LEGISLATIVE COUNCIL

Wednesday 5 May 2004

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

LEGISLATIVE REVIEW COMMITTEE

The Hon. J. GAZZOLA: I bring up the 19th report of the committee.

Report received and ordered to be read.

The Hon. J. GAZZOLA: I bring up the 20th report of the committee.

Report received.

The Hon. J. GAZZOLA: I bring up the report of the committee on regulations under the District Court Act 1991 concerning criminal and civil division fees; the Magistrate's Court Act 1991 concerning criminal and civil division fees; and the Supreme Court Act 1935 concerning fees.

Report received and ordered to be published.

MEMBER'S ATTENDANCE

The PRESIDENT: I note that one member is not present in the chamber and, in accordance with standing order 32, the Clerk will mark the attendance paper in accordance with standing order 30, as she is duty bound. If the member is ill, I am sure we will all be sympathetic. If not, the normal procedure will prevail.

PAPER TABLED

The following paper was laid on the table:

By the Minister for Industry, Trade and Regional Development (Hon. P. Holloway)—

A 10-Year Vision for Science, Technology and Innovation in South Australia—Report.

MITSUBISHI MOTORS

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I table a ministerial statement on Mitsubishi made by the Deputy Premier today.

QUESTION TIME

MITSUBISHI MOTORS

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make a brief explanation prior to asking the Leader of the Government a question about the Department of Trade and Economic Development and Mitsubishi.

Leave granted.

The Hon. R.I. LUCAS: Members will be aware that concerns have been expressed both in the parliament and publicly about the government's decision in relation to what was the department of manufacturing and trade and is now the Department of Trade and Economic Development. Those concerns placed on the public record include the gutting of the department in terms of the number of officers, the loss of morale of officers and the loss of decades of corporate knowledge and experience in dealing with critical issues that relate to industry and trade in South Australia.

Some members may also be aware that a number of senior and middle level managers from within that department have either left the department because they have had concerns as to whether or not they will have jobs following the restructuring and reduction in the size of the department, some have resigned and some have been reassigned or placed in other government departments and agencies. In particular, I am advised from within the department that, as members would be aware, a considerable amount of experience and expertise has been developed in the automotive industry because of its importance in South Australia and considerable expertise and experience in the area of the problems and issues that confront Mitsubishi as one of our major car manufacturers in South Australia.

As part of the problems of the past two plus years within the department most, if not all, of those officers have now left the old department of industry and trade (now the Department of Trade and Economic Development). I have been further advised that, in recent days, when the major issue of Mitsubishi hit the headlines and was a concern to all of us, the department and the government had to make a decision because most of the corporate knowledge was no longer within the current department—that is, all these officers had left the department—and there was no-one with the considerable corporate knowledge required to deal with the corporate assistance package in particular that had been negotiated with Mitsubishi and the associated issues.

I have been further advised that a senior officer who used to be within the department and who has transferred to the Land Management Corporation in the position of Manager, Commercial and Industrial Development, Mr David Litchfield, had to be brought back to the department to try to provide the government with advice and assistance on this issue. My questions are:

1. Will the minister confirm whether or not Mr David Litchfield had to be returned from the Land Management Corporation to this new department to try to provide advice and assistance to the government on this most critical issue?

2. Will the minister also indicate how many other officers, who previously worked in the past five years in the critical area of automotive industry policy, have left the department and are no longer working for the Department of Trade and Economic Development?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): In relation to the first question, it is my understanding that, yes, Mr David Litchfield is helping out with advice on the automotive industry with the Department of Trade and Economic Development. It is my understanding that Mr Litchfield won a position with another department—so he left of his own volition—but, given his background, he is assisting the department, and I am pleased about that. In relation to the second question, obviously I would have to obtain that information, so I will take that part of the question on notice.

The Hon. R.I. LUCAS: I have a supplementary question arising out of the answer. Why was Mr Litchfield returned from the Land Management Corporation? Was it because there were not sufficient officers within the minister's department to provide the necessary advice that the government requires at this critical time?

The Hon. P. HOLLOWAY: Under the restructuring, the new Department of Trade and Economic Development will consist of about 120 officers. Part of that structure will be the new Office of Manufacturing to deal with that very important

sector of the industry. At the present time, the department is filling those positions. The Leader of the Opposition would be well aware of that.

As I have informed the council in the past, seven executive positions have all been filled in the department, and the positions for the Office of Manufacturing are being filled as we speak, and I am aware that a position in the Office of Trade was filled yesterday. The department is in the process, as we speak, of filling some of those important positions.

The Hon. R.I. LUCAS: I have a supplementary question arising out of the minister's answer. Who is the current executive head of the Office of Manufacturing, and what experience does he or she have in relation to the problems besetting the automotive industry and Mitsubishi in South Australia?

The Hon. P. HOLLOWAY: I was just indicating that those positions are in the process of being filled. There are seven executive positions, and those positions have been filled. Nevertheless, approximately 170 officers from the old department are still working within the departmental structure. The problem is in matching the expertise with that required by the government. Clearly there is a need for additional skills, and the government will be recruiting people with skills in some of these key areas.

The Hon. R.I. LUCAS: Sir, I have a further supplementary question arising out of the minister's answer. For how long has Mr David Litchfield been assigned to the department, and what are the arrangements with the Land Management Corporation in relation to the length of his appointment?

The Hon. P. HOLLOWAY: I will have to get those details. I will take that question on notice. Obviously, Mr Litchfield will be available to assist as long as his services are required in relation to the current issue that we face. Clearly, in the longer term, we hope to fill the positions within the Office of Manufacturing with officers of a similar or higher calibre.

The Hon. J.F. STEFANI: Sir, I also have a supplementary question arising from the minister's answer. Will the minister advise the council as to the exact dates when each officer left the department?

The Hon. P. HOLLOWAY: The honourable member is asking for a pretty detailed answer. There are all sorts of reasons why people would leave. At one stage, the old department of industry and trade had almost 300 employees. Clearly, people have left for a range of reasons. Some have retired, some were on contracts and some have taken positions in other departments. Also, as I have indicated in the past, a number of those people, such as those in Invest SA, within the food section and those servicing the wine council have been transferred to the department of primary industries and resources. Some other officers who were involved in that area in the old DIT have been transferred to the Office of Infrastructure. In relation to population policy, some of those officers have gone to the Department of the Premier and Cabinet, and other officers in relation to running some of the industry funds have gone to Treasury. So, there has been a reorganisation of officers from within the old DIT.

All that information is, I believe, on the public record, and I have certainly answered questions about that in the past. I will see what information is available for the honourable member. I suggest that obtaining a leaving date for every employee who has left, for whatever reason, would be a fairly onerous task. However, we will see whether we can obtain sufficient information to satisfy the honourable member's curiosity.

ANANGU PITJANTJATJARA LANDS

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 Anangu Pitjantjatjara lands.

Leave granted.

The Hon. R.D. LAWSON: Yesterday, the minister tabled in this council the ministerial statement made by the Premier in relation to the report of the Hon. Bob Collins and also a copy of Mr Collins' report. The ministerial statement from the Premier stated that Mr Collins' recommendations were 'clear and strong'. The Premier commended those recommendations to the parliament and said that they would be implemented. After stating that he was dismayed at the profoundly dysfunctional situation in the most important organisation on the lands—namely, the APY executive—Mr Collins recommended a number of things, two of which were as follows: item 2, that the South Australian Electoral Commission conduct the election (that is, the election for a new APY council); and item 4, that the term of the council so elected be for 12 months. In answer to a question posed by me, the minister said:

> Whether the Electoral Commission will be involved and whether the council election will be for a 12-month period are being worked through at the moment.

The minister further said that the recommendations will be seriously considered. After question time yesterday the minister issued a press statement, in which he said that all the recommendations of Mr Collins would be implemented. My questions to the minister are: are there issues of Electoral Commission involvement, and is the term of 12 months, as recommended by Mr Bob Collins, still being—to use the minister's words—worked through, or is the government committed to implementing those particular recommendations?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his questions. The situation is that the legislation is still being worked on, in relation to the detail associated with how the ballots will be conducted on the lands. As the honourable member knows, the current method of election is inadequate. An annual general meeting held with no reference in the act to any Electoral Commission participation is something that, with consultation, will be worked through to get agreement and to make sure that future elections have a role for the Electoral Commission.

We are trying to normalise the way in which elections are held in the AP Lands, that is, to bring them in line with local government style elections given that the AP Lands are certainly nothing like any other local government sized boundary. To have a circumstance where longer periods between elections are destabilising, not only in the AP Lands if they are held every 12 months but in any other organisation that has differences within it, tends to focus people's minds on re-election rather than on doing the job at hand. We are trying to work through that with the APY executive and the community to find a more appropriate way of dealing with the electoral process; to find a more appropriate time-frame for the body to hold office; and also to find another way of

dealing with the myriad of issues that the APY executive, over time, has been dealing with.

We are trying to share the burden and to get distinct roles for chief executives and elected members to have the same separation of responsibilities that any other local government body would have. Presently, we are drafting, appropriately, bills to take into account a fresh election which may be for a 12 month period while these negotiations go on in relation to other recommendations that Bob Collins has made. That is, that there be a review of the Pitjantjatjara Lands Right Act so that any proposed amendments can be considered by the South Australian parliament prior to the expiration of this term. That means that we have a look at the act and its application to see whether the appropriateness of a changed format is suitable for those lands.

It is a unique area in the state and, probably, in Australia, given the distances between communities, the area and size of it, and the fact that we have culturally different people living in their natural environment. That and the other issues have to be dealt with. To sum up and reply to the question, we are looking at the detail that the honourable member requested. We should have a final bill for presentation and discussion with the opposition and members of other parties before its introduction into this council.

The Hon. R.D. LAWSON: I have a supplementary question. Is the statement just made by the minister—that the government is examining a more appropriate time for the executive to hold office—inconsistent with the Premier's statement on Mr Collins' recommendations, including the recommendation that the executive would hold office for 12 months?

The Hon. T.G. ROBERTS: It is not inconsistent. The council being elected for 12 months is one of the recommendations. The government is saying that that would be an interim period subject to any formal changes through negotiations for a changed structure that would be capable of dealing with commonwealth and state funding bodies and organisations of non-profit, but the first term, while those negotiations and discussions are going on about what form of governance would be approved (that is, by commonwealth-state and APY itself), may take up to 12 months to get the parameters right for acceptance and implementation for the next election, which would be by agreement. If it lines up with local government it would be a three-year period.

The Hon. NICK XENOPHON: As a supplementary question, will the minister advise whether all recommendations made by the Hon. Mr Collins are promptly being made public by the government?

The Hon. T.G. ROBERTS: The release yesterday of Bob Collins' report should make the recommendations and the report accessible to the public generally but, if the honourable member is talking about specific circulation and he has some suggestions, we have no objection to circulating it more widely.

INDIGENOUS LAND USE AGREEMENTS

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about state funding for indigenous land use agreements.

Leave granted.

The Hon. CAROLINE SCHAEFER: Currently, negotiations are going on between a series of key stakeholders—in particular the mining industry, pastoralists and indigenous groups—with a view to developing a series of indigenous land use agreements (ILUAs) across South Australia, particularly in the pastoral areas. I have been approached by the mining industry seeking reassurance from the minister that he will rule out any cut in state funding for indigenous groups to negotiate indigenous land use agreements in the upcoming budget, thereby requiring funding from the other two key stakeholders.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): Not surprisingly, I am not going to speculate about what might be within the next budget. I will say only that the government is well aware of the importance of the indigenous land use agreements for the future of the mining industry. Of course, the government has announced in advance of the budget the $15 million package over five years to promote exploration within this state.

NATIVE TITLE

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about native title processes.

Leave granted.

The Hon. R.K. SNEATH: It is well known that throughout Australia native title processes have the potential to be extremely time consuming. Is this the case in South Australia and are South Australia's advantages recognised by the industry?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): While it is true that there is potential for long delays in project development and while the process does take some time in South Australia, I am happy to be able to tell the Council that South Australia is well ahead of the rest of the country in its native title processes. This was recognised in statements made to the ABC by Victoria Petroleum Managing Director John Kopcheff, who said:

> There is a difference between Queensland and South Australia. The South Australian government realised if they really wanted to accelerate exploration in the South Australian portion of the Cooper Basin, they really needed to be proactive in helping explorers. So the South Australian government spent considerable funds in ensuring that the native title process went as fast as it could.

This is a credit to the state and to those on both sides of politics. The process began under the former government (and Trevor Griffin paid a key part in that) and it has continued under this government. Last year there were two signings of indigenous land use agreements. These ILUAs meet the government's objective of concluding access agreements that are fair to the registered native title claimants and sustainable in relation to development. The deeds for the agreement cover not just the exploration phase but also the development of any discovery should exploration prove successful. This is why they are regarded as historic and groundbreaking, and I believe that South Australian agreements can be used as a template for the rest of Australia in future native title negotiations.

The deeds for these exploration licences sustain processes to protect Aboriginal heritage before and during field operations and they provide appropriate benefits to the registered native title claimants. Exploration in the Cooper Basin petroleum exploration licence areas will inevitably

achieve additional success, leading to more investment in our state.

Obviously, this state has done very well and considerable funds have been put into this area. As for the question that the Hon. Caroline Schaefer asked in relation to future funding, a number of agencies are involved in that and, obviously, there are also issues involved with the federal government and what changes might be made to ATSIC; and my colleague, the Minister for Aboriginal Affairs and Reconciliation, is probably in a better position to make a comment on that than me. But, certainly, this state has achieved considerable gains in this area over a number of years both before this government took office and after. We are keen to see those gains continue.

The PRESIDENT: I remind the Hon. Mr Redford of his responsibilities under standing order 165.

LAYTON REPORT

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development, representing the Attorney-General, a question about the Layton report.

Leave granted.

The Hon. KATE REYNOLDS: This morning the Democrats hosted a forum in Parliament House to discuss the Layton report. Speakers included Emeritus Professor Freda Briggs, Dr Elspeth McInnes, Simon Schrapel and Nina Weston. One of the major issues raised was what the speakers referred to as the complete lack of progress in relation to legislative changes needed to improve child protection in South Australia.

The Layton report recommended a series of legislative changes to advance the interests and protection of children and young people, and to enable the establishment of statutory bodies to act in the interests of children. The report recommended that the government introduce amendments to the Evidence Act 1929, the Youth Court Act 1993, and the Family Law Act 1975 specifically to enhance the interests of children appearing as witnesses in an adult criminal court. It also recommended that consideration be given to reforming the Children's Protection Act, the Family and Community Services Act, the South Australian Health Commission Act, the Education Act and the Children's Services Act and noted that there may be other acts that require amendment. My questions to the minister are:

1. What action has been taken by the Attorney-General to address the recommendations contained within the Layton report?

2. Specifically, what action is the Attorney-General taking to facilitate a more cooperative relationship with the federal jurisdiction of the Family Court to protect and advance the interests of children in South Australia?

3. What action is being taken to provide training and skills development to court personnel in the areas of family violence and abuse?

4. When will the government introduce changes to amend the Evidence Act 1929, the Youth Court Act 1993 and the Family Law Act 1975?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I will pass that question on to the Attorney-General and bring back a response. I hope that, if there is any future legislation, we get a little bit more cooperation from the opposition than we received last night with some of the other moves to implement the Layton report.

The Hon. A.J. REDFORD: I rise on a point of order. The minister is reflecting upon debate that occurred in this place and I understand that that is not in order.

The Hon. P. HOLLOWAY: Mr President, I was simply reflecting on the fact that I hope that we have more support; I was not reflecting on the vote.

The PRESIDENT: I am very sensitive to the point of order that the Hon. Mr Redford makes, but the minister did not actually reflect on any of the decisions, or the decision which I think he refers to. I will entertain no member casting any reflections on any decision of the Legislative Council. That goes for me and everyone else, so we may as well get that straight right from the start.

PARLIAMENT HOUSE, IT SERVICES

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 Administrative Services, a question in relation to parliamentary IT services.

Leave granted.

The Hon. NICK XENOPHON: On Wednesday 28 April, my office started experiencing problems sending and receiving emails, and this has continued for a number of days. Last Thursday, we were notified on several occasions by the Parliamentary Network Support Group that it was having problems with the exchange server. This continued until yesterday (4 May), when we received many emails that had been originally sent to my office in the previous week. Even today, we are receiving emails that were sent a number of days ago. My questions are:

1. Can the minister advise the nature and extent of the problem?

2. Can we be assured that this problem will be rectified so that it is not an ongoing problem?

3. Can the minister advise whether there is a need to provide further infrastructure or other technical service work so that this problem does not occur in the future?

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.

SCHOOLS, RANDOM DRUG TESTING

The Hon. J.M.A. LENSINK: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development, representing the Premier, a question about random drug testing in schools.

Leave granted.

The Hon. J.M.A. LENSINK: Members of this chamber would be familiar with the Premier's strong friendship with the British Prime Minister, Tony Blair, and their shared love of the New Labour philosophy. Premier Rann has spent time with Blair in the UK, sharing ideas. Apparently, the Blair government has scouts posted with various states governments to assist in spreading the word and to share Blair's successful publicity techniques. Tony Blair has come up with a proposal that will allegedly protect students from their own evil ways by encouraging British schools to introduce random drug testing.

In an article published in the London *Times* entitled 'If only random testing could drive the opiate of pandering to

tabloid prejudices out of the Prime Minister's bloodstream' it was reported, as follows:

> Focus groups have told him (Mr Blair) that voters believe that young people are out of control. Something must be done. So the Prime Minister casts around for a solution that costs the government no money but sounds as if he is 'cracking down'.

We do know that we have a serious issue in South Australia with young people taking both legal and illegal substances. However, one of the issues with drug testing is that less harmful illicit substances have slower clearance rates from the bloodstream than more dangerous drugs. So, while cannabis can remain in the bloodstream for over a month, heroin is cleared within a matter of days and cocaine and ecstasy will disappear within hours.

So, half smart kids may well view risky behaviour as avoiding the drug that is more likely to get you caught, rather than the one that has the highest risks. My question is: will the Premier rule out any proposal to introduce random drug testing in South Australian schools?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I will refer that question—I think it would be more properly to the Minister for Education and Children's Services—and bring back a reply.

REGIONAL SKILLED LABOUR SHORTAGES

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development a question about regional skilled labour shortages.

Leave granted.

The Hon. J.S.L. DAWKINS: I understand that the Department of Trade and Economic Development, formerly known as DBMT, last year appointed four regional project officers to specifically identify and assist regional businesses with skilled labour shortages. In cooperation with the federal regional migration mechanisms and schemes, these officers were charged with increasing the number of skilled migrants coming into regional South Australia, as well as attracting overseas business migrants, by promoting business opportunities. These officers now have access to the publication *Attracting and Retaining Skilled People in Regional Australia: A practitioner's guide*, which was prepared by the Standing Committee on Regional Development.

Three full-time officers were placed with the following regional development boards: the Limestone Coast RDB (covering the South-East and the Coorong); the Riverland Development Corporation (covering the Riverland and Murraylands); and the Barossa-Light Development Incorporated (covering the Barossa, Mid North and Yorke Peninsula). Apparently, the fourth position is divided into four part-time arrangements between the Port Pirie RDB; the Northern RDB, which, as you would know, sir, is based at Port Augusta; the Whyalla Economic Development Board; and the Eyre Regional Development Board. It is my understanding that the Adelaide Hills, Kangaroo Island and Fleurieu RDBs have to access Adelaide-based staff from DTED for assistance with skilled labour shortages. My questions are:

1. What relationship exists between these regional project officers and the six regional facilitation groups established by the government?

2. Will the minister consider appointing extra regional project officers at least to match the number of regional facilitation groups and, at best, to provide locally based full-time officers for the northern and western regions of the state as well as the inner country areas?

3. What role, if any, did the minister's department play in developing the practitioners' guide 'Attracting and retaining skilled people in regional Australia'?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I will have to take the last question on notice, as I am not aware of what particular role we played in that. The honourable member asks a very important question. Much of the growth that we have seen in the last decade has been in regional Australia, and a number of issues have arisen in relation to facilitating that growth into the future. Attracting skilled people to those regions and retaining them is very important. We have seen some special cases of the problems that can arise in relation to, for example, the medical profession in just getting doctors or other professionals into some of the what might even be regarded as more attractive regional areas let alone some of the more remote regional areas. This is a significant problem not just for this state but for the country, particularly at this time when unemployment levels throughout the country are at an historic low.

So, there are a number of issues involved. The issue of attracting and retaining skilled labour relates not just to the higher professions but also to a number of less skilled areas as well. There are a number of factors relating to that. The provision of housing is a key factor. For example, in some parts of the South-East where it is particularly difficult to get housing, for some reason the market does not appear to be working as well as one might hope it would to provide facilities in those areas.

Regarding the particular questions asked by the honourable member about extra regional project officers, the resources that the department has available to it are limited. We need to ensure that those resources are employed to the best possible effect in those areas where they are most needed. I am prepared to examine these issues in the light of the honourable member's question and give him a more considered reply.

PLASTIC BAG CHALLENGE

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the minister representing the Minister for Environment and Conservation a question about the recently announced plastic bag challenge.

Leave granted.

The Hon. J. GAZZOLA: On 15 April the Minister for Environment and Conservation (Hon. John Hill) announced that a number of councils had taken up the state government's plastic bag challenge. In particular, Yankalilla and Kangaroo Island councils were given special mention in the minister's news release. My question is: is the minister aware of other councils' efforts to reduce the numbers of plastic bags in circulation?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his question and his interest in regional areas in particular. Kangaroo Island is making a special effort to rid the island of plastic bags with a very aggressive approach being taken towards this problem. I am aware of the efforts of other councils to reduce the numbers of plastic bags in circulation in their precincts. To date, 39 councils have taken up the challenge. The program is designed to assist local councils

in their initiatives to reduce the numbers of single-use plastic bags commonly used in businesses such as supermarkets, etc. The community has taken up the challenge quite well and many of the supermarkets are issuing calico bags and other promotional bags as substitutes.

