LEGISLATIVE COUNCIL

Monday 1 December 2003

The PRESIDENT (Hon. R.R. Roberts) took the chair at 2.18 p.m. and read prayers.

PAPERS TABLED

The following papers were laid on the table:

By the President—

Reports, 2002-03—
City of Mitcham
City of Port Lincoln
City of Prospect
City of Whyalla
Regional Council of Goyder
District Council of Grant
District Council of Loxton Waikerie
Renmark Paringa Council
District Council of Tumby Bay.

QUESTION TIME

YELLOWTAIL KINGFISH

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about yellowtail kingfish escapes.

Leave granted.

The Hon. CAROLINE SCHAEFER: Last week the escape of another 5 000 yellowtail kingfish was reported in the press.

The Hon. D.W. Ridgway interjecting:

The Hon. CAROLINE SCHAEFER: Catholic kingfish? There was speculation and suggestion that this was due to poor husbandry and management by the fish farm operators. This, in turn, resulted in further calls for a moratorium and even closure of the industry. My questions are:

1. Can the minister confirm that the escape was caused by a government research vessel going too close to the fish farm and cutting a hole in its side with the boat's propeller?

2. Does the minister intend to compensate the owners of the fish farm for the loss of 5 000 fish?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): The facts of the matter are that this particular cutting of the net appears to have occurred because of an outboard motor. There was a SARDI vessel in the vicinity at about the time. The SARDI officers had rung the owner of the fish farm and it has been agreed (some time before) to tie a fish trap to the particular ring that the fish came from.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: It was actually for leather jacket. There have been some suggestions that it may have been as a result of this vessel. This is denied by those officers and I have asked the chief executive of the department to have an independent investigation into this particular matter so that the truth can be determined.

NGAANYATJARRA PITJANTJATJARA YANKUNYTJATJARA WOMEN'S COUNCIL

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 the Ngaanyatjarra Pitjantjatjara Yankunytjatjara women's council.

Leave granted.

The Hon. R.D. LAWSON: The Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council Aboriginal Corporation is a body established in the Pitjantjatjara lands to provide allied health services to women in the lands. It was established in 1980 and, as my colleague the Hon. Sandra Kanck says, it does an excellent job. The council has a number of worthy objectives. From a visit to the lands by the select committee, I know that the minister shares our admiration for the work of this excellent body. Last week I received a communication that the Pitjantjatjara Yankunytjatjara council (the AP council) has expressed a desire, to quote the women's council's words:

> . . . to evict us from hard-won premises at Umuwa. The first we heard of this was a late afternoon telephone call on Friday 24th October. . . He advised that APY would be taking over the office space and we would have to move out.

My questions to the minister are:

1. Is he aware that the AP council is evicting the NPY women's council from premises in Umawa?

2. Is he aware that those premises are the only premises which the NPY women's council has on the lands?

3. Does he approve of this high-handed and peremptory action and is this the sort of conduct which he expects of the APY land council?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): In relation to the NPY health services operating in the lands, they do a very good job in the lands under very difficult circumstances. In relation to the governance questions that go with the NPY's interaction with the APY Council, it has always been one of cooperation and consultation, as I have known. There are always differences of opinion between service groups and executives. It does not matter whether it is in Aboriginal areas or in non-Aboriginal areas, there will always be differences of opinion, and they manage to negotiate their way through most of them. In this metrocentric state of ours we do not hear of too many issues of difference that are not settled through discussions and negotiations between these service groups and the council.

However, in this case the NPY Council has notified me as minister that it was given what it believes was short notice to leave the premises that it had inside the APY Council's offices and yes, it is true, there are not too many options for any organisation, whether it be a service provider or anyone else on the lands, to acquire easily any alternative accommodation, so it would make it very difficult for the NPY to find alternative offices at this stage. It would cause disruption to NPY operations, I suspect, if it were to move elsewhere—if it could find elsewhere. As to whether it was a high-handed move, I am not quite sure of the detail of the discussions that took place and, as minister, would not be expecting any word-by-word description of what went on, only to know that the request was for the NPY to move.

I wrote back to the APY Council. I do not have the letter with me, but the tone of it was that although I was minister I do not have control over the day-to-day operations of the council in relation to apportioning its land or buildings but I believed it may be good public relations and good net operating value to reconsider its decision and to take up negotiations with the NPY Council for alternative rooms. I will provide a copy of the letter to the honourable member as soon as I can retrieve it from my records.

METROPOLITAN DOMICILIARY CARE

The Hon. J.M.A. LENSINK: I seek leave to make an explanation before asking the minister representing the Minister for Health a question about Metropolitan Domiciliary Care.

Leave granted.

The Hon. J.M.A. LENSINK: I had a good opportunity to thoroughly read the annual report of Metropolitan Domiciliary Care for 2002-03, recently tabled in this place. Metropolitan Domiciliary Care (MDC) is an amalgamation of the four regional metropolitan dom care services and came into being as a new entity on 1 July 2002. Much of the drive for a single service was to reduce duplication, unify services across the metropolitan area and, presumably, for some efficiency gains. The new amalgamated service is of quite significant size. Total revenue for 2002-03 was $59.5 million. It has a total full-time equivalent of 667.39 and for the year had a total active client number of 11 581, who received a total of 45 724 direct and indirect hours of service—direct being personal care and other forms of assistance and indirect referring to the behind the scenes work such as travel and staff contact with other professionals.

According to the report, the average client receives 3.91 hours of direct service. However, a few calculations lead to some interesting results. If you do a simple division of the total expenses for the year of $52.16 million by the total number of service hours to establish a simple measure of unit cost, that being what it costs to deliver one hour of service to a client, it comes out to $1 140.76. In wondering whether that could possibly be correct and in recognition of the significant equipment distributed by domiciliary care, I excluded all except the largest expense, employee benefits of $37.694 million divided by the number of FTEs, to come up with approximately $56 500 in benefits for the average staff member.

The next calculation was to divide the number of clients by the number of staff, which led to approximately 17 clients for every staff member. Benefits per staff member divided by the number of clients per staff member yields $3 256, which sounds something like the level of funding for a CACP package, or low level support at home. When you divide that last figure by the average service hours per client, you get an hourly rate of all employee benefits for the cost of providing domiciliary care services at a staggering rate of $833 per hour.

The Hon. R.D. Lawson: Repeat that!

The Hon. J.M.A. LENSINK: $833 per hour.

The PRESIDENT: I do not think the Hon. Ms Lensink needs a straight man.

The Hon. J.M.A. LENSINK: I thought that maybe I was wrong, so I recalculated it and took just the wages and salaries (which excludes long service leave, holiday pay and so on) of $32.573 million and divided it by total client hours of 45 724 to reach an hourly rate of $712. At that point, I decided there were no more things that I could exclude in the interest of being fair to MDC. My questions are:

1. How can these costs be justified in light of South Australia's ageing population and the high demand for services?

2. What efficiency dividends has the merger achieved so far?

3. How many employees are receiving executive level salaries and at what rates; and why were those levels not printed in detail on page 23 as were the number of people on various levels of the nursing award, medical officers award and so on?

4. Has the government considered any restructure that would make domiciliary care more efficient?

5. Will the government consider financial benchmarking with other services in the non-government and private sector in the interests of providing more services for the large number of dollars it receives?

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.

An honourable member interjecting:

The Hon. T.G. ROBERTS: Of course I would; it is not my particular area of responsibility.

PORT STANVAC OIL REFINERY

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Agriculture, Food and Fisheries, representing the Treasurer, a question concerning the mothballing of Mobil's Port Stanvac refinery.

Leave granted.

The Hon. SANDRA KANCK: On 18 November, the Treasurer announced that the state government had signed an agreement with Mobil allowing it to mothball the Port Stanvac refinery until July 2006. This is a precarious backflip by the government, having earlier pledged to make Mobil reopen in the near future, or clean up and get out. The shutdown of the refinery for almost three years creates significant environmental risks. Anything less than the highest standard of maintenance could result in serious environmental problems. My questions are:

1. Does the agreement require Mobil to remove the sludge from all the tanks and degas them? If not, why not?

2. Does the agreement require all lines to be purged with nitrogen? If not, why not?

3. Will the sub-sea line that connected the single mooring point to the shore be left full of water? If not, in what condition will it be left?

4. Who will undertake the shutdown work and what qualifications do they have for undertaking such work?

5. What is the annual budget for maintenance during the mothballing period, and what rates are Mobil being charged during the mothballing period?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I will refer those questions to the Treasurer and bring back a reply.

BOATS, CHARTER

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about changes to the charter boat industry.

Leave granted.

The Hon. R.D. Lawson interjecting:

The Hon. R.K. SNEATH: Unlike the Hon. Mr Lawson, I will not refer to farmers and logic in the one sentence as being rough. Charter boat fishing is a growth industry in this state. It is reasonable to expect that, with continued growth, at some stage the industry will have an effect on the fish stocks in South Australia. My question to the minister is:

what steps is the government taking to regulate the charter boat fishing industry?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank the honourable member for his very important question. Members of the council may have seen the public notice on this matter that appeared in Saturday's *Advertiser*. That notice—

The Hon. Sandra Kanck: We always read those!

The Hon. P. HOLLOWAY: Well, sometimes we do get a few who do not; so, just to make sure, it is worth reiterating because that notice and my media release of 28 November constitute an investment warning for those people who are considering entering the charter boat industry after 28 November. The state government has drafted a new policy for charter boat fishing operators to improve protection of South Australia's fisheries. Charter boat fishing offers recreational fishers increased chances of success through the guidance of experienced operators, the sophisticated fish location technology that is used and, also, the fishing platforms that are able to access offshore grounds.

All those factors give recreational fishers a greater chance of success. The potential therefore exists for the charter boat sector to have a greater impact on the state's fish resources than a similar effort by unguided recreational fishers. Left unmanaged, the continued expansion and development of the charter boat fishing industry is likely to have biological and economic consequences for the commercial and recreational sectors and on our marine scale fish stocks. Of course, last week, in answer to a question, I referred to the situation in relation to King George whiting and snapper stocks of which there is evidence of some decline and which are the target of so much recreational effort.

Controlled development and regulation of the charter boat fishing industry will provide better management of the fisheries. The key focus of the policy is on sustainability of the resource, and I encourage all involved in the sector to make submissions. The paper contains 27 recommendations relating to definitions, licensing, endorsements, regulations, industry representation and the development of a management plan for the fishery. The policy paper recommends that a charter boat fishery working group be established to draft a management plan by February 2004 and to advise on a scheme of management by March 2004.

I expect that appropriate legislation will be implemented so that a specific licence in the fishery can be issued from 1 July next year. The key management proposals include that licences in the charter boat fishing industry be offered to current operators in the industry who can demonstrate operational or investment history in charter fishing in South Australia prior to 28 November 2003 through the submission of appropriate receipts, invoices, advertising material and other records relating to the business; that licences in the charter boat fishing industry are provided on an annual basis commencing 1 July 2004; and that the South Australian coast be divided into zones of management for the charter boat fishery that coincide with the boundaries determined for marine planning (which is five zones).

It is obvious that the government would envisage some sort of limitation on the numbers of charter boats in that industry until some assessment can be made of the impact upon our fishing resources. Copies of the policy direction paper are available from the PIRSA web site or from PIRSA fisheries, and I will arrange to have a copy circulated to any member who wishes to have one.

CHILD ABUSE

The Hon. A.L. EVANS: 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 the investigation of child abuse.

Leave granted.

The Hon. A.L. EVANS: Last weekend the minister provided me with a response to a question concerning the number of deaths of children in the care of FAYS. The response was 10. An article in the *Sunday Mail* of 30 November 2003 reported that all 10 deaths were inflicted by the children's caregivers and that the government had been aware of some of the children being abused before they died. The article also reported that the minister said that if any new questions were raised about these children's deaths she would carry out an inquiry. My questions are:

1. Of the 10 deaths reported, will the minister confirm that only one of the cases was the subject of a coronial inquest?

2. Will the minister advise of the specific nature and cause of each of the 10 deaths?

3. Of the cases known to the department prior to the death, was any action—disciplinary or otherwise—taken against any officer of the department?

4. What action, if any, was taken by the department on behalf of these children prior to their death to protect them from abuse or neglect?

5. Why is the minister waiting for new questions concerning these deaths before calling for an inquiry?

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.

The Hon. NICK XENOPHON: I have a supplementary question. Does the government acknowledge that it may have breached its duty of care to those children, given the circumstances of these particular cases?

The Hon. T.G. ROBERTS: I thank the honourable member for his supplementary question, but I point out that it is a very difficult area in which to operate for government and parents, and for proper and appropriate protocols to be put in place and policed. I think over the years the South Australian department has handled its responsibilities in a responsible way. It is now becoming a political issue in the community and getting wide publicity. If questions are to be asked, they need to be asked in a sensitive way. The replies need to be brought back to members as soon as possible. We do not wish to cause unnecessary angst by leaving questions unanswered or by probing into those particular areas in an insensitive way. In no way do I indicate that either of the questions asked by members points in that direction, but it is an emotional issue that needs to be handled sensitively.

The Hon. KATE REYNOLDS: I have a supplementary question. Given the increase in community concern about this issue—not just deaths, but abuse of children generally—can the minister say when the government will be releasing its response to the Layton report?

The Hon. T.G. ROBERTS: I will take that important question on notice and bring back a reply.

INDUSTRY, TRADE AND REGIONAL DEVELOPMENT DEPARTMENT

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make a brief explanation before asking the minister representing the Minister for Industry, Trade and Regional Development a question about the department's budget.

Leave granted.

The Hon. R.I. LUCAS: Page 116 of the Auditor-General's Report details the expenditure for 2002-03 for each of the overseas representative offices. Members will be aware that, as a result of the Economic Development Board's deliberations, one of the many recommendations that went to government concerned the rationalisation of overseas representative offices. Some members will also be aware that the new minister has indicated that he had already taken a decision in relation to the closure of one of those offices, one in the United States. My questions are:

1. What decisions has the minister or the cabinet taken in relation to all overseas representative offices and their future operations?

2. If any decision has been taken to close any of the offices, who took that decision and on what date was the decision taken?

3. What are the budgets, in accordance with the same breakdown that the Auditor-General has provided on page 116, for the financial year 2002-03 for the expenditure proposed for any remaining offices for 2003-04?

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

METROPOLITAN FIRE SERVICE

The Hon. A.J. REDFORD: I seek leave to make an explanation before asking the Minister for Agriculture, Food and Fisheries, representing the Minister for Emergency Services, a question about MFS travel.

Leave granted.

