the bullying, the nepotism and the bureaucratic interference that emanates from head office.

In this regard it is very interesting to reflect on a recent Colin James' feature in *The Advertiser* in which he wrote of the number of redeployees in state government departments. I do not have any figures on it, but I would hazard a guess that there would be a preponderance of DHS employees who have run foul of head office and been relieved of their duties.

The Hon. Nick Xenophon interjecting:

The Hon. SANDRA KANCK: There is a very deep-seated problem, because in my almost 10 years of parliament all but one of the complaints that I have had about bullying and high-handedness have been about a limited number of DHS head office bureaucrats, and the same names occur again and again—so much so that when yet another employee or former employee writes to me, comes to see me or phones me and starts naming some of these people I say, 'Stop. Don't

tell me any more. I believe you.' They are exactly the same names over and over again. It is the same pattern of bullying and interference. That same high-handedness and bullying within DHS has carried over to dealings with doctors in the wider community. It is no wonder that doctors in Mount Gambier are at loggerheads with the department.

Some years ago, when doctors at Naracoorte were at the point of signing a new three year agreement that had been brokered by George Beltchev of DHS, Ms Roxanne Ramsey, who, at that stage, I think, had the title of Executive Director of the Country Health and Disability Services Division of DHS, walked in and told them the deal was off. She then made the decision to fly in obstetricians and GPs rather than use the locals. The upshot was that, in the space of six weeks, Ms Ramsey blew 24 weeks of the health service's budget to prove her point—whatever it was.

I draw members's attention to questions and speeches that I made earlier this year in regard to DHS head office interference with the Port Lincoln health services. Answers that I received to those questions, combined with an FOI request, suggest to me that Ms Roxanne Ramsey is in charge of country health and not the minister. Those questions and speeches that I made in parliament resulted in a number of phone calls, emails and letters from various other people who had had dealings with Ms Ramsey. One of them came from a surgeon who came from a particular region which I will not mention. He writes:

> I have been reading some transcripts from *Hansard* recently regarding problems at the Port Lincoln Hospital. You have clearly identified a problem within the DHS. . . The hospital and regional boards and regional general manager—

of this particular region from where the doctor is writing—

> attempt to be supportive of our position but clearly there is someone in the DHS white-anting us. . . Given the situation at Port Lincoln, I can understand why our RGM and board are afraid to act. . . I am certain that the problems we are having. . . are related to those in Mount Gambier and Port Lincoln. I think you and I know who and where the problem is.

Another person who had read *Hansard* decided to write to me. The letter states:

> I noted with interest your question in the house to Ms Lea Stevens with regards to the difficulties faced by Port Lincoln as a result of the management options undertaken by Ms Roxanne Ramsey. . . It appears to me that Ms Ramsey has always appeared to be central to the difficulties of the smooth running of medical services in Mount Gambier. . . it currently costs the State Government somewhere in the region of $1.5 million extra per year to run the system compared to pre 2000. It seems incredible to me that somebody could effectively be promoted. . . in the Division of Country Health having been party to that decision. There appears to be no way that we have found to adequately demand that these employees of the Department of Human Services have been called to account to justify their actions. Meanwhile the crisis in the South East continues. . . Your help in questioning on behalf of the public, the running of the Department of Country Health and Social Justice is very much appreciated.

Let's look at some of the people who have been in the firing line from the Country and Disability Services Division and, later, the Social Justice and Country Health Division over the past few years. Chris Firth, formerly the CEO of Julia Farr Services, had the confidence of his board and, when his contract came up for renewal a few years ago, his position was advertised. The board decided that of all the applicants it preferred Chris Firth. His name was duly forwarded to the department but Roxanne Ramsey, the Executive Director, would not accept the recommendation of the Julia Farr Board. As far as I know, that board is the only one in the DHS that has been able to stand up to Ms Ramsey. All the other boards, when contacted by her and she says 'I no longer have confidence in such and such a person in your employ', have buckled to her request—sometimes literally within hours.