An amount of $700 000 has been allocated over the next three years to South Australian councils, communities and businesses. This funding is being distributed under the state government's Zero Waste initiative. Recipients will use this funding to cover half the cost of the measures they introduce to ban single-use plastic bags in their area. The recent decision by the national environment ministers for a nation-wide ban on single use plastic bags by the year 2008 has prompted many retailers to initiate reduction strategies. These initiatives have already seen reductions of the order of 20 per cent in plastic bags used throughout some retail outlets in South Australia.

As mentioned in the explanation, rural and regional councils have taken up the campaign. I have seen a press report of the Yankalilla initiative, where a specially designed cotton bag has been ordered for distribution through local schools, including the Yankalilla Area School and the Myponga and Rapid Bay primary schools. The names of organisations assisting with the program will be displayed on the bag and advertised. Each of these schools will be having a special environment event to reinforce the positive messages behind the plastic bag reduction initiative.

Councils on Eyre Peninsula have joined the challenge, including Tumby Bay, Port Lincoln, Streaky Bay and Ceduna. Tatiara council as well as the Kingston and Robe district councils have taken up the initiative, and I also understand that Mount Gambier City Council and perhaps the district council have taken up the initiative. Loxton and Waikerie recently announced their intention to seek information—and I would be surprised if councils at Wattle Range have not taken up the initiative as well—from the KI and Yankalilla councils on how those councils went about their programs. The Karoonda East Murray District Council is distributing 500 free calico bags to households within its council district.

I could go on naming rural and regional councils that have indicated their support for the program, but I am sure we are seeing a trend not only towards environmental awareness but also a continuing sense of civic pride, which will be translated into tourism attractiveness for the regions participating. I often here positive comments from interstate visitors regarding the general tidiness of our streets. The other issues with packaging and the deposit legislation certainly have had a lot to do with that.

The plastic bag challenge will complement the programs and help reduce the litter load on the environment and maintain South Australia as a state which recognises its contribution to a sustainable lifestyle for future generations. The regional councils are playing their role and enthusiastically taking up the challenge to bring about changes within our environment in order to try to get rid of the curse of the blow away plastic bag.

KINGSCOTE MARINA

The Hon. SANDRA KANCK:I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Urban Development and Planning, questions concerning plans for a marina to be built at Kingscote on Kangaroo Island.

Leave granted.

The Hon. SANDRA KANCK: On a recent visit to Kangaroo Island I was informed by locals of plans to build a marina at Kingscote. These people were not opposed in principle to the building of a marina, although they did point out the relative nearness of Wirrina and how many times that development has had financial problems over the years. The locals were concerned about the potential location of any marina at Kingscote. In particular, there is considerable disquiet at the prospect of alienation of public land and the rumoured location having potential adverse environmental and heritage consequences for the Kingscote foreshore and marine environment.

Kangaroo Island's Mayor, Michael Pengilly, told me no application was before the council for a marina and, until such time as one was received, he was not prepared to speak about it. However, Kingscote residents believe that a proposal has been floated and that council has had in camera discussions about it. They are concerned that council is not being straight with the ratepayers. They are also concerned that the proponent is apparently Howard Young and Associates, a company that has also been involved in the contentious Glenelg foreshore development. They are asking what role Planning SA is playing in the discussions and fear that it could be declared a major project by the government. My questions to the minister are:

1. Has the state government had any discussions with any developers regarding the construction of a marina at Kingscote? If so, when and with whom?

2. Is the state government considering providing any financial assistance to the Kingscote marina project? Will the minister rule out the granting of major project status for the project?

3. Have any Planning SA officers been in discussion with the Kangaroo Island council regarding the construction of a marina at Kingscote?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I will refer those questions to the Minister for Urban Development and Planning and bring back a reply.

PASSENGER TRANSPORT BOARD

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development a question about access to public transport for people with memory loss and dementia.

Leave granted.

The Hon. A.L. EVANS: In February 2003, the Statutory Authorities Review Committee tabled a report into the Passenger Transport Board. The inquiry heard evidence from a number of witnesses, including the Alzheimer's Association of South Australia, in relation to problems associated with the South Australian transport subsidy scheme, including the need for the service to take into consideration the transport limitations of members of the community who suffer memory loss and dementia, especially those in the early stages of the disease. As a result of evidence provided by the association and other groups, the committee recommended, along with a number of other recommendations, the following:

The minister and Transport SA resolve the issues raised in relation to the South Australian transport subsidy scheme to ensure the desired interpretation of eligibility criteria and to take into account the service gaps identified by the Alzheimer's Association and others.

The Alzheimer's Association of South Australia reports that people with memory loss, specifically those with early dementia, experience a number of significant challenges. One significant challenge is the issue of mobility.

Essential activities such as attending medical appointments or shopping for necessities become very difficult because people with memory loss and dementia are unable to recognise landmarks or signs to assist them to move from place to place. As a consequence, family members, friends and support organisations such Alzheimer's Australia (SA) must step in and fill the gap. More often than not, people with memory loss and dementia end up paying full taxi fares. The association is advocating for subsidised taxi fares because it would assist such people to engage in the full range of life and lifestyle activities, activities which are currently being obtained at a significant cost, and a cost which is causing people to experience considerable financial hardships. My questions are:

1. Given that it has been over 12 months since the report into the Passenger Transport Board was tabled, will the minister advise whether the government intends to extend the eligibility scheme under the South Australian transport subsidy scheme to include people with memory loss and dementia, specifically those who have lost or relinquished their driver's licence and who are in the early stages of dementia?

2. If yes, will the minister advise whether additional funding will be allocated to the Public Transport Board to meet the demand of assistance to people with memory loss and dementia in the 2004-05 budget? If not, when?

3. Will the minister advise whether the government intends to initiate a research study to evaluate the demand and usage of people with memory loss and dementia who have lost or relinquished their driver's licence through the South Australian transport subsidy scheme?

4. If yes, will the minister advise of a likely starting date for the research study?

5. Will the minister advise whether advice on the terms of reference and evaluation criteria for the research project will be sought from but not limited to medical experts and peak organisations supporting people with memory loss and dementia?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I thank the honourable member for his important questions. I will refer them to the Minister for Transport in another place and bring back a reply.

PARLIAMENT HOUSE, CAR PARK

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking you, Mr President, a question about the Parliament House car park.

Leave granted.

The Hon. J.F. STEFANI: On arriving at Parliament House on Monday, I found that the designated car park for members was fully booked. Vehicles were parked in each of the bays but they were also double parked in the aisles of the car park. I sought to park my vehicle immediately outside that area and again found that there were no spaces and that vehicles were double parked in the aisles of the car park. I then proceeded (against the wishes, I know, of the Festival Theatre car park) to park my vehicle on the lower ground floor. I know that on previous occasions Festival Theatre car park attendants have expressed their displeasure of members using other areas of the car park. My questions are:

1. Mr President, are you able to indicate whether members of parliament are permitted to park their vehicles outside their designated area when it is full?

2. Will this be a continuing problem? I have observed it to exist on previous occasions.

The PRESIDENT: The matters that the Hon. Mr Stefani has raised are in the province of the Joint Parliamentary Services Committee. I am aware of those problems from my experience on the Joint Parliamentary Services Committee. A considerable amount of work has been done in discussing this matter with Festival Centre car park representatives. Recently, the problem became quite acute. There was a renegotiation of the agreement between the parliament and the Festival Centre car park that provided, I believe, an extra 10 car parks. There is also an agreement (contrary to the member's belief that you cannot go and park somewhere else) that, if the allocated car parks for members of parliament are full, you are entitled to park wherever you can.

This matter has been raised with me outside the chamber in recent days. From time to time, for one reason or another, members or staff are provided with car park passes. Comments have been passed on to me that people from Parliament House have no recognition of some people parking in the members' car park. So, we are continually monitoring that issue. As a consequence of the previous inquiry, I will raise the matter with the building manager and we will be in a position to bring back further advice at a later date.

The specific answer to the member's question is that it seems the greatest problem arises on a Wednesday, in particular, because of other parliamentary activities or recreations that take place. Therefore, there is an agreement that, if a member cannot find a park in the allocated area, they can move into one of those other areas and an adjustment will be made. So, the member acted with propriety in the action that he took.

PRISONS, REHABILITATION PROGRAMS

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

Leave granted.

The Hon. A.J. REDFORD: On page 46 of last year's correctional services annual report, the department reported to the parliament that it was undergoing a process of identifying groups within the offender population for whom targeted programs are necessary. It highlighted those with mental health issues, Aboriginal offenders, those of Asian or other non-English-speaking backgrounds, women, sex offenders and violent offenders. It is my rare duty to stand here today and congratulate the minister on one of his exceptionally rare cabinet wins. I note that today he issued an important press release entitled 'Prison rehabilitation programs about to begin'. I know that on this side of the chamber we were all shocked and aghast that he managed to succeed in something in relation to his dealings with the current Treasurer.

In the program that he announced (and I congratulate the minister on the program), the government will allocate $1.5 million a year for four years for prison rehabilitation programs for violent offenders and sex offenders who are the major focus of the package. It goes on to explain in some detail—there is a little bit of politics in it, and I will not

demean the chamber by referring to some of the political statements in the press release—

The PRESIDENT: That would be very wise.

The Hon. A.J. REDFORD: Thank you, Mr President. I know that the minister will not do that, either. It goes on to refer to the fact that a Canadian expert in treating sex offenders has been retained. He will be in Adelaide to run training sessions at the Yatala Labour Prison. A second Canadian expert has been brought to Adelaide for his experience in delivering programs; he will return in July. I also note that we had 1 019 prisoners participating in other programs last year. In light of that, my questions are:

1. What outcomes are expected in relation to the implementation of the violent and sex offenders' program?

2. What other aspects are there in this package, given that the press release refers to the former as a major focus?

3. What programs are in train in relation to literacy, and particularly the issues raised in the annual report regarding non-English-speaking background prisoners?

4. In relation to mental health issues, Aboriginal offenders, Asian or other non-English-speaking background prisoners and women, what programs are likely to be implemented in future, as announced in the department's annual report?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I thank the honourable member for his question and his faint praise. I have a very sensitive Treasurer who deals with correctional services, and I have a very sensitive cabinet which ensures that the budget is adequately supplied to fill a gap in the services for rehabilitation programs that were lacking when we took government. The government has provided the Department of Correctional Services with an additional $5.5 million over four years for rehabilitation programs for high risk, complex need prisoners and offenders. As the honourable member said, priority will focus on sex offenders, violent offenders and appropriate rehabilitation programs for Aboriginal people.

The department has commenced recruiting staff, as the press release said, and we expect program activity to commence soon. The extra surprise in the package is the way in which the Canadian government has cooperated with our rehabilitation services without requests for funding. As the honourable member said, it is very good. I was surprised as I thought I would have to tread carefully with the cost of the program, and to perhaps try to get some program on-selling into other Australian states with some of the uniqueness that is associated with these programs, and to try to balance the South Australian correctional services books.

Fortunately, the pleasant surprise is that the Canadian correctional services people do not charge and insist that you do not charge other people if you pass on the intellectual property associated with the program. I do not have full details of that but it seems that they are certainly more advanced in rehabilitating prisoners in Canada than they are in the United States of America.

The United States tend to guard the perimeters only and have something like 600 000 prisoners going outside their walls without any rehabilitation programs at all. It is a pleasant surprise for another commonwealth country to cooperate as they are. We certainly will be building up a cooperative response with the Canadian team—small team that it is—and I met with them yesterday. Dr Rouleau has been conducting the clinics, the courses or training programs in this state and, as the honourable member says, a small team will be put together to drive those initiatives within our prisons.

The Yatala Labour Prison will be the first to pick up on those programs and, hopefully, I will be able to report progress for the treatment programs that we are told can significantly reduce the offending of sexual offenders. The general view of the briefings that I had in opposition—and this is no reflection on the previous government, but on the information that was being supplied—was that sexual offender programs in the main did not work; there was no solid evidence that they actually worked. But, in fact, in general there was no solid evidence taken because there was not enough interest in supplying the programs in the first place to try to measure outcomes. But the Canadians have done that, and they say that they can significantly reduce the incidence of reoffending and return some of the offenders back to a normal life. So, we have to give offenders the appropriate chances in life through these programs.

The honourable member mentions literacy and numeracy, and I must say that the programs being run in the Mount Gambier gaol in anger management, literacy and numeracy are quite advanced and are producing good results. The literacy programs that are run with our own correctional services division are starting to pay dividends as well.

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: We are trying to do that. In some cases it is difficult to follow the progress of a prisoner because of the fact that once a prisoner is released you do not have the power to hold people in programs. We would like to be able to follow through with those programs to make sure that they are attached to TAFE courses on the outside.

I thank the honourable member for his very constructive question. I understand his interest in it, and I am sure that I could obtain an invitation for him to visit the Canadian centres in Ottawa and other places to gain first hand experience of the programs that are in place and to talk to the Canadian authorities about these rehabilitation programs that, I hope, we will be able—in a cooperative way—to move interstate, because the interstate authorities are starting to show interest.

MATTERS OF INTEREST

RURAL WOMEN

The Hon. CARMEL ZOLLO: Following the participation of a South Australian delegation in the Third World Congress for Rural Women in Madrid in October 2002, several meetings were held at Parliament House to enable those women who took part in the delegation to discuss ways in which they could influence and contribute to their rural communities. At the last meeting a suggestion was put forward by one of the delegates, Linda Eldredge, to see rural women empowered in the same manner as their city counterparts by having access in rural South Australia to the well-respected education program, the Australian Institute of Company Directors course.

The delegates decided that it would be appropriate to encourage and empower rural women to undertake such an education program, which would enable them to confidently participate in the process of being nominated, elected and

duly responsible for a position on the board of a company—a challenge that would bring about real change.

The delegates recommended that the South Australian contingent link with Partners in Grain, a Grain Research and Development Corporation funded project. At the time, this reference group was undertaking negotiations to bring the company directors course to regional South Australia for the first time in 2004. I met with the main proponents of the proposal: Linda Eldredge, Judy Wilkinson and Jeanette Long. Both Linda and Judy were participants at the Madrid Rural Congress and Jeanette attended the Washington Congress, as well as being South Australia's RIRDC Rural Women's award winner for 2004.

Through the auspices of Mr Holloway's then office and PIRSA—in particular, I should thank Mr Ian Pickett—financial assistance was made available via FarmBis. Recognition was given to the importance of this project as a pilot for similar training activities. During March, a company directors course was run regionally by Partners in Grain at Clare, which was a first in South Australia. It attracted 25 participants, 21 of whom were FarmBis eligible, with nine of the participants being women. I know that many participants were able to attend only because of the FarmBis funding.

Because of the demands of running rural businesses, the course was structured around those demands to enable more study and reading time. I was pleased to be invited to join the group for lunch on one of the days and, in particular, I was pleased to see the greater enrolment of woman. I briefly sat in on one of the sessions before lunch and noted the enthusiasm of the participants. Comments made by them on the day included, 'This is one of the best courses I have ever done' to 'I am able to do this course only because of FarmBis funding.' The participants attending came from south of Adelaide, the Riverland, Eyre Peninsula, the Clare Valley, the Mid North and Yorke Peninsula.

The objective to see greater female participation fits well with government policy and strategy. Members would be aware that, earlier this year, the Premier announced our commitment to see 50 per cent of all positions on government boards and committees filled by women by 2006. The current level of representation of women stands at around 32 per cent. In relation to nominations for membership, it is now required that three names are put forward for consideration, comprising both genders.

Several weeks ago, the Premier, together with minister Key, launched a statistical profile of South Australian women. The launch reaffirms the government's commitment to see the full and equal participation of women in the social and economic life of our state. Australia wide, women make up one-third of Australian farmers and they sign 80 per cent of farm cheques. However, such numbers are not reflected in positions of leadership.

The objective of the company directors course is to develop the practical skills and knowledge of directors and officers, thereby contributing to improved individual company and board performance. It is all about increasing involvement in rural communities and business, which will lead to greater prosperity and self-reliance. I acknowledge the commitment and willingness of the organisers and presenters of the company directors course; they made it possible to run the course in regional South Australia. I again congratulate Linda Eldredge, Judy Wilkinson and Jeanette Long for their diligence and their advocacy for greater women's participation.

DIRECTOR OF PUBLIC PROSECUTIONS

The Hon. R.D. LAWSON: The Premier's statement today that he has instructed the Attorney-General that the government wants an Elliott Ness-type person appointed as the Director of Public Prosecutions to replace Paul Rofe QC is a great illustration of the fact that this government simply does not understand the significant elements in our criminal justice system. I am sure the Premier was not speaking literally in suggesting that Elliott Ness be appointed. However, what he was intending to convey was that he wants an Elliott Ness-type DPP. I imagine that even this Premier is aware of the fact that the DPP Act stipulates that the incumbent shall be a legal practitioner of at least seven years. I doubt whether the Premier is aware of the wise adage that the only thing more dangerous than a lawyer who wants to be a policeman is a policeman who wants to be a lawyer.

The notion that we need an Elliott Ness-style DPP shows that this government does not understand the proper role of the DPP under our system. What this Premier is really calling for is an American DA-style public prosecutor. The Premier envisages having a tough, media savvy prosecutor. He wants to politicise the prosecution service in the same way as it has become highly politicised in the United States of America. He wants to erode the very fabric of our criminal justice system. Our Director of Public Prosecutions Act and the whole system under which the Director of Public Prosecutions operates is based on the fact that the director is independent, subject to certain very limited exceptions of control or direction by elected officials.

More importantly, the culture of our criminal justice system and our prosecution system is one of independence, of fearless service in the public interest. A delicate balance must be struck if public confidence in our system is to be maintained. This government's actions in recent weeks have undermined the independence of the criminal justice system and public confidence in our system. This government's grandstanding, especially by the Premier and his Attorney-General with their cynical manipulation of the media and information, has completely undermined Mr Rofe. Let there be no mistake: this government has made a concerted effort to make it impossible for Mr Rofe to continue in office.

The sophistry that has been engaged in by the Attorney-General and the Premier is truly amazing. The Attorney-General refused to express confidence in Mr Rofe for a whole week when he was asked to do so countless times by the media. When he appeared on Father John Fleming's program on Sunday evening, he was asked whether he had confidence in the DPP. He said that he did, notwithstanding all the want of expressions of confidence during the week. The Attorney-General told a particular commentator and a particular audience that he had confidence, when all the while he had been undermining the DPP by drawing attention to the rather extravagant language used by the Solicitor-General in a report which called Mr Rofe inept in a particular respect.

Earlier this week, in parliament the Premier attacked the Law Society and the legal profession generally. Once again he showed that he does not understand the importance of public confidence in the justice system. This Premier and this government are prepared to do and say anything to achieve what they deem to be electoral popularity, notwithstanding the damage that they are doing to the fabric of our criminal justice system. It is deplorable.

Time expired.

ACQUIRED BRAIN INJURY

The Hon. G.E. GAGO: I would like to draw attention to an event that I was honoured to attend recently. Last December on behalf of the Hon. Stephanie Key I was privileged to launch two programs which are run by the Brain Injury Network of South Australia and the Brain Injury Options Coordination Agency. These organisations run learning and life skill programs in the Movers and Shakers CD-ROM. These two initiatives aim to protect the people who suffer from acquired brain injury, a condition that is becoming increasingly prevalent in South Australia. At present, approximately 3 600 people in this state are affected by acquired brain injury. Acquired brain injury may be caused by a traumatic head injury from a motor vehicle or other accident, a stroke, a brain tumour, or serious illnesses such as meningitis and encephalitis. This increase provides huge challenges to service providers as well as support networks, carers, educators and family members.

Many people who suffer from acquired brain injury face long periods of hospitalisation and rehabilitation as well as having to cope with the huge challenges of readjusting to family life and work. This is where organisations such as the Brain Injury Network of South Australia and the Brain Injury Options Coordination Agency fit into the picture. These organisations aim to assist people who have a significant and permanent disability as a result of an acquired brain injury and their relatives, many of whom act as full-time or part-time carers. Another aim of these organisations is to provide education, advocacy and support to increase sufferers' independence and self-reliance in order to rebuild and enhance their lives.

The Learning and Life Skills program provides opportunities for people with acquired brain injury and their relatives to participate in educational courses, workshops, fora and seminars to build on their current skills and abilities. This program will provide people with information about: independent living skills; relationships; depression; employment; financial management; chronic pain; brain injury; epilepsy and seizures; compensation and legal issues; and other matters. This valuable program will no doubt have a positive impact upon the way people with brain injuries cope with everyday activities by providing them with useful and practical information to improve their quality of life. This program is also targeted towards educating relatives of people with brain injury and the wider community about the ongoing impact of brain injuries and ways that they can help sufferers assume control of their lives.

The second program, the Movers and Shakers CD-ROM, provides an opportunity for audiences to gain a greater understanding of the range of activities in which people with acquired brain injury can participate. For example, the CD-ROM shows clients of the Brain Injury Options Coordination Agency rock climbing, playing netball, snorkelling, scuba diving and operating computers. This is indeed a very dynamic and uplifting CD-ROM and it provides excellent examples of people with brain injuries celebrating their abilities and achievements and developing a positive outlook in the face of tremendous adversity.

The launch of these programs coincided with the International Day of People with a Disability, an extremely worthy celebration. This day is organised in recognition of the skills and abilities that disabled people have and encourages them to achieve their full potential. Agencies that deal with people suffering from acquired brain injury provide an important and largely unrecognised service. Given the growing demand of these agencies to provide assistance to the disabled, who remain an extremely marginalised and disadvantaged group in our society, I think it is only fitting that their role be highly commended and recognised by members of this house.