The Hon. A.J. REDFORD: Yesterday's *Sunday Mail* published an article by that well respected journalist Craig Clarke and revealed that Chief Officer Grant Lupton and his deputy, Mick Smith, had undertaken overseas travel to places such as Berlin, Vancouver, Los Angeles, London, Paris, the South Pacific, New Zealand, Spain and Phoenix, just to name some of the destinations over the past 20 months. Indeed, between the election and mid November (some 20 months), Messrs Lupton and Smith were away for some 25 weeks, not counting annual and other leave entitlements. This was at a time when the MFS was dealing with some very important issues regarding the safety of South Australians and their property. The article states:

> 'This will be photographic proof that we are both in the country at the same time,' said Mr Lupton during a photo shoot with the *Sunday Mail* last week.

The article states that they are planning further trips on the taxpayer to Britain and Canada. Indeed, I note that Mr Lupton is entitled to an annual return trip to Canada as part of his employment package.

The information came to me pursuant to an FOI application. The material also enclosed an internal memorandum, which is headed 'Subject: International Travel—M.G. Smith', which was prepared by Mr Norman, the business manager of the South Australian Metropolitan Fire Service. The memorandum states:

> Commander Mick Smith undertook two overseas trips in March and April of this year on behalf of SAMFS, both involving conferences in Berlin. Mr Smith was advanced meals and incidental allowances. . .

It goes on to state:

> . . . based on the number of days away and also based on the rates currently payable for interstate trips (within Australia.)

The memorandum also says:

> Upon my return to work after sick leave, Mick discussed with me the fact that the allowances were calculated on Australian domestic rates, which are substantially below those payable under the Department of Foreign Affairs and Trade (DFAT) schedule.

It goes on:

> In my calculations I have used full days not part days in order to partially compensate for time in the air.

It also states:

> Even so, the attached table indicates that Mick is due to receive $1 064.46 more under DFAT rates for the two trips taken by him.

In light of the above, my questions are:

1. Does the minister think that the level of travel by these two public servants is reasonable?

2. Will Mr Smith receive the extra $1 064, and will this principle be adopted across the public sector?

3. Why was it necessary for Mr Smith to go to Vancouver from 5 April to 12 April this year and then for Mr Lupton to leave for Vancouver on 13 April this year, the day after Mr Smith returned? Why did Mr Smith go to Vancouver, and why couldn't Mr Lupton have done whatever it was that Mr Smith went for?

4. Will the minister table a list of all proposed travel by these two officers over the next two years?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I will ask the Minister for Emergency Services to provide that information for the honourable member.

CORRECTIONAL SERVICES, MOBILE OUTBACK WORK CAMPS

The Hon. J. GAZZOLA: I seek leave to make a brief statement before asking the Minister for Correctional Services a question about Kantara homestead.

Leave granted.

The Hon. J. GAZZOLA: Last week, in response to a question, the minister informed us of some of the very good work groups of prisoners from Port Augusta have been doing in the Coorong, particularly building and maintaining walking trails. I understand that the work being done by prisoners in the Coorong goes well beyond maintaining walking trails and removing weeds and rubbish. Can the minister give details of other work prisoners are performing in the Coorong, particularly in regard to Kantara homestead?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I thank the honourable member for his question and for his continuing interest in the regions and correctional services.

The Hon. R.I. Lucas: And rubbish.

The Hon. T.G. ROBERTS: Picking it up, not speaking it. Last week I was able to inform the council of my recent visit to the Coorong and the work that had been completed during the past seven years by prisoners in the mobile outback work camps from the Port Augusta Prison. I briefly outlined the work that is occurring, namely, building

walkways and walking trails through the park, removing tonnes of noxious weeds and bushes, and constructing parking and visitor areas. Probably the most significant project being undertaken is the renovation of the heritage homestead at Kantara. I have often passed the homestead but never dropped in to see it. It is located in the southern section of the Coorong National Park and was built around the 1860s. Throughout most of its recent history, the homestead has been in a fairly dilapidated state.

Approximately three years ago, MOW camps started working on the restoration of this historic homestead. Renovations have included restoration of the building itself, which has been extensively damaged by visitors over the years and by the ravages of time. The roof has been replaced and work has been progressing well on the outside walls under the guidance of a heritage stonemason, and some of those skills have been picked up by the prisoners who have been working on it. It is a huge job of restoration that the prisoners have done very well.

Grounds and fences have now been cleared and replaced and the gardens are starting to be re-established. Inside the homestead the prisoners have completed a number of rooms. They have been extensively repaired and painted in heritage colours, selected by the staff of the Department for Environment and Heritage, and all that work has been carried out diligently and in some extreme circumstances. The initial setting up of the house without any of the comforts of home, as most who have done renovations would understand, made it even more difficult, but they have now got the building into a state where some of the rooms are livable. From time to time, the snakes and many of the bush inhabitants that share old buildings can be found. Correctional Services officers are doing a wonderful job, and I pass on congratulations to the prisoners who have worked diligently on this project in partnership with National Parks and Wildlife.

COUNTRY FIRE SERVICE

The Hon. IAN GILFILLAN: I seek leave to make a statement before asking the Minister for Agriculture, Food and Fisheries, representing the Minister for Infrastructure, a question relating to CFS funding.

Leave granted.

The Hon. IAN GILFILLAN: Only too dramatically we have been reminded of the vulnerability of South Australia to country fires. In a relatively early start to the season, and quite a dramatic one, fires have occurred in the Mid North and on Kangaroo Island. That situation puts into pretty stark relief a story in the Mount Barker *Courier* of Wednesday last week, which is entitled, 'CFS group still rattling tins'. It states:

> SA Volunteer Fire Brigades Association President Cam Stafford believes the cost of running and maintaining the CFS was underestimated when the levy was introduced in 1999. He also believes it has hampered the upgrading of some stations and the replacement of CFS vehicles. Mr Stafford said that despite the CFS receiving budget increases during the past few years, the budget was still 'behind the eight ball'. He said that the financial situation had forced the association to arrange a lottery with the aim of raising $1 million during the next few years. He said the funds would go towards training and cadet development—areas that are not covered by the annual budget.

It has been brought to my notice, and it also had some publicity, that the Minister for Infrastructure, Mr Conlon, commented on the lack of cover of the government radio network on Eyre Peninsula, at Port MacDonnell and in the Gilbert Valley. Gilbert Valley has had very stark evidence that the GRN does not operate, creating extraordinarily dangerous circumstances for those depending on it. My questions are:

1. Does the minister believe that it is appropriate for the CFS to be forced to run fundraisers to supplement its income after the emergency services levy was introduced to avoid that necessity and to adequately fund the CFS?

2. What is the minister doing specifically about the black spots in the Government Radio Network (GRN) outlined above?

3. Has the minister done any equations as to how many cake stalls the CFS will have to run to build a GRN tower?

An honourable member: Or barbecues.

The Hon. IAN GILFILLAN: Yes, or barbecues. My questions continue:

4. Does the minister expect CFS volunteers, who put their lives on the line to protect the community, to also be required to spend their time selling cakes or cooking barbecues instead of fighting fires and being prepared to protect lives and property in South Australia?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): The honourable member acknowledged in his question that additional resources have been put in to the CFS in recent years. I think the *Mount Barker Courier* article, which I have read, referred to the fact that money had been put in. The honourable member would be well aware of what the public at large think about the emergency services levy. I guess these things are always a matter of priorities within the resources. I will refer the question to the Minister for Emergency Services in another place and bring back a reply.

MOTOR VEHICLES, REGISTRATION

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Transport, questions about motor vehicle registration.

Leave granted.

The Hon. T.G. CAMERON: In the last state budget $200 000 was listed as a future budget saving through the abolition of issuing registration stickers for motor vehicles. Registrations would instead be done by some electronic means available to Transport SA. I understand that SAPOL would have access to the system to check driver compliance. Several constituents have raised concerns about this new proposal. For example, a person using someone else's vehicle would have no means of knowing whether or not that vehicle was registered. Similarly, motor mechanics road testing cars would not be able to check to see whether the vehicle was legally registered.

On 27 June this year, the transport minister stated on the ABC that only .18 per cent of all vehicles were unregistered and insured. I do not know where he got that figure—perhaps he should contact the police for a more accurate estimate. Information supplied to my office suggests the true figure for non-compliance could be as much as 2 per cent. The police are still not routinely checking registration when cars are pulled over for whatever reason. The proposed non-sticker regime will further assist those people who choose not to register their vehicles and could cost the government as much as $6 million in lost revenue through non-compliance. My questions are:

1. When will the new system of motor vehicle registration be introduced?

2. Will the minister provide the most recent figures available for non-compliance with motor vehicle registration and third party insurance?

3. How much is this costing the government in lost revenue each year?

4. How will non-owners of a motor vehicle be able to check to see whether a vehicle is legally registered and whether or not it is insured?

5. For the past three years how many vehicles were found to be unregistered? How much was raised in fines?

6. Can the minister release publicly what procedures the police are required to follow after pulling over a driver?

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.

LABOR PARTY, WEB SITE

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries, as Leader of the Government, a question about the Labor Party's web site.

Leave granted.

The Hon. D.W. RIDGWAY: Last night at about 11 p.m. I was busily researching some information on my colleagues on the other side of the chamber. I logged on to 'Find Your SA Local Labor Member'. I brought up the Leader of the Government in this place, the Hon. Paul Holloway, and it mentions that he is the Minister for Agriculture, Food and Fisheries, Minister for Mineral Resources Development and a member of Executive Council. There were other biographical details. I then found the Hon. Terry Roberts, who is Minister for Aboriginal Affairs and Reconciliation, Minister for Correctional Services and Minister Assisting the Minister for Environment and Conservation. He is also a member of Executive Council.

Scrolling down to the bottom of the alphabetical list to have a look at my colleague the Hon. Carmel Zollo, I see she was appointed Parliamentary Secretary to the Minister for Agriculture, Food and Fisheries and Minister for Mineral Resources and Development in 2002 and she is the convener of the Premier's Food Council and the Issues Group of Food, South Australia. She is also Government Whip in the Legislative Council. The Hon. Gail Gago was mentioned. Also mentioned was where the Hon. John Gazzola was born as well as some of the achievements in his wonderful working life.

Also mentioned was that the Hon. Bob Sneath was born in Kingston. In fact, Bob Sneath has the largest biographical details section by volume, although maybe not by achievement. However, Mr President, I came to your particular details and I noticed that you are the former deputy leader of the opposition in the Legislative Council, former shadow minister for primary industries and rural affairs and former shadow minister assisting in industrial affairs. The web page said that Mr Roberts held these positions from 1994 to November 1997. Mr Roberts also held the position of Government Whip in the Legislative Council in 1992.

It was rather interesting to note, Mr President, that there was absolutely no mention of the fact that you are President of this wonderful august body, the Legislative Council, despite the very dignified and fair way that you discharge your duties as President of this council. I might add, Mr President, that if a Liberal government were in power, and a Liberal member of parliament were President of the Legislative Council, we would be proud to mention that on our web site. Will the Leader of the Government please tell me why the President of the Legislative Council is not mentioned on his party's web site?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I have not looked at the ALP web site for some time. What I do know is that last weekend the Australian Labor Party held a very successful convention. As you know, the Australian Labor Party always conducts its affairs in public. There were two days of very spirited debate across every issue affecting this state. It was also a very productive conference in putting up a blueprint of a plan for the future. It may well have been—

Members interjecting:

The Hon. P. HOLLOWAY: I am coming to the answer.

The Hon. A.J. REDFORD: I have a question concerning relevance. Also, it is not fair on members of the left to have the Hon. Paul Holloway remind them of the right's significant victories at the weekend.

The Hon. P. HOLLOWAY: It is obvious that the honourable member was not at the conference. The point is that because the Labor Party has been involved in such a productive conference—such as we alone do as a party, canvassing these matters in public—all members of the ALP office have been very busy in the past few days preparing for the conference. Now that we have conducted these very important affairs, I promise I will contact them after question time and make sure they correct that.

The PRESIDENT: Order! I would have thought that the simple answer is that the position of President is neither a government nor an ALP position, but a position of the parliament.

GLENSIDE HOSPITAL

The Hon. T.J. STEPHENS: Thank you, Mr President. Again, what a terrific job you do. I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries, representing the Minister for Health, a question about Glenside escapees.

Leave granted.

The Hon. T.J. STEPHENS: It was recently reported in the electronic media that the Glenside facility has had six escapes in eight weeks. Amongst those escapees were a child kidnapper and a convicted murderer and rapist. These escapes occurred from supposedly secure wards in the facility. My questions are:

1. Given this government's law and record rhetoric, will the minister explain how this was allowed to occur?

2. What steps are being taken to rectify the situation?

3. Given that the Minister for Agriculture was the acting Minister for Health at the time of one of the escapes, what recommendations did he make to address the situation that obviously either have not been implemented or have failed?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): The question was directed to me. I do not represent the Minister for Health in this place so, obviously, I will obtain the details in relation to that. The honourable member did refer in his question to the time when I was acting minister. I made some comments on the issue at

the time and, as a result of some of the actions that I then took, the Minister for Health is now investigating those matters. I will get her to provide a full statement in relation to that. I certainly was aware, when I was acting Minister for Health, of the significant number of people who had left the mental health area. I think it was something like 200 people during the last 12 months of the previous government.

There are people coming and going from Glenside all the time. There is only one small ward there, which has about 20 beds, from memory, that are actually secure. As to the details of those people who have left Glenside, whether they have walked out and whether or not they are secure wards, that detail is for the Minister for Health and I will ask her to examine the matters raised by the honourable member.

The Hon. T.J. STEPHENS: As a supplementary question, the minister says that there are 20 beds in a secure ward. How do you define a secure ward? I would have thought you would not just be able to walk out of a secure ward.

The Hon. P. HOLLOWAY: Again, I think it would be wise that the Minister for Health provide the answer to that. The reason that it came about, from my understanding at the time that I was acting minister, was that Hillcrest was full back in the late 1990s. At the time, Dean Brown made one of his many promises that he never fulfilled. As a result, there was the opening of these 20 beds in a ward at Glenside, and that was to deal with the overflow from Hillcrest. That was the situation that existed at the time this government took office, in spite of a number of very public promises that the former minister had made. In her answer the Minister for Health might care to enlighten the council on some of those promises that had been made but not delivered by the previous government.

STEPFAMILY ASSOCIATION OF SA

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking the minister representing the Minister for Social Justice a question about the Stepfamily Association of South Australia Inc.

Leave granted.

The Hon. KATE REYNOLDS: Concerns have been raised with my office regarding funding difficulties for this voluntary organisation, which offers information and support to hundreds of stepfamilies in South Australia. The major concern relates to the amount of funding that is available to the group, which is particularly having difficulties securing funding for its well-used web site as well as for day-to-day operating costs. The association has received an average of $2 700 from various government agencies for each of the past six years, with the last amount allocated in May 2002. Because of this lack of funding, over the past two years members have developed a comprehensive and interactive web site so that they can continue to provide information and support to South Australian stepfamilies in some small way, given their lack of other funding.