The Hon. J.F. Stefani: They got sacked?

The Hon. SANDRA KANCK: Yes, they have ended up being sacked. The Julia Farr Services Board is the only one that has stood up, and more power to it. I am not quite sure how long ago that stand-off occurred but I think it could have been 12 months or possibly more before the department finally gave in. Now, I was really quite surprised back in May, I think, to suddenly see that the CEO position at Julia Farr was being readvertised. I understand that, after all this time, Chris Firth has now resigned. I do not know the circumstances but I would not mind betting what the circumstances—

An honourable member interjecting:

The Hon. SANDRA KANCK: Yes, I would say that the stress of having to continually fight with head office would have been very difficult for him. I understand that he is now basically languishing in DHS, unattached to anything in particular with all of the considerable expertise that he has built up over the years simply being wasted.

The Hon. J.F. Stefani: In the transit lounge.

The Hon. SANDRA KANCK: In the transit lounge, among the sorts of people that Colin James wrote about: people who are being paid good money but who, because of the bullying in head office, have decided that it is simply too hard to stay in there.

Naracoorte Hospital, another one in the South-East, has had its problems over time including the closure of wards, the loss of paediatrics services for a time, and doctors being locked out for two weeks, all of which had the potential to put lives at risk. Sue Williams, who was one of about three CEOs at that hospital over the last decade, was bullied by people in head office to the extent that she felt that if she did not leave that position, her future career prospects would not be just threatened but destroyed. So, she made a sensible career move before her reputation could be damaged too much by the head office terrorists, and resigned and went to Queensland where she continues her career.

At around the same time, Ken Barnett suddenly departed as CEO from Mount Gambier and left for Cooma. I had met with him when I was down there and I was impressed by the way he was apparently bringing things under control. He was easy to get along with, staff seemed to have a good working relationship with him; and colleagues, after his departure, spoke to me of his professionalism. It has been suggested to me that, like many others, he ran foul of head office. So, yet again we had destabilisation and a lack of continuity of health services in the south-east.

I remind members that, with regard to the south-east, Mount Gambier has had three regional CEOs, and five hospital CEOs in the space of a decade. There is something terribly wrong in head office in DHS when these sorts of things happen. John Easton was appointed as the manager of Ceduna FAYS because there had been a succession of CEOs staying less than two years. He brought about the stability that was required, staying there for—

An honourable member interjecting:

The Hon. SANDRA KANCK: John Easton of FAYS. He stayed there for five years, bringing about that necessary stability.

An honourable member interjecting:

The Hon. SANDRA KANCK: It was the longest one and you would have thought the department would be grateful.

Suddenly, for no apparent reason, he was unacceptable to head office and despite the fact that he was held in high regard by the mayor, all the ministers of religion in the town, and by the Yalata Aboriginal people—he had a petition signed by 120 Yalata Aboriginal people—he got his marching orders from Roxanne Ramsey and her sidekick, Lyn Poole.

The Hon. Nick Xenophon: What was the background? What was the justification?

The Hon. SANDRA KANCK: God knows. He cannot find out. Margaret Bonnar, who replaced him, found the interference from head office so difficult that she took a TVSP. I am aware that the CEO of Ceduna Hospital, Ken Maynard, got the boot a few years ago as a consequence of head office interference and other people, such as John McGowan at Woodville FAYS and Ken Tao and Ian Procter from FAYS, have been moved sideways or overlooked in promotions.

Resignations and/or sideways transfers of CEOs, medical directors and directors of nursing of rural and regional hospitals are commonplace. Again and again, I am told of DHS interference which has resulted in a rapid turnover of staff and destabilisation of service delivery. Of the many DHS or former DHS employees who have fallen victim to this destructive behaviour, one said in a letter to me:

> I hope it will not take an incident like Dr Kelly in the UK before something is done about it.