LABOR GOVERNMENT

The Hon. J.M.A. LENSINK: Today I wish to draw some conclusions about the Rann government's likeness to Pauline Hanson. In her heyday, Hanson caused many Australians embarrassment with her provocative attacks on minorities with comments such as Australia was 'in danger of being swamped by Asians', criticism of the 'assumption that Aboriginals are the most disadvantaged in Australia', the Family Law Act and child support, the privatisation of Qantas, foreign aid, and her call for the reintroduction of national service. These were easy targets in 1996 following the politically correct Keating years, the recession we had to have, and the collapse of the State Bank which led to high unemployment and low levels of business confidence.

The rich vein of resentment was ready to be tapped; recipients of funding based on their ethnicity were easy scapegoats. Scapegoating is a regular feature of this government's public commentary. In the last two years, the arts community has been told to 'stop whining' and 'grow up'; electricity generators have been labelled 'greedy blood-suckers'; certain unions are 'bully boys'; lawyers are 'the gang of 14', 'trendies' and 'snobs' who 'live in the leafy suburbs'; hoteliers are 'pokie barons' from whom their poker machines will be 'ripped out'; criminals are 'low lifes'; and those who rent out homes are 'wealthy property accumulating opportunists'—once again, all easy targets about whom an undercurrent of resentment or envy can be tapped. There are other similarities in media management. Hanson was chaperoned by John Pasquarelli, who carefully vetted her statements and her first explosive speech. Rann's statements are just as carefully scrutinised, but he needs no Svengali to advise him. He gets words from Bob Ellis and concepts from Tony Blair. In Hanson's maiden speech, she referred to 'fat cats, bureaucrats and do-gooders'.

In opposition Rann regularly referred to fat cats. In government they are his reluctant fall guys when public debate goes sour and the government needs to respond. For example, last year the Essential Services Commissioner was warned that his job was on the line because of electricity prices. In March this year senior public servants were told the same in relation to homelessness. The Premier and Attorney-General have successfully underminded the office of the DPP while he was facing health problems, and that scalp they now have. The language of Hanson and the Rann government when applied to scapegoats is blunt, unpolished and uses the mental shorthand of stereotypes. It takes no responsibility for providing a complex explanation to complex solutions and is thus the antithesis of true leadership.

How can political figures from the opposite end of the spectrum have so much in common? Hanson was a fish and chip shop proprietor who was unashamed of her inability to grasp complexity. Mike Rann is a journalist with decades of experience in the political game. He claims Don Dunstan as his hero—the 'maestro of the possible' he has called him—and based on this rhetoric this Premier should be interested in social reforms, bold visions and explaining complexity. But actual reforms can be painful, especially when they are not popular, so the Premier compensates for lack of action by

talking tough and kicking easy targets. Hanson harnessed community disaffection with politicians. Rann seeks to harness disaffection with anyone to whom he can conveniently lay blame for South Australia's problems.

COMPUTER VIRUSES

The Hon. IAN GILFILLAN: I have no doubt that members of this place have heard that there is something going on in the internet at the moment and that it is not a good thing. Computers around the world are constantly rebooting, IT people are pulling out their hair and email is taking an eternity to get from place to place. The Sasser worm is active around the world and is doing an enormous amount of damage. We are all aware that viruses, trojans and worms are a constant problem for people who connect their computers to the internet, but not everyone is affected. I will explain why some are safer than others in a moment.

This attack, a nasty piece of business created by an irresponsible vandal, gets on to a computer without any action by the user at all. It affects users of a number of recent versions of Microsoft Windows and sneaks in through an open door that the Windows system uses itself. This is important. The media was originally informing the world that this problem affects every computer that is connected to the internet. I will quote from the brief article in yesterday's *Advertiser* at page 2:

> The Sasser worm can infect any computer that is switched on and connected to an internet service provider and, unlike most other worms or viruses, is not spread by email.

This is not correct and it is important for members to understand this crucial piece of information. It did not affect all computers. Anyone running non-Microsoft computers were safe from infection and only affected by the worm slowing down all the connections between Microsoft computers. Let me put this in no uncertain terms. The user was safe if he or she were asking Apple, Sun, UNIX, BSD, Linux (your flavour of Linux could be RedHat, Fedora, Debian, Gentoo, SUSE or any of many others). If you were using anything except some versions of Microsoft Windows you were safe. Even if you were a Windows user, you would have been safe had your computer had the latest software patches, but I will get to that in a moment.

I am very keen for South Australia to look at the benefits of switching over more systems to open source alternatives. There are many organisations that are well on the way to achieving this, including Telstra, Coles Myer and, most recently, David Jones. My office received a very interesting phone call yesterday from Novell to say that it now distributes a fully supported version of Linux called SUSE and that it is doing this commercially around Australia. This is something we could be doing here in government in South Australia with full commercial support.

In the interests of fair play, I sent around a little media piece yesterday pointing out that the Sasser worm does not affect computers that do not run Windows. There are reasons why open source is safer, and I summarised them as follows. There is a clear separation of functions like email from other applications so that hostile code cannot be run without significant user intervention. There is a greater variety of systems, programs and methods making it impossible for the bad guys to exploit large numbers of identical set-ups. The open source community has thousands of eyes routinely scanning the source code of this software so that vulnerabilities are spotted early and fixed quickly. I received a very pleasant response from a physical security consultant in London, stating:

> I am powerfully impressed by the willingness of the Hon. Ian Gilfillan to take a direct stand on this important and controversial issue. The best dynamic for fair treatment of all sides of an issue comes from both sides being willing to make a strong, well-argued public stand on the issue.

There are more flattering comments, which I will not put into this particular contribution now. I also believe in open and fair debate and for the sake of fairness we should give Microsoft some credit where it is due. It did identify the problem and it has distributed a patch, which was made available for anyone to use 21 days ago. I was forced to ask why people did not have the current patch installed. It is a painful and time consuming process. The United States tends to assume that people are connected through broadband link. That is not the case. In fact, many people only use dial-up telephone lines and to install patches takes hours and, at times, days.

It is quite clear that, first, the open source system is far safer from being contaminated by viruses and so-called Sasser worm and therefore my recommendation is that in this place and the other place, both houses of parliament, we introduce open source and urge the government to take it on widely in government departments. We need to get moving on open source and need to do it now.

NEWSPAPER AWARDS

The Hon. J.S.L. DAWKINS: In March this year I was pleased to attend the 2003 newspaper awards function conducted by Country Press SA at Victor Harbor. This was the third occasion on which I had been involved with the award for best community involvement. Sponsoring and judging this Country Press SA award has once again given me the opportunity to recognise the strong links between rural and regional newspapers and the communities they serve. Numerous entries all demonstrated the ability and capacity of the local press to know its area and tap into a particular issue or cause with appropriate publicity and editorial support.

As with the two previous years, they included a wide range of examples of community support and initiative. Some campaigns were quite prolonged, while others were brief and succinct. Such involvement in community projects and the promotion of goals and achievements results in the distinct feeling of ownership that readers have towards their local newspaper. Country newspapers can do a great deal to foster local pride and aspirations and in the last 12 months this has been particularly reflected in the entries of seven newspapers, the first four of which I mention received a commendation.

The Leader at Angaston and *The Barossa and Light Herald* are Barossa based newspapers but are distinctly different publications, both in style and the manner of their distribution. However, both papers put significant and sustained effort into publicising and supporting a local man who, despite having endured 20 knee operations, undertook a marathon swim from Blanchetown to Swan Reach to raise funds for Camp Quality.

The Loxton News got right behind the local Scout group when it became evident that a lack of volunteer leaders threatened the continuing existence of the group. The support and publicity not only resulted in a number of potential leaders coming forward but also helped ensure that a

contingent from Loxton attended the recent Jamboree in the Adelaide Hills.

The Yorke Peninsula Country Times responded to the call for help from the local National Trust branch, which has a highly revered property known as Matta House, which is badly in need of a new roof. However, replacing the existing shingle roof would cost $35 000, compared with $10 000 for an iron roof. *The Yorke Peninsula Country Times* ran a survey to gauge community opinion. Once it was recognised that the retention of a shingle roof was the overwhelming response, the paper developed a fund-raising campaign in cooperation with the National Trust.

Third place was awarded to *The Katherine Times*. This paper ran an excellent campaign of encouragement and support for the many RAAF personnel from the nearby Tyndall Air Base stationed in Iraq during the war in that country. The large community response resulted in a published letter of thanks from the RAAF and a request for a subscription to *The Katherine Times* from the personnel in Iraq.

Second place went to *The Plains Producer*. *The Plains Producer* got right behind a novelty shearing event, which was designed to publicise and attract additional people to the annual Balaklava show. Two local men, one a broken down truckie and the other a local accountant, became involved in a friendly wager about who could shear the most sheep. The show society president enlisted the assistance of the paper to promote this contest as an addition to the normal shearing competition. It became the talk of the town and resulted in a large audience for the shearing contest and a significantly greater attendance at the show.

First place went to *The Islander*. *The Islander* utilised the 2003 local government elections to encourage the community of Kangaroo Island to form a closer relationship with its council. Complementing the paper's usual close coverage of council activities was a campaign to emphasise the importance of voting at the local elections. This included a comprehensive lift-out guide to all the candidates and editorial comment. The subsequent reporting of the election results included the news that the number of KI residents who voted had increased by 40 per cent over the 2000 election. In conclusion, I place on record my congratulations to *The Loxton News*, which won first place in the category for circulation under 5 000; and also to *The Mount Barker Courier* for winning first place in the over 5 000 award.

Time expired.

NATIONAL DAY OF THANKSGIVING

The Hon. A.L. EVANS: On 29 May 2004, Australia will celebrate the inaugural National Day of Thanksgiving. The theme to launch the first ever National Day of Thanksgiving is: 'Thanking God. . . thanking each other'. The National Day of Thanksgiving was launched by His Excellency, the Governor-General of Australia, Major Michael Jeffery, on 11 February 2004 at Government House, Canberra. In his speech, His Excellency drew a distinction between Australia Day and the National Day of Thanksgiving, explaining that the National Day of Thanksgiving is different from Australia Day—the former being a chance to publicly celebrate our faith, and the latter being a celebration of our nationhood. The National Day of Thanksgiving has come about as a result of numbers of individuals and organisations making repeated calls for a national day to give every Australian the opportunity to express gratitude of and give thanks to God and to others.

The momentum to mark a day of thanksgiving has been building for many years. Indeed, over the past two decades, certain events are acknowledged as being major building blocks towards the final concept. In 1988, 50 000 Christians from all over Australia travelled to Canberra to dedicate Australia and the new Parliament House to God and prayer. This was followed by prayer and fasting events in 1996 and 1998 convened by Praise Corroboree; and then finally, in 1998, about 30 000 Christians gathered for an all night prayer vigil at Parliament House in Canberra to pray for the nation. In 2004, Australia's most significant prayer organisation, the Australian Prayer Network, put forward for comment the concept of the National Day of Thanksgiving to various organisations. The idea quickly gained support, including from the National Prayer Council.

The conveners of the prayer events during the 1980s and 1990s had gained their inspiration and conviction from the preamble to the Australian Constitution, which says 'Humbly rely on the blessings of Almighty God'. The National Day of Thanksgiving on 29 May will be a day to give clear celebration to the expression of the words found in the Australian Constitution. Even history notes Australia's foundation of God and prayer. De Quiros, when he journeyed across Australia in 1606, declared this land to be Terra Australis del Espirtu Santo, or 'The Southern Land of the Holy Spirit'. Particular support for the National Day of Thanksgiving has been given by many Aboriginal Christian leaders, who have suggested that it could be a day when Aboriginal people express thanks to God for those who have come to share their land with them, thus incorporating reconciliation as part of the concept of the day.

Understandably, on the day a significant demonstration of prayer and thanksgiving leadership will come from the church. Other prayer and thanksgiving suggestions include an opportunity for people to appreciate and thank their parents and grandparents; for employers to express thanks to their employees in their efforts in the workplace and employees to do the same for their employers; families could be encouraged to see the National Day of Thanksgiving as an opportunity to express love and thanks for each other for what each means and contributes to their life; churches could use the day to bring together people of many cultural and ethnic backgrounds who make up the community; and family fun festival days could be organised by churches to bring people together to celebrate all we share in common and to bring hope and renew our community spirit.

I look forward to seeing the National Day of Thanksgiving become a significant unity building day on the nation's calendar. Indeed, the Prime Minister in his prime ministerial statement offering his support to the day said:

> Such a day encourages us to recognise the values and people that sustain us as a nation and to be grateful for those precious things we sometimes take for granted.

In time, I believe that the day will become one of the country's most significant days of celebration because it has the potential to contribute positive benefit to both the physical and spiritual dimensions of the nation.

Time expired.

VICTIMS OF CRIME

The Hon. J. GAZZOLA: I move:

That the regulations under the Victims of Crime Act 2001 concerning compensation, made on 18 December 2003 and laid on the table of this council on 17 February 2004, be disallowed.

The majority of the Legislative Review Committee voted to recommend disallowance of this regulation at its meeting this morning. The regulations specify which reports the Crown Solicitor will pay for in a victim of crime compensation claim. These include hospital reports, reports from a general practitioner, dentist, and, where prior approval has been obtained, a report from a medical specialist. The committee received submissions from the Australian Psychological Society and Mr Russell Jamison, a solicitor who practices in the victims of crime field, that the Crown should pay for reports from a victim's treating psychologist and social worker.

The Hon. IAN GILFILLAN secured the adjournment of the debate.

OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION COMMITTEE: STATUTES AMENDMENT (WORKCOVER GOVERNANCE REFORM) BILL

The Hon. J. GAZZOLA: I move:

That the report of the committee on the Statutes Amendment (WorkCover Governance Reform) Bill 2003 be noted.

Initially, the committee referred the bill on its own motion and then on 7 August 2003, pursuant to a notice in the South Australian *Government Gazette*, the Governor referred examination of the Statutes Amendment (WorkCover Governance Reform) Bill 2003 to the committee. The bill is based on a report prepared by the Department of Treasury and Finance. In its report, the Department of Treasury and Finance argued that there were a number of anomalies and accountability gaps in WorkCover's governance structure, and the legislation introduced by the minister reflects recommendations to rectify identified anomalies.

Clause 5 of the bill proposes to apply the Public Corporations Act to WorkCover, which will align WorkCover with other major government business enterprises. It has been argued that this will clarify the relationship between the WorkCover Corporation and the Crown. Whilst there is substantial public interest in the successful independent operation of WorkCover, some stakeholders are opposed to unnecessary ministerial intervention in the decision making processes.

However, the government has a responsibility to ensure the continued viability of the scheme. Three main issues were identified by stakeholders in relation to the application of the Public Corporations Act. These were:

- the degree of ministerial control in regard to the development of a charter and performance statement;
- delegations—those that particularly relate to claims agents' contracts; and
- the potential for WorkCover to pay a levy to the government. This relates to circumstances where the Treasurer explicitly guarantees the liabilities of WorkCover and is described in section 29 of the Public Corporations Act.

The committee supports the Public Corporations Act being applied to the WorkCover Corporation Act but recommends that a performance agreement and charter, as required under the Public Corporations Act, be developed in consultation with WorkCover Corporation's key stakeholders.

The committee notes that delegations to claims agents may be terminated by a minister under the current legislation. The minister gave assurances to the committee that it is not his intention to terminate claims agents' contracts through application of the Public Corporations Act. These assurances have been accepted by the committee. The minister informed the committee that WorkCover would be protected from imposition of a levy pursuant to section 29 of the Public Corporations Act because of the government's competitive neutrality policy. The committee recommends amendments to legislation to reflect the minister's intent to ensure that the statutory obligation to pay a levy is not imposed on WorkCover.

The committee considered the merit of the proposal to remove the occupational health and safety and rehabilitation specialists from the WorkCover board and the potential effectiveness of the proposal to create specialist adviser roles. The committee found that the majority of stakeholders were opposed to the proposal to remove the occupational health and safety adviser and rehabilitation adviser positions from the WorkCover board. Other stakeholders argued that the constitution of the board should focus on engaging the right skills and expertise for the business environment. Concerns were raised that the creation of independent adviser positions could result in the board's not being provided with critical information in a timely and effective manner.

The committee supports the abolition of specialist advisers from the WorkCover board. However, the committee recommends that the legislation be amended to provide a specific requirement for specialist advisers to regularly report to the WorkCover board. Clause 7 of the bill proposes to provide the Governor with the power to remove board members on the recommendation of the minister at his or her discretion. According to the Department of Treasury and Finance, monitoring ongoing performance is not sufficient if the minister does not have the power to remove boards that perform poorly. The minister argued that there may be situations in which an individual or board has poor decision making capacity that falls short of negligence and, therefore, this power is important. The power is provided to the minister in regard to other large corporations such as SA Water, Forestry SA, TransAdelaide and Adelaide Cemeteries.

The committee opposes the proposal and believes that the existing conditions under section 6(2) are an adequate basis for removing board members. The conditions for removal of board members under section 6(2) are: breach or non-compliance with conditions of appointment; mental or physical incapacity; neglect of duty; or dishonourable conduct.

Clause 13 of the bill proposes that the CEO will be appointed by the Governor. The Department of Treasury and Finance argued that the board/chief executive officer relationship should be such that the CEO should not be a member of the board. Some stakeholders were opposed to the proposal because of the potential for conflict, and it was argued that this could be interpreted as ministerial interference. The majority of the committee opposes the proposal for the Governor to appoint the CEO.

Clause 18 of the bill proposes the establishment of an average levy rate committee with royal commission powers and for the minister to develop guidelines by which the committee will operate. The Department of Treasury and Finance report stated that, in the past, WorkCover boards set

levies in a non-transparent manner with little accountability. It recommended the establishment of an average levy rate committee modelled on the Motor Accident Commission's Third Party Premium Committee. The Occupational Safety, Rehabilitation and Compensation Committee considered the merit of establishing the proposed average levy rate committee and the likely influence it might have on the WorkCover board's performance.

There are several differences between the Motor Accident Commission and WorkCover, the most notable being the duration of claims and the consequent potential costs that are incurred by WorkCover in managing its 'long tail' claims. Another factor is WorkCover's unique responsibility for the rehabilitation of injured workers. While several stakeholders voiced opposition to the creation of an average levy rate committee, others were opposed to the application of the Royal Commission Act.

The committee is aware that in other Australian workers compensation jurisdictions the levy or premium setting process is subject to much more scrutiny than is the case in South Australia. The majority, on the casting vote of the chair of the committee, supports the proposal to create an average levy rate committee. However, the committee recommends that improved transparency and accountability will be achieved by the average levy rate committee being subject to regulations rather than ministerial guidelines.

The majority of the committee considers that the application of royal commission powers is excessive and, therefore, this proposal is not supported. However, the committee does recommend the application of specific powers to compel attendance and provide information. The committee also recommends that the transparency of the average levy rate calculation process be improved by the development of regulations that include the requirement to make the formula publicly available.

The committee considered the effectiveness or adequacy of some key terms defined in clause 17 of the bill and, in particular, the definition of the term 'solvency' and the definition of the term 'average levy rate'. The committee was concerned that the proposed definition for 'solvency' appears to depart from the common law definition. The committee is not able to make a recommendation on the appropriateness of the definition of 'solvency'. The committee recommends that, if there is to be a departure from the common law definition, it be set by regulation.

The former chair of the WorkCover board questioned the definition of the term 'average levy rate'. Despite its best efforts, the committee was not able to receive evidence from the current WorkCover board regarding the appropriateness of the proposed definition. To ensure that the proposed definition of 'average levy rate' is workable, the committee recommends that the opinion of the current WorkCover board be sought.

The committee heard from 18 witnesses during the inquiry and received 26 submissions. However, at the time of producing this report, the committee had not received a submission from the current WorkCover board. As a result of this inquiry, the committee identified six main issues, has made 11 key recommendations and looks forward to a positive response to them. I take this opportunity to thank all those who have contributed to this inquiry. I thank all those who took the time and made the effort to prepare submissions for the committee and to speak to the committee. I extend my sincere thanks to the members of the committee, the Hon. Ian Gilfillan, the Hon. Angus Redford, Mr Paul Caica MP, Mr Chris Hanna MP and Mrs Isobel Redman MP and also the staff of the committee, Mr Rick Crump and Ms Sue Sedivy.

The Hon. IAN GILFILLAN: I will speak briefly to this motion rather than adjourn the debate, because I am sure there will be comments from other members of the committee. It was a very significant contribution to the evolution of what one looks forward to as being effective legislation on a matter that is absolutely vital to worker protection, workers compensation and also to a viable employer/employee relationship economy in South Australia.

Many of the issues raised were contentious. I felt, with pleasure, that the committee worked harmoniously to evolve what was the best result with respect to the problems that arose. As was observed by the Hon. John Gazzola, there were majority decisions in certain cases so, clearly, we were not unanimous in every matter. But it was done without acrimony and, except in very rare cases, I believe that the committee came to its conclusions free from any party political pressures and that, of course, is the optimum way for committees of this place to work.

I share the Hon. John Gazzola's appreciation of others who worked on the committee, both members and staff, and those who gave evidence. Many of them gave very generously of their time—and I also include the minister (Hon. Michael Wright) in that category. However, this does not deal with the legislation, and I expect that, when the legislation comes before this chamber, we will have a more detailed debate, and I intend to say more about the various issues at that time. I support the motion in respect of this very valuable contribution made by the committee.

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

MIDWIVES BILL

The Hon. SANDRA KANCK obtained leave and introduced a bill for an act to provide for the registration of midwives; to regulate midwifery for the purpose of maintaining high standards of competence and conduct by midwives in South Australia; and for other purposes. Read a first time.

The Hon. SANDRA KANCK: I move:

That this bill be now read a second time.

Today is International Midwives Day and I am immensely proud to move this bill. This bill is about wellness, professionalism and about choice for women and their families. Given that one half of the population is female, and that most of them go on to have at least one child, this is a significant piece of legislation with the potential to positively impact on a majority of family units in this state. Increasingly, women choose a midwife to assist them in giving birth.