The association was also forced to turn down an offer of suitable office space because there was no funding available for it to meet rental costs. It had planned to use the office to provide workshops, face-to-face referral, counselling and other services. My questions to the minister are.

1. What funding is available for voluntary social welfare groups for the establishment of innovative and cost-effective methods of providing information and support, such as web sites?

2. Why has the Stepfamily Association of South Australia had difficulties securing adequate funding from the state government in recent years?

3. Given the increasing incidence of family breakdown and the growing numbers of step families, what assistance can the minister offer the Stepfamily Association?

4. Are there any plans to establish, increase or expand services funded or delivered by the state government which aim to address the unique needs of step families in South Australia?

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.

EVERY CHANCE FOR EVERY CHILD INITIATIVE

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to an Early Childhood Services initiative, 'Every chance for every child', made earlier today in another place by my colleague the Minister for Health.

GAMBLING EDUCATION PROGRAM

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 Education and Children's Services, a question about the state government's gambling education program.

Leave granted.

The Hon. NICK XENOPHON: A media release issued by the Minister for Education and Children's Services earlier today headed 'New gambling education program launched' refers to a program, teaching children about the risks of gambling, being trialled in 15 government schools, and it refers to the program, called 'Dicey Dealings', as being the first of its kind in Australia. I note that this partly implements a Labor Party promise made at the last state election; and the media release goes on to say that it has a view to expanding the program in 2005. My questions are:

1. What was the precise nature of Labor's promise at the last election in relation to such education programs in schools on gambling?

2. Why is the program being trialled in so few government schools?

3. Has the government offered to assist in the program being trialled in private schools?

4. Does the government agree that the program should have been up and running much more widely, given the timing of the commitment; and how much is the program costing in 15 schools?

5. To what extent is the program modelled on gambling education programs in other states, particularly Queensland; and what are the differences between the Queensland and South Australian programs?

6. What input have Breakeven agencies, problem gambling groups and welfare agencies had in relation to the program; and what, if any, recommendations for the curriculum from such groups have not been taken up?

7. What is the extent of the expansion of the program planned for 2005; and does the government acknowledge that until this program is available in all schools the government will not be fully implementing its election promise made in February 2002?

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.

IRRIGATION INDUSTRY

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about investment in irrigation based industries.

Leave granted.

The Hon. J.S.L. DAWKINS: Most members of this chamber would be aware of the importance of investment in irrigation based industries to the long-term prosperity of many South Australian communities. I am aware that a report on investment trends in the Lower Murray-Darling Basin has recently been prepared by the Bureau of Transport and Regional Economics within the commonwealth Department of Transport and Regional Services. I understand that this report will be launched in Renmark later this week. The report, prepared with assistance from the Barossa Riverland and Mid North Area Consultative Committee, studied patterns of investment and production across a number of communities in the Riverland, Sunraysia and Central Murray regions.

I understand that organisations such as the Riverland Development Corporation, Central Irrigation Trust, and a range of individuals from the Riverland provided assistance and input. In addition to focusing on economic conditions and investment in irrigated agriculture and manufacturing across the three regions, the report examined the key factors which influence investment, as well as inhibitors to investment such as security of water supply. My questions are:

1. Is the minister aware of the development of this report?

2. Will he indicate whether PIRSA, or any other state government agency, has had input into the report?

3. Given that the report strongly links strength of investment to high levels of reliability of water supply, will the minister ensure that the report is brought to the attention of the Minister for the River Murray (Hon. John Hill) and the Department of Water, Land and Biodiversity Conservation?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I am not sure of the state government's level of involvement. It is normal that commonwealth reports of this type are based on consultation and information from the relevant state departments. I will have to take that part of the question on notice to provide the exact detail. In relation to the second part of the honourable member's question, I will certainly ensure that the Minister for the River Murray is made aware of this particular report, and I will await the report myself with some interest.

CORRECTIONAL SERVICES ACT

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about the Correctional Services Act.

Leave granted.

The Hon. A.J. REDFORD: Pages 73 and 74 of the South Australian Ombudsman's annual report tabled last week provides some interesting reading, particularly the story about the still at the Cadell prison. Interestingly, the Ombudsman discloses two cases. The first case relates to a prisoner who was alleged to have threatened to take an officer hostage. As a consequence of that alleged threat, the authorities in the prison took electricity from the prisoner's cell and limited his number of telephone calls. In another case a prisoner was accused of abusing a nurse and, as a consequence, his television was removed for a period of a week.

While investigating complaints by the prisoners in relation to those two matters, the Ombudsman indicated that the actions taken by prison officers were contrary to the provisions set out in the Correctional Services Act. The Ombudsman said:

> Staff of the department have expressed that the difficulties which they face are because changes are needed to the Correctional Services Act.

The Ombudsman further states:

> Notwithstanding that, the act should be complied with.

And, as a matter of law, the Ombudsman is absolutely correct. In the light of the Ombudsman's report, my questions are:

1. Is the government proposing amendments to the Correctional Services Act to address the issues raised by the Ombudsman and, if not, why not?

2. When was the minister first made aware of the deficiencies in the Correctional Services Act by departmental staff?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I do not have a copy of the Ombudsman's report with me. A number of issues were raised in association with the punishment being administered by deprivation of benefits or rights, as some people would categorise them. It is, I understand, unlawful to proceed with those forms of punishment. I guess it leaves those in charge of prisons either to charge those people with the actions or acts they carry out in relation to their time within prison or counsel them. They are the only two methods of correcting antisocial behaviour, if you like, in relation to how they behave in a prison.

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: The honourable member has pointed out that there may be a third way of dealing with it, that is, to change the act to allow other forms of punitive punishment, if you like, for acts that would be seen as falling into a mid range of activities that were either disruptive or threatening. That is something we can look at. Some changes are being looked at in relation to the administration of prisons. I will raise the issue with Peter Severin—our new chief of staff for corrections—and keep the honourable member informed.

PARLIAMENT HOUSE, ENERGY AUDIT

The PRESIDENT: I have an answer to a question put to me by the Hon. Ms Kanck. The Hon. Ms Kanck asked a question of me on 17 September 2003 in relation to energy use in Parliament House. I advise that electricity energy use for Parliament House during the last financial year was 1 935 220 kilowatt hours with gas usage of 2 731 068 megajoules. I will insert into *Hansard* the statistics over the past five years.

Power Usage for Parliament House
Financial Years: 1999-00 to 2003-04

	Electricity Usage (kWh)			
	Fin Year	Peak	Off-Peak	Total
Old Parliament House	2003-04	38 052	36 401	74 454
	2002-03	149 562	148 325	297 886
	2001-02	131 095	137 000	268 094
	2000-01	157 265	137 891	295 156
	1999-00	118 994	114 904	233 898
				1 169 488
Parliament House	2003-04	252 551	130 071	382 622
	2002-03	1 069 003	568 336	1 637 339
	2001-02	958 235	553 318	1 511 553
	2000-01	1 081 000	544 000	1 625 000
	1999-00	649 000	333 000	982 000
				6 138 515
Finance (Qantas House)	2003-04	not available	not available	7 224
	2002-03	not available	not available	23 539
	2001-02	not available	not available	20 310
	2000-01	not available	not available	16 329
	1999-00	not available	not available	13 265
				80 667
Flood Lights	No usage in kWh is available as Flood Lights are umetered & agreed set price is paid for consumption.			
Total ELECTRICITY used for the 5 Year Period			7 388 669 kWh	

	Gas Usage (MJ's)	
	Fin Year	Units
Old Parliament House	2003-04	358 579
	2002-03	990 614
	2001-02	634 138
	2000-01	723 363
	1999-00	281 127
		2 987 821
Parliament House	2003-04	823 724
	2002-03	1 740 454
	2001-02	1 897 297
	2000-01	1 667 198
	1999-00	1 525 290
		7 653 963
Total GAS used for the 5 Year Period		10 641 784 MJ's

	Liquid Petroleum Gas (kg)	
Parliament House	2003-04	45
	2002-03	135
	2001-02	180
	2000-01	90
	1999-00	not applicable
		450
Total LPG used for the 5 Year Period	450	kg's

The PRESIDENT: Our parliamentary buildings are well advanced in the way in which energy programs have been embraced to reduce overall energy consumption. Because Parliament House is such a prominent heritage listed building, it is perhaps important that we produce new energy initiatives that can be implemented by other buildings of a similar nature. Where practical, all incandescent light fittings have been refitted to take low-energy fluorescent lamps. This lowers power consumption considerably. The emergency generator located in the plant room has been converted from operating on diesel fuel to natural gas. This is a cheaper alternative and also eliminates the amount of greenhouse gases emitted to the atmosphere. In consultation with the Department of the Premier and Cabinet we are investigating the installation of solar panels on the roof of Parliament House. If this project proceeds—and I believe it will—it will enable 60 kilowatts of power, which is about 10 per cent of the maximum demand, to be produced, resulting in our annual electricity account being reduced.

Saving water has also become a high priority within our complex. For example, when toilet cisterns need replacing we are installing dual flush units. Urinals use a high volume of water so, in order to eliminate excessive water use, we are currently evaluating a new concept where the urinal is treated with biological blocks so no water is used at all. Discussions have been held with a representative of the Adelaide City Council and the building manager of the Adelaide Festival Centre regarding the possibility of collecting the rainwater from our main building and the Adelaide Festival Centre and storing the water, possibly in an underground tank. This water then could be used for flushing toilets and other purposes.

YELLOWTAIL KINGFISH

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I would like to make a statement to provide additional information to a question that the Hon. Caroline Schaefer asked me about a yellowtail kingfish escape. As a condition of licences under the Aquaculture Act 2001, operators are required to report any escapes by telephone within 24 hours and in writing within seven days. The telephone report of the particular incident to which the honourable member referred in her question advises of the event and provides an estimation of the number of animals involved, while the written report contains more detailed numbers of escaped fish, results of recoveries and the likely cause of escape.

The escape of approximately 4 000 kingfish from a farm located at Port Lincoln on 21 November 2003 was first reported by telephone. Further advice was provided in writing on 24 November 2003 confirming that 4 740 kingfish averaging 1.5 kilograms in weight had escaped and rapidly dispersed due to predator activity in the vicinity of the cages. The report indicated that it was likely the escapes were caused by boat propeller damage. Escapes caused by propeller damage are unusual and, consequently, an investigation of the circumstances surrounding the escape is to be conducted.

The Chief Executive of the department has advised that an independent investigation will be conducted. The investigation will address the following:

- accurate estimate of the number of escapes;
- the likely cause of damage and resulting escapes;
- who had access to the site and for what purposes;
- whether appropriate protocols and reporting requirements were followed; and
- what measures could be taken to avoid similar incidents.

In conducting the work the investigator will interview the farm operator and any other relevant witnesses, and seek independent technical expertise as necessary. The independent investigator has already been appointed and briefed by Mr Ian Nightingale, the Director of Aquaculture SA.

GREAT AUSTRALIAN BIGHT MARINE NATIONAL PARK

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I move:

That this council requests Her Excellency the Governor to make a proclamation under section 43(4) of the National Parks and Wildlife Act 1972 to vary the proclamation made under sections 28 and 43 of that act on 26 September 1996 so as to remove the ability to acquire or exercise pursuant to that proclamation rights of entry, prospecting, exploration or mining under the Mining Act 1971, the Petroleum Act 1940 (or its successor) or Petroleum (Submerged Lands) Act 1982 over the land constituted by that proclamation as the Great Australian Bight Marine National Park.

The Hon. J. Gazzola interjecting:

The Hon. T.G. ROBERTS: I thank the honourable member for his goodwill. This measure relates to the Great Australian Bight Marine National Park, which is jointly proclaimed to provide for mining rights. Whilst the management plan permits mining and petroleum activities for six months of the year, the government has a policy commitment to extend the current prohibition on mining and petroleum activities from six months of the year to year round prohibition. The intention to implement this policy commitment was announced by the Premier in a community cabinet meeting held in Ceduna in May this year.

The Great Australian Bight is of great significance in terms of biodiversity for the southern right whale, the Australian sea lion and marine invertebrates. Many of these species are unique to the bight and are found nowhere else in the world. The Head of the Bight, the major viewing area for whales in the region, is increasing in popularity with visitors and providing an important drawcard and economic opportunities for the Yalata people.

While the Head of the Bight is the largest breeding and calving nursery area in Australia and one of the major breeding areas in the world, the world population of southern right whales is only slowly recovering from the effects of whaling and therefore the species is still at risk of extinction. It is appropriate that the region be given the highest level of protection possible under South Australian legislation to assist with the conservation of the species. Removing mining rights from the national park will provide greater long-term protection from the risk, however small, of an environmental tragedy. Implementing this measure will prevent any of the area being subject to mining and exploration or any pipeline from the adjacent commonwealth waters crossing into state waters.

The Hon. D.W. RIDGWAY: I rise to speak on the motion regarding the extension of the sanctuary zone of the Great Australian Bight Marine Park. The Liberal Party supports the proposed change to the conservation zone of the

park, which would result in it being reclassified a sanctuary zone to bring it into line with the rest of the bight, despite the fact that there is no immediate threat to the area. Currently, the sanctuary zone encompasses the western half of the whale sanctuary and the western arm, one nautical mile in width, extending to the Western Australian border. Within the sanctuary zone there is a total ban on mining and fishing, except for line fishing or recreational fishing from the beaches.

The conservation zone covers the remaining area of the Great Australian Bight Marine Park and extends from one nautical mile to three nautical miles seaward and the eastern half of the whale sanctuary. While within the conservation zone, mining and fishing are allowed for six months of the year from 1 November to 30 April, except for the part that is within the whale sanctuary.

The purpose of this motion is to transfer the parts of the conservation zone that are currently unprotected for six months every year into the status of a sanctuary zone, making mining and fishing illegal in this area all year round to protect South Australia's unique and rare species of mammals, including the southern right whale and the Australian sea lion, as well as other whales and other species, including algae, sea fauna and crustaceans.

At present there are no petroleum exploration licences or applications in place in the Great Australian Bight, and there is little interest with regard to petroleum exploration, as the incidence of hydrocarbons is low in this area. Woodside Petroleum has shown some interest in drilling 300 kilometres south of the Head of the Bight (in commonwealth waters), and this would mean transferring oil from the rig to the mainland by either a ship or a pipeline. There is no evidence that a pipeline would interfere with the park areas in any way.