We clearly have a desperate situation in South Australia, where public servants see the possibility that one of them might commit suicide because of this departmental head office dysfunctionality. The turnover of staff in DHS is, to say the least, destabilising in terms of human damage and the loss of expertise. The carnage perpetrated by head office is appalling, and I do not understand that our health minister allows it to continue.

Given that it is a monster, and given the number of good people who have fallen by the wayside as a consequence of DHS head office interference, I was astounded and disappointed to hear that Ms Ramsey, whose contract is just expiring, will now assume the role of Executive Director, Country Services, as from 1 December.

The Hon. A.J. Redford: God help us!

The Hon. SANDRA KANCK: Yes, God help us. Quite frankly, unless the minister is prepared to put Ms Ramsey on a leash, the problems we see at Mount Gambier will continue, despite any investigation undertaken or recommendations made by this select committee. As I said earlier, there is a culture of bullying, nepotism and bureaucratic interference from and in head office—and, by the way, it has happened to junior people in head office as well—that underlies so much of what has been happening in Mount Gambier. I challenge the health minister and, for that matter, the Minister for Social Justice, to take action to bring it under control. I move:

> Paragraph I
>
> Leave out all words after 'the operation of the' in line 2 and insert the following:
>
> Mount Gambier District Health Service and, in particular, the following specific issues—
>
> (a) the negotiation of contracts with resident specialist doctors and other staffing issues;
>
> (b) the impact of the budget of the Mount Gambier District Health Service on other health services within the South-East region;
>
> (c) the involvement and actions of the Department of Human Services in the management of these issues;
>
> (d) regional service planning as it relates to the health needs of the community;
>
> (e) the impact on health services in the Mount Gambier area of these issues; and
>
> (f) any other related matter.

Members will see from my amendment the changes I am making. I will not be supporting the government's amendment to have a joint committee, and I have good reasons for this. Partly, it is a matter of the precedents I have set myself. When I moved a motion to set up a select committee on multiple chemical sensitivity, I was lobbied by the government, when the opposition put up an amendment, to make it into a joint select committee. It was put to me that the committee would be used for grandstanding. I accepted that and, as a consequence, then moved a motion for the issue of multiple chemical sensitivity to go before the Social Development Committee.

Similarly, I am going to stick to my guns on this and stick to my own precedent, and not allow this particular committee to be used for grandstanding by either former or present ministers. I do not want this committee to be used for grandstanding or as a political football, and I believe that, by keeping it as a select committee of this house, amended as it will be by the Hon. David Ridgway, so that we have five members (which I believe will be two Liberals, two Labor and one Democrat), we can prevent it from being used as a political football.

I met with the minister yesterday to talk about this matter and, although she is keen to be a member of the committee, I do not really think that is appropriate, because both she and the former minister are perceived to be part of the problem. It is possible that the committee might even want to cross-examine them and, if they were members of the committee, that would not be possible. I indicate that, with appropriate amendments, the Democrats will be supporting the setting up of this select committee.

The Hon. NICK XENOPHON: I indicate my support for a committee to be established, based on the amendment moved by the Hon. Sandra Kanck. I prefer the Hon. Sandra Kanck's amendment to the other amendments and, indeed, the substantive motion. I believe, first, that this matter should not be restricted to post July 2002.

The Hon. Angus Redford, in his motion, outlined a number of concerns and problems that exist at the Mount Gambier Health Service. Clearly, the honourable member is interested in the here and now but, if some of those problems go back prior to July 2002, I think they should be looked at in so far as they are relevant to the current position. Obviously, it would be absurd to go back a number of years if it was not relevant, in a direct sense, to what is currently occurring in the Mount Gambier Health Service.

I am very concerned about the allegations made by the Hon. Sandra Kanck in relation to the Department of Human Services. They appear to relate to a number of systemic problems. I urge the health minister (Hon. Lea Stevens) to inquire into those allegations and to take matters further because, if that was the case, it would affect the proper functioning of the department and the services provided, particularly in regional health services.