The word midwife literally means 'with woman'. It is a partnership between the woman who is expecting a child and the midwife who accompanies her, and to a lesser extent her family, through that journey of pregnancy, support during labour, birth, bonding between mother and child, the establishment of feeding patterns, and even extending to providing contraceptive advice after the birth. The increased popularity of midwives is demonstrated by the fact that, at the recent launch of the Women's and Children's Hospital's so far solitary Group Midwifery Practice, we were told that each day the hospital turns away 10 South Australian women who request support through their pregnancy and birth using this continuity of care midwifery model.

Giving birth is an act of wellness and normality for women. In fact, the World Health Organisation states:

> The midwife is the most appropriate and cost-effective type of health care provider to be assigned to the care of normal pregnancy and normal birth, including risk assessment and the recognition of complications.

Currently, midwives in South Australia are regulated under the Nurses Act 1998. When that bill was considered by this chamber, I moved a number of amendments which would have given proper recognition to midwives in this state. They included changing the name of the act to the Nurses and Midwives Act, and creating a nurses and midwives' board, which, as I pointed out in 1999, was already the case in the United Kingdom and New Zealand. The then Liberal government argued that 'nurses' was 'agreed terminology'. I ask: agreed by whom? The answer is: by nurses, by sheer weight of numbers, because there are more nurses than there are midwives. It is an agreed terminology only if one accepts that midwives are a subset of nurses, and that is something I do not accept, and neither do many midwives.

The government strangely argued that providing recognition to midwives in this way would set up competition between midwives and nurses and that this would somehow jeopardise the care of newborns. It was a very strange logic and one that I think was pulled out of the air to justify the rejection of my amendments.

The Hon. Kate Reynolds: It shows a total lack of understanding.

The Hon. SANDRA KANCK: Well, I think we saw a great deal of misunderstanding, at least in 1999. Not only was it strange logic but it was really very insulting to the dedicated midwives in our health system. The Labor opposition opposed my amendments, but the Hon. Paul Holloway said the following:

> Let the events such as the direct entry issues be resolved and, if necessary, we can revisit the issue.

Part of the reason that the Labor opposition opposed my amendments was that no other state had a nurses and midwives act. Now, as of a few months ago, New South Wales has a nurses and midwives act. In 1999, the Hon. Paul Holloway stated the following:

> All the bodies such as the Nurses Board, the Australian Nurses Federation, the Royal College of Nursing etc have not settled this issue about whether midwifery is a separate profession.

Why would they? They are bodies primarily representing nurses. Listen to their names: the Nurses Board, the Australian Nurses Federation and the Royal College of Nursing. There are 23 000 nurses in this state, and that will always beat 4 500 midwives. The Hon. Lea Stephens, the then shadow minister for health, gave an undertaking which the Hon. Paul Holloway relayed to this chamber. He said the following:

> I have the permission of the shadow minister for health, Lea Stevens, to give an undertaking to consider this issue again, that is, the issue of the recognition of midwifery in a few years when we have had a chance to see what has happened in relation to the direct entry midwifery courses.

That undertaking was given five years ago. At that stage, the opposition seemed to doubt the claims that I made that there would be direct entry midwifery and that it would be happening soon. Eleven months ago, when we were considering a bill to deal with vacancies on the Nurses Board, I attempted to amend that bill again to change the name of the board to the nurses and midwives board. I was not successful, but I did obtain some undertakings from members about the need for change. The Hon. Paul Holloway said the following:

> The time is probably now appropriate for the respective professions to commence these discussions—

that is, whether or not there needed to be a separate act, or whether there ought to be a nurses and midwives act and a definition of the scope of midwives and their practices—

> with a view to changes in the future. . . Recognition of the practice of midwives and midwifery in the form of legislation, such as the Nurses Act, needs to be undertaken with the due consultation of all parties.

The Hon. David Ridgway, representing the opposition 11 months ago, said the following:

> . . . the Liberal party is in favour of supporting and enhancing the very important role that midwives play in our community, and especially in rural and regional South Australia.

I was pleased to hear that but, shades of 1999, he continues:

> Advice from the shadow minister (Hon. Dean Brown) and other advice I have sought indicates that this amendment—

that is, changing the name of the act to the nurses and midwives act—

> opens a Pandora's box of other issues.

The Hon. Mr Evans had a much more positive comment to make, although he was not prepared to support my amendment at that time. He said the following:

> . . . I will favourably consider any measures that she may bring in the future to achieve her purpose on behalf of midwives in our state.

That was 11 months ago, and at that time I reminded the government that the direct entry midwifery students would graduate at the end of this year, and that they were going to have to do something to cope with that group of graduates when they arrived on the scene. That group of students from Flinders University and the University of South Australia (I am not quite sure how many there are, but I estimate that we are talking about 40 or 50 students) will complete their education at the end of this year. They are training, at this point, to be midwives and not nurses. Be very clear that, once they are out in the work force, they will not be competent, for instance, to work in a gerontology unit or in a gastroenterology ward. These women want only to be midwives and they are training only to be midwives.

We are coming full circle. When my great-grandmother practised as a midwife (and a midwife only) last century, she was a highly valued member of the community. But doctors appropriated the task of delivering babies—and might I say that a lot hangs on that word 'delivering'—and for the past 60 years midwifery has been regarded as a subset of nursing. It is something that has been tacked on as a optional extra when all the training to be a nurse has been completed.

It meant that those women who wanted to be midwives had no choice but first to study to become nurses, and while that was happening it was probably appropriate that we had a Nurses Act, because they were nurses in the first part of their training. Despite the fact that these women who wanted to become midwives had to do a lot more study than nurses, they were not ever given the appropriate recognition that they deserved in their profession and we had to fight very hard back in 1999 just to keep a separate register in the Nurses Board for midwives. When the current third year midwifery students graduate, they can if they so choose do optional extra nursing qualifications—although, knowing them as I do, I doubt very much that they will make that choice.

Because midwifery and nursing are equal but different professions, both deserve their own separate recognition and their own separate regulatory body. Nurses work with people

who are unwell. It is a profession that deals with illness and recovery from illness. Generally speaking, nursing happens within a medical framework with nurses dependent upon decisions and commands from doctors. Nurses do an extraordinary job in keeping people alive and helping them get better. Midwives, on the other hand, work with well women, because pregnancy and birth are all normal aspects of being a woman. Mostly, the woman's body knows what to do and it requires just a little bit of pointing in the right direction, a little bit of support, and a little bit of encouragement. And that is what the midwife does most effectively.

The Hon. Kate Reynolds interjecting:

The Hon. SANDRA KANCK: You can tell that my colleague the Hon. Kate Reynolds had her babies with the help of midwives.

The Hon. G.E. Gago interjecting:

The Hon. SANDRA KANCK: Most certainly, community health nurses do that but they are the exception, and I am talking about the role that midwives play with well women, because 95 per cent of births are normal and do not require intervention. Yet a majority of women have their babies delivered by an obstetrician whose job it is to intervene and who is usually male. The statistics show that obstetrics care will result in far more medical interventions, such as caesarian sections. South Australia has a very poor record on caesarians: it is way above the World Health Organisation standards. In fact, in one private hospital here in Adelaide one in two women end up having caesarian sections, which is pretty frightening.

Women who choose a midwife are far more likely to be accompanied and supported in giving birth by someone of their own gender, who is more likely to understand what they are experiencing and who is far less likely to intervene in the natural birthing process. The language tells the story: 'delivery by' an obstetrician or 'birthing with' a midwife. Even if there were no other advantages to choosing a midwife, it is by far the cheaper of the two options. I said at the beginning that this bill is about choice. If a pregnant woman wants to have her baby in that medicalised framework, it should be her choice. Equally, if she wants a caring, supportive, non-intrusive environment in which to give birth, we should provide that option. And it is via midwives that this option is once again becoming increasingly available.

Today's direct entry midwifery students are not training to be nurses and not training to deal with illness. It is philosophically offensive for direct entry midwives to be regulated under a Nurses Act. Some of those students who will be graduating at the end of this year are seriously considering registering themselves in New South Wales under that state's Nurses and Midwives Act so that they can surmount the problem that faces them here. Under the Mutual Recognition Act, that would be a perfectly legitimate action and they would still be able to practise in South Australia. Surely the government does not want to have midwives who are practising in South Australia registered in New South Wales and accountable to a body in New South Wales.

Back in 1996 a Danish obstetrician, Dr Marsden Wagner, wrote a letter to the then health minister Dr Michael Armitage about the proposed rewrite of our Nurses Act, in which he wrote:

> The fundamental issue here is freedom: the freedom of the women and families of South Australia to choose from the widest range of safe options for someone to assist them during one of the most important events in their lives, the birth of their child.

Giving proper professional recognition to midwives through this bill will enhance the birthing choices available to women in South Australia. It is just plain commonsense. I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines key terms used in the measure.

4—Medical fitness to practice midwifery

This clause provides that in making a determination as to a person's medical fitness to practice midwiferey, regard must be given to the question of whether the person is able to provide the service personally to a patient without endangering the patient's health or safety.

5—Objects

This clause sets out the objectives for the Act, and requires that, wherever possible, a person administering the Act should endeavour to give effect to the objects.

Part 2—Midwives Board of South Australia

Division 1—Establishment of Board

6—Establishment of Board

This clause establishes the Midwifery Board of South Australia as a body corporate with perpetual succession, a common seal, the capacity to litigate in its corporate name and all the powers of a natural person capable of being exercised by a body corporate.

Division 2—The Board's membership

7—Composition of Board

This clause provides for the Board to consist of 6 members appointed by the Governor, empowers the Governor to appoint deputy members and requires at least 1 member of the Board to be a woman and 1 to be a man.

8—Terms and conditions of membership

This clause provides for members of the Board to be appointed for a term not exceeding 3 years and to be eligible for reappointment on expiry of a term of appointment. However, a member of the Board may not hold office for consecutive terms that exceed 9 years in total. The clause sets out the circumstances in which a member's office becomes vacant and the grounds on which the Governor may remove a member from office. It also allows members whose terms have expired to continue to act as members to hear part-heard proceedings under Part 4.

9—Presiding member

This clause requires the Minister, after consultation with the Board, to appoint a midwife member of the Board to be the presiding member of the Board.

10—Vacancies or defects in appointment of members

This clause ensures acts and proceedings of the Board are not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

11—Remuneration

This clause entitles a member of the Board to remuneration, allowances and expenses determined by the Governor.

Division 3—Registrar and staff of Board

12—Registrar of Board

This clause provides for the appointment of a Registrar by the Board on terms and conditions determined by the Board.

13—Other staff of Board

This clause provides for the Board to have such other staff as it thinks necessary for the proper performance of its functions.

Division 4—General functions and powers

14—Functions of Board

This clause sets out the functions of the Board and requires it to exercise its functions with the object of protecting the health and safety of the public by achieving and maintaining high professional standards both of competence and conduct in the practice of midwifery in South Australia.

15—Powers of the Board

This clause sets out the powers of the Board.

16—Committees

This clause empowers the Board to establish committees to advise the Board or the Registrar or assist the Board to carry out its functions.

17—Delegations

This clause empowers the Board to delegate its functions or powers to a member of the Board, the Registrar, an employee of the Board or a committee established by the Board.

Division 5—The Board's procedures

18—The Board's procedures

This clause deals with matters relating to the Board's procedures such as the quorum at meetings, the chairing of meetings, voting rights, the holding of conferences by telephone and other electronic means and the keeping of minutes.

19—Conflict of interest

This clause creates an offence in relation to conflicts of interest on the part of Board members. The offence is consistent with the offence recently approved, but not yet in operation, by Parliament in the Statutes Amendment (Honesty and Accountability in Government) Act 2003. The maximum penalty for an offence under the clause is a fine of $20 000.

20—Powers of Board in relation to witnesses etc

This clause sets out the powers of the Board to summons witnesses and require the production of documents and other evidence in proceedings before the Board.

21—Principles governing hearings

This clause provides that the Board is not bound by the rules of evidence and requires it to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms. It requires the Board to keep all parties to proceedings before the Board properly informed about the progress and outcome of the proceedings.

22—Representation at proceedings before Board

This clause entitles a party to proceedings before the Board to be represented at the hearing of those proceedings.

23—Costs

This clause empowers the Board to award costs against a party to proceedings before the Board and provides for the taxation of costs by a Master of the District Court in the event that a party is dissatisfied with the amount of costs fixed by the Board.

Division 6—Accounts, audit and annual report

24—Accounts and audit

This clause requires the Board to keep proper accounting records in relation to its financial affairs, to have annual statements of account prepared in respect of each financial year and to have the accounts audited annually by an auditor approved by the Auditor-General and appointed by the Board.

25—Annual report

This clause requires the Board to prepare an annual report for the Minister and requires the Minister to table the report in Parliament.

Part 3—Registration

Division 1—The register

26—The register

This clause requires the Registrar to keep a midwives register and specifies the information required to be included in each part of the register. It also requires the register to be kept available for inspection by the public and permits access to be made available by electronic means. The clause requires registered persons to notify a change of address within 1 month of the change. A maximum penalty of $250 is fixed for non-compliance.

27—Authority conferred by registration on register

This clause sets out the kind of midwifery that registration on each particular register authorises a registered person to provide.

Division 2—Registration

28—Registration of natural persons on the register

This clause provides for full and limited registration of natural persons on the midwives register.

29—Registration of midwifery students

This clause requires persons to register as midwifery students before undertaking a course of study that provides qualifications for registration on the midwives register and provides for full or limited registration of midwifery students.

30—Application for registration

This clause deals with applications for registration. It empowers the Board to require applicants to submit medical reports or other evidence of medical fitness to practice midwifery or to obtain additional qualifications or experience before determining an application.

31—Removal from register

This clause requires the Registrar to remove a person from a register on application by the person or in certain specified circumstances (for example, suspension or cancellation of the person's registration under this measure).

32—Reinstatement on register

This clause makes provision for reinstatement of a person on a register. It empowers the Board to require applicants for reinstatement to submit medical reports or other evidence of medical fitness to practice midwifery or to obtain additional qualifications or experience before determining an application.

33—Annual practice fee

This clause deals with the payment of registration, reinstatement and annual practice fees. It empowers the Board to remove from a register a person who fails to pay the annual practice fee.

34—Information to be provided by registered persons

This clause enables the Board to require a registered person to provide the Board with prescribed information relating to her or his employment. Failure to comply with a requirement of the Board attracts a maximum fine of $1 250.

Division 3—Restrictions on the practice of midwifery

35—Illegal holding out as registered person

This clause makes it an offence for a person to hold herself or himself out as a registered person or permit another person to do so unless registered on the appropriate register. It also makes it an offence for a person to hold out another as a registered person unless the other person is registered on the appropriate register. In both cases a maximum penalty of $10 000 or imprisonment for 2 years is fixed.

36—Illegal holding out concerning limitations or conditions

This clause makes it an offence for a person whose registration is restricted, limited or conditional to hold herself or himself out, or permit another person to hold her or him out, as having registration that is unrestricted or not subject to a limitation or condition. It also makes it an offence for a person to hold out another whose registration is restricted, limited or conditional as having registration that is unrestricted or not subject to a limitation or condition. In each case a maximum penalty of $10 000 or imprisonment for 2 years is fixed.

37—Use of certain titles or descriptions prohibited

This clause creates a number of offences prohibiting a person who is not appropriately registered from using certain words or their derivatives to describe herself or himself or services that they provide, or in the course of advertising or promoting services that they provide. In each case a maximum penalty of $10 000 is fixed.

38—Prohibition on provision of midwifery by unqualified persons

This clause makes it an offence for a person to practice midwifery for fee or reward unless the person is a qualified midwife under the measure. A maximum penalty of $10 000 or imprisonment for 2 years is fixed for the offence. However, these provisions do not apply to midwifery services provided by an unqualified person in prescribed circumstances. In addition, the Governor is empowered, by proclamation, to grant an exemption if of the opinion that good reason exists for doing so in the particular circumstances of a case. The clause makes it an offence punishable by a maximum fine of $10 000 to contravene or fail to comply with a condition of an exemption.

39—Board's approval required where registered person has not practised for 5 years

This clause prohibits a registered person who has not provided midwifery services of a kind authorised by their registration for 5 years or more from providing such treatment for fee or reward without the prior approval of the Board and fixes a maximum penalty of $20 000. The Board is empowered to require an applicant for approval to obtain qualifications and experience and to impose conditions on the person's registration.

Part 4—Investigations and proceedings

Division 1—Preliminary

40—Interpretation
This clause provides that in this Part the terms registered person includes a person who is not but who was, at the relevant time, a registered person.
41—Cause for disciplinary action
This clause specifies what constitutes proper cause for disciplinary action against a registered person.
Division 2—Investigations
42—Powers of inspectors
This clause sets out the powers of an inspector to investigate certain matters.
43—Offence to hinder etc inspector
This clause makes it an offence for a person to hinder an inspector, use certain language to an inspector, refuse or fail to comply with a requirement of an inspector, refuse or fail to answer questions to the best of the person's knowledge, information or belief, or falsely represent that the person is an inspector. A maximum penalty of $10 000 is fixed.
Division 3—Proceedings before Board
44—Constitution of Board for purpose of proceedings
This clause sets out how the Board is to be constituted for the purpose of hearing and determining proceedings under Part 4.
45—Obligation to report unprofessional conduct
This clause requires the employer of a registered person to report to the Board if the employer believes the registered person to be guilty of unprofessional conduct. A maximum penalty of $1 250 is fixed for non-compliance. The Board must cause a report to be investigated.
46—Obligation to report medical unfitness of registered person
This clause requires certain classes of persons to report to the Board if of the opinion that a registered person is or may be medically unfit to practice midwifery. A maximum penalty of $1 250 is fixed for non-compliance. The Board must cause a report to be investigated.
47—Medical fitness of registered person
This clause empowers the Board to suspend the registration of a registered person, impose conditions on registration restricting the right to practice midwifery or other conditions requiring the person to undergo counselling or treatment, or to enter into any other undertaking if, on application by certain persons or after an investigation under the measure, and after due inquiry, the Board is satisfied that the registered person is medically unfit to practice midwifery and that it is desirable in the public interest to take such action.
48—Inquiries by Board as to matters constituting grounds for disciplinary action
This clause requires the Board to inquire into a complaint relating to matters alleged to constitute grounds for disciplinary action against a person unless the Board considers the complaint to be frivolous or vexatious. If after conducting an inquiry, the Board is satisfied that there is proper cause for taking disciplinary action, the Board can censure the person, order the person to pay a fine of up to $10 000. If the person is registered, the Board may impose conditions on the person's right to practice midwifery, suspend the person's registration for a period not exceeding 1 year, cancel the person's registration, or disqualify the person from being registered.
If a person fails to pay a fine imposed by the Board, the Board may remove their name from the appropriate register.
49—Contravention of prohibition order
This clause makes it an offence to contravene a prohibition order made by the Board or to contravene or fail to comply with a condition imposed by the Board. A maximum penalty of $10 000 or imprisonment for 2 years is fixed.
50—Variation or revocation of conditions imposed by Board
This clause empowers the Board, on application by a registered person, to vary or revoke a condition imposed by the Board on her or his registration.
51—Provisions as to proceedings before Board
This clause deals with the conduct of proceedings by the Board under Part 4.
Part 5—Appeals
52—Right of appeal to District Court
This clause provides a right of appeal to the District Court against certain acts and decisions of the Board.
53—Operation of order may be suspended
This clause empowers the Court to suspend the operation of an order made by the Board where an appeal is instituted or intended to be instituted.
54—Variation or revocation of conditions imposed by Court
This clause empowers the District Court, on application by a registered person, to vary or revoke a condition imposed by the Court on her or his registration.
Part 6—Miscellaneous
55—Interpretation
This clause defines terms used in Part 6.
56—Offence to contravene conditions of registration
This clause makes it an offence for a person to contravene or fail to comply with a condition of his or her registration and fixes a maximum penalty of $10 000 or imprisonment for 2 years.
57—Offence to give, offer or accept benefit for referral or recommendation
This clause makes it an offence—

(a) for any person to give or offer to give a registered person or prescribed relative of a registered person a benefit as an inducement, consideration or reward for the registered person referring, recommending or prescribing a health service or health product provided, sold, etc. by the person; or

(b) for a registered person or prescribed relative of a registered person to accept from any person a benefit offered or given as a inducement, consideration or reward for such a referral, recommendation or prescription.

In each case a maximum penalty of $75 000 is fixed for a contravention.
58—Procurement of registration by fraud
This clause makes it an offence for a person to fraudulently or dishonestly procure registration or reinstatement of registration (whether for herself or himself or another person) and fixes a maximum penalty of $10 000 or imprisonment for 2 years.
59—Statutory declarations
This clause empowers the Board to require information provided to the Board to be verified by statutory declaration.
60—False or misleading statement
This clause makes it an offence for a person to make a false or misleading statement in a material particular (whether by reason of inclusion or omission of any particular) in information provided under the measure and fixes a maximum penalty of $10 000.
61—Registered person must report her or his medical unfitness to Board
This clause requires a registered person who becomes aware that he or she is or may be medically unfit to practice midwifery to forthwith give written notice of that fact of the Board and fixes a maximum penalty of $10 000 for non-compliance.
62—Registered persons to be indemnified against loss
This clause prohibits registered persons from practicing midwifery for fee or reward unless insured or indemnified in a manner and to an extent approved by the Board against civil liabilities that might be incurred by the person in connection with the provision of such service. It fixes a maximum penalty of $10 000 and empowers the Board to exempt persons or classes of persons from the requirement to be insured or indemnified.
63—Protection from personal liability
This clause provides that no personal liability attaches to a member of the Board, the Registrar or a member of the Board's staff for an act or omission in good faith in performance or purported performance of functions or duties under the Bill. Such a liability lies instead against the Crown.
64—Immunity from liability
This clause provides that no civil liability attaches in relation to a statement made honestly and without malice in a report for the purposes of this measure, and that making such a report does not constitute a breach of professional etiquette or ethics.
65—Information relating to claim against midwife to be provided
This clause requires a registered person to provide the Board with prescribed information about any claim made against the registered person or another person for alleged negligence

committed by the registered person in the course of practicing midwifery. The clause fixes a maximum penalty of $10 000 for non-compliance.