We support this motion because it brings South Australia into line with the strategic objectives stated by the commonwealth Department of Environment and Heritage, as mentioned in its plan of management published in 1999. These objectives are:

- to manage the area as part of a comprehensive, adequate and representative system of marine protected areas to contribute to the long-term ecological viability of the marine and estuarine ecosystems;
- to protect biodiversity;
- to protect the southern right whale during its yearly aggregation in the waters of the bight and to protect its habitat on a year round basis;
- to protect the Australian sea lion and its habitat;
- to preserve a representative sample of the benthic fauna, flora and sediments; and
- to allow the multiple use of the Great Australian Bight Marine Park resources according to the principles of economically sustainable development, subject to the use of these resources being consistent with other strategic objectives.

The Liberal Party supports this motion as it brings South Australia into line with commonwealth recommendations on the protection of the Great Australian Bight Marine Park.

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

NATIONAL ENVIRONMENT PROTECTION COUNCIL (SOUTH AUSTRALIA) (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 November. Page 721.)

The Hon. SANDRA KANCK: This is mirror legislation, that is, the same act is passed by the commonwealth, states and territories to facilitate the creation of a national standard or organisation. In this particular case, a version of this bill will also be passed by each jurisdiction represented on the National Environment Protection Council. The stated intention of this bill is to simplify the process for minor variations to the National Environment Protection Measures or NEPMs, as they are known. To date there are five NEPMs in place in Australia: the ambient air quality measure; the national pollution inventory measure; the movement of controlled wastes between states and territories measure; the assessment of site contamination measure; and the used packaging materials measure. I am aware also that a working group in South Australia is preparing an air toxics NEPM.

To date, in my opinion, Australia's performance in environmental protection has been poor to appalling. You only have to witness the shameful unwillingness of our government to commit to implementation of the Kyoto protocols to have some understanding of how badly we perform in the environmental arena. It is certainly a pity that there is not an NEPM to deal with greenhouse gas emissions. The political struggle over environmental issues will continue to grow in the coming years, because the environment is under sustained assault from our needs and desires. The Democrats support the smoothing of legislative blockages that reduce the effectiveness of the National Environment Protection Council. We also support the inclusion of five-year reviews of the act. Increased public scrutiny of the bodies created by governments to protect the environment is critical to getting the best outcome for our environment. The Democrats support the second reading.

The Hon. CAROLINE SCHAEFER: The Liberal Party also supports this bill. As the Hon. Sandra Kanck has said, it is mirror legislation that is required by all states to mirror the commonwealth act on the mechanisms of how the National Environment Protection Council (NEPC) operates. The NEPC was established following a premiers' conference in 1990 under the inter-governmental agreement on the environment which came into effect in May 1992. The establishment of the NEPC marked the commitment of the commonwealth, states and territories to cooperatively work together to address environmental protection issues of national importance. The NEPC is a statutory body with law-making powers established by the Commonwealth National Environment Protection Council Act 1994. Mirror legislation has been established in each of the states and territories. In South Australia, it is the National Environment Protection Council Act of South Australia 1995.

In accordance with the requirements of the commonwealth NEPC act, a review of the act was undertaken in 2000. The NEPC concluded that only minor amendments to the legislation were necessary which this bill encompasses. The commonwealth National Environment Protection Council Amendment Act 2002 was enacted as a result of this review. The amendments include a simplified process for amending national environment protection measures, five-yearly

reviews of the NEPC acts, and provisions enabling the NEPC Service Corporation and the NEPC executive officer to provide secretariat services to the newly established Environment Protection and Heritage Council. The bill also amends the act to reflect changes to commonwealth legislation including the Public Service Act 1999 and the Commonwealth Authorities and Companies Act 1997. These are required to update the act so that it remains consistent with commonwealth legislation. The Liberal Party supports the legislation.

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

The Hon. T.G. ROBERTS: Mr President, I draw your attention to the state of the council.

A quorum having been formed:

LAW REFORM (IPP RECOMMENDATIONS) BILL

In committee.

Clause 1.

The Hon. P. HOLLOWAY: In his second reading contribution, the Hon. Angus Redford asked a number of questions regarding the impact that last year's legislative reforms have had on insurance premiums. As I said in my response last week, when commonwealth and state ministers agreed in November 2002 to implement the key recommendations of the Ipp report, they had received an actuarial assessment on the impact of the recommendations which was prepared by PricewaterhouseCoopers. That assessment indicated that, at least for those recommendations where some quantification could be attempted, implementation of the reforms could be expected to deliver an initial reduction in premiums in the order of 13.5 per cent. This estimate related predominantly to the impact of those Ipp recommendations relating to the assessment of damages which were the subject of legislation in this parliament last August.

South Australia's approach to reforms and damages were not identical to what the Ipp report recommended in this area, particularly in regard to the general damages threshold and legal costs. As such, the actuarial assessment received by ministers may not be indicative of the likely impact of the South Australian reforms in this area. PricewaterhouseCoopers was not able to quantify the impact on claims, costs and premiums of the Ipp recommendations which deal with liability, that is, those recommendations which are the subject of the current bill. However, they did comment that these recommendations could result in further significant reductions in claim costs.

The honourable member also asked whether anything is known about the impact of last year's amendments on the cost of claims covered by private insurers. He wanted to know whether they had made similar savings to those made by the Motor Accident Commission when the point scale and cap were introduced some years earlier for third party injury claims. The government does not know the answer but suspects that it may be too early to say. The amendments made last year were prospective only. Accidents that have happened in the past 12 months may not yet have reached the stage of resolution and payment. It may often take two or three years or longer for the claim to be ready for settlement or judgment.

The only significant evidence we have with respect to trends in premiums comes from the ACCC report, to which I referred last week. The ACCC concluded that it was too early to assess the impact of the reforms on costs and premiums. However, we do know that, partly in response to this government's legislative proposals, on 19 May 2003, the Community Care Underwriting Agency (CCUA) entered the South Australian market. CCUA is a joint venture between QBE, NRMA and Alliance whose primary purpose is to help not-for-profit organisations to access public liability insurance. While this development is not going to provide a solution for all the insurance difficulties being faced by community groups, it does provide some indication of capacity returning to the market.

The Hon. Mr Redford also sought information on the outcomes of the government's initiatives in relation to risk management and provisions of insurance to community and not-for-profit groups. Some months ago the state government, through SACORP, the Local Government Association and the QBE Mercantile Mutual Group, contributed funding to create a partnership with local government risk services, to provide a risk management training program and advisory services across the whole of government to community and not-for-profit groups.

This program, local government risk services, is: delivering risk management training workshops in rural and metropolitan areas of South Australia; providing community and not-for-profit groups with information and updates on the government's legislative reforms; providing information about insurance schemes available for the not-for-profit sector; developing a community insurance and risk management web site; and delivering ongoing information and advice to both state and local government bodies in relation to community and not-for-profit group insurance and risk management issues. The office for recreation and sport and the office for volunteers are also contributing marketing and coordination support and providing agency specific assistance.

The LGRS risk management training package has been welcomed in both regional and metropolitan areas. Over 200 organisations have attended workshops. Attendees have included sporting organisations; church groups; tourism and outdoor operators; volunteer groups; scouting groups; and aged care organisations. LGRS has also been involved in other specific information sessions for the volunteer and recreation sectors. LGRS has received additional requests for further industry specific workshops from regional bodies and sporting associations. Feedback has clearly supported the further need for the workshops to revisit regional communities and attend new regions in 2004. The aim has been to enable the not-for-profit sector to embrace simple risk management strategies that will maintain a low claims environment and thereby keep the cost of public liability insurance at reasonable and affordable levels.

The LGRS insurance scheme has been offering public liability insurance for the not-for-profit sector for over 15 years. Since the public liability insurance crisis hit Australia in 2001, the cost of public liability insurance for LGRS clients in this sector has increased by, on average, only 12 percent in October 2002 and 8 per cent in October 2003. The success of limiting the premium increases in 2003 is, the government believes, at least partly due to the involvement and support of insurers in the risk management education workshops. In summary, the outcomes of the program, which has been operating only since June 2003, have been significant.

The Hon. Mr Redford asked that the government explain exactly what differences there are between this bill and the recommendations of the Ipp report. Of course, these will be apparent upon comparison of the two documents. Indeed, the honourable member has kindly pointed out some of them. It would take some time to traverse them all, but I offer the following summary.

Many of the Ipp recommendations are not included in this bill. Most of the Ipp committee's recommendations on the quantum of damages have been excluded because of our earlier legislation which set limits to damages for bodily injury and provided for structured settlements. The recommendations to limit legal costs were rejected as not conducive to access to justice. Some of the liability recommendations were considered by the government but were rejected either initially or as a result of comment received. These included: recommendations about limitations of time; the liability of public authorities; and recommendations 11 and 12, dealing with obvious risk in dangerous recreations. Some recommendations did not apply to South Australia, for example, the recommendations for amendment to the Trade Practices Act, although there will need to be consequential state amendments following the proposed commonwealth amendments.

Some recommendations did not require legislative action at all, for example, the recommendations about the devising criteria for the forensic diagnosis of mental injury and the recommendation about there being no special provision for non-profit organisations. The recommendations adopted in this bill are: recommendation 2, that all breach of duty claims, not only negligence claims in the technical sense, should be covered; recommendation 3, on the standard of care for professionals; recommendation 4, on the persons professing particular skills; recommendation 14 that there should be no duty to warn of an obvious risk; recommendations 28, 29 and 30, dealing with duty of care, causation and contributory negligence; recommendation 32, dealing with the defence of voluntary assumption of risk; recommendations 34, 35 and 37, dealing with mental harm; and recommendations 55 and 56, dealing with death claims. Where we have adopted a recommendation, we have not necessarily used the exact language of the Ipp report and we have sometimes deviated, to a small extent, from the recommendation. In most cases this has resulted from comments received, from comparison with interstate measures or from the advice of parliamentary counsel.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: I am not sure that one would say there is a common theme. As I said, it has been in response to comments received. I am probably not in the best position to comment about what the parliamentary counsel said about any theme in relation to that. It would not appear to be the case. If I could give an example: in relation to recommendation 3, the duty of care for professionals, the Ipp report was confined to bodily injury claims and so dealt, in particular, with the duties of health care professionals. Comments received by the government showed that the prevailing view was that the recommendation, if adopted, should apply to all professionals. In relation to that recommendation, the precise recommendation of the report has been somewhat elaborated in the bill to provide more guidance on how it would work. The elaborations are based on the provisions adopted in New South Wales and Queensland.

In relation to recommendations 14 and 32, the government proposed to follow the Ipp recommendations closely but received criticism from the Law Society and the Plaintiff Lawyers Association. It has adapted the provision to try to address this so that, for example, the recommendation to state that a risk can be obvious even though of low probability has not been followed. The reference to a proactive duty has been taken out because the recommendations dealing with proactive and reactive duties of care have not been adopted. In relation to recommendations 28 and 29, the wording has been somewhat altered by the drafter, but the effect of the provision is consistent with the recommendations. However, the government did not adopt recommendation 29G. The reference to the Fairchild and Glenhaven case was added because it was thought desirable to make clear that it is intended that liability can be found, as the House of Lords did in that case, based on proof of the negligent material increase in the risk of harm where it is difficult or impossible to prove factual causation. This was particularly intended to give comfort to asbestosis victims.

Recommendation 30 has been followed, but the drafter has avoided the repetition of matters that are already set out in the bill in the context of duty of care. A special mention has also been added, for avoidance of doubt, to make clear that specific statutory rules about contributory negligence are not abrogated. In recommendation 34, the second paragraph of the Ipp recommendation could be thought to suggest a subjective test of what the defendant should have known, and the drafter has ensured that the test is objective. As to paragraphs (c)(ii) and (iii), these have been adapted to conform to our existing law, limiting the circumstances in which damages are recoverable for nervous shock, that is, section 24C of the Wrongs Act.

Since the law already requires that the plaintiff was at the scene or was a close relative, the references to the aftermath and to witnessing with one's own unaided senses are otiose in South Australia. Also, in relation to mental harm, the stipulation that if you actually know or you should know that a plaintiff is a person of less than normal mental fortitude then you can owe a duty of care even if your act might not have injured a person who was of that fortitude has been adapted from the New South Wales provisions. It accords with what Justice Gaudron said in the Tame/Annetts case.

The honourable member also asked, in the context of new section 32, why the government had selected the expression 'not insignificant' rather than some other term, such as 'realistic'. First, in the core provisions setting out what constitutes negligence, the government thought it desirable if possible that there should be national uniformity rather than varying rules around the country. The phrase 'not insignificant' has been adopted in New South Wales (in section 5B), Queensland (section 9(1)(b)), Western Australia (section 5B), the ACT and Tasmania (section 11(1)(b)) and is proposed to be adopted in Victoria (proposed new section 48(i)(b)). Secondly, the government noted that the Ipp committee, which included two eminent legal minds, had considered several alternative formulae but had selected this one as the best.

The report explains why the term 'realistic' was rejected by the committee. It says:

> We did consider the use of the term 'realistic' but rejected it on the ground that it was too close to 'real', which might be thought too closely associated with the Shirt formula.

The committee was expressly trying to move away from the Shirt formula and to set a higher standard, thus adopting the term 'realistic' would tend to undermine the Ipp recommendation, whereas the government intends to adopt it. The

government would not wish to see the bill adopt a formula that was expressly rejected by the Ipp committee. The honourable member also asked why new section 32, in reference to the negligence calculus, says that the court 'is to consider' the four factors listed rather than it 'may consider' them. The honourable member suggests that the latter is closer to the Ipp formulation. The Ipp recommendation is:

> In determining whether the reasonable person would have taken precautions against a risk of harm, it is relevant to consider, amongst other things. . .

It then lists the factors. The government does not see any difference between saying that the court is to consider certain factors and saying that it is relevant to consider them. If something is relevant, the court ought to consider it. It should not have the option of disregarding a factor that parliament identifies as relevant.

The Hon. Mr Redford also asked why the government had included new section 38, which he thought to be contrary to the discussion at paragraphs 8.36 and 8.37 of the Ipp report. In those paragraphs the committee is talking about its term of reference 3(c). That required the committee to consider proposals to restrict the circumstances in which a person must guard against the negligence of others. The committee took this to refer to a duty to protect the plaintiff against the plaintiff's own negligence or that of a third party. Examples included the duty of parents in relation to children or prison authorities in relation to prisoners. It decided not to make any recommendations dealing with that matter as it considered the law satisfactory.

New section 38 deals with obvious risks. It proposes that a defendant is not under a duty to warn a plaintiff about an obvious risk. This derives from Ipp recommendation 14 and relates perhaps more to terms of reference 1(f) and 3(b), to do with allowing individuals to assume risks. The report discusses obvious risks and concludes at paragraph 4.29 by recommending a provision such as that proposed in the bill. As I mentioned earlier, the words of the recommendation were adapted in light of comment received, but the government does not consider the provision to be a departure from Ipp as the honourable member suggests. Similar provisions are found in New South Wales (section 5H), Queensland (section 15) and Tasmania (section 17).