Initially, I was attracted to the idea of a joint house committee. However, I think the matters raised by the Hon. Sandra Kanck in terms of what was put to her by the government in relation to the issue of multiple chemical sensitivities make good sense. I also think it would be reasonable, in this case, for the minister—and, indeed, the former health minister—to be available to assist by giving evidence to the committee, if required. I am sure that both the minister and

the former minister would cooperate with any reasonable request made by the committee.

Clearly, this is an issue of significant concern for the Mount Gambier community. I understand from a media release that the Hon. Rory McEwen, the local member, has put out that he does not have a problem with matters prior to July 2002 being investigated.

The motion moved by the Hon. Angus Redford, with the proposed amendments moved by the Hon. Sandra Kanck and the Hon. David Ridgway, is reasonable in the circumstances. I would like to think that, at the end of the day, this should not be about ad hominem attacks or witch hunts. I am sure that the mover of the motion and all those involved have been motivated to deliver better health system outcomes for the people of Mount Gambier. Hopefully, at the end of the day, that will be the case in terms of the committee's findings and recommendations so that, ultimately, the people in the South-East will get a better health system.

The Hon. R.D. LAWSON: I rise to support this motion in its amended form. I also indicate my personal support (and I am sure the honourable member will have the support of the Hon. Angus Redford, the mover of the motion) for the amendments proposed by the Hon. Sandra Kanck. However, I cannot allow the Hon. Sandra Kanck's attack on Roxanne Ramsey to go without comment. I held the disability services portfolio in the previous government, during which time Roxanne Ramsey was the executive director responsible for disability services, and she was a most conscientious and competent officer. I think that it is unfortunate that people in this place, using the opportunity that their being in parliament presents, attack a public servant in the way in which the Hon. Sandra Kanck has done.

The Hon. Sandra Kanck interjecting:

The Hon. R.D. LAWSON: I can see it coming now. Roxanne Ramsey is a professional public servant, and what she does is to implement government policy. Whatever she has done was done with the authority of the minister. The minister is responsible for that, and the minister and the government should be held accountable for what is happening in Mount Gambier.

To make Roxanne Ramsey the scapegoat for what is happening in Mount Gambier when government policy is being implemented by the department would be a regrettable diversion. The attack on Ms Ramsey is regrettable and I believe it is misguided. The committee should be looking at how this minister and the department implementing this minister's policies are addressing the issues in Mount Gambier. To seek to blame a particular officer and make her a scapegoat will no doubt in the fullness of time be very convenient for this government and this minister. Speaking for myself, we will seek to hold accountable those who are really responsible, that is, the minister who is charged with responsibility for overseeing our health services.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I wish to make a few comments. I must say I am extremely disappointed that it is now obvious that this council will reject the proposal for establishing a joint select committee. In other words, the House of Assembly—the house that is represented by local members and in which government is formed—apparently is not worthy of participating in this issue. It is extraordinary and also incredibly stupid, as I think events that will unfold in the future will determine. How extraordinary that we are saying that the Minister for Health—

The Hon. Sandra Kanck interjecting:

The Hon. P. HOLLOWAY: The Hon. Sandra Kanck, who just made a disgraceful attack on a public servant, interjects. I have met Roxanne Ramsey once but, according to the Hon. Sandra Kanck, she is responsible for every problem in the health system. Good heavens! What about the shortage of nurses we are facing at the moment; what about the medical indemnity insurance crisis? What about the commonwealth cuts to funding we have had—the $75 million over the next few years? What about the chronic shortage of doctors in country areas; what about the mental health crisis that has been evolving over the past 10 years? What about all those issues and the very special problems we have in Mount Gambier, which certainly would have pre-dated Ms Ramsey's current position. It is just extraordinary that such attacks should be made.