66—Self-incrimination

This clause provides that if a person is required to provide information or to produce a document, record or equipment under this measure and the information, document, record or equipment would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide the information or produce the document, record or equipment, but the information, document, record or equipment so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than an offence against this measure or any other Act relating to the provision of false or misleading information.

67—Continuing offence

This clause provides that a person convicted of an offence in relation to this measure is, if the act continues after the conviction, guilty of a further offence and is, in addition to the usual penalty for the further offence, liable to a penalty of not more than 1/10th of the maximum penalty for the offence for each day during which the act continued.

68—Punishment of conduct that constitutes an offence

This clause provides that if conduct constitutes both an offence against the measure and grounds for disciplinary action under the measure, the taking of disciplinary action is not a bar to conviction and punishment for the offence, and conviction and punishment for the offence is not a bar to disciplinary action.

69—Application of fines

This clause provides that fines imposed for offences against the measure must be paid to the Board.

70—Board may require medical examination or report

This clause empowers the Board to require a registered person or a person applying for registration or reinstatement of registration to submit to an examination by a health professional or provide a medical report from a health professional, including an examination or report that will require the person to undergo a medically invasive procedure. If the person fails to comply the Board can suspend the person's registration until further order.

71—Ministerial review of decisions relating to courses

This clause gives a provider of a course of education or training the right to apply to the Minister for a review of a decision of the Board to refuse to approve the course for the purposes of the measure or to revoke the approval of a course.

72—Confidentiality

This clause makes it an offence for a person engaged or formerly engaged in the administration of the measure to divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—

(a) as required or authorised by or under this measure or any other Act or law; or

(b) with the consent of the person to whom the information relates; or

(c) in connection with the administration of this measure; or

(d) to an authority responsible under the law of a place outside this State for the registration or licensing of persons who practice midwifery, where the information is required for the proper administration of that law; or

(e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions.

However, the clause does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates. Personal information that has been disclosed for a particular purpose must not be used for any other purpose by the person to whom it was disclosed or any other person who gains access to the information (whether properly or improperly and directly or indirectly) as a result of that disclosure. A maximum penalty of $10 000 is fixed for a contravention of the clause.

73—Service

This clause sets out the methods by which notices and other documents may be served.

74—Evidentiary provision

This clause provides evidentiary aids for the purposes of proceedings for offences and for proceedings under Part 4.

75—Regulations

This clause empowers the Governor to make regulations.

Schedule 1—Related amendments and transitional provisions

This Schedule makes related amendments to the *Nurses Act 1999* and makes transitional provisions with respect to the registration of, and practice of midwifery by, nurses under this measure.

The Hon. R.K. SNEATH secured the adjournment of the debate.

DIRECTOR OF PUBLIC PROSECUTIONS

The Hon. IAN GILFILLAN: I move:

1. That a select committee be appointed to inquire into and report on the offices of the Director of Public Prosecutions and the Coroner, with particular reference to—

(a) the implementation of the enabling legislation of these offices to identify any improvements that could be made to the enabling legislation by amendment;

(b) the resources needed to effectively fulfil the roles and functions as required by the enabling legislation;

(c) the relationships between the Director of Public Prosecutions, the Coroner, the Attorney-General, the government and the parliament; and

(d) other relevant matters.

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

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

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

In my view, a select committee is the most constructive way in which this parliament can deal with the furore that has emerged through what I describe as the mishandling in government circles and in the media of recent events in the Office of the Director of Public Prosecutions. I do not intend to elaborate to the council at this stage on an analysis of the Office of the DPP nor on the office of the Coroner, because quite clearly that is the purpose of the select committee.

From my experience with select committees, in almost 100 per cent of cases they have proved to be a very constructive and objective forum in which a wide range of evidence can be taken in unique circumstances where privilege applies, and that the people on the committee, representing as they often do different political parties, show a remarkable degree of cooperation in working through to a common position on what they see as the best outcomes for the people of South Australia.

There are a couple of points I would like to mention. I refer to the sensational focusing on the procedure of plea bargaining which, I predicted, if it were frightened out of the normal activities within the courts would result in a blowout of time taken for certain matters to be dealt with, with increasing expenditure and unacceptable delays. Sadly, that is already happening. ABC Radio media highlighted that this morning; that lawyers are finding that the impact of what they are calling the Nemer effect is already changing the pattern in which matters are dealt with in this state.

If you take it item by item, quite often there appears to be—on the surface—good reason to look at what is arguably the inappropriate use of plea bargaining. The problem with that is that the actual process is then damaged almost beyond

repair. I think 'bargaining' is an unfortunate choice of word whereby it is rather evocative of purchasing something in a bazaar where each side tries to beat the other down or beat the other up. With that in mind, the public—encouraged by the media and by members of the government—have been led to believe that it is really a very cheap and a somewhat 'cheating' way of dealing with justice in this state in our courts system.

The fact is that, were we not to have this process in which a sensible time and economically efficient way of dealing with matters is negotiated, the arguably still under-resourced and over-stretched resources of the DPP and the police prosecutorial sector would be even more extensively drawn out and, in many cases, may be unable to fulfil their obligations in an appropriate manner.

I think the other aspect which the select committee, from the terms of reference, will be led to look at in detail is the effectiveness of the legislation and the meaning and interpretation of various sections—one of which has been used as the justification for the government to intervene and give specific direction to the DPP on a particular case. I suggest that that certainly was not the intention of the Labor government when the then attorney-general, Chris Sumner, introduced the legislation. In fact, it was specifically identified in *Hansard* that that was not to be the case and it certainly was the expectation of those of us—including myself—who were involved in the debate over the legislation.

The climate which has now evolved and the uncertainty of what the interface is between the government and the Office of the DPP will make it almost impossible, I believe, for us to attract candidates or nominees to fill the vacancy left by the resignation of Paul Rofe QC. That itself is lamentable. I think that Ms Abraham will fill the role adequately in the short term, and I have no doubt that there are very many competent people there, but what we need is a fearless and competent leader of the DPP who will not come forward, I believe, until there is much more clarity and certainty as to what the relationship will be between that position and the government. I think we have a conflict, because the current Attorney-General has said more than once that he will have no regrets if he completes his term without ever having to give a direction to the DPP, and it is my opinion that he has a certain personal abhorrence for sticking his nose directly into the day-to-day matters of the DPP.

This seems to be in contrast with his leader, the Premier, who—although saying this morning that he would like a sort of quasi Elliott Ness to fill the position of DPP—wants to have the capacity, the right and the opportunity to interfere and direct what that Elliott Ness would do in certain matters. I can tell the Premier that, if he gets someone of an Elliott Ness-type character, that person would very smartly tell the Premier where to go if the Premier chose to stick his nose into what were decisions made by a strong and aggressive DPP.

I think we have such a myriad of conflicting approaches by this government to the position—aided and abetted by various sections of the media—that we are now in the untenable position that, unless we can objectively assess what the state, the people and this parliament want of the role of the DPP and make a clear statement about that, there will be uncertainty in the Office of the DPP. There will be great hesitancy to go into any measure of plea bargaining, because the blowtorch of Kourakis might be turned onto each incident. Maybe the Crown Solicitor will need more resources if the Premier and the Attorney-General are going to demand that he look at a great host of cases. I will bet that there is a queue of victims and families of victims who believe that justice was not done in their case and who will now be clamouring to have their particular case revisited. Unfortunately, I think that a Pandora's box has been opened there.

I am optimistic that with the rapid formation of this select committee, which will then actively go about its business, we can quite quickly expect some sensible, rational and calm objective recommendations to come from the select committee. By then I hope that the feverish approach of the government to this matter will have abated and it will listen to reasonable suggestions.

The Coroner's office is spared the sensational analysis and criticism that the Office of the DPP has had, so from that point of view it is in a different category. For those honourable members who may not have heard what the Coroner said at the Democrats' third Balanced Justice Conference that we had a couple of weeks ago, he very explicitly and lucidly outlined what he identified as problems and deficiencies in the legislative structure surrounding his office, unacceptable time delays between the event of the death and the police inquiry then being referred to him, and the shortfall in autopsies and post mortems that he believes should have been, and should be, done, and which currently are not done. We do rely—albeit less dramatically—on the Coroner for a very important contribution to the well-being of this state, and it is important that the select committee take his identification of problems very seriously. Again, I refer honourable members to an impassioned plea by the Coroner which received quite substantial media coverage—I suspect it might be over two months ago—where he berated the delay in implementing his recommendations for minimising deaths in custody. That is just one example.

I have no doubt that there is valuable work that the select committee can do. I believe that it is a select committee that this particular house of parliament should set up. We are very well placed to provide good-quality members of the committee and, as I say, we have a history of producing well thought out and constructive recommendations at the end of select committees' deliberations. I commend the motion to the council.

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

SOCIAL DEVELOPMENT COMMITTEE: INQUIRY INTO OBESITY

The Hon. G.E. GAGO: I move:

That the committee's report be noted.

Obesity is a rapidly escalating problem in most developed countries worldwide. Since 1990, obesity amongst Australian adults has increased by over 7 per cent. Currently, more than 60 per cent of Australian men and over half of Australian women are either overweight or obese. Even more alarming is that, from 1985 to 1995, the proportion of overweight Australian children doubled and the proportion that were obese tripled. The latest data indicates that around 24 per cent of Australian boys and 26 per cent of Australian girls are overweight or obese. Rates are higher still amongst indigenous people. Almost one-third (31 per cent) of indigenous people in non-remote areas are considered obese compared to 16 per cent of other Australians.

The report of the Australian National Obesity Task Force released last year has described obesity as a major epidemic in this country. Trends have been similar here in South Australia, as they have been for the other states. If these trends continue, Australia is expected to be second only to the US in its rate of obesity by 2025. Research clearly shows that overall energy consumption has increased and physical activity has decreased across the Australian population. This is more than sufficient to explain the rise in levels of overweight and obesity. Underlying this is a range of social and environmental trends which have evolved over several decades and which are intrinsically linked to our contemporary lifestyle. These include sedentary employment, greater demand and availability of convenience foods, and technological entertainment, to mention only a few.

Therefore, obesity poses a major challenge to the community and to government. The government's concern and intervention is fitting, given the enormous health and economic cost of obesity to individuals and the community. Latest estimates put the economic cost of obesity in Australia at around $1.3 billion per year and, of course, that amount is rising fast. That amount is made up of treatment costs and lost productivity. Being overweight or obese increases the risk of a number of conditions, including heart disease, type 2 diabetes, respiratory problems and some cancers.

Before continuing, I would like particularly to acknowledge the work and cooperation of the members of the Social Development Committee: Mr Jack Snelling, Mr Joe Scalzi, Ms Frances Bedford, the Hon. Michelle Lensink and the Hon. Terry Cameron. I would also like to acknowledge the excellent work of the Research Officer, Ms Susie Dunlop, and also the excellent work of the secretaries to the committee, Ms Robyn Schutte and Ms Kristina Willis-Arnold, in writing and preparing the report.

The committee heard oral evidence from 31 people, representing 10 organisations and six individuals, and received 28 written submissions from 13 individuals and 15 organisations, including six schools. In relation to the key findings and recommendations of the committee in response to the rising rates and costs of obesity, numerous initiatives have commenced on international, national and state levels. These include the Australian Statewide Task Force on Obesity, the South Australian Healthy Statewide Task Force, and the South Australian Ministerial Physical Activity Council. Numerous departmental initiatives have been undertaken in this state, such as the Department of Education and Children's Services 'Eat Well SA Schools and Preschools' and 'Active for Life' initiatives.

The committee supports the National Obesity Task Force's four-year plan to address obesity amongst Australian children and young people, which was released in 2003. A preventative focus is important, given that overweight young people have a 50 per cent chance of remaining overweight as adults. In addition, the committee endorses a focus on those groups with higher rates of overweight and obesity and associated complications. These include people in the 'middle age' group (45 to 64-year-olds). I think there are some examples in this chamber, I am sad to say—

An honourable member interjecting:

The Hon. G.E. GAGO: There are a few who are going to abstain from this discussion. I beg your pardon, Mr President.

The PRESIDENT: Offensive remarks are out of order.

The Hon. G.E. GAGO: I was trying to be kind, Mr President. These groups also include socioeconomically disadvantaged people, indigenous people and people living in rural areas. The committee also supports a strong overall public policy for all South Australians by the Healthy Weight Statewide Strategy. In making our 51 recommendations, we have focused on those we believe will add to and enhance existing initiatives.

I will now outline some of our key findings and recommendations. In response to the lack of awareness of some members of the community about the need for good nutrition and physical activity, the committee has recommended the development of a statewide community education strategy to promote healthy weight and to increase fruit and vegetable consumption. Having said this, it was clear from the evidence that public education alone will not resolve this obesity problem. We are all aware of how difficult it can be to cook healthy meals and exercise regularly with our busy schedules, whether it is parenthood, work, or both, as well as our numerous other complex commitments. For many people, other issues simply take precedence.

The committee resolved that the government must accept the community's demand for convenience and seek to make healthy options more accessible. The committee supports moves within the fast food industry to provide healthier choices but cautions that this is only one of the range of strategies that must be employed. The committee also recommends a review of point-of-sale information in the labelling by fast food franchises to assist consumers to make healthy food choices. There is also a need to make organised physical activities more accessible.

The committee has made a number of recommendations aimed at increasing the provision of low-cost community exercise facilities, with a particular focus on socioeconomically disadvantaged and rural communities. Competitive sporting culture in Australian society can be a significant deterrent for children and adults who are not talented in the traditional types of sports, or who are already overweight and are often shy in participating in some of these activities. As a community we need to be more innovative and inclusive in providing physical activity opportunities.

The committee has recommended a more flexible and inclusive system for school-based physical education entailing a 'credit system', whereby students can substitute endorsed out-of-school physical activities for time in traditional PE and sports. An added benefit will be improved links between schools and community-based organisations, helping school leavers with the transition to community-based activities and clubs.

There is also a need to improve the factors in our environment that lead to unintentional over-consumption and under activity. One way is to ensure that our physical infrastructure encourages people to walk, cycle and use public transport, or even the stairs, I might suggest for some of our members here, rather than drive or take the lift. Transport systems and urban design both have a significant influence over levels of incidental physical activity. Further, the extent of urban sprawl, street networks and perceived safety are all central in determining whether people use public places for physical activity and active transport, such as walking to shops, schools or bus stops. The committee acknowledges that a number of state government plans are in train to address these types of issues and that existing physical infrastructure is difficult to alter. Our recommendations therefore focus on future developments and recommend that planning guidelines for all new non-industrial developments have specific clauses to promote active living.

A highly contentious issue in the evidence was the advertising of junk food, especially on television. This is of particular concern in relation to children, given their vulnerability to persuasive advertising messages. Australian children watch an average of 75 advertisements per day or over 25 000 advertisements per year—an astounding figure. I think it would be difficult to say that these advertisements are not having a profound impact on the choices our children make. While research today does not provide unequivocal evidence of a causal link between food advertising and increased consumption of advertised foods by children, the committee received strong evidence that it is a significant contributing factor in an overall environment that promotes overeating and therefore obesity.

This position is supported by the World Health Organisation and the International Obesity Task Force. Despite claims from some industry organisations that advertising leads to brand awareness rather than increased consumption, it seems unlikely that companies such as McDonald's would have increased expenditure on media advertising in Australia more than eight-fold since 1983 to a staggering figure, which I have had double-checked because I found it hard to believe, of $52 million, which it spent on advertising in 2001. It is hard to believe that that degree of expenditure is not having some influence on consumption.

The committee therefore calls for the state government to lobby the commonwealth to implement mandatory limitation on food advertising during programs aired in peak viewing times for children regardless of the program classification. On a more positive note, both the Australian Association of National Advertisers and the Australian Food and Grocery Council gave evidence to the inquiry and expressed a commitment to assist with public education relating to healthy eating and a healthy lifestyle. The committee supports consultation and partnership with industry organisations in developing public education and other strategies. The Heart Foundation's 'tick' program is a good example of a successful partnership between the commercial and health sectors. This program enables the Heart Foundation to promote their health message, assists consumers to make healthy choices, and enhances marketing for food companies.

There was overwhelming support in the evidence for strengthening the role of schools in promoting regular exercise and physical education. Since 1998-99 the Department of Education and Children's Services has doubled physical activity funding per student. This includes Active for Life funding since 2002. However, there is currently no minimum requirement for physical activity in schools. Based on a range of evidence, including mandatory requirements interstate, the committee calls for implementation of physical activity guidelines for schools that include a recommended minimum of 30 minutes of organised physical activity per day for primary students and 100 minutes per week for secondary students. Given the general move towards greater local management of schools in this state, the committee does not consider a mandatory approach to be appropriate.

There was also strong support for reducing the sale of junk foods at school canteens and events. DECS has developed comprehensive guidelines relating to food and nutrition issues in schools, including food supply and foods that should be limited or not provided in schools. The document is called 'Eat Well SA Schools and Preschools' and implementation is due to begin in August. The committee calls for close monitoring of schools' adherence to the Eat Well guidelines and the establishment of a system for publicly awarding and acknowledging successful schools. A number of schools throughout the state have already implemented initiatives such as restrictions on the availability of junk foods and daily fitness programs. Unfortunately, time does not permit me to discuss in detail all of the recommendations. It is a comprehensive report. I know that members opposite have already read the report in full.

The Hon. R.D. Lawson: It's front-page news.

The Hon. G.E. GAGO: And editorial. Some of the other areas involved sectors that clearly need to implement strategies to help address this problem. Those areas include maternal and infant health, primary care services, and workplaces, to mention only a few. In conclusion, I stress that obesity is a serious problem with significant and rising health and economic costs to individuals and the community, both nationally and in South Australia. The challenge for the government and the community lies in altering the ingrained social and environmental trends that have led to overconsumption and underactivity becoming part of our everyday modern lifestyle. This will take time and require action in a wide range of sectors.

The Hon. J.M.A. LENSINK: In commenting on this report I would like to acknowledge the work of the committee, in particular, our chair, Gail Gago and fellow parliamentary colleagues, the Hon. Terry Cameron, the Lion of Hartley, Mr Jack Snelling, and Ms Frances Bedford. This is a very comprehensive report encompassing close to 200 pages, which I think recognises the significance of the problem. I encourage all members to read it from cover to cover; it is very interesting. I do not say that facetiously. I have spoken to a number of community groups on this issue and they are always fascinated by some of the statistics which are particularly frightening. I have had an interest in this issue for some time, so I greatly enjoyed working on this committee. I commend our research officer, Suzie Dunlop, and our secretary, Robyn Schutte, for their work on this report.

As I said, the statistics are very frightening. As the Hon. Ms Gago pointed out, 60 per cent of men and 50 per cent of women are either overweight or obese. That is 2½ times the percentage in 1980. If we continue at the current rate—according to some of the evidence that we received—by the year 2025, 90 per cent of our population will be overweight or obese. This is a problem for many countries in the OECD. The United States Surgeon-General has declared war on obesity, and the 57th annual assembly of the World Health Organisation, which will meet in two weeks, will focus on this topic.

In Australia, we cannot blame our climate for not exercising. We also cannot claim a lack of availability of fresh, unprocessed foods, so there are obviously a number of other factors at play. As the Hon. Gail Gago said in her speech, 25 per cent of children are now overweight or obese. This is probably the most alarming statistic of all. Surveys conducted in South Australia show that children are now 3.4 kilos heavier than in 1985. That figure takes into account height and weight changes. If you say that perhaps they are taller, well they are only 2 per cent taller and 7 to 8 per cent heavier, and their waist girth measurement is 6 to 8 per cent larger. So, obviously, they are growing outwards out of all proportion to their growth in height.

The risks of being overweight or obese are significant. They include: cardiovascular disease and type II diabetes, which was previously called adult onset diabetes. but which now occurs in children. Type II diabetes can cause other

effects such as circulatory problems, cardiovascular disease again, and strokes, and it now affects 940 000 Australians. That figure has trebled in the last three years. Other risks include: high blood pressure, which also leads to kidney disease and strokes; some forms of cancer; and hormonal changes. Something that the chaps might like to note is that testosterone levels can drop, and arthritis and reduced musculoskeletal development are also possibilities, together with mental health problems, which can affect social status and sleep apnoea and so on.

In the United States the Surgeon-General stated in 2001 that the technology gains made in areas such as heart disease, diabetes and cancer may be completely wiped out by obesity. As has been stated, it costs Australia $1.03 billion per annum and I would hazard a guess that that would include some of the direct costs of treatment and the weight loss industry. Weight Watchers has something like 420 000 life members in Australia, Jenny Craig some 200 000 and there are indirect costs of secondary health problems, lost productivity and premature death.

To focus on children, there is a tendency in Australia and South Australia for children to become overweight and obese in their pre-school years. A study referred to several times was done on four-year olds, tracking their dietary habits and from 1983-85 and 1995 there was an increase in energy intake over that period in which childhood obesity and overweight rates doubled. The criminals here are the intakes of highly processed and high energy dense foods such as cakes, biscuits, chocolate, soft drinks, sugar and so on. Over that time milk take decreased by about 90 per cent. Children are replacing their milk intake with soft drinks, fruit juice and cordial, which is one of the messages we need to get out that parents need to be aware of.

We are all probably aware that we do not move enough. Only about 50 per cent of adults are sufficiently active and, while something like 80 per cent of children are sufficiently active, their level of sedentary activity has also vastly increased. For every hour a child spends in front of the television their risk of obesity increases by some 10 per cent and it is recommended that they should not be inactive for more than 120 minutes.