The honourable member also asked, in the context of new section 41, how it is to be proved that a particular practice was widely accepted in Australia as competent professional practice. This will be a question of fact. The bill does not stipulate how it is to be proved, but there might be many approaches. One might be to establish what the medical schools at Australian universities teach their students on the point. Another might be to refer to leading text books. Another might be to look to publications of the relevant college or any professional education that the college might run on the point. Another might be to tender evidence from learned professional journals circulating in Australia. But the bill does not seek to mandate or rule out any particular approach to proof.

Somehow or other, the defendant will need to establish by evidence admissible to the court that the opinion is in fact widely accepted. The honourable member puts the example of a defendant who calls a couple of witnesses to say that they believe that an opinion is widely held. I wonder whether that would violate the rule against hearsay. I hope that I have addressed the matters that have been raised by the Hon. Angus Redford.

The Hon. R.D. LAWSON: I might indicate to the committee that I have today put on file a number of amendments, the first of which is to clause 27. The amendments are not identical to those moved by any other honourable member. I also indicate that I have today received the Hon. Mr Gilfillan's amendments and would wish to have the opportunity to consider those before the committee stage proceeds.

The Hon. A.J. REDFORD: I do not believe I have an opportunity on any other clause, but there are just a couple of matters that I raise in terms of questions. I am quite happy for the minister to come back at some other stage to answer them. I preface my questions by saying that I am grateful to the minister and those who worked in his office very diligently, I assume, in answering the extensive questions that I put last week. I would ask the minister to pass on my thanks to those officers involved in that process. What I found very interesting, and indeed quite heartening in the response from the minister, is that there has been quite an extensive market response to the insurance crisis and it would appear, based on what the minister has said, that that has produced some positive results in terms of the premium crisis.

I would be interested to know, first, whether it is possible to quantify at this stage what impact that may have had on premiums and, secondly, whether there are likely to be continued impacts upon premiums as a consequence of those market reforms and market initiatives adopted by the government.

The Hon. P. HOLLOWAY: I am not sure that I can add too much more to the example I gave earlier, that is, the original PricewaterhouseCoopers estimate was a reduction of 13.5 per cent, but that was based on many of the measures which were introduced last year. I also indicated that obviously it will take some time: it often takes two or three years or longer for a claim to be ready for settlement or judgment. Whereas one can make estimates, as PricewaterhouseCoopers did, one can really only be certain that it has had that effect after some time and when cases have been before the court. I am not sure that I can give any more information than I gave earlier.

The Hon. A.J. REDFORD: I am sorry, I may not have asked my question clearly enough. I am not talking about the actuary results or the impact upon premiums by previous legislative enactments, I am talking about the initiatives of this government (albeit suggested prior to the last election) of bringing together volunteer groups and small business groups which, as I understand it from the answer to the questions that I put, have had a positive impact. I only listened to the minister's speech; I do not have a copy of precisely what the minister said. I think that QBE, a prominent and respected insurance broker and the Local Government Association insurance scheme were involved, all of which, in my view, are positive initiatives and ones for which the government ought to be commended.

It is that particular market driven response to the crisis about which I am particularly asking, that is, firstly, what has been the tangible impact of that, and, secondly, whether or not there are likely to be improved and continued impacts upon premiums as a consequence of that initiative.

The Hon. P. HOLLOWAY: I did give some information earlier. The heartening news was that with the LGRS insurance scheme, on average, those clients have seen increases of only 12 per cent in October 2002 and 8 per cent in October 2003. I guess that is the most tangible measure but I am advised that there are some exceptions. In relation to

groups outside those covered by that scheme—and a lot of publicity was given to some of the horse groups, steam railways and the like which had particular issues—there has been some success but, obviously, in relation to those other groups, we would hope that if these measures are carried it will have further beneficial impact. I suppose more generally one could make the comment that there have been a number of factors in the insurance market in the last couple of years, not the least of which would have been the couple of years of negative stock market return.

I suppose everyone is looking for market premium response. There are other factors aside from those related to these measures which will impact on insurance premiums, and if you were trying to assess what had happened, you would have to look at those external factors. Reinsurance rates would be another factor. There are probably other issues as well that you would have to untangle when trying to do some assessment about what is happening in the insurance market at present. It is obviously more than just this, but nevertheless this is a significant factor when insurance companies make their assessments.

The Hon. A.J. REDFORD: I acknowledge what the minister says and I understand what he says. These initiatives are directed at two issues. One is whether or not a product or an insurance product is available, and, secondly, the price of that product. In relation to the former, we see examples where perhaps gun owners and gun clubs—because they are organised nationally to go out and secure insurance—are able to do so because they have collected a large premium pool which enables them to get into the marketplace, whereas—

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: Yes, but then there are other groups—and some of the horse groups fall into this category—that have not had the capacity to be able to amass a substantial premium across a sector which then makes it difficult for them to negotiate. That is one issue. The other issue is that, once you do get a critical mass of premium dollar, then you can start using that market force to drive down prices. I am sure the minister will take this on notice, but if there is any quantifiable result as a consequence of those precise initiatives, either in terms of the numbers or the availability of insurance, or alternatively, the cost of insurance, I would be very interested to hear that. Again it is not necessary that that be answered for the purposes of dealing with the bill right now.

The Hon. P. HOLLOWAY: I am not sure that we can provide much more. I did refer in that lengthy answer to the honourable member's questions to the community care underwriting agency and other initiatives, but if there is anything further, I will provide that information.

The Hon. NICK XENOPHON: I am grateful for the government's response but I have not had an opportunity to see a hard copy and a number of matters may arise out of what the leader has just told the committee. In terms of the second reading speech, I am concerned that there were some further questions arising out of that, but I would like to look at that in the context of what the leader has just told the committee so that there is no undue repetition. For that reason, I would be urging the government to agree to an adjournment of this matter at least until this evening or tomorrow.

The Hon. P. Holloway interjecting:

The Hon. NICK XENOPHON: Further, some general comments may arise that would normally be made in the context of clause 1 and, hopefully, the government will not take issue with it later. I indicate that I am at a disadvantage because I do not have a copy. Another issue about the matters raised by the Hon. Angus Redford and indeed the Hon. Andrew Evans in relation to insurance pooling which concerns me is that we may be going down a path of slashing people's rights when there may be much more reasonable alternatives. I know the Hon. Angus Redford has referred to the Law Society's indemnity scheme which has delivered premiums significantly lower than those paid by our colleagues in the eastern states. It has worked effectively and, in some respects, it seems to be a template of the way to deal with groups and organisations getting insurance at a reasonable price.

The other matter I wish to raise is in the context of the underlying basis of this legislation, the so-called insurance crisis, and I refer to the Treasurer's comments when he said that insurance companies must now show their good faith. He referred to this in a media release dated 8 July 2002 in which an initial package was mentioned; and the Treasurer has made other comments on behalf of the government about the obligation of insurance companies. I have a media release issued by Des Munro, a partner with SimsPartners (an insolvency practice), dated 5 November 2003. I refer to this media release because it relates directly to one of the underlying foundations of this bill.

This media release is entitled 'Insurance costs forcing company administrators' hands'. In his media release, Mr Munro (who is an insolvency practitioner who sorts out companies in trouble) states:

> Company administrators may be forced to liquidate companies rather than revive them or sell them as going concerns unless insurance costs can be brought under control.

With respect to this particular company, Mr Munro says that he has been looking after its administration and that the only quote he received in Australia for a standard public liability cover of $10 million had been for an annual premium of $105 000, with a $40 000 excess and $50 000 which was to be paid up-front and which was non-refundable. Clearly, that would have made it impossible for this company to continue trading; it would have had to go into liquidation, as I understand it. When I spoke to him late last week, Mr Munro told me that his insurance broker (which is a recognised insurance broker that has offices internationally) made a number of inquiries here in Australia.

It got only one quote from one particular insurance company and that was for that $105 000 premium. Mr Munro then indicated that he cast further afield, and ultimately managed to secure insurance for this particular business through Lloyds of London—and there is no question that Lloyds is internationally reputable—for less than one tenth of the cost that an Australian insurer could deliver. As I understand it, the quote did not have attached to it the onerous conditions of a huge excess and a huge amount which was to be paid up-front and which was non-refundable.

I just raise that. What is going on here? Are insurance companies gouging the market? Is the government looking into that along with other governments? Are insurance companies behaving as a cartel, given that we have an example from a reputable insolvency expert who says that he could not get insurance in Australia but that he managed to get it overseas and that Australian companies would not insure at a realistic level? I raise that as an area of concern, given that this bill is very much based on an insurance crisis that the insurance industry keeps telling us about.

The Hon. P. HOLLOWAY: I expect that the honourable member is talking about the state of the insurance market, market failure in insurance, and so on, which is probably more the province of the federal government and its regulators.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: Well, I mean, the honourable member talks about gouging, but from the example he gave it seems that insurance companies in this country are very reluctant to touch particular types of insurance. What does one do about that? That is really the question the Ipp bill is looking at. What response can governments make to that? We have sold our own insurance companies, and I do not want to bring that question up for debate. Governments are out of that business. I would be the last person to suggest that we could get back into that business, but what else does government do but try to address this as a market reform to make it more attractive to get companies back in there?

One could say a lot of things about the market. It is probably outside the scope of the bill. I am no expert in this area but, clearly, companies have collapsed, such as HIH. Perhaps that has caused nervousness, in addition to the state of the stock markets and investments which impact heavily. Maybe there are factors here that do not impact in other states. Obviously, Lloyds of London has a much bigger pool; maybe it has greater expertise in understanding particular sorts of risk because it is a much larger body than the insurers here that are dealing with a much smaller market.

One could say lots of things, but I think that we would all agree that the objective of any government legislation should be to try to keep companies to which the honourable member referred in business to try to ensure that insurance is available at a reasonable cost. That is the objective of these measures. The government is introducing and supporting them so that that insurance will be available at a reasonable cost; and so that not only companies but also individuals, community groups and so on can continue to function with that protection of appropriate insurance cover.

The Hon. R.D. LAWSON: A great deal of the comments that have been made so far have related to the insurance industry and the so-called insurance crisis, insurance premiums and the like. No mention has been made by the government to date about the collapse in New South Wales of the medical indemnity fund, which insured a large number of medical practitioners not only in that state but also elsewhere. I wonder whether the government could indicate for the benefit of the committee any information about the reasons for that collapse. Clearly, it was not because of excessive profits to any insurer because it was a mutual fund, as I understand it.

The fund has only recently been placed in liquidation. I think that it would be of benefit to the committee to know why it was that that particular fund has become insolvent; because, as you would be aware, Mr Chairman, this bill seeks to make significant changes to the law relating to professional negligence, which will have particular relevance to medical practitioners.

The Hon. P. HOLLOWAY: I do not have a lot of information about the particular fate of that medical indemnity fund. Obviously, a superficial look at that fund indicates that there was inadequate provisioning. I understand that in South Australia a different insurer covers medical indemnity. We probably do not have within this state access to the particular information in relation to the medical indemnity fund. We assume there has been some investigation into it. Perhaps we will take that question on notice to see whether there has been any formal study or investigation of it that can throw more light on it.

I thank the honourable member for his comments, because they indicate that this is about more than just the matters I referred to earlier. It is more about general insurance. Obviously, the fact that this medical indemnity fund did collapse is an indication that significant action needs to be taken. If there was inadequate provisioning, when you boil it down, it really means that there were insufficient premiums to cover all the forward payouts. There are only two solutions: either increase significantly the premiums (with all the repercussions that has for the community) or try to contain costs.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: In relation to that, the fact is that it was a medical indemnity fund—it was a community fund: it was not a profit making body. Philosophically, if it was badly managed, it was badly managed only in the sense that the premiums with investment income were not sufficient to cover the outgoings.

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: Essentially, with insurance that is what it is all about.

The Hon. R.D. LAWSON: My question specifically is: will the government provide for the benefit of the committee such reports as are available; and, if they are not readily available, will it make inquiries to ascertain the reasons, so far as they are publicly known, for the collapse of the medical indemnity fund?

The Hon. P. HOLLOWAY: We will do that.

Progress reported; committee to sit again.

CRIMINAL LAW CONSOLIDATION (IDENTITY THEFT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 November. Page 670.)

The Hon. A.L. EVANS: This bill is aimed at those people who use false identifying information to commit criminal behaviour. A key requirement running through the bill is that the defendant intends to commit a serious criminal offence when making use of the information. The penalty is that which is appropriate to an attempt to commit a serious criminal offence. Under section 270A of the Criminal Law Consolidation Act 1935, the penalty for an attempt is two-thirds of the maximum penalty prescribed for the offence. A serious criminal offence is defined in the bill as an indictable offence or an offence prescribed by regulation. I agree that the bill should be confined to serious criminal offences and not relate to criminal offences in general. Anything broader could result in unfair outcomes. For example, there have been those cases where people have misrepresented their identity when taking a test for a driver's licence or university exam. It is not appropriate they be charged with attempts to commit the offence. The bill rightly excludes misrepresentation by a person under the age of 18 years in order to obtain alcohol or tobacco or entry to premises.

The bill is aimed at preparatory behaviour, which is something less than an attempt. The current law provides for the offence of attempting to commit a criminal offence, which at times can be difficult to prove. Under the common law there must be something more than just mere preparation to

commit an offence. The criminal must be putting things into action. If that is not the case, then there is a good chance that the offence of attempt will not be proven. This bill ensures that criminals can be prosecuted at an earlier stage when all that the criminal is doing is preparing to commit an offence. The key requirement is that there is an intent to commit a serious criminal offence. New section 144E of the bill provides:

A person cannot be convicted of an attempt to commit an offence. . .

In essence, a person will not be charged for an attempt to attempt. The concept is reflected in common law. I note with interest that the government in another place has amended new section 144D(2) after Family First raised some concerns during a briefing session. That section provides:

A person who sells. . . or gives. . . prohibited material to another person, knowing the other person is likely to use the material for a criminal purpose is guilty of an offence.

It is not by nature a preparatory offence so section 144E should not apply. In other words, it is entirely appropriate that someone may be charged with an attempt to commit an offence against new section 144D(2). In purported response to our concerns, the government introduced an amendment which provides that, if a person sells or offers to sell, or gives or offers to give, prohibited material, they may be guilty of an offence. I am not satisfied that the inclusion of the words 'offers to sell' and 'offers to give' adequately covers my concerns, because it is still entirely possible that someone may attempt an offence against a part of the section. This may be something that I will address during the committee stage.