Even if what the Hon. Ms Kanck was saying was right, one thing on which I do agree with the Hon. Mr Lawson is that the minister is responsible for the department, yet the minister is not now able to be on the select committee. We are saying the minister cannot be involved; we will say what the minister can do. The Hon. Sandra Kanck has already made up her mind that what is wrong with the South-East is Roxanne Ramsey; she is the problem, apparently. So, she has made up her mind, but she is saying that neither the Minister for Health nor the shadow minister for health can be on this committee and be part of it. It is absolutely extraordinary that this should be rejected. Nevertheless, the numbers are not there and I suppose that, given the time, we will have to accept it.

I am pleased to see that, although we have not had much time to look at the terms of reference that will now go to the upper house committee, at least they will be similar to those proposed in amended form by the Minister for Health. I would have liked the opportunity to speak to the Minister for Health about those terms of reference; nevertheless, they are close enough that they are at least similar. It is rather extraordinary that, when the Hons Sandra Kanck and Nick Xenophon have said they do not want this to be a witch-hunt, we have just had an attack on a public servant. One of the other points that need to be looked at in this matter is that country hospitals have independent hospital boards. What is the role of the boards in this?

The Hon. Sandra Kanck: They roll over all the time!

The Hon. P. HOLLOWAY: Do they really? It just seems to be quite extraordinary. There is no doubt that there are longstanding problems at Mount Gambier Hospital; it is obvious to anybody who is aware of the situation down there. There are all sorts of reasons: personalities are involved and there are longstanding disagreements. There are many reasons for it, which I am sure anyone familiar with that situation would know. From the government's point of view, we certainly would have supported a committee that looked at them. That is appropriate; from the government's perspective, we believe we have nothing to hide in that and, in fact, we believe a properly constituted committee would only work to expose the real situation down there. I think it is regrettable that, now that this committee has rejected the proposal, the Minister for Health, the shadow minister for health and possibly the local MPs from that area should not be part of it. It diminishes greatly the credibility of that—

Members interjecting:

The Hon. P. HOLLOWAY: I think it will detract from its credibility. It is quite extraordinary, and certainly it completely negates any argument that the objective of this committee was to try to be objective and discover the real reasons behind the longstanding problems at this hospital. I will not take up any more time of the council, and we will not bother to call for a division on it.

The Hon. A.J. Redford: You haven't got the numbers!

The Hon. P. HOLLOWAY: That's right; we probably do not have the numbers but, when this council abuses its numbers, as it is clearly doing now in rejecting a joint committee, it always comes back, and I will make the prediction now that this council will again be demeaned by the abuse of numbers, as has occurred so often in the past.

The Hon. IAN GILFILLAN: I want to make a very brief contribution to the debate. The minister appears to be making a meal out of the fact that it is not a joint house committee. It is rather strange, however; I assume that he and his party accepted that a select committee looking into genetically modified organisms excluded both he and I as being prime movers in that, and determined that it would be a select committee solely of the lower house. It is a very interesting conflict. I also reflect that we are the house of review, and I believe it is quite appropriate for us to have a select committee to work on our own personnel. I believe that we are fully capable of doing it.

The Hon. J.F. STEFANI: I was not going to speak on this matter, but I feel compelled to do so. I want to remind the council that it was this house that established the select committee into the Queen Elizabeth Hospital, and it was this house alone that served on that committee, over which I presided. I was very interested to hear the minister's comment, because when in opposition at that time he supported the establishment of the select committee, and there was no joint house committee. I find it strange, now that the there is—

Members interjecting:

The PRESIDENT: Order! The hour is late. Everybody is getting emotional about it, but the Hon. Mr Stefani has the call. I would prefer that he be heard in silence. We will do the voting afterwards.

The Hon. J.F. STEFANI: Thank you for your protection, Mr President. There was no objection to the select committee's being established. Again, the select committee was established on the initiative of the Democrats, and it worked very well. That select committee also took a very substantial body of evidence which indicated that the head office of DHS was acting in a very manipulative and dogmatic manner on many issues. Whilst it would not be proper for me to go into personalities, I do say that senior practitioners within the health service in South Australia have held a longstanding view that the head office is very dogmatic and manipulative and is a great dictatorship. It actually drives the agenda on issues and manipulates ministers to succumb to its views, because it is so big.