The factors that we are probably intuitively aware of are that we have had a number of changes in our society and environment, so the term 'obeseogenic environments' has been created. We have an increasing proportion of energy dense and highly processed foods. We upsize and on average eat larger sizes. The average slice of bread 10 years ago was 28 grams and today it is 45 grams. Interestingly, over the past 30 years we received and adhered to strong messages about fats, as members would know from going to the supermarket and seeing low fat this, that and the other, but the role of carbohydrates in weight gain has been ignored. That is where some of our problems are coming from.

When I have been speaking to community groups I usually do a quick survey of the required daily intake of how many serves of fruit and vegetable are required and there are not too many people who get that right. Obviously we live on smaller blocks and that has had a significant impact. People watch more TV, spend more time in front of screens and there are safety issues as well with parents being busier and having less time to accompany their children. Parents are tending to drive their children to school and do not let them go to the park by themselves.

If you compare generations and surveys, of today's parents 83 per cent played unsupervised in their neighbourhood compared with 25 per cent of today's children. From 1985 to 1997 the percentage of children walking to school dropped from 45 per cent to 33 per cent and the percentage riding to school dropped from 16 per cent to 9 per cent. There are fewer opportunities for participation in community sport because there are fewer coaches, referees and sports administration people and some sports are quite costly for participants.

People cook less at home. If they eat out the foods tend to be high in calories. We get to some of the solutions. This is a very complex area, as the chairperson, the Hon. Gail Gago, pointed out. I will reflect on some of the comments of Dr Allison Smith who works for the Centre for Health Promotion at the Women's and Children's Hospital, namely, that if we are to tackle this seriously there needs to be a long-term investment. The solutions will be complex because the causes are complex and the solutions will need to be based on evidence and involve communities and all of the settings in which children are located.

We also heard, unfortunately, that there is not much empirical evidence about what works. David Engelhardt and Victor Nossar from Child and Youth Health, in their written and oral evidence, stated:

> There is scant evidence that any interventions over the past 30 years have brought about the desired reductions in childhood obesity at the population level.

We do need to focus on prevention rather than treatment and need to focus on a multi-strategy approach, so we are looking at homes, communities, schools, out-of-school hours care and so on. Comparisons have been made with smoking and the reduction in smoking levels. As everybody would be aware, that has been a sustained process. We have had legislative intervention as well as education, which, as the previous speaker pointed out, by itself does not necessarily work. We need good nutrition education about what people should and should not be eating and simple clear messages and need to provide people with much better opportunities to make healthy choices. One of the big things this report has to say is that it is not that easy to make healthy choices because the bad ones are far and wide and easy to fall into.

Breastfeeding within the first six months has a protective role in preventing obesity. We heard quite a bit about things such as breakfast programs and school tuckshops and trying to get the message through to children and families about having junk food just on special occasions so that people do not think that when you are hungry you eat a bag of chips. The TV advertising was particularly interesting. Some of the evidence we heard was that something like 80 per cent of ads in kids' TV viewing times are for high fat/high sugar foods, which has the effect of normalising children's attitudes towards these foods. Five to 12-year olds watch on average some two and a half hours of television every day. Young children under 10 years are not able to discern the persuasive intent of adverts and, having being a resident aunt, I can say that that is certainly the case. TV is the primary medium used by food companies to market to children. The number of food commercials is something like 12 per hour and is one of the highest rates in the world and greater than the rate in the United States.

Some of the evidence internationally showed a favourable correlation between the regulation of junk food advertising and obesity. Australia is the only country with no regulations about the type or amount of TV ads kids can view, and that is something about which we have made a recommendation. We have also recommended that organised physical activities

for primary school students be 30 minutes a day and 100 minutes a week for secondary students. We agree that some of the actions taken by the industry to improve the calorific and nutritional value of their foods is welcome. We also applaud things like virtual buses and walking school buses that collect kids on their way to school and provide a safe option to ensure they get some exercise daily. We also applaud the work of organisations such as the Women's and Children's Hospital, which produce simple information for schools to include in their newsletters. There were also other urban development issues to do with safe play zones, safe bike lanes and providing safe places to walk. Cul-de-sacs discourage people from walking—a bad innovation of the past few decades.

The good news is that small amounts of weight loss lead to significant health increases. If an individual loses three kilos their cholesterol decreases, four kilos lead to diabetes prevention and to lowering blood pressure. If across the population people on average lost five kilos, overweight and obesity rates would fall to 45 per cent.

Brian Haddy, who used to run Gutbusters, had some very good news for the fellows; that is, they can lose weight quite easily, lose a kilo a week or a centimetre off their girth and manage to keep it off. The bad news for women, unfortunately, is that it is much harder work for us to lose weight, but we always knew that, anyway. I commend this report to the council and encourage everyone to take some interest in this because, clearly if we do not take some pro-active action, things will get worse and it will be quite costly for us in the future.

The Hon. R.K. SNEATH: I will make a short contribution. Only a couple of weekends ago I was watching *Bush Tucker Man*, and it seems that eating bush tucker is one way of losing weight because you have to walk so far between each meal to find food. Exercise is what is important. I remember some 36 years ago, when I got married, I was 11 stone ringing wet. This is a good opportunity to blame my wife: it must be her cooking which is to blame for my size now. Even though I like various foods, I have been fortunate with my health and I have not had much sickness at all. However, on the last occasion I visited my doctor he said that I was overweight and should do something about it. He said that, considering my weight, I should be 10-foot six. Consequently, I have decided to work on getting taller to compensate for my weight!

It was interesting to hear the Hon. Gail Gago say that perhaps some of us could utilise the stairs. I think that is a very good idea and perhaps a bill should be moved to extend the ringing of the bells by three minutes to allow that to happen. I must say that this is a very serious matter. I think I have mentioned in this place previously my disappointment at seeing competitive sports disappear from many of our schools. It is very important that our school children are encouraged to play competitive sport. When you reach our age and you have to give away competitive sport and take up bowls, for example, it is not a good way to lose weight—some tend to have a drink between ends at bowls. Physical activities at school are very important not only for combating obesity but it is also important for the future of children once they leave school in that, once they have played competitive sport, there is a fair chance that 60 to 70 per cent of them will continue to play competitive sport as young adults.

I am sure that, as we get older, we begin to worry about our weight and therefore look after ourselves a little more. This report might issue some of us with a challenge and we might start working on those things. It is a very important issue and it should be taken seriously. It does add to our health bills and it is always nice to see our young children fit and competing against one another.

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

CRIMINAL CASES REVIEW COMMISSION

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

1. That the Legislative Council requests the Legislative Review Committee to examine and report upon the establishment in South Australia of a Criminal Cases Review Commission to examine suspected wrongful convictions, miscarriages of justice and other issues in the criminal justice system.
2. That the report of the committee include recommendations on—
   - (a) Terms of reference of the commission;
   - (b) The relationship of the commission to the Supreme Court, the parliament and Executive government;
   - (c) The powers of the commission and its membership;
   - (d) The criteria for cases to be examined by the commission;
   - (e) Whether the commission should be empowered to examine and make recommendations in relation to crimes in respect of which there was no prosecution or conviction;
   - (f) Resourcing issues; and
   - (g) Any other relevant matter.

The Legislative Review Committee of the parliament is the appropriate committee to examine issues of this kind. That committee, as members will know, has amongst its functions the inquiry into considering and reporting upon matters concerned with legal, constitutional or parliamentary reform, or with the administration of justice. Section 16 of the act provides that references to the committee can be by resolution of either house or of the committee's own motion.

This proposal arises out of the fact that in this community, over quite a number of months, indeed years, there have been serious concerns about aspects of the criminal justice system. Those concerns have been expressed from many quarters, some in this parliament, such as the government might be disposed to dismiss and dismiss lightly some of the concerns which have been expressed. The Speaker in another place called for a royal commission a few months ago on the issue, although the government declined to take up his suggestion. There have been claims which have received widespread publicity not only in this state but now throughout the country that the opinions and evidence of the forensic pathologist Colin Manock, in many cases, were flawed or unreliable. A program on the ABC show *Four Corners* some time ago prompted a motion from the Hon. Nick Xenophon. The motion was not supported but, notwithstanding that, the concerns were very real.

Similarly, the investigative program *Today Tonight* (televised on Channel 7 in Adelaide on a number of occasions) has raised a series of significant issues which ought be addressed. Regrettably, however, at present, there is no formal mechanism for examining alleged miscarriages of justice outside the normal criminal appeal process. It is true that section 369 of the Criminal Law Consolidation Act does provide a mechanism whereby a petition for mercy can be referred by the Attorney-General to the Supreme Court to be there determined, and there have been some instances where there have been such references. However, the Supreme Court does not have any investigative function and the powers that it exercises are limited, especially by precedent.

One formal way in which cases are reviewed in our system of justice is through a royal commission.

The cases of Lindy Chamberlain and Edward Splatt are prominent examples of royal commissions, but a royal commission is a very expensive option. Moreover, royal commissions are set up only in response to protracted public agitation and extensive media pressure. This means that cases which do not capture the public imagination may not receive the attention they warrant. Had it not been for the activities of Stewart Cockburn in relation to the Edward Splatt case and the fact that he was a highly respected journalist with *The Advertiser*, there never would have been a royal commission and Mr Shannon would not have made the recommendations that he did.

A Criminal Cases Review Commission was established in the United Kingdom in 1997. Its establishment was recommended by the Royal Commission on Criminal Justice in the United Kingdom, which sat between 1991 and 1993. Details of the constitution and functions of the United Kingdom commission (which I believe should be a starting point for the Legislative Review Committee's examination of the desirability and feasibility of establishing such a commission here) can be found, for those members who are interested, at www.ccrc.gov.uk. I urge members who are interested in this subject to examine the information contained on that web site, which is comprehensive.

The Criminal Cases Review Commission in the United Kingdom is a non-departmental public body established under the Criminal Appeal Act. It was formally established in 1997. It assumed the responsibilities for reviewing miscarriages of criminal justice previously exercised by the Home Office and also by the Northern Ireland Office. Members of the commission are appointed by the government. Its main responsibilities are, first, to review alleged or suspected miscarriages of justice and to refer a conviction, verdict, finding or sentence to the appropriate court of appeal when the commission considers there is a real possibility that it would not be upheld; to investigate and report to the Court of Appeal on any matter referred to the commission by the court; and to consider and report to the Secretary of State on any matter referred to the commission arising from consideration of whether or not to recommend the exercise of Her Majesty's prerogative of mercy in relation to a conviction.

The United Kingdom body is a substantial one, well staffed, with significant experts. The commission refers cases, and it has to decide whether or not a case should lead to a referral or a non-referral. Referral by the commission requires a person to have been convicted of an offence, either on indictment at the Crown Court or summarily by a Magistrates Court. Unless it appears to the commission that there are exceptional circumstances, references of a conviction, verdict, finding or sentence can be made only if an appeal against that conviction, verdict, finding or sentence has already been determined or leave to appeal has been refused. There is provision for exceptional circumstances to be taken into account in determining eligibility. The commission can only refer a conviction, verdict or finding to a court. That means that, if no conviction was entered or no charge was laid, the commission would not have jurisdiction to act.

The United Kingdom act expresses the intention that the commission should be an active investigative body. It may investigate issues by using its own resources—for example, by case workers and legal and investigations advisers; it may appoint an expert to carry out an investigation or prepare a report; it may request police to carry out work—for example, interview witnesses; and it may require the formal appointment of an investigating officer. Expert advice is often significant in case reviews. Relevant techniques may not have been available when a trial or subsequent appeal took place. Even when they were, appropriate expert evidence may not have been obtained because of the failure to recognise its potential importance or because of funding limitations.

The commission's in-house expertise in areas such as law, police investigations, fraud and forensic psychiatry have meant that it has developed working relationships with a number of experts in fields such as DNA testing, the examination of documents, fingerprinting, video analysis and forensic pathology. The Forensic Science Service regularly provides independent scientific evidence and advice to the commission.

The commission in the United Kingdom, as at 31 March 2002 (as I read its figures) has investigated some 4 830 cases, and it has led to the convictions in 64 matters being quashed. In this country, no similar bodies have yet been established at a governmental level. However, 'innocence projects' are being established at some Australian universities—notably, Griffith University and the University of New South Wales. These innocence projects are based upon a model that has been adopted in the United States.

Whilst innocence projects are important and provide lawyers, academics and law students with the opportunity to examine particular cases (and, in many cases, they have led to serious doubts being cast upon the incarceration of individuals), I believe that privately run organisations, such as universities, conducting innocence projects does not enhance public confidence in our criminal justice system. In fact, the existence of those informal arrangements tends to undermine confidence. A better solution is to provide a formal government funded mechanism through which cases can be examined in a professional, competent, independent and appropriate way rather than having a media circus in those particular cases that catch the attention of the media or excite public interest. A formal commission would, in my view, improve public confidence in our criminal justice system, which, I have had occasion to say in another contribution earlier today, has been seriously eroded by certain events in this community in recent weeks.

The Hon. Ian Gilfillan interjecting:

The Hon. R.D. LAWSON: It will not be necessary to refer to the recent forced resignation of the Director of Public Prosecutions at this juncture. No doubt, the Legislative Review Committee may have work to do in relation to that aspect of the matter.

There are several important points to note. The motion is to examine the feasibility of a commission in this state. The Liberal Party is not yet committed to the concept, in terms of resources to be allocated. However, we believe that this concept deserves very close examination to determine whether or not it is feasible in a jurisdiction such as ours. The government has already rejected the notion as a political stunt. I can only say of this government that, in relation to law and order matters, it would certainly recognise a stunt when it saw one. It is a master of stunts—and there were a few happening outside the Attorney-General's office earlier this week, with his clown-like act to attract a public headline. The highly disrespectful 'On your bike, Mr Rofe' exercise was a low point in law and justice in this state.

The PRESIDENT: I draw the honourable member's attention to his responsibility with respect to making injurious remarks about other members of Her Majesty's parliaments.

The Hon. R.D. LAWSON: I am indebted to you, Mr President. The government may attack this proposal on the grounds of cost, but I believe that the Legislative Review Committee will be able to examine how a commission could be established in the state in the most efficient manner. It must be borne in mind that our current mechanism for dealing with alleged miscarriages of justice, ultimately, is a royal commission; a most expensive operation, as we found in the Splatt case and with Lindy Chamberlain. If we can avoid inquiries of that kind, a commission of this nature will actually save money for the community.

In moving the motion I do not suggest that every person who is convicted of any criminal offence will be given an automatic avenue of appeal; that is certainly not my intention in moving this motion. The Legislative Review Committee is required to examine whether any filters are appropriate and, if so, what those filters ought be. No doubt the Attorney indicates that the Liberal Party has jumped on the 'Free Keough' bandwagon; that is certainly not the case. However, we do not doubt that, if the appropriate criteria are met, a case such as that or any other cases mentioned in relation to Dr Manock might be appropriate for, at least, an examination at the preliminary level by an independent body.

Finally, I must emphasise that this proposal is designed to improve public confidence in our system. It is not designed to undermine it. It is designed to ensure that the guilty are behind bars, but that only the guilty are behind bars. I commend the motion.

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

SOUTH AUSTRALIAN COUNTRY WOMEN'S ASSOCIATION

The Hon. CARMEL ZOLLO: I move:

That this Council notes and congratulates the South Australian Country Women's Association on its 75 years of service to our community.

One of our most important and respected institutions in the state, the South Australian Country Women's Association, is this year celebrating 75 years of service to our community. Recently, I had the pleasure to be invited to join members of the South Australian Country Women's Association for a number of very important functions.

Earlier this year I was particularly pleased to represent minister Holloway at the special day to celebrate Rural Communities and Industries Working Together. It was sponsored by DAFFA on International Women's Day. I was also pleased to be invited to join members of SACWA and members of Women in Agriculture and Business at the reception to mark the occasion of the visit of Mrs Hilda Stewart MBE, World President of the Associated Countrywomen of the World. Mrs Stewart was en route to Hobart for the Associated Country Women of the World 24th Triennial Conference, with the theme of the conference being 'Women Working Worldwide'.

I know that our South Australian delegates representing peak bodies, including, of course, the South Australian Country Women's Association, played an important role as part of the conference. I was particularly pleased to be asked by the international officer in South Australia, Adair Dunsford, to meet and join our delegates prior to their attendance.

The South Australian Country Women's Association began its community service in Burra, and has from that time upheld the principles of the movement known throughout the world as the Country Women's Association. The association is non-party political, non-sectarian and non-profit. The ideals and beliefs of the association are very much worthwhile placing on record.

Women of all ages, whether in the city or country, need support. Sharing involves service and the giving of time, talents, effort and finance. What is given in service is the road to what is gained personally from membership. Caring involves friendship, tolerance and understanding of others. The provision of community welfare is important. By working together much can be achieved. Social issues need constant monitoring and lobbying at local, state and federal levels. Education is continuous. Heritage skills and history are worth preserving. Leisure activities enhance the quality of life. Women can make a difference to what happens worldwide. And the policies of the association must remain flexible to facilitate change.

As Parliamentary Secretary Assisting Minister Holloway, I am well aware that the government of South Australia has had a longstanding interest in seeing rural women's contribution as an important aspect of the growing of the primary industries sector. Viable primary industries need good solid social infrastructure underpinned by a diverse range of people with talent, vision and skills. The South Australian Country Women's Association has played an important role in the promotion of rural women in primary production. Associations like the South Australian Country Women's Association serve to highlight the fact that a group of women who make up more than 50 per cent of the population cannot be ignored. They help to remind us that when conservative figures suggest that over 32 per cent of farmers are women, and when over 7 000 women in South Australia alone define themselves as farmers or farm managers, the numbers, alone are significant. As well, I understand that Australia-wide women sign 80 per cent of farm cheques. So obviously the majority of businesses are in partnership, or, indeed, sole ownership.

I remember when I joined the South Australian Country Women's Association workshop on International Women's Day earlier this year, the view that came through from the members present and other speakers was that they took for granted that women farmers are heavily involved. Regrettably, the numbers are still not sufficiently reflected in positions of leadership.

I mentioned earlier today in the matters of interest debate that several weeks ago, together with minister Key, the Premier launched a statistical profile of South Australian women. The launch reaffirmed the government's commitment to see full and equal participation of women in the social and economic life of our state. As well, I believe it is worth while reiterating that the objective is to see that the participation of women fits well with government policy strategy. It is policy which, no doubt, has support from all parties in this chamber. Honourable members would be aware that the Premier announced earlier this year our commitment to see 50 per cent of all positions on government boards and committees filled by women by 2006. At present, the number is around 32 per cent.

It is important for us to acknowledge and recognise that women's contribution is not just social but also economic. Their role in the many challenges that face primary industries and rural communities today is significant. Throughout history women have displayed strong leadership and courage in times of crisis. The South Australian Country Women's Association has always been ready to assist and support our

rural areas, rural communities, rural people and rural women in particular.

As one of the guest speakers on International Women's Day I was extremely pleased to be presented with a copy of the book *History of the South Australian Country Women's Association 1979-1999, In Their Own Words*. The book, authored by Victoria Zabukovec, a member from Penneshaw, Kangaroo Island, is a follow-on from *The First 50 Years*. I thank Victoria Zabukovec for her work as it certainly has assisted me in preparing this congratulatory motion. I also thank the current president, Betty Tothill, for providing other information and assisting with member's information. *In Their Own Words* differs from most history books because the South Australian Country Women's Association story is told mostly by the members themselves.

Marie Lally, then state president, in December 1998, points out the importance of preserving and recording our history. I would encourage all to obtain a copy of the book. Apart from providing an overview of the association before 1979 it lists all its projects, the people and the many involvements and good works of the association in yearly format.

In our early days as a colony rural women's fear of isolation and sickness was very real. In South Australia the association arose out of country women's needs. The first branch of the association came out of Burra in 1926 at a time when Burra was a bustling mining and agricultural centre. *In Their Own Words* history book tells us that the first branch's aims were to improve the welfare of women and children, and specifically to 'facilitate fellowship and friendship, provide opportunities for recreation, provide opportunities for studies and educational facilities, improve public health, create medical and hospital facilities'.

As is pointed out in the book, it was inevitable that city cooperation became necessary, and in 1928 the Metropolitan Country Women's Association was formed. When members came to Adelaide the metropolitan branch provided hospitality, they met trains, arranged accommodation, guided patients to the Royal Adelaide Hospital, visited them, helped take them to convalescent homes, put them back on the train, and when someone died the family was amongst friends.

The Club at 30 Dequetteville Terrace, Kent Town, provides three-star accommodation for members and non-members at a reasonable tariff. Facilities are available for small workshops, conferences, and even garden weddings. Mary Walker House, at the same address, provides a venue with seating for 120 for meetings, with kitchen facilities available. International links were also established around this time. In 1929 the National and International Council of Women meeting in London resolved that the aim was to 'ensure that the progress made by organised women in one country would be passed on to another'.

A pattern of triennial conferences was established, and it continues to this day.

The good works of the South Australian Country Women's Association ranges from being there in times of crisis—like Cyclone Tracy—or times of drought, to raising funds for a Julia Farr bus or a kidney dialysis machine in Port Augusta. I think it is important to place on record some highlights in relation to the community work that the South Australian Country Women's Association has been, and is currently, involved in, as follows:

· In 2000-01, over $20 000 was raised for the Motor Neurone Disease Association for an outreach worker in country areas;

· In 2001-02, $24 500 was raised for the South Australian Country Women's Association state property maintenance fund to upgrade the building located at the Adelaide Showgrounds, where catering is provided both during the show in September and two weeks pre-show;

· In 2002-03, $15 500 was raised to assist REVISE, which is the Retired Volunteer Educators for Isolated Students Education, with travel and funding for these tutors;

· $35 000 was also raised during that year for the South Australian Country Women's Association emergency aid fund, which includes providing baby parcels valued at $150 for mothers in need. This amount was raised from only 3000 members;

· In 2003-04, the South Australian Country Women's Association emergency aid fund provides assistance for families in need. For example, it pays car registrations, AGL accounts, and provides food and fuel vouchers, etc. The project ends at 30 June each year;

· In 2004, there is the Greenhill Lodge for cancer patients and families.