Part 2 of the bill contains a provision for victims of an offence to apply to the court for certificates which will give details of the offence, the names of the victims, and any other matter considered by the court to be relevant. The victims who are eligible to make an application are those who have not consented to the use of the information. This provision will assist those victims, for example, who are struggling to obtain finance because their credit rating has been ruined as a result of a defendant's behaviour. My only concern is the cost to be incurred by the victim in making an application. I am told that the filing fee will be set at a very low amount so the expense will be minimal. However, I think that it is unfair to expect a victim to pay any amount to make such an application. My question of the government is whether it is possible to provide for the victim's cost to be met in some way. At the very least, I would like an assurance that the filing fee and all other associated expenses will be kept to a minimum. Will the government give some sort of estimate of the likely expense in making an application?

This bill is a sad reflection of the times in which we are living. Unfortunately, the incidence of the crimes contemplated in this bill is on the increase. I understand that the bill is the first of its type in the nation and, as such, we are leaders in this area of legislative reform. I commend the government for its introduction. Family First supports the bill.

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

STATUTES AMENDMENT (BUSHFIRE SUMMIT RECOMMENDATIONS) BILL

Adjourned debate on second reading.

(Continued from 26 November. Page 723.)

The Hon. J.S.L. DAWKINS: I rise on behalf of Liberal members to contribute in this debate. This bill results from a commitment to one of the main recommendations arising from the Bushfire Summit held on 23 May this year. At the summit, an agreement was reached to support amendments to the Country Fires Act 1989 to allow for the issue of expiation notices by SAPOL officers and by the relevant local government body for a limited number of offences.

The government argues that the use of expiation notices for the apprehension of minor offences will significantly reduce the number of incidents that would otherwise be subject to court proceedings, reducing enforcement costs accordingly. The specific offences deemed suitable for expiation have been identified in consultation with metropolitan and rural fire prevention officers. At present, three separate statutory provisions are relevant to bushfire risk under which the lighting of a fire is an offence, namely, causing a bushfire, endangering life or property, and lighting or maintaining a fire in the open air during the fire danger season. Only certain prescribed offences in the third category are considered suitable for expiation.

Under sections 36(1), 36(2), 38, 45, 46 and 47(1), the bill allows for the issue of an expiation notice for a number of offences. Those offences are specifically identified in the regulations, as many breaches of the conditions outlined in these sections are worthy of tougher penalties. Another major initiative of the bill is to give local councils greater power to enforce a private landowner's existing obligation to reduce fire hazards. Under both section 40 of the Country Fires Act and section 60B of the South Australian Metropolitan Fire Service Act, a council has the power to issue a notice to a landowner requiring them to reduce fire hazards (such as flammable vegetation or other flammable material) on their property. In the past, councils have found it difficult to prosecute landowners, with the current legislation failing to act as a deterrent.

In order to permit the expiation of the offence without reducing a significant penalty to deter the wilful act of non-compliance with the notice, the bill proposes two significant changes to section 40 of the act. The amendment would allow a council to issue a hazard reduction notice, with any belief that there is a degree of fire risk, without the direct assessment of the landowner's action or inaction.

The bill also abolishes the defence of reasonable excuse, creating two categories of offences instead. Those who wilfully fail to comply would be subject to a maximum penalty of $10 000, with a maximum $1 250 fine for all others. The relevant statutory authority (the CFS Board) would appoint only suitably trained fire prevention officers employed by councils as persons who may issue expiation notices for most of the expiable offences. Under section 6(3) of the Expiation of Offences Act, they could also be issued by police officers. However, there is no suggestion that either CFS or MFS firefighters will be authorised to do so.

The opposition supports this bill, particularly the establishment of a clear differential between serious intentional offences and situations where people innocently make a mistake. The member for Mawson in another place provided an example of one of his constituents who made an innocent mistake which caused a fire to start and which ended up in that person going through the court system. That is obviously something we would all hope could be avoided, and the passage of this bill will bring that to fruition. The bill also plays an important role in getting the message home to the public of South Australia about proper behaviour; for

example, someone not butting a cigarette or cigar in the correct manner will be hit with an expiation notice.

In another place, the opposition moved a number of amendments, which were largely developed to strengthen the role of CFS volunteers in the issuing of expiation notices and to increase the levels of penalties for serious intentional offences. However, the opposition will not proceed with these amendments in the Legislative Council. Members of the Liberal Party are well aware of the need to get this bill through this sitting week, particularly given the serious fires which have already occurred in the latter days of spring.

The Minister for Emergency Services indicated, in the committee stage of the bill in another place, that he believes the opposition's amendments should be dealt with during the review of the CFS Act, which will see a large body of reforms brought to the parliament next year. The minister indicated that we will then deal with them in the fullness they deserve. The opposition is prepared to agree to that course of action but remains committed to the need for the amendments moved by the member for Mawson to be included in the CFS Act. The Liberal Party supports the bill.

The Hon. IAN GILFILLAN: The Democrats support the second reading of this bill and will happily support it through all stages. It is appropriate on this day, which is the beginning of the fire season, that we deal with this matter. I heard the Premier on the radio this morning talking about bushfires. He said that last year half our bushfires were deliberately lit, and he also said that there will be tough new penalties for those deliberately lighting fires. However, the bill before us deals with a different matter and seeks to improve awareness of and compliance with CFS fire regulations through the use of expiation notices, and the Democrats support these provisions.

In fact, it was irresistible to go back to *Hansard* of 1999. In this instance, I will quote my second reading contribution dealing with the States Amendment (Local Government and Fire Prevention) Bill. The LGA had written to me and said:

> The LGA sought comments from its membership in relation to this Bill and some concerns were raised. [However] being mindful of the time frame of this Bill, the LGA has chosen to pursue only one of the issues raised. Our concern is that provision should be made for an expiation fee to apply in relation to the owner failing to take reasonable action. We wrote to the Minister for Local Government advising him of this and the LGA has suggested an expiation fee of not less than $200 should apply. The ability of councils to expiate the offence would be in addition to recovering the costs incurred by council for undertaking the work on behalf of the owner/occupier. The Minister is not prepared to accept the LGA recommendation.

I went on to say:

> I ask the government: why not?

Further on, I said:

> Those who go to the trouble of ensuring that their property is properly cleared of undergrowth and fire fuel will, I believe, wholeheartedly support any campaign to ensure that others do the same. Empowering councils to issue $200 on-the-spot fines will lead to much more activity by private property owners to make their land safe. It may even, in the end, save lives.

I will not go into the extensive and almost irresistible argument I put in this case. However, I have to report that the Hon. Diana Laidlaw said in response:

> Out of all the options presented by the Hon. Mr Gilfillan, the Government has a very genuine reason for not supporting the amendment.

The Hon. Diana Laidlaw went on to explain the government's reason. So, it was rather sad to find that that amendment, having eventually gone through a very extensive debate, particularly between the Hon. Trevor Crothers and the Hon. Terry Cameron as to whether the Hon. Terry Cameron had said one thing and the Hon. Trevor Crothers said he did not (it took a full page of *Hansard* to go through that particular exchange), was negatived.

That is history, but it is justifiable history, because it takes a while for some of the measures that we propose to be fully appreciated. However, the time has come to recognise that the massive penalties in the legislation were most unlikely to be imposed in most of the circumstances—and they were not, and they are not—whereas expiation fees will do the trick, in our opinion.

I express concern about the government's approach to the fighting of fires once they have begun. While we believe that everything should be done that can reasonably be done to prevent the occurrence of bushfires, we also have to realise that they will occur, even if we put an end to every deliberately or accidentally lit fire. Bushfires are part of the Australian ecology, they have been for many thousands of years, and our native vegetation has adapted. We, on the other hand, have not. Further, the lessons we learn from each bushfire are too frequently ignored or forgotten. One has only to take a drive through the Hills to see the huge number of homes that are deathtraps in the event of a fire. Too many of the recommendations of the Coroner's report on Ash Wednesday remain unimplemented, and we implore the government to spend less time ranting about the tougher penalties and more on addressing the risks that exist in our community.

I have already been briefed to indicate that more significant matters will be dealt with next year, and no doubt that will be a time for more substantial debate where dangerous practices and other issues can be raised. I am a little concerned that most of the issues that are dealt with by the expiation fee, although important, are not as extensive as we would like to see them. Those of you who are familiar with the summit would probably already know, but the following issues will be the subject of expiation fees: people who light fires for personal comfort or cooking; burning rubbish in incinerators and heating bitumen; and the use of welders, gas metal cutters or grinders. It is reasonable that expiation fees apply to the unauthorised implementation of those activities.

Expiation fees will also apply to contravention of a permit issued by a council or CFS to light or maintain any type of fire; the use of prescribed equipment contrary to the CFS regulations, including stationary engines, internal combustion engines, bee smokers, rabbit fumigators, bird scarers and blasting; and failure to remove flammable material from property. In addition, two other offences will be expiable: use of a caravan without use of a regulation fire extinguisher; and smoking within two metres of flammable bush or grass.

We recognise that this measure should go through rapidly, and we support that. We expect that there will be more substantial debate next year under a different measure to deal with some other matters that the spokesperson for the opposition, the Hon. John Dawkins, has indicated will be introduced next year. With those remarks, I indicate Democrat support for the second reading.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank the Hon. John Dawkins and the Hon. Ian Gilfillan for their indication of support for the bill. I take this opportunity to place on the record some slight clarifications about clause 6. In the other place, the minister suggested that section 40 was changed 'on the best advice out

of our legal draftspeople on the basis that it is currently to a degree internally contradictory'. This was a mistake. Section 40 was not internally contradictory, nor did the suggestion to change it come from the Parliamentary Counsel. Rather the amendment that alters the section is designed to achieve two important policy aims that have some tension between them. On the one hand, the amendment maintains a high penalty for the offence of failing to comply with a hazard reduction notice. On the other hand, the amendment also creates a new lower penalty for the same offence when it is committed other than wilfully. It is the lower penalty that is expiable.

The minister also suggested that the amendment creates two offences. Parliamentary Counsel has advised that it is incorrect to characterise this amendment as creating two offences. Rather, it is one offence for which the penalty may vary according to whether the offence is committed wilfully or not. Thus, there is only one offence but two categories of offenders. I take that opportunity to correct the record, and I thank the council for its indication of support for the bill.

Bill read a second time.

In committee.

Clauses 1 to 5 passed.

Clause 6.

The Hon. IAN GILFILLAN: The minister indicated that there was some confusion about the difference between offence (a) and offence (b). In other words, in the case of a person who wilfully fails to comply with a notice, there is a penalty of $10 000. In any other case, the penalty is $1 250, with the option of an expiation fee. That much I can understand. What I do not understand is how a person would not comply with a notice other than wilfully.

The Hon. P. HOLLOWAY: I have been advised that the difference is if the offence was inadvertent. It could be that, if someone had two blocks, they might have cleared the wrong one, or something like that. Another example might be if the people had thrown the notice in the bin and failed to clear the land, not through any deliberate disregard of the notice but through inadvertence.

The Hon. IAN GILFILLAN: Will there be any avenue of excuse in this matter? If one can present the case that they had not actually received the notice, will that stand as a defence for either the penalty of $1250 or an expiation fee?

The Hon. P. HOLLOWAY: I am advised that the general provisions under the Expiation of Offences Act will apply.

The Hon. IAN GILFILLAN: That is a satisfactory answer, and I will let the matter rest.

Clause passed.

Remaining clauses (7 to 11) and title passed.

Bill taken through committee without amendment; committee's report adopted.

Bill read a third time and passed.

LEGAL PRACTITIONERS (MISCELLANEOUS) AMENDMENT BILL

In committee.

(Continued from 27 November. Page 754.)

Clause 5.

The Hon. R.D. LAWSON: As I indicated in my second reading speech, this clause seeks to insert into section 6 of the Legal Practitioners Act a provision which authorises the taking of a particular undertaking from persons who apply for and receive the title of Queen's Counsel. As indicated then, we are opposed to this clause because it seeks to include in section 6 material which is inconsistent with the balance of the section.

As I said in the second reading speech, the section is, in our view, a mishmash. On the one hand, subsection 1 provides, unusually, that it is the intention of the parliament that the legal profession be a fused profession. The subsequent subsections tend to derogate from that proposition. In the second reading speech, I endeavoured to explain something of the tortured history of this particular provision. Section 6.1 of the act, declaring parliament's intention, is undermined by this provision. It is the Liberal Party's position that we ought to have a section relating to the legal profession in South Australia that reflects actual practice; this does not. However, we do not propose to divide on this matter, but I do seek expressions of support from those members who would wish to see a better and more cogent section 6 included in this act.

The Hon. IAN GILFILLAN: I indicate the Democrats' support for the clause as it is spelt out in the bill.

The Hon. P. HOLLOWAY: I should put the government's position on record. To some extent, I covered it in the second reading response. Although the opposition opposes clause 5 of the bill, the shadow attorney-general does not suggest that the Chief Justice is wrong in requiring the giving of the undertaking. He thinks that the amendment would make section 6 of the act a mishmash; the government disagrees. The opening statement of section 6 provides:

> It is Parliament's intention that the legal profession should continue to be a fused profession of barristers and solicitors.

This confirms the consequence of section 15 of the act. Section 15 provides that a qualified applicant is to be admitted and enrolled as a barrister and as a solicitor of the Supreme Court. Section 6 continues with four other subsections intended to clarify that opening statement. For example, subsection (2) provides:

> The voluntary establishment of a separate bar is not, however, inconsistent with that intention, nor is it inconsistent with that intention for legal practitioners voluntarily to confine themselves to practice as solicitors.

Subsection (3) provides that an undertaking to practise solely as a barrister or solely as a solicitor is void but there are exceptions. Subsection (4) provides the following:

> Despite this section, an association of legal practitioners may be lawfully constituted on the basis that membership is confined to legal practitioners who practise solely in a particular field of legal practice or in a particular way.

Subsection (5) provides that the legal practitioner cannot be required to join an association. Parliament has not been so foolish as to legislate that every legal practitioner must practise as both a barrister and a solicitor. It would be like legislating that every medical practitioner must practise both as a surgeon and as a physician. The additional subsection that this bill would insert into section 6 is by way of further elaboration of what parliament intends. It is intended to put beyond doubt that the undertaking given by Queen's Counsel on their appointment, about the circumstances in which they will use their title, is not contrary to parliament's intention and not contrary to subsection (3).

The Hon. A.L. EVANS: Family First is opposed to the amendment. Chief Justice Doyle asked for the inclusion of clause 5 in order to remove any possibility that the undertaking would be rendered void by the operation of section 6(3) of the act. It is arguable that the undertaking does not clash

with the provisions of the act even without this clause. I have been persuaded by the comments of the Hon. Paul Holloway that the undertakings have nothing to do with refusing to practise both as barrister and solicitor, nor is it an undertaking that barristers will not practise in partnership with solicitors. It simply relates to issues of potential commercial advantage for those firms if a QC were permitted to use his title.

If there is a potential for clash, then I believe clause 5 serves to make things cldearer and to remove any doubt that the undertaking is perfectly valid and not inconsistent with the provisions of the act. For these reasons, Family First opposes the amendment.