I dare anyone to oppose that view because, if you speak to all the practitioners in all the major hospitals, they will tell you the same thing. Something needs to be done about that big monster—head office—that controls an agenda and spending which is huge, and we all recognise that, but it also has a very secretive view of protecting its own kind in the way that it operates.

Members interjecting:

The Hon. J.F. STEFANI: Well, the monster is too big, and it is a challenge for any minister to come to terms with it. I challenge the current minister to really come to terms with the issues because those issues need to be addressed, and head office, which is such a huge organisation—

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Stefani has the call.

The Hon. J.F. STEFANI: —needs to be brought under control and reviewed in a manner so that it becomes functional in the service of the people of South Australia.

The Hon. A.J. REDFORD: I thank all members for their contribution. First let me indicate to the council what I indicated to the Hon. Sandra Kanck earlier, that the opposition will be supporting the Hon. Sandra Kanck's amendments. She has been extraordinarily helpful through this process and I have no doubt that she has come to this position from a genuinely held view. I say that because I have not seen the Hon. Sandra Kanck seek to make political capital or seek publicity or anything as a consequence of her comments, and I think it is unfortunate that her motives have been questioned.

The Hon. Gail Gago indicated that she wanted a genuine investigation. I assure the honourable member, who has not been here as long as other members, that all select committees conducted by the Legislative Council are genuine investigations. It is disappointing, albeit understandable from one who is fairly junior in this place, that she would think that an inquiry by a Legislative Council committee would not be a genuine one. However, I look forward to her being a member of the committee and I am sure that she will be enlightened when that process unfolds.

I thank the Hon. David Ridgway for his strong words of support for this motion. I also thank the Hon. Sandra Kanck for her comments. I have no doubt that she comes from a genuine position and I know that she will be a constructive adjunct to the committee. I assure the Hon. Nick Xenophon that, as far as we can ensure it, politics will not be played on the committee. The issue is far too important. The outcome for the people of the South-East is most significant, and I know that the Hon. Nick Xenophon will accept that undertaking. I also thank the Hon. Rob Lawson for his support.

I will now make a couple of comments about the contribution of the Hon. Paul Holloway. His logic was torn apart in an erudite and clear statement of about two sentences by the Hon. Ian Gilfillan, followed up by a blinding attack by the Hon. Julian Stefani that leaves the minister's credibility in tatters. However, I do have a suggestion for the Hon. Paul Holloway.

Members interjecting:

The PRESIDENT: Order! This has been a long debate and members have strong views about this issue. At the moment, the Hon. Mr Redford is summing up the debate that has been put before the council. He just said he might have some advice for the minister. That is not his role at this stage. He can talk about the contributions and wind up the debate, and we will get the committee set up. I think we should get on with it.

The Hon. A.J. REDFORD: Thank you for your very strong protection, Mr President.

Members interjecting:

The PRESIDENT: Order! The minister will come to order.

The Hon. A.J. REDFORD: In his speech, the Hon. Paul Holloway indicated that it was not fair that the minister was not on the committee. As I said, that argument was quickly torn apart by the Hon. Ian Gilfillan and the Hon. Julian Stefani. However, I offer this suggestion to the leader in the warmest and most positive way. If he wants a minister for health to be on this committee, I suggest that he has a discussion with the Premier, who could immediately sack the current Minister for Health, and put someone like the Hon. Gail Gago, who seems to know a little bit more, into the position, and that would facilitate a health minister being on a Legislative Council select committee. The ball is in the government's court, if that is what it thinks is so important.

On a more serious note, let me say that I deprecate the comments about the minister's not being on the committee detracting from its credibility. From a short-term attorney-general, I find that quite an extraordinary statement, and I say that for this reason: the credibility of the committee will be diminished if the people who are being looked at and inquired into are part of that committee. For the edification of the former attorney-general, because I know he did not hold that position very long, I advise him that you do not make the litigant the judge, you do not make the criminal part of the jury. In this case you do not make those—

The PRESIDENT: Order! The Hon. Mr Redford should be a bit more temperate in his language. When he refers to ministers, he must not call them criminals.