The South Australian Country Women's Association is involved in so many other good works and endeavours, ranging from the state international committee, the state handicraft committee, the state floriculture committee and the state creative arts section. The social issues fact finding team monitors and lobbies governments on issues of concern presented by members, and the state finance committee takes care of the monetary section of the association. A special outreach extension fund provides funding for conducting leadership and training workshops, and I should also mention the Dorothy Dolling Memorial trust fund which provides special scholarships for rural students who find difficulty in funding their tertiary education.

I also place on record the women who are office bearers at this point in time as the South Australian Countrywomen's Association celebrates its 75 years of service, as well as some of those women who have helped shape the South Australian Country Women's Association in the past and who have served with talent and goodwill. The current executive consists of: the State President, Betty J. Tothill of the Enfield branch; the Deputy State President, Mary Shattock of the Clare branch; the State Treasurer, Judith Mitchard from the Happy Valley branch; the State General Officer, Gloria Afford of the Jervois branch; the State Creative Arts Officer, Lorna Barry of the Rostrevor branch; and the State Property Officer, Mary Hampel of the Browns Well branch.

Those women who have been state presidents in the past 20 years include Vera Gower 1997-80, Elaine Lambert 1981-84, Betty Ashman 1983-84, Lorna Adams deputised in 1985, Joyce Gamlen 1986-88, Enid Philbey 1988-90, Lorna Adams 1990-93, Anne Phelan 1993-96, Marie Lally 1996-99, Roslyn Schumann 1999-2002, and Betty Tothill 2002-05. As well, the following are Members of Honour: Mrs J.A.E. Gamlen from the Wilmington branch, Mrs M.D. Cooper from the Jamestown branch, Mrs M.J. Chatterton from the Lyndoch branch and Mrs B.J. Tothill from the Enfield branch. The Members of Honour title is conferred only on members who have given outstanding and diverse service to the association at state office level.

The vision of the association is 'service to women through women for women by women.' The South Australian Country Women's Association is justly proud to have served both rural and urban communities over the past 75 years, whether it be monetary or in kind support. I add my personal appreciation to all rural women. Their contribution is

significant and very noticeable. Minister Jane Lomax-Smith in the other place, who has been a member for several years, speaks very highly of the association and its commitment to women in South Australia. I know I am joined by all in congratulating this wonderful association—the South Australian Country Women's Association—on its 75 years of community service.

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

INSTALMENT CONTRACTS

Order of the Day, Private Business, No. 12: Hon. J.M. Gazzola to move:

That the regulations under the Land and Business (Sale and Conveyancing) Act 1994 concerning instalment contracts, made on 23 October 2003 and laid on the table of this council on 11 November 2003, be disallowed.

The Hon. J. GAZZOLA: I move:

That this order of the day be discharged.

Motion carried.

LAND MANAGEMENT CORPORATION

Order of the Day, Private Business, No. 5: Hon. J.M. Gazzola to move:

That the regulations under the Public Corporations Act 1993 concerning Land Management Corporation Board, made on 27 November 2003 and laid on the table of this council on 2 December 2003, be disallowed.

The Hon. J. GAZZOLA: I move:

That this order of the day be discharged.

Motion carried.

INDUSTRIAL AND COMMERCIAL PREMISES

Order of the Day, Private Business, No. 13: Hon. J.M. Gazzola to move:

That the regulations under the Public Corporations Act 1993 concerning Industrial and Commercial Premises Corporation Revocation, made on 23 October 2003 and laid on the table of this council on 11 November 2003, be disallowed.

The Hon. J. GAZZOLA: I move:

That this order of the day be discharged.

Motion carried.

LAND MANANGEMENT CORPORATION

Order of the Day, Private Business, No. 14: Hon. J.M. Gazzola to move:

That the regulations under the Public Corporations Act 1993 concerning Land Management Corporation amendments, made on 23 October 29003 and laid on the table of this council on 11 November 2003, be disallowed.

The Hon. J. GAZZOLA: I move:

That this order of the day be discharged.

Motion carried.

DEVELOPMENT ACT

Order of the Day, Private Business, No. 24: Hon. J.M. Gazzola to move:

That the regulations under the Development Act 1993 concerning development assessment variation, made on 4 September 2003 and laid on the table of this council on 16 September 2003, be disallowed.

The Hon. J. GAZZOLA: I move:

That this order of the day be discharged.

Motion carried.

DISTRICT COURT ACT

Order of the Day, Private Business, No. 36: Hon. J.M. Gazzola to move:

That the regulations under the District Court Act 1991 concerning Civil and Criminal Division Fees, made on 29 May 2003 and laid on the table of this council on 4 June 2003, be disallowed.

The Hon. J. GAZZOLA: I move:

That this order of the day be discharged.

Motion carried.

MAGISTRATES COURT ACT

Order of the Day, Private Business, No. 37: Hon. J.M. Gazzola to move:

That the regulations under the Magistrates Court Act 1991 concerning Civil and Criminal Division Fees, made on 29 May 2003 and laid on the table of this council on 4 June 2003, be disallowed.

The Hon. J. GAZZOLA: I move:

That this order of the day be discharged.

Motion carried.

SUPREME COURT ACT

Order of the Day, Private Business, No. 38: Hon. J.M. Gazzola to move:

That the regulations under the Supreme Court Act 1935 concerning fees, made on 29 May 2003 and laid on the table of this council on 4 June 2003, be disallowed.

The Hon. J. GAZZOLA: I move:

That this order of the day be discharged.

Motion carried.

SPENT CONVICTION LEGISLATION

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I lay on the table a copy of a ministerial statement relating to the speed conviction legislation discussion paper made today by the Attorney-General.

[Sitting suspended from 5.57 to 7.45 p.m.]

DIGNITY IN DYING BILL

In committee.

(Continued from 26 November. Page 716.)

Clause 2.

The Hon. R.I. LUCAS: It has been some time since we addressed this bill. My attitude to the bill is outlined in the second reading debate, so obviously I will not repeat that. As this measure requires a conscience vote, I can only speak for myself, although there may be one or two members who think similarly, and what I say might expedite the committee stage. I will oppose the third reading of the bill. Therefore, I am confronted with two general approaches to the committee stage: first, to seek to amend each and every clause that I oppose and then, ultimately, to vote against the third reading

of the bill. From the brief discussions that I have had with a number of members, it appears that the majority will oppose the third reading and that therefore the bill will be defeated.

Obviously, I speak only on behalf of myself, and this is my judgment rather than a definitive indication. Based on that judgment, I indicate that there are one or two clauses on which I will ask questions, but I do not intend to delay the committee by seeking to amend each and every clause of the bill in order to remove the provisions to which I personally am opposed. Whilst I will not call for a division on each and every clause or stand up and oppose every clause, that is not to be construed as consent from my point of view and possibly that of other members.

Some members will oppose the third reading of the legislation, but they will not drag out the debate in committee line by line. So, those of us who are of the view that the bill will be defeated at the third reading will not unnecessarily delay the consideration of the legislation in the committee stage. I just wanted to indicate that, whilst I will not call for a division or speak to every clause, that is not to be construed as consent to each clause because, in the end, I will vote against the third reading. It is my personal judgment at this stage that the numbers are in the chamber to defeat the legislation at the third reading, which is my preferred position.

The CHAIRMAN: So, your position in respect of this clause is that you want no commencement date.

The Hon. NICK XENOPHON: The Hon. Mr Lucas may be horrified to hear me say that he pretty well spoke for me on that occasion in terms of his approach. I think it is an eminently sensible approach. It is pragmatic; it allows the Hon. Sandra Kanck's views to be heard with respect and the bill to be dealt with. I do not resile from my position of opposing the third reading, but I think the Hon. Mr Lucas should be congratulated for setting out a practical way of dealing with the bill without members' principal positions, whatever they may be, being compromised in any way.

The CHAIRMAN: So, your opinion on the commencement is that there should be no commencement.

The Hon. CARMEL ZOLLO: I echo those comments. I have previously indicated that I cannot support this legislation, and that will not surprise the Hon. Sandra Kanck. I see no point in calling for a division or contributing to every clause knowing full well that I am not able to support the third reading. I agree that probably the numbers are not there for it to pass, but I am speaking for myself because my party requires a conscience vote on this bill.

Clause passed.

Clause 3 passed.

Clause 4.

The Hon. D.W. RIDGWAY: I move:

Page 4, after line 3—Insert:

(2) A person who suffers from clinical depression and from no other injury or illness that would, apart from the depression, seriously and irreversibly impair the person's quality of life is not to be regarded as hopelessly ill.

In my extensive travels and investigation on this bill, which was introduced shortly after I become a member of parliament, I was quite concerned with the definitions in that I felt that depression should be included as an illness that was not acceptable in my view as being hopelessly ill. In my view it is a transitional disease, but we have in this society today and worldwide a lot of people who face some very unpleasant circumstances in their life and some might choose perhaps suicide or death as a way out of that unpleasant position. I certainly do not believe that this bill is designed to be a way out for people in unfortunate or difficult situations. Often the depression or the diseases associated with depression can be managed with medication and other types of intervention. For those reasons I move my amendment.

The Hon. SANDRA KANCK: As the Hon. Mr Ridgway would know, I think the bill I have introduced is the model bill. However, I am pleased with the way members are approaching this. This is a far better way to go about it than we did on the previous occasion when it seemed that we were going to be left with a shell with a title and nothing else as clauses were gutted one by one. The Hon. David Ridgway is proposing in this amendment the sort of cooperative response I was always looking for on this bill so that South Australia can know what sort of bill will be acceptable.

Clearly, the Hon. Mr Ridgway is inserting something that provides another safeguard. For those who oppose the legislation, it does not matter how many safeguards go in, because they will not support it, but for someone who may be slightly marginal on this issue and not sure which way to go another safeguard may be what makes the difference for them. While I am not happy to accept it, as I think what we have already is the most humane approach, I will not oppose this subclause being inserted in the bill.

The Hon. A.L. EVANS: I oppose the amendment as it cannot be reconciled with the definition of 'hopelessly ill' in clause 4. There is an inherent contradiction between the two clauses. I refer to the problem of the definition of 'hopelessly ill' being tied into equally vague notions of being mentally impaired. With regard to the vast directives, there is too much vagueness and subjectivity around the term 'hopelessly ill'. There is an important consideration that a desire for euthanasia is a symptom, that the patients may be suffering feelings of hopelessness arising out of depression and therefore are not in a condition to make a sound decision. In the Netherlands there has been a gradual widening of the laws. I therefore oppose the amendment.

The Hon. R.I. LUCAS: I understand the rationale of the amendment from the Hon. Mr Ridgway, but it raises for me again the issue of the definition of 'hopelessly ill'. Whilst I certainly accept the argument implicit in his amendment, clinical depression should never be used as a reason for voluntary euthanasia. Many others would still be caught up in the bill as structured even with the amendment. It is fine to pick out clinical depression—I would not argue with the Hon. Mr Ridgway on that—but from correspondence we have received there are many other examples one could give where one could put in an exemption, a further safety net or provision and we then have an internal argument about what else you would put in.

I understand the background to the amendment. My preference is similar to the Hon. Mr Evans in relation to this. I do not intend to call for a division on it. If this provision is in there, as the mover of the amendment and the originator of the bill have indicated, and it goes through on the voices, so be it. I will vote against the third reading of the bill with or without this amendment.

The Hon. P. HOLLOWAY: I support the amendment.

The Hon. J.M.A. LENSINK: I applaud my colleague, the Hon. David Ridgway, for this amendment and am happy to support it. As I outlined in my previous speech, depression is one of the areas about which I hold particular concerns with this bill. While I am still unlikely to support it at the third reading for other reasons, I believe depression is a particularly insidious disease. Many people who suffer from

it do not realise or want to accept, even with professional advice, that they have an illness because of the stigma that is attached and it can be quite distorting to people's version of reality and make them believe all sorts of things about their lives that other people would not believe to be true. It is an important thing to recognise and I support it.

The Hon. J.S.L. DAWKINS: I indicate my support for the amendment moved by the Hon. David Ridgway.

Amendment carried; clause as amended passed.

Clauses 5 to 13 passed.

Clause 14.

The Hon. D.W. RIDGWAY: I move:

Page 7 lines 20 to 23—Leave out paragraphs (b) and (c) and insert:

(b) the patient has made a request for voluntary euthanasia under this Act and, having made reasonable inquiries of the patient (if the patient is conscious) and of any persons who have a close relationship to the patient and are reasonably available for consultation, the medical practitioner has no reason to believe—

(i) that the request has been revoked; or

(ii) that the patient has expressed a desire to postpone the administration of voluntary euthanasia; and

This amendment deals with advanced directives and in my travels and study of the bill I spent some time at the Mary Potter Hospice and with some of the nuns who worked there and talked to some of the staff. During the course of the discussions it came up that what we may like to say when we are in our 40s, 50s, 60s or 70s or while still of sound mind and body may be different from what we say when in that situation.

My colleague, the Hon. Diana Laidlaw, used to say, 'If I am ever incontinent I want to be out of this place.' The Mary Potter Hospice acknowledged that, while the quality of life of those people was significantly diminished from what they had known as younger people, how could we still be sure, if they had lost their ability to communicate, whether euthanasia was still their preferred option? That was the concern of a large number of people I spoke to. They may have had a viewpoint at one time, but in five or 10 years or even months later, when their physical condition may have deteriorated, they may not be able to communicate to doctors or family members that their opinion had changed. I was concerned by that.

The purpose of this amendment is for the doctors and family to be still 100 per cent sure that that is what the patient or person seeking voluntary euthanasia still desires to happen. If you cannot be 100 per cent sure, perhaps you should not proceed. In trying to make this legislation tighter, more proscriptive and harder to abuse, I move this amendment.

Even my colleague the Hon. Robert Lucas suggested at one stage that, while he acknowledged there was strong support for the notion of voluntary euthanasia in both informal and formal polling in our community, on previous occasions on this issue he did not accept the majority vote. I think as legislators, if the majority want something, it is our duty and responsibility to try to come up with a law or some legislation which allows them their wish but protects absolutely the minority who do not wish it.

The Hon. A.L. EVANS: I oppose the amendment. I point out that, in relation to the issue of the majority vote, at the last election they had that opportunity. The most high profile euthanasia expert known by everyone, Nitschke, gained 1 per cent and the Democrats vote dropped. They had their opportunity to get their numbers; that was their big chance. Three days before the election out came the big story about Mrs Crick. Everyone heard about that, yet the results did not show it. I really discount those figures. I oppose this amendment. It attempts to bring a safeguard, but it still fails to address the problem of an unconscious patient not being able to communicate a change of mind. A close family member is not able to read the mind of an unconscious patient. It is an amendment which again purports to be a safeguard, yet it does nothing to address the problems of involuntary euthanasia.

By the way, in Holland, according to their own statistics (a copy of which you have all received from the Euthanasia Society) one in four are euthanased without consent. That is Holland's official document—one in four. I do not think any of us would want to be accused of being part of a system where one in four is killed without their consent. Indeed, it highlights the problem by excluding from its ambit those who are not conscious. It says that, if you are conscious, you will have an opportunity to change your mind but, if you are not conscious, then bad luck. I have heard stories of people who were unconscious but they were still aware of their surroundings. It is a dreadful thought that they could be killed in such circumstances against their will.

I refer also to my earlier contribution in which I outlined some of the difficulties inherent in relying on people close to the patient, when those people may be experiencing conflicting emotions about the situation. It is not safe to rely on the views or wishes of such people who may be in a state of emotional turmoil and confusion as to their own motives towards the patient. Euthanasia of this ill friend might be a tempting option for delivering a quick end to their own suffering and distress. The level of skill required to make a safe assessment in the event of such a likelihood is well beyond most, if not all, doctors, even if they are highly skilled in palliative care and psychiatry. Therefore I oppose the amendment because it fails to address the problem of the unconscious patient's not being able to communicate a change of mind. The amendment does nothing to remove the risk of euthanasia without consent. Let Holland be our example and our lesson.

The Hon. SANDRA KANCK: Again, as with the previous amendment, I understand that the Hon. Mr Ridgway is placing more safeguards in the bill and, although I think I have enough already, I am prepared to accept it so that, at the end, those of us who support voluntary euthanasia have some understanding of what parliament is prepared to tolerate in legislation such as this. In terms of the comments made by the Hon. Mr Evans, I do point out that, despite a doubling in the number of candidates from the 1997 to the 2002 state election for the Legislative Council, I was elected at a higher position than I had previously and I had the highest number of no. 1 votes below the line. Whether or not Philip Nitschke obtained a good vote I do not think is an indicator at all for support for this legislation, because Philip Nitschke is going down a different path and not the legislative path.

It is certainly not true to quote the Netherlands situation in the way in which the Hon. Mr Evans has done because, if he looks at what has been said in the Netherlands, the doctors who administer euthanasia in this situation do so with the knowledge that these people have previously indicated either to family or friends that they do not want to exist in that situation and, under those circumstances, with that corroboration, the doctors then take that action. It is mischievous to say the least to run these sorts of arguments.

The Hon. A.L. EVANS: I am not quoting my own figures; I am not making up anything.

The Hon. Sandra Kanck: You are distorting them.

The Hon. A.L. EVANS: No, I am not; you received the book and you saw the figures. These figures were not only endorsed by the Dutch government on its official paper but also by the Dutch ambassador who came here, and he talked about the honesty of the Dutch people to support his reason for accepting that the figures were accurate.

I also received an email from Mary Gallnor admitting that approximately 1 000 people were euthanased without consent. How can anyone who believes in libertarianism let that happen? The figures are not distorted; the figures are factual. The honourable member will find that at point 2 in the book it clearly states how many were euthanased, how many were suicide and how many were euthanased—and the words are clear—'without consent', and it is around 1 000 people a year. I will never be party to a bill in which people's rights are taken away without their consent, and I do not think any civil libertarians can do that.

The Hon. P. HOLLOWAY: I indicate that I support the Ridgway amendment on the basis that it does add a small but I think worthwhile additional safeguard to the measure. I voted against this bill at the second reading and indicated that I will be voting against the third reading but, given that this bill may well have the numbers to get up, it is better that the bill in its final form should have the maximum possible safeguards. For those reasons, I support the amendment.

The Hon. J.S.L. DAWKINS: I indicate that I support this amendment and I commend the Hon. Mr Ridgway for his efforts to add further safeguards to the bill.

The Hon. G.E. GAGO: I support the amendment. I think it does add at least some degree of protection. In response to the Hon. Andrew Evans' concerns, it is important to remember that this bill is about trying to ensure that there are safeguards to ensure that consent is given and that consent is followed through to the final act of euthanasia. I believe that this amendment goes a considerable way to ensuring that that does occur.

The Hon. J.M.A. LENSINK: I also indicate support for the amendment because I think it does add an additional safeguard. Were this bill to get through, I would sleep much better knowing that I had added an additional safeguard to it rather than having let that opportunity pass.

Amendment carried.

The Hon. D.W. RIDGWAY: I move:

Page 8, after line 1—Insert:

(ia) that the medical practitioner, having made reasonable inquiries of the patient (if the patient was conscious at the time of the examination), has no reason to believe—

(A) that the request has been revoked; or

(B) that the patient has expressed a desire to postpone the administration of voluntary euthanasia; and

This amendment is consequential on the previous amendment.

Amendment carried; clause as amended passed.

The Hon. SANDRA KANCK: I had hoped to make a small amount of progress tonight on this bill. We have actually managed to get halfway through the bill, which is 24 clauses long plus the schedule, so I am happy at this point to report progress.

Progress reported; committee to sit again.

HEALTH AND COMMUNITY SERVICES COMPLAINTS BILL

In committee.

(Continued from 4 May. Page 1454.)

Heading.

The Hon. A.J. REDFORD: I move:

Page 10, line 1—Leave out heading and insert:

Part 2—Health and Community Services Complaints Commissioner

The Hon. A.J. REDFORD: I believe that this is consequential upon an earlier amendment that was passed.

Amendment carried.

Clause 5.

The Hon. A.J. REDFORD: I move:

Page 10, lines 4 to 6—Leave out subclauses (1) and (2) and insert:

(1) There is to be a Health and Community Services Complaints Commissioner.

(2) The office of the Commissioner will be held by the person for the time being holding the office of State Ombudsman.

The first part of the amendment is in fact consequential on the decision made yesterday by this chamber. The second part is to amend the bill so that the office of the commissioner is held by the person holding the office of state Ombudsman. This is a significant issue so far as the opposition is concerned and is one of the significant points of difference between the government and the opposition. I acknowledge that a lot was said during the second reading debate regarding this issue, but I will quickly traverse some of the matters that we advanced in relation to our position on this clause.

First, it is interesting to note that, following the 1997 election, it was ALP policy that the Ombudsman deal with issues of health and community complaints. Indeed, a bill was put before the parliament by John Hill MP, the member for Kaurna, now a senior minister in this government, in which he advanced the proposition that the Ombudsman should have responsibility for the supervision of health matters, including private health matters.

Indeed, the Legislative Review Committee looked at that bill, and I know that you, sir, were a member of that committee, and we unanimously made recommendations in relation to it. I can point to some features that the Ombudsman has and at the same time point to some features that the commissioner will have under this bill and some of the points of difference. First, the office of Ombudsman is independent. That is clearly the case and has been the case for the 32 years that the office of Ombudsman has been in existence in this state.

It is not clear about the level of independence of the commissioner, and I will visit that issue shortly, just to point out some clauses in this bill that would indicate, at least to me, that the independence of the commissioner as proposed in the bill is significantly less than that of the Ombudsman. I know members would understand that that is an important issue. The fact is that we are going to have here a body that will investigate both the public and the private sectors, and it is important that the person holding that office is removed from both the public and the private sectors and the capacity to be influenced.