The Hon. A.J. REDFORD: What are the terms of the undertaking?

The Hon. P. HOLLOWAY: They are as follows:

I hereby undertake that, if I practise in future as a solicitor or in partnership or association with a solicitor, I will not whilst so practising use or permit my partners or associates to attribute to me in connection with such legal practice the title of QC or Queen's Counsel or any other indicia of the office of Queen's Counsel.

The Hon. A.J. REDFORD: Could the minister explain to me—and I will explain why—what is meant by the term 'solicitor' as opposed to the term 'barrister'? What is the difference?

The Hon. P. HOLLOWAY: I am advised that there is no difference in the act between barrister and solicitor, so it really comes back to the common law, which is that a solicitor does that legal work other than appearing before courts or tribunals or the preparation of advice in relation to court hearings, which is probably as rough a definition as I am capable of giving, or as accurate, I should say.

The Hon. A.J. REDFORD: This whole area is couched in what I would call mystery. I can give an example of a case I was involved in, where I was engaged to act for a fellow legal practitioner. The Law Society and others had made a complaint against this practitioner because that particular practitioner had signed the bar roll as a barrister and it was felt that that person was acting as a solicitor. I will not go into any of the detail except to say that after a significant exchange of correspondence—and if I had been charging my client what potentially might have been an expensive exchange of correspondence—nobody could give me a precise definition as to what constitutes a solicitor and what constitutes a barrister.

There was the example of, 'you have to go through a solicitor to get access to the services of a barrister.' There are actually quite a lot of exceptions to that, and one only has to look into the legal services provided by the government. Then there was an attempt to do it by the actual giving of advice and/or giving evidence in court, which was the model that the minister provided, and I appreciate that the minister is taking advice. But the difficulty with that is this: where does Mr Hackett-Jones, a distinguished Parliamentary Counsel who is a Queen's Counsel, fit into the scheme of things? He does not go to court, and I am sure that he would be horrified at the thought of having to deal with those sorts of things, and he certainly does not get instructions via a solicitor, but nobody would doubt that he is entitled to hold the office of Queen's Counsel.

There are also situations where I have seen and observed operating out of the government arena Queen's Counsel who are taking instructions directly from the agencies for which they act. I am sure that the Hon. Paul Holloway may well have been involved in something like that, and I make no criticism of him. What I am alluding to here is a demonstration that there is no sort of clear definition. When this legislation first came in, that is what the Hon. Chris Sumner was actually alluding to, if you want to look at it from a point of principle; that is, what is a barrister and what is a solicitor. I say to those members who are not familiar with it that the big difference is that barristers pay a lot less in professional indemnity insurance premiums than solicitors.

I make those general comments, but what concerns me about the government proposal is that, first, the terms of the undertaking are not statutorily defined. They can be changed by the court any time the court sees fit. They are not even the subject of any control through a regulatory process. So, albeit innocently, and I would not presume to suggest that the Supreme Court would seek to subvert a clear parliamentary intention, it is possible for that intention to be subverted, particularly when we do not see or have any control over the terms of the undertaking, and I wonder whether the minister will consider whether the terms of the undertaking could be subjected at least to some form of parliamentary scrutiny.

Essentially, we are handing over to the courts the capacity to enable a practice that is potentially, at least in our eyes, inconsistent with the notion of a fused profession, which I have to say has served this state extremely well when one compares the value and the confidence in the legal services provided by practitioners in South Australia as opposed to those in the non-fused states, in particular New South Wales.

The Hon. P. HOLLOWAY: First, Parliamentary Counsel are barristers at the bar of parliament and there is a tradition of appointing the chief Parliamentary Counsel a QC. I am also advised that Mr Hackett-Jones does accept some briefs to appear before the courts. In relation to the second part, if in the future the Chief Justice required some undertaking that was unacceptable to parliament, obviously there would be the option for parliament to intervene as it saw fit through the legislation. That is obviously not the case at present.

The Hon. A.J. REDFORD: I will not labour the point, but I must say that we on this side did not come down yesterday to say, 'If it is a bad law, we will fix it up later.' We on this side actually try to get it right in the first place. I will finish the yarn, because it was quite interesting. Those who sought to prosecute my client for acting as a barrister, or claiming to be a barrister when they were doing solicitor's work, went to the Professional Conduct Tribunal—that is how far they took it.

I am pleased to say that the Professional Conduct Tribunal said that there was absolutely no way you could tell the difference between a barrister and a solicitor, and refused to intervene in the argument. In terms of dealing with the issue, it adopted a more commonsense approach. There have been and possibly in the future will be the odd occasion where you will get this sort of tut-tutting regarding who is doing solicitor's work and who is doing barrister's work. I have to say it is an extraordinarily difficult line to draw and I am surprised that the Supreme Court would seek to get involved in that.

The Hon. P. HOLLOWAY: I make the point that the undertaking about which we were talking and which I just read out—

The Hon. A.J. Redford: Was to act as a solicitor.

The Hon. P. HOLLOWAY: No, it was not about practising: it was about using the title. It is all about using the title of 'Queen's Counsel'.

The Hon. A.J. Redford: You can call yourself a barrister

and practise as a solicitor and the Supreme Court says that is fine.

The Hon. P. HOLLOWAY: As I understand it, the issue is all about using the title 'QC'. It is when one uses the title of 'Queen's Counsel.': it is not about the work that is undertaken. It is not about solicitors acting as barristers or vice versa: it is about the use of the title.

The Hon. R.D. LAWSON: Apropos the debate that just occurred, I ought to remind the committee that the terms 'barrister' and 'solicitor' still appear in subsection (3) of section 6. They actually declare unlawful and void, contrary to public policy, an undertaking to practise solely as either one or the other, which obviously presupposes that both those expressions do have meaning, as I believe they do. Of course, it is worth commenting that until relatively recently our Legal Practitioners Act has provided, firstly, in the 1936 act (which was almost the same since 1845) that nothing in the act should prevent the separation of legal practitioners into two classes; one consists of barristers or advocates, on the one hand, and the over attorneys, solicitors or proctors, on the other. I do believe that there is a distinction.

My colleague did mention the position of Parliamentary Counsel, Mr Hackett-Jones, Queen's Counsel. Mr Hackett-Jones would have given an undertaking at about the same time as I, which was an undertaking to practise at the independent bar and not to be a member of a firm of solicitors. I do not believe there is any inconsistency in relation to his particular position although, as the honourable member suggests, there will be lawyers in government service who have subsequently made an undertaking that might have some of the infirmities to which the honourable member refers. The Attorney suggested (although he did not quite say it) in the committee stage of this bill in another place that this government is committed to the retention of the title of 'Queen's Counsel' in this state. I ask for that confirmation in light of the fact that, as was recently reported in *The Australian Financial Review*, South Australia is now the only state in which the government is involved in the appointment of Queen's Counsel.

The Hon. P. HOLLOWAY: Certainly this matter was the subject of some discussion at the Labor Party convention over the weekend, and it is the view of the party (as expressed) that that position should not continue, but obviously implementation of that policy is a matter for the Attorney.

Clause passed.

Clauses 6 to 13 passed.

Clause 14.

The Hon. IAN GILFILLAN: I move:

Page 5, lines 20 to 24—
Delete paragraph (c)

Clause 14 amends section 97. From the time I have spent on the Legislative Review Committee, I have become hypersensitive to regulations which go outside the bounds of the head power of the enabling legislation, that is, the act. This may not in itself necessarily go outside because it is really going into new territory. I certainly cannot recall a provision for regulations which leaves it to the discretion not only of the Attorney-General but the Supreme Court or the Law Society. I would suggest to the committee that we can delete paragraph (c) and still retain within the bill all the powers that are needed to make the enabling regulations to implement the bill, and that is why I move the deletion of paragraph (c).

The Hon. P. HOLLOWAY: The Hon. Ian Gilfillan has moved an amendment to delete that part of clause 14 that would be inserted into section 97 of the act if this clause is passed. The government opposes his amendment. The subsection that the government seeks to have added is nowadays a standard provision in acts that confer regulatory functions on bodies other than the minister and would bring the existing 22-year old section 97 up to date. I can assure the Hon. Ian Gilfillan and all members of the committee that there are many South Australian acts that contain a provision that is the same (or very similar) to the one to which he objects. They date back to at least 1986. I will give some examples: the Travel Agents Act 1986, the Land Agents Act 1984, the Conveyancers Act 1984, the Land and Business Sale and Conveyancing Act 1984, the Plumbers, Gasfitters and Electricians Act 1995, the Security and Investigations Act 1995 and the Second-Hand Vehicle Dealers Act 1995. They all authorise the making of regulations providing for a matter or thing to be determined according to the discretion of the minister, or the Commissioner for Consumer Affairs.

The Police Act 1998 authorises the making of regulations that leave a matter or thing to be determined according to the discretion of the minister or the Commissioner of Police. The Dental Practice Act 2001, the Veterinary Practice Act 2003 and the Nurses Act 1999 authorise the making of regulations that confer discretion on the minister, the relevant regulatory board, or another prescribed person or authority. The Development Act authorises regulations conferring discretions on the minister, the Development Assessment Commission, local councils, authorised persons and other prescribed authorities. I mentioned the Veterinary Practice Act but the related area under the Minister for Environment and Conservation is the Animal and Plant Control Act and the Agricultural Protection and Other Purposes Act 1986, and in my portfolio the Aquaculture Act 2001. I could certainly provide further examples if requested. Parliamentary Counsel has advised that there are about 30 such acts where this takes place.

The Hon. R.D. LAWSON: I indicate to the minister that the Liberal Party will not be supporting the amendment proposed by the Hon. Ian Gilfillan. When I first saw this clause I thought that this might be of the nature of a so-called Henry VIII clause—one which allows an amendment to legislation by either regulation or proclamation. As he is a longstanding member of the Legislative Review Committee, the Hon. Ian Gilfillan will be well aware of the fact that committees of delegated legislation and scrutiny of bills throughout Australia regularly condemn the use of Henry VIII clauses.

The fact that such a section exists in a number of acts would not convince me necessarily that it would be appropriate that it be included in this act. I was concerned at first glance that this bill seemed to give to an organisation—namely the Law Society, which is not appointed by a minister and not elected by the community—particular powers or discretions. However, on examination, I do not believe that to be an infirmity in this particular provision. This provision does not extend the regulation-making power at all: it provides that a regulation making power may within it contain or allow for the exercise of a discretion, in this case by the court, the Attorney-General or by the Law Society.

There are a number of acts to which my attention has been drawn by Parliamentary Counsel in which such a discretion is allowed in a person or body other than a minister or some body appointed by the Crown. For example, in the Air Transport (Route Licensing) Passenger Services Act 2002 the

discretion may be exercised by either the minister or other prescribed person or authority. In the Dog and Cat Management Act 1995 the discretion may be exercised by the board or by a council. In the Primary Industries Funding Scheme Act the discretion may be exercised by the minister or the person or body administering a fund established under the regulations.

In the Prohibition on Human Cloning Act 2003 the discretion may be exercised by the minister or any other person or body prescribed by the regulations. There are similar provisions in the research involving the Human Embryos Act 2003, the River Murray Act 2003, the Upper South-East Dry Land Salinity and Management Act 2002, the Nurses Act 1999, the Development Act 1993 and the Veterinary Practice Act 2003. In the last mentioned act which, I suppose, is the most comparable to the Legal Practitioners Act, the discretion may be exercised by the minister, the board, the registrar or other prescribed person or authority. Accordingly, whilst sympathetic to the sentiments which lay behind the honourable member's amendment, I do not believe that this is an appropriate occasion to delete what is now a common power appropriately protected by the legislation.

The Hon. IAN GILFILLAN: I indicate that I will not be voting for my own amendment. I think that, far from being swamped by all the examples, I would echo what the Hon. Robert Lawson said. Repetition of a mistake however many times does not necessarily correct the mistake. Were that to have been a mistake, I could not have cared less how many times it has been implemented. However, on closer analysis and thinking about the comments made, I go back to the following wording in the act: 'may provide [the regulations under this act] that a matter or thing in respect of which regulations may be made is to be determined at the discretion. . . '.

I concede that, properly implemented, it is not that the regulations are at risk of going outside the head power: it is just that the matter upon which the regulations would be formulated can be triggered by a discretion of these three bodies. Under those circumstances, I can see that there may be a matter in the legislation about which the Law Society may feel quite strongly that its implementation would be enhanced by formulation of appropriate legislation. I need no further argument to persuade me that my amendment is unnecessary, and I will not be voting for it.

The CHAIRMAN: The honourable member is not pursuing his amendment?

The Hon. IAN GILFILLAN: I will not be pursuing it.

Clause passed.

Title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed

GREAT AUSTRALIAN BIGHT MARINE NATIONAL PARK

Adjourned debate on motion of Hon. T.G. Roberts (resumed on motion).

(Continued from page 774.)

The Hon. SANDRA KANCK: I indicate Democrats support for this motion. I think it is very good that the government and the opposition have seen the light on this issue. In 1994 we dealt with the Petroleum (Submerged Land) Miscellaneous Amendment Bill. At that time I tried to amend that bill. I tried to include in it amendments to prevent the exploration or drilling by the petroleum industry in areas frequented by whales during the winter breeding season. I was only calling for a time period between 1 May and 30 September, during which time there would not be seismic exploration.

In 1994 I could not get either the government or the opposition to support me on this, so both the Labor and the Liberal parties have come a long way on it. In fact, I think I probably have to give some accolades to the Liberal Party in government, because it was when it was in government in 1995 that it proclaimed the Great Australian Bight Marine Park Whale Sanctuary, which extends out from the shoreline of the Great Australian Bight. It is not a very deep area, so to speak, in terms of how far it comes back from the shoreline, but it is quite a long area. In 1996, the government proclaimed the Great Australian Bight Marine National Park, which goes out about twice as far into the Bight as the whale sanctuary.

This bill takes the area that is the conservation zone and prohibits mining and petroleum activities, extending it from a ban of six months of the year to a year-round prohibition. It is a big step forward. However, I contrast this with the government's attitude to southern blue fin tuna, which can also be found in the Great Australian Bight. This species is not just endangered, as the southern right whale is endangered—and this information of that whale's endangered status is given in the government's briefing notes in support of this motion—but, rather, is critically endangered. It is on the World Conservation's red list, yet our government takes no action to have it listed or to prevent its fishing.

The last time I looked, I noted that about 5 000 tonnes per annum of southern blue fin tuna is fished in South Australia. That is incredible when we are talking about a critically endangered species. It leads me to be a little cynical about what the government is doing here when it comes to whales. Obviously, whales are vote catchers, but we eat southern blue fin tuna so we can turn a blind eye to its critically endangered species status. Whether or not this is about vote catching, in the end I will not use any intention or motivation of the government as a reason to vote one way or another. I think this is an important move from the point of view of conservation and protecting whales, sea lions and various other sea life. The Democrats support the motion.