The Hon. A.J. REDFORD: I was using something that is used quite commonly in parliament: it is called a metaphor.

The PRESIDENT: Order! The Hon. Mr Redford must not be condescending to the chair. I ask the Hon. Mr Redford to temper his remarks. He should get on with it or I will conclude the debate.

The Hon. A.J. REDFORD: Mr President, I did not make any comment about the minister being a criminal and I did not intend to make that comment.

The PRESIDENT: Order! You were referring to his request about the minister being on the committee and you suggested that you do not make the criminal the judge. I draw it to your attention, and I am asking you not to do it again. If you do it again, I will sit you down.

The Hon. A.J. REDFORD: Thank you, Mr President. I will give the former attorney another example. You do not put the league footballer who is charged with striking on a footy tribunal. I thought he would understand that simple and basic principle.

Members interjecting:

The PRESIDENT: Order! Members on my right will come to order.

The Hon. A.J. REDFORD: I also deprecate the leader's comments that this would not be a properly constituted committee. It will be a properly constituted committee, and for the leader of this house to say that it is not properly constituted is an insult to the Legislative Council and each and every one of us in this place. I think the Hon. Sandra Kanck set out quite reasonably why it should not be a joint committee, but I will add another reason. The health of the people in the South-East is the paramount issue. The hiatus and crisis that is happening in the Mount Gambier health system is continuing. There are still some 14 doctors—

Members interjecting:

The PRESIDENT: Order!

The Hon. A.J. REDFORD: The Hon. Gail Gago talks about 10 years ago.

Members interjecting:

The PRESIDENT: Order! The Hon. Ms Gago must contain her enthusiasm.

The Hon. A.J. REDFORD: I am interested in the here and now; the contracts that were signed 10 years ago have expired. They do not have any relevance to any previous government at all. What we are talking about are current contracts with current specialists and current doctors, and the Hon. Gail Gago would be well aware that the issue of attracting medical practitioners to our regional areas—

Members interjecting:

The Hon. A.J. REDFORD: The Hon. Gail Gago has one mouth and two ears and I suggest that she use them in that proportion.

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! I have called for order on both sides of the council. I do not need any more gratuitous advice as to who ought to be chucked out and who ought not to be. I will just start chucking a couple out, I think. We are very close to the end of this debate. The Hon. Mr Redford is about to conclude his remarks, I believe, and then we will vote.

The Hon. A.J. REDFORD: The Hon. Gail Gago talks about 10 years ago. What we are concerned about is the here and now. The contracts that were in existence 10 years ago expired, and we want to ensure that the contracts are re-signed and a whole process is put in place to ensure that the Mount Gambier area does not lose any more doctors, because it has lost a significant talent pool. The Hon. Gail Gago can shake her head all she likes. That is what is disappointing—

The Hon. J. Gazzola interjecting:

The Hon. A.J. REDFORD: Well, the contracts weren't expired. The Hon. John Gazzola asks about what we did. We certainly did not lose any doctors. We certainly did not sit on our hands as doctors walked out of Mount Gambier. That is what we did not do. In conclusion, I thank all members for their contributions and those who have indicated their support. I also express my exceeding disappointment at the inability of the government to accept the decision of the Legislative Council with some degree of grace.

The Hon. P. Holloway's amendment negatived; the Hon. Sandra Kanck's amendment carried; the Hon. D.W. Ridgway's amendment negatived; motion as amended carried.

The council appointed a select committee consisting of the Hons G.E. Gago, Sandra Kanck, Angus Redford, D.W. Ridgway and T.G. Roberts; the committee to have power to send for persons, papers and records, and to adjourn from place to place; the committee to report on 3 December 2003.

ADJOURNMENT

At 10.11 p.m. the council adjourned until Monday 20 October at 2.15 p.m.