Motion carried.

VICTIMS OF CRIME (CRIMINAL INJURIES COMPENSATION REGULATIONS) AMENDMENT BILL

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

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): 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 *Victims of Crime Act 2001* provides for statutory compensation to victims who are physically or mentally injured as a result of a crime. It repeals and replaces the former *Criminal Injuries Compensation Act 1978*.

Under both these Acts, the fees that lawyers can charge victims of crime for their help with the claim are limited, and provision is made to pay those fees from the statutory fund. The limitation protects the victim and the Fund. It protects the victim because, if the victim wins the case, the lawyer's fee is paid from the Fund and the victim is not out of pocket. It also protects the Fund because it caps the amount that can be paid to a lawyer in any case.

The amount of the lawyers fee has always been fixed by regulation. Under the *Criminal Injuries Compensation Act*, the maximum fee was, for many years, $675 (plus, in latter years, the GST). By the mid 1990s, it was becoming apparent that this fee was no longer adequate, and the Law Society justifiably asked the Government for an increase. This occurred only in 2002 when the present Government, in its first year of office, raised the fee to $1 000, a figure that the Government believes was satisfactory to the profession and a fair recognition of the lawyer's work in these cases. Unlike the previous scale, which paid more if the case went to court than if it was resolved out of court, the new scale set a fixed fee for all cases. It was hoped that this would encourage early settlement and discourage application to the court where there was no real dispute.

By the making of two sets of regulations, the new scale of fees was applied first to cases under the *Criminal Injuries Compensation Act*, which applies to offences committed before 1 January 2003 and, also, after that Act was repealed, to cases under the *Victims of Crime Act*, which covers offences from that date onward.

The fee increase was to be funded by an increase in the levy paid by those who expiate or are found guilty of offences. The levy is fixed by regulations under the *Victims of Crime Act*. As contemplated in that Act, the regulations provided for a higher levy to be paid for indictable than for summary offences, and for a still higher payment in the case of offences of violence or other offences likely to give rise to injury claims, such as armed robbery or home invasion.

The new scale contained, however, one feature that proved controversial. Both the Acts contain a requirement that, before a victim can apply to the Court for compensation, he or she must first give the Crown Solicitor full particulars of the claim, including medical reports, and three months must elapse, a period that the parties can use for settlement negotiations. The new cost scale proposed that, for the purpose of these negotiations before application to the Court, the Fund should not ordinarily pay for a report from a medical specialist, but only a report from the victim's usual or treating general practitioner.

I emphasise that this rule applied only to the period before application to the Court. The former Regulations did not restrict the recovery of the reasonable cost of specialist reports once application was made to the Court for compensation.

This was thought to be a good idea for several reasons. First, most claims in this jurisdiction are small claims, with many under $6 000 and most under $10 000. Compensation is limited by a points scale and a formula, the application of which is well understood by practitioners. The assessment of compensation is not usually a difficult exercise and the vast majority of cases settle by negotiation without the need for a trial. This is a good thing because it spares the victim the distress of an unnecessary court hearing. Reports from medical specialists rarely cost less than $400 and may often cost $700-$800 or more, whereas a general practitioner's report may cost around $100 to $150. As assessment of compensation is not usually difficult, it is better economy to use specialist reports only where there is some good reason why a general practitioner's report will not do.

Also, if a victim has a treating general practitioner, it is desirable that that person provide the report where possible, rather than sending the victim to a stranger to go over the whole history again. Many victims report distress at recalling or reliving the criminal assault upon them. Some find it tiresome to have to repeat their experiences first to police, then lawyers, then doctors, then courts. Sometimes this is necessary, of course, but it should be kept to a minimum.

Further, a treating general practitioner is often in a particularly good position to report on the victim's condition. If there has been an injury, whether physical or mental, that is genuinely impeding the person's way of life, the general practitioner is likely to be the first port of call and thus to see the victim soon after the offence. He or she may see the victim several times over the crucial early months. If the doctor has known the victim before the crime, he or she may be well placed to compare the pre and post injury condition. The general practitioner may also have a rapport with the victim that makes it easy for the victim to speak frankly with the doctor about the offence and how it has affected the victim. After all, the general practitioner has been chosen by the victim to treat the injury, whereas the examining specialist is chosen by the lawyer for forensic advantage.

Also, a medico-legal referral to a specialist often entails a wait of two or three months for an appointment, and perhaps some weeks or months thereafter for a report. A treating general practitioner can rely on his or her existing knowledge and records of the patient and can prepare a report without undue delay. Victims may be distressed by long delays in bringing a claim to conclusion because they feel that they cannot put the offence behind them and get on with their lives while legal proceedings are still on foot.

This provision applied only to the period for negotiation; that is, the initial three months, or longer as agreed by the parties, during which the parties should attempt to resolve the matter out of court. It did not stop the victim claiming from the Fund for the cost of specialist reports obtained thereafter; that is, when an application was made to the Court for compensation.

The rule, of course, was not absolute. There may be some cases in which a general practitioner's report may not be adequate, and no doubt some cases where the injured victim has not seen a general practitioner for treatment and does not have a usual general practitioner. For this reason, provision was made for a specialist report to be obtained at Fund expense with the agreement of the Crown even at this early stage of the case. Indeed, during the short life of the Regulations, the Crown so agreed with practitioners on many occasions.

Some members of the legal profession, however, took exception to this provision. Their objection seems to have been that general practitioners are not qualified to write a report for this purpose. Some, indeed, appeared to argue that general medical practitioners are not qualified to diagnose mental injuries. The Government does not agree with that point of view. After all, general practitioners are legally entitled to treat such injuries, including prescribing medication for sufferers, admitting them to hospital and, in grievous cases, detaining them there under the *Mental Health Act*. In reality, it is general practitioners who treat most of the mental illnesses and injuries that occur in our society, and rightly so. I refer to a recent address by Dr Jonathan Phillips, the Director of Mental Health Services for South Australia, to the Royal Australian and New Zealand College of Psychiatrists (of which he was then President) in which he said:

> *Currently, mental health services are delivered predominantly by general practitioners in both our countries. This is as it should be. There is no person better placed than the family doctor to know the needs of an individual and to provide care in a timely and efficient manner close to home…*(See Australian and New Zealand Journal of Psychiatry 2003:37:1-4)

This is not to say that specialists do not play an important role—of course they do. But the contention that a general practitioner, though qualified to treat the injured person, is quite unqualified to write a satisfactory report about him, is, in the Government's view, mistaken.

The contention must, however, have seemed persuasive to the Legislative Review Committee of the Parliament, because it moved the disallowance of these Regulations, apparently, mainly for that reason. Motions to disallow both the *Victims of Crime Regulations* and the *Criminal Injuries Compensation Regulations* were carried in another place. As a result of that disallowance, the new Regulations had no further operation and the former Regulations, including the lower fee for the lawyer's work, revived.

In the case of the *Victims of Crime Regulations*, because the parent Act is extant, new Regulations could be made restoring the fee scale, as well as other important features of the Regulations, such as the levy on offenders. The remade Regulations were, however, again disallowed. Since then, therefore, regulations fixing the levy have been separately remade, because, as far as the Government is aware, the Committee had no objection to the collection of a levy on offences at the prescribed rates. The fees regulations have not been remade, pending Parliament's deliberations on this Bill.

The case of the *Criminal Injuries Compensation Regulations* is different. The parent Act has been repealed, so there is no longer a regulation making power. If there is to be any change to the revived Regulations of August 2002, this must be done by Act of Parliament. That is the purpose of this Bill.

The present Bill would restore the former scale of fees, both the increase in the amount paid to lawyers and the rule about medical reports. The Government still believes, as it has all along, that lawyers are overdue for a fee increase and that the victim's general

practitioner can, in most cases, write an adequate report for negotiation purposes.

Although there may be two or three practitioners who disagree, the Government does not believe that the majority of practitioners in the field have difficulty with the proposed rule about medical reports. The Law Society has been consulted and has indicated support for this Bill.

It may be helpful in passing to dispel a myth that circulates persistently, in this place among others, that there are only one or two lawyers in Adelaide who will accept criminal injuries cases. Despite the current low fee, the Crown's records show that there are some 10 firms who regularly do such work, and up to 50 or so altogether who do this work at least occasionally. Thus, the Parliament should take care to hear the views of the profession as a whole, not just of one or two practitioners, when making laws in this field.

Some modifications of the former rules are proposed, however, in the hope of reducing some concerns. One is that the report of any general practitioner, not only the victim's usual or treating general practitioner, will be paid for by the Fund. Another is that the report of a treating hospital will be paid for either in addition, or instead, as the victim wishes. Also, the Bill stipulates the matters that the Crown must take into account in deciding whether to approve a request for payment of a specialist's report before application is made to the Court. These include the nature of the injury and whether a general practitioner could provide a satisfactory report in the particular case.

There are other new features. Some lawyers expressed concern to the Government that they might be in breach of their duty of care toward their client if a settlement was negotiated in reliance on the report of a general practitioner. Frankly, it would be doubtful that a practitioner would be found negligent for doing just what the law contemplates that he or she should do, but the Government wishes to give comfort to the profession on this point. Accordingly, the Bill provides that a legal practitioner is not negligent in giving advice to the client in reliance on the report of a general medical practitioner. This should deal with those concerns.

The Bill also introduces a new rule that the Fund will not normally pay for the cost of reports from allied-health practitioners; that is, people who do not have medical or dental qualifications. After all, these cases are claims for injury. A medical diagnosis is the basis of a claim. It has always been the law that the Crown and the offender, if they want an expert report, must get it from a medically qualified person. Victims would probably rightly complain if they were subjected by the Crown to examination by persons who were not so qualified. Likewise, why should the Fund have to pay for reports from people who cannot claim to be qualified to diagnose or prognosticate about injury (other than in the exceptional case where the injury is not within medical expertise). The Bill therefore provides that allied-health reports will generally not be paid for by the Fund. The exceptions are where the Crown agrees, or the Court is persuaded that the report of a medical practitioner or dentist could not provide the necessary evidence of injury.

In addition, the Bill makes some amendments to the particulars that the victim must give to the Crown about the claim. It stipulates that the victim must provide either or both a report from a treating hospital or a general practitioner or dentist. It indicates what the report should cover; for example, the history taken, the diagnosis, details of treatment and the prognosis. Some lawyers appear to have been under the mistake that the general practitioner must be asked to perform certain medical tests. The provision makes it clear that this is not necessary. It is up to the doctor to decide whether to order or perform any and what tests.

The Bill also stipulates that as well as giving details of the offender's conviction, the victim must disclose whether there has been an appeal. This is helpful in reminding the victim that until any appeal has been disposed of, it may be wise to defer incurring expenses in pursuance of the claim. If an appeal succeeds and a conviction is overturned, the victim may face greater difficulty in bringing a successful claim on the Fund. It is therefore helpful if a check is made at an early stage to see whether an appeal has been lodged within time and, if so, what is its fate.

Further, the Bill proposes that a victim must verify the particulars by statutory declaration. This is to make sure that the particulars are checked by the victim and are accurate. The Crown places some reliance on these particulars in deciding whether to make a payment from the Fund. A statutory declaration is not an onerous requirement and it helps to ensure that the Fund is being properly expended.

I should explain how the Bill, if passed, will affect pending cases. The new scale applies to claims that were first notified to the Crown on or after 19 December 2002. This date has been chosen because it was the date of the regulations that made the original fee increase. The Government had intended that fees should increase prospectively from that date. That is, the new fee scale was meant to apply to new claims first made after 19 December 2002, but it was not meant to provide a windfall or a top-up payment in cases where the lawyer had already accepted the work while the old scale prevailed.

In relation to the fee payable to the lawyer, if the case was first notified before 19 December 2002, the practitioner will, therefore, still be paid on the old scale, because that was the scale at the time he or she accepted the work. If the case was first notified to the Crown after 19 December 2002, and is yet to be settled or determined, the lawyer's fee will be on the new scale proposed by this Bill. The Bill will not affect cases, whenever notified, that have already settled or been determined before the Bill becomes law.

As for disbursements already incurred in pending cases affected by the Bill, if a disbursement was reasonably incurred in reliance on a scale prevailing at the time, it will be allowed in accordance with that scale.

Of course, this Bill only affects claims arising under the repealed *Criminal Injuries Compensation Act*; that is, claims for offences committed before 1 January 2003. For claims arising from offences committed on or after that date, the *Victims of Crime Act* applies. The relevant scale of fees will be that prescribed under that Act. The Government plans to make regulations fixing those fees in light of the Parliament's deliberations on the present Bill.

The Government is keen to see lawyers receive their long awaited and well deserved fee increase in criminal injuries matters.

I commend the Bill to the House.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Victims of Crime Act 2001*

3—Amendment of Schedule 1—Repeal and transitional provisions

Clause 1 of Schedule 1 of the *Victims of Crime Act 2001* (the ***principal Act***) repeals the *Criminal Injuries Compensation Act 1978* (the ***CIC Act***). Clause 2 of that Schedule provides that the CIC Act nevertheless applies in relation to an application for compensation in respect of an injury that arose before the repeal of the CIC Act. Thus, although the CIC Act has been repealed (and the regulations under the CIC Act thereby impliedly revoked) the *Criminal Injuries Compensation Regulations 2002* continue to apply in relation to any applications for compensation under the repealed CIC Act.

Before the CIC Act was repealed, the regulations under that Act were varied (see Gazette 19.12.2002 p 4797) by substituting the scale of prescribed fees for legal practitioners so that the scale matched the scale set under the *Victims of Crime Act 2001*. Those variation regulations were disallowed on 16 July 2003.

As a result of the disallowance, the original scale of fees for legal practitioners in relation to applications under the repealed CIC Act was restored.

As the CIC Act has been repealed, there exists no head of power to vary the regulations under the CIC Act. Such variation can only be achieved by an Act of Parliament. This measure proposes to achieve that by varying the regulations under the CIC Act as set out in proposed new clause 3 to be inserted in Schedule 1 of the principal Act.

The regulations (if varied as proposed) will prescribe a new scale of costs for legal practitioners. The scale of costs under the regulations in existence before 19 December 2002 would apply in relation to a claim of which the Crown was notified before that date but, if neither the Crown is notified nor an application for compensation is lodged until after that date, then the scale as proposed to be substituted by this measure would apply. The new scale is substantially the same as the scale that will apply under the principal Act.

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

STATUTES AMENDMENT (INTERVENTION PROGRAMS AND SENTENCING PROCEDURES) BILL

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

ADJOURNMENT

At 5.44 p.m. the council adjourned until Tuesday 2 December at 2.15 p.m.