The next important point is that the office of Ombudsman is answerable to parliament, whereas in this case there are significant provisions in the bill that would indicate that the commissioner is answerable and accountable to the minister. One example of that is the preparation of a charter in which the minister himself has approval. The third point is that experts in relation to public affairs (and, in that respect, I refer to Chris Finn from the University of Adelaide) gave evidence to the Legislative Review Committee in 1999 to the effect that public policy would demand a greater degree of

independence. Their view was that over 30 years of dealing with medical issues had shown that the Ombudsman had developed significant experience in relation to this issue.

The next issue that would demonstrate the importance and the independence of the Ombudsman is that the Ombudsman holds his or her office until they turn 65 which, again, would indicate a significant degree of independence from both the public sector and the private sector in the jurisdiction of the Ombudsman. Another issue, I concede, shared in the provisions of this bill is that the Ombudsman cannot be dismissed unless there is an address of both houses of parliament.

Another point of difference is that it is quite clearly stated in the Ombudsman Act (and I refer to section 11) that the Ombudsman is not a public service employee, whereas no similar provision is contained in this bill. Another point that we raised during the second reading is that the creation of a separate office could, or would, have impacts in that there is a real risk that people would go jurisdiction shopping and there would be potential for confusion.

In my second reading contribution I pointed to a number of comments made by the Ombudsman in relation to this issue. First, there was a comment that he made in his 2000 report, as follows:

> I think it entirely consistent with the public face of the Ombudsman in the modern age of administration, which involves inter alia, a changing face of government itself, with contracting out, privatisation and corporatisation for the Office of the Ombudsman (including the Health Complaints Unit) to deal with certain kinds of private sector issues, provided that the nature of any such dealing is carefully defined in order that the role of the complaint-handling body (whatever its formal title may be) is not misconceived as being regulatory or overlapping in its role with other more appropriate remedial bodies, including professional registration boards, tribunals and courts.

It is quite important to take into account the Ombudsman's views, given his extensive experience in the issue—and, indeed, in quite an unprecedented way for him. He is certainly not as up-front as our other parliamentary officer, the Auditor-General, in making public statements. He is one of those public officials whom I would describe as a man who talks softly and rarely and, when he does talk, I think we owe him a duty to listen to him. He said this in relation to the bill—and this is significant:

> In this state the institution of the Ombudsman has become reliable and credible over a period of 30 years. It has been faithful to the charter laid down by the parliament. Moreover its credibility depends on effective original jurisdiction over all government departments and statutory agencies and authorities. If that jurisdiction were to be lessened by other schemes, that would not only undermine the office of the State Parliamentary Ombudsman but also the paths so carefully laid down by parliament itself in that original act. . .

He said that the parliament has subsequently reinforced the Ombudsman's role. He went on to state:

> Moreover, removing directly or by implication any government department or agency from the Ombudsman's primary jurisdiction and relegating it to a peripheral 'supervisory' function over some 'intermediate complaint-handling agency' be it called Ombudsman or not, would even impede and frustrate the operation of the new audit review functions provided for in the recent Ombudsman (Honesty and Accountability) Amendment Act 2002. . .

He further stated that it would 'negate the overall intent of parliament'. It is an unprecedented statement from the Ombudsman to say that the effect of the government's bill, if passed in an unamended form, would be to negate the role of the Ombudsman himself, an office which is held in high regard in this state and which has been held in high regard for a period in excess of 32 years. He further stated:

> From my 34 years experience, 17 with legislation and 17 as Ombudsman, I am only too aware how the perverse consequences of an even apparently innocuous definition may cause subsequent grief within a perfectly healthy legal environment. I pray that the legislators carefully scrutinise all new legislation impacting on my jurisdiction and communicate with me on any concerns they may have. Such communications would not be inimical to the proper operation of the Ombudsman.

He concludes by saying, 'Let not 30 years of good Ombudsmanship be in vain.' They are very strong words.

I read that out in my second contribution. And what did the government do? It got a couple of the heavyweights (I think the Attorney-General was one of them) and went around with a big stick and sought to counsel the Ombudsman. They then reported back during the third reading and said they had counselled him and everything was okay. That is not good enough. If the Ombudsman has a statement to make that contradicts what he said on the public record on the occasion of the 30th birthday of the Ombudsman's office, he ought to say so publicly and not be taken into a back room and thumped around by the Attorney-General or one of his colleagues. The government has not provided this chamber with any evidence that would indicate that the Ombudsman's concerns have been addressed.

In that respect, let me take members (and, in particular, the Hon. Andrew Evans) through the bill and give some examples of how this particular office, if the bill is passed unamended, is accountable to the minister. The first example is the way in which the issue of community service can be extended by regulation. As it currently stands, the executive arm of government can actually take jurisdiction from the ombudsman by way of regulation. It can also do precisely the same thing with health. The minister has a role in approving, or not approving, charters prepared by this particular ombudsman.

When you go further into this matter, you see that this particular office is held by a person for only seven years. The appointment is not made through a parliamentary committee, the process involved in the appointment of an ombudsman, it is made by minister. We have a character of an entirely different design than that which the ombudsman is currently. The ombudsman plays a very special role in our constitutional framework. The ombudsman is not accountable to the executive arm of government. He makes the executive arm of government accountable to parliament and to the people. In this bill the office is set up so that there is no such direct accountability to parliament. Any accountability comes via the minister. The direct accountability to the people is diminished as a consequence.

In relation to funding and various other issues, we have significant executive interference and executive responsibility to this office. In relation to this bill, the opposition is saying that it is absolutely vital that we have an independent officer supervise health and community services and process their complaints. The framework established within the bill that is presented to this parliament does not establish that. We have lesser terms, more accountability to a minister and we have financial control.

I will move to another issue that causes the opposition at great deal of concern. I know that some members may be concerned or confused as to why I raised questions about finances in relation to the office. Let me explain what I understand the government proposes to do. First, the

government proposes to set up this office with, I assume, an amount of money of somewhere in the order of $300 00 to $400 000—I think it has been suggested, and I am sure the minister will correct me if I am wrong—to be used to set up this office. That $300 000 or $400 000 can pay for a lot of things including ministerial office renovations (if the minister looks at recent Sunday Mails). It is entirely unnecessary because it is a cost not required if the ombudsman undertakes this task. Secondly, we will have approximately, as I understand it, at least $350 000 per year each and every year taken out of the current ombudsman's office.

I do not know if the members have been down to the current ombudsman's office lately, but I assure members that on the visits that I have made, his staff works very hard, and he has been screwed quite hard by successive governments in relation to the resources that are made available to him. He and his staff do an enormously important job in dealing with community complaints. We will take $350 000 from him; I know the government will say that we are going to take a bit of its jurisdiction away from him as well, and everything will be hunky-dory. We will also give this body another half a million dollars a year of taxpayers' money. So, you will have an ombudsman's office that will operate on something in the order of $1.3 to $1.4 million, and you will have a commissioner's office with a budget of about $850 000 which is about $2.2 million. One would have to question whether or not there might be more efficient outcomes in dealing with the complaints in a seamless fashion without arguments about jurisdiction if we just do not give the ombudsman the extra $500 000, and enable his office to function with $2 million and use his current staff. That is terribly important.

Finally, the opposition is extremely concerned about the government's rhetoric on honesty and accountability. The government has gone on and on about honesty and accountability for a number of years; it makes a great play of it. This severely undermines honesty and accountability of government when you consider that the government can, by regulation, remove jurisdiction from the ombudsman and hand it over to the public servant who is directly accountable to the minister rather than retain it with an officer who is accountable to parliament. So, we have a potential for a government, through regulations, to deny the ombudsman jurisdiction in investigating important and significant matters of public policy. This is an ombudsman who enjoys public confidence in this state. I have never heard anyone criticise him. That is something that we should do with great care, to allow someone who is the answerable to a minister to reduce or diminish the jurisdiction of an ombudsman by executive act.

My final point is: just who will this commissioner be? We do not know what the government proposes regarding the appointment of a commissioner. Again, that is an issue that gives us cause for great concern. For argument's sake, we do not know if the minister might choose to appoint someone who is politically connected with the government of the day. We need to ensure that this very politically sensitive area, that is, health and community services is not swept under a carpet and pushed away so that the public, media and others cannot properly scrutinise the delivery of health and community services.

That is a very important and significant issue. We know that when we appoint an ombudsman a parliamentary committee is established to supervise the appointment. No such provision exists in this bill; there is nothing like it. This is simply an appointment by the minister. For all we know, we can have the minister appoint someone from her office or from the public service who is very close to her to deal with these issues. That is a very important issue when dealing with such serious and significant issues in this community. On this side we know that the minister has been under significant pressure regarding health matters. We are concerned that this bill will be used to appoint someone who is politically close to the government and who will then proceed to sweep things under the carpet in order to give the minister a clean bill of health. With those few words I urge members to support the opposition's position.

The Hon. P. HOLLOWAY: I was listening in my room to the rather extraordinary comments of the Hon. Angus Redford. It is amazing to think that this bill, which was an election promise of the Rann government, has been sitting around this place for more than 12 months.

The Hon. A.J. Redford: It is your fault.

The Hon. P. HOLLOWAY: No, it is not our fault.

Members interjecting:

The CHAIRMAN: Order! The Hon. Angus Redford was heard in silence.

The Hon. P. HOLLOWAY: Until this bill is passed there can be no extension of the health complaints service into areas that are not currently covered. We should remember that the previous Liberal government rejected any extension of it—that was its position prior to the election. It rejected any extension, and one suspects that members opposite still have that hankering now.

Then we had this extraordinary comment from the Hon. Angus Redford that the government might actually want to appoint someone to hide it under the carpet. To hide what under the carpet? This bill seeks to extend the area and the services that would be investigated by the health services commissioner. Indeed, every amendment that the Hon. Angus Redford has moved is to restrict the areas in which the health services commissioner can look. How extraordinary, therefore, for the Hon. Angus Redford to suggest that the government—if this is not passed—might in some way try to keep things under the carpet. Where are we going on this? That is the most extraordinary comment I think I have heard in relation to this bill.

If this bill is passed in the broad terms in which it has been put forward by the government we will have the capacity for a comprehensive investigation of complaints across the whole health system. That is what we need to happen. What we do not need is an opposition that is making these extraordinary claims, that is trying to restrict the areas in which there can be investigation, and that is then accusing the government that it might, in some way, try to put its own person there to restrict those investigations. Quite extraordinary!

The Hon. T.G. ROBERTS: It was an extraordinary contribution. The honourable member did get a bit animated with his language.

The Hon. A.J. REDFORD: I rise on a point of order. The minister has misrepresented me: I was not animated. That is a misrepresentation and I ask him to withdraw it.

The CHAIRMAN: There is no point of order. The honourable member is entitled to his opinion—you have given plenty of your opinions. He has not breached any standing order. Dissent is not a point of order.

The Hon. T.G. ROBERTS: The colourful language and the way in which the minister was described as having thumped the Ombudsman in a visit to counsel the Ombudsman about the bill is, I think, a little over the fence and a little

bit colourful. It is an attack on the integrity of the government and the minister in relation to how they deal with matters.

It is a sensitive issue in relation to some of the powers that the honourable member indicates are not going to be with the Ombudsman. It is not as if they have been taken away. It is a bill that has been drafted over a long period of time, and the government is quite conscious of what the implications are when it comes to separating out the health commissioner's duties from the Ombudsman's duties. I would not see it, as the honourable member sees it, as somehow weakening a consumer's ability to make a complaint. It is extending the field and encouraging people to make complaints against those areas of the health system that have, perhaps, been left untouched.

The proof will be in the pudding, and you would think that the opposition would at least give the government a chance to govern and put forward its preferred position. In three years, as the bill indicates, there is a type of cooling off period or a type of sunset clause, which we explained to the honourable member—

The Hon. A.J. Redford: It is not a sunset clause.

The Hon. T.G. ROBERTS: It is a reporting mechanism which allows for the public and the parliament to consider the way in which the bill has bedded down. I would have thought that that would be the way in which the opposition would handle its tactics in relation to this matter. There is no mention in this statement of a counselling session. There was no suggestion that the Minister for Health or the Attorney-General were counselling the Ombudsman, and nor was there an attack on the integrity or the independence of the Ombudsman. It is highly improper to suggest that.

The Hon. A.J. Redford: What happened at the meeting?

The Hon. T.G. ROBERTS: I do not have the minutes of that meeting but I am reliably informed that the meeting was to indicate to the Ombudsman the nature of the bill and to listen to any concerns that he had: it was not as the honourable member said. If the opposition continues to oppose clauses of the bill, it will be the committee that decides the outcome of the amendments and the bill itself. I think we ought to allow the committee to make its own determinations.

Clause 11, in terms of the independence in relation to the issue that we are talking about, provides:

> (1) In performing and exercising his or her functions and powers under this Act, the HCS Commissioner must act independently, impartially and in the public interest.
>
> (2) The Minister cannot control how the HCS Commissioner is to exercise the HCS Commissioner's statutory functions and powers.

The honourable member said that the commissioner is not responsible to parliament, but he or she is responsible to the minister, and the minister is responsible to parliament, and there are ways in which that reporting process can be scrutinised by the public and by the opposition. So it is wrong to say that there is no way in which the minister can act improperly without public knowledge of how the minister and the government are reacting to the commissioner's role and function.

I think it is an exaggeration, but I understand that the honourable member has a position to put. The government has decided that it would like the operations to be under the roof of the Ombudsman and it would like the Ombudsman to take on the extra weight and responsibility of health which, in terms of the government's budget, is a considerable percentage of our budget, to work up an extra workload for the Ombudsman under the Ombudsman's roof. We are saying that we prefer to have it as a separate body.

We will not appoint politically connected people. The appointment of the commissioner will follow the process of government that is required through the Office of the Commissioner of Public Employment and in line with the rules of the merit-based selection process. If that offends the honourable member then a lot of appointments made under the previous government would have offended his sensitivities as well and I did not hear him complaining about a lot of those appointments.

The Hon. A.J. REDFORD: Will the government give an undertaking that no-one who has worked within the minister's office will be appointed to this position?

The Hon. T.G. ROBERTS: It would be very foolish of the government, after all the scrutiny that has been placed on the position, to make an appointment like that. It would clearly be seen as something that would provoke a reaction. As I said, the appointment of the commissioner will follow the process of government that is required through the Office of the Commissioner of Public Employment in line with the rules of the merit-based selection process. It is an age-old formula that has served the public service well, and it has served the public well.

Regarding the powers of dismissal for the commissioner, the Governor may remove the HCS commissioner from office on the presentation of an address from both houses of parliament seeking the HCS commissioner's removal. The Governor may suspend the commissioner from office for incompetence or misbehaviour, in that event. A full statement of the reasons must be laid before both houses of parliament within three days of the suspension. If, after one month from the date the statement was laid before parliament, an address from both houses seeking the commissioner's removal has not been presented to the Governor, the commissioner must be restored to the office. So, there is another avenue for transparency in relation to the dismissal. There has not been any complaint about that formula by the previous government for other positions created, or for other persons employed. Certainly, the dismissal is a very open and transparent public process.

The Hon. A.J. REDFORD: The answer to my question was that the government would be very foolish to do what I suggested. However, that was not my question. My question was very direct and can be answered with a simple yes or no. Will the government give an undertaking that no-one from the minister's office, past or present, will be appointed to this position?

The Hon. T.G. ROBERTS: I think that would be discriminatory and may rule people out for no real purpose or reason.

The Hon. A.J. REDFORD: You have just said that there will be no-one politically connected. Now you are saying there could be; you are not going to rule them out.

The Hon. T.G. ROBERTS: The point I was making is that, if the only attribute that person has is that they are politically connected, they would not get the job. The person has to go through the process I have just described, based on merit. It would be very foolish to appoint someone who does not have the qualifications, based on merit, to be employed in that position. In relation to the reasons for having a separate commissioner, as opposed to putting it under the umbrella of the Ombudsman, is that the government has determined that there should be a separate health and community services commissioner. Unlike the state Ombudsman, the commissioner will not be limited to dealing with public sector agencies only. The commissioner will deal with

complaints about private organisations and will have powers in investigating a complaint they consider relevant and complementary health services in settings both public and private.

The establishment of a separate commissioner's office already has significance. Key peak bodies—SACOSS, Volunteering South Australia, Health Rights and Community Action—have supported its establishment. In addition, discussions with boards and associations have shown in-principle support for the bill, and they have not questioned the establishment of a separate commissioner's office. The commissioner will have service improvement functions which go beyond the state Ombudsman's current activities. If there were a joint appointment, additional resources would be needed for the office, including an assistant or deputy to the state Ombudsman.

Apart from the cost of the Ombudsman, there will be little significant extra cost in the establishment of such an office since the commissioner's jurisdiction would require a separate office within the office of the state Ombudsman. Staffing and associated infrastructure costs will be similar whether the role of the existing office of the state Ombudsman is expanded or a new office established. Therefore, support for separation of these offices would reinforce the state Ombudsman's role in reviewing complaints about the HCS or the commissioner.

To ensure fairness of the HCS complaints system, there needs to be an external arbiter. The state Ombudsman should have powers consistent with the honesty and accountability amendments to the Ombudsman Act to review the investigative process for fairness. This ensures the proper process is followed by the commissioner. Appointment of the commissioner will follow the process, and so on. The safeguards are there; it is transparent. There will not be jobs for the boys or the girls. It makes good sound sense to separate the two positions of ombudsman and commissioner for the reasons I have outlined, if not for making it much simpler so that you are dealing with both public and private sectors. If they were dealing with public sector only, there might be a case. However, in the case of the new commissioner's job, he will be dealing with the public and the private sector due to the way in which the health system is set up.

The Hon. A.J. REDFORD: Why won't the government give the undertaking in a simple way that no-one from the minister's office, past or present, will be appointed to this position?

The Hon. T.G. ROBERTS: Which office?

The Hon. A.J. REDFORD: The one we are talking about: the office of the health and community services commissioner.

The Hon. T.G. ROBERTS: What office are you talking about that the person might come from?

The Hon. A.J. REDFORD: The minister's office.

The Hon. CARMEL ZOLLO: Mr Chairman, can I make a contribution? I think we should point out to the Hon. Angus Redford that we live in a democracy in this state.

The Hon. A.J. Redford interjecting:

The Hon. CARMEL ZOLLO: I do not think anyone is trying to gag you. The honourable member is coming up with absolute tosh, and he should be ashamed of himself.

The Hon. A.J. REDFORD: Before that exchange and I was interrupted, I was wondering whether the minister could directly answer my question, which is an important question. Why won't the government give an undertaking that someone who is either currently employed or who has been employed in the office of the minister will not be appointed to this health and community complaints commissioner position?

The Hon. T.G. ROBERTS: I take it that the honourable member means the current minister's office?

The Hon. A.J. REDFORD: Yes.

The Hon. T.G. ROBERTS: I have answered that question in two parts. One is the employment conditions of a person: it has to be based on merit and must go through a public service model. The other reason is that it would be discriminatory to rule out someone on the basis that they have worked for a minister. Blackballing and similar conditions are difficult to police. Someone might have worked in a minister's office, resigned and gone somewhere else, such as interstate or overseas. I do not know—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: It will be independent. That is the nature of the—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: The honourable member is saying that it will be someone out of the minister's office.

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: I am saying that the process that is being determined is not discriminatory.

The Hon. SANDRA KANCK: I am a little disturbed about how personalised some of this has become. I must say that I took offence on behalf of the minister at some of the things the Hon. Mr Redford had to say when he implied that the minister would appoint someone who would basically be there to cover up the government's mistakes. I think the honourable member should look at a little bit of history and note that the current minister moved basically this same piece of legislation when she was a shadow minister. She would not have had anything to gain from that; she would not have had a say in the appointment of the person. It would have been Dean Brown in those circumstances. If that private member's bill had passed it would have been Dean Brown who would have appointed the person.

One could have equally argued that, if the minister had been successful when she was in opposition, Dean Brown could have appointed someone with that same motive. It is a fairly destructive line of questioning and inference with respect to whether someone from the minister's office, past or present, should or should not be considered for the position of what, at this stage, is called the health and community services complaints commissioner. The minister—whether it be a Labor or Liberal minister—has to choose someone who has expertise in a particular area at a particular time for what that government is doing. They should not choose second best. People come and go from the minister's office, as a consequence of the emphasis the government is putting at a particular time.

I have never been in government, but I have seen that this happens. To say that someone should be disqualified from a position simply because at some stage they worked in a minister's office, I think is extremely discriminatory. Regarding the issue of whether or not this position should be independent or part of the ombudsman's office, I refer members to a report of the Consumers Association of South Australia, which I do not think is a particularly left-wing organisation. In fact, I am sure that the Hon. Angus Redford is aware that one of the key people in that organisation is an active member of the Liberal Party. The Consumers Association conducted a survey—

The Hon. A.J. Redford interjecting:

The Hon. SANDRA KANCK: Well, I'm surprised that you didn't know. The Consumers Association conducted a survey of its members. They also put this survey out to various agencies including: SACOSS, COTA, Disability Action and Health Rights and Community Action. They invited people to participate in this survey about their experiences with health complaints in South Australia. The results state, in part:

> More consumers did not lay complaints (57 per cent) even though they felt strongly enough about what had occurred to voluntarily participate in this survey. The reasons for not laying a complaint included, lack of trust/confidence in the system, lack of know-how, fear of retribution, and personal difficulty.

I stress the lack of trust and confidence in the system and the lack of know-how. It continues:

> When consumers did lay complaints, they were often left with a continual struggle with lack of communication, lack of transparency and fear of retribution.

From reading this, the fear of retribution was when they actually laid complaints directly with the doctor or the medical service, not the state ombudsman's office. It goes on:

> Consumers expressed the need for an independent, comprehensive complaints system that is open, transparent and accessible to all and does not result in fear for the consumer.

That, for me, says it all. The Democrats cannot support the move that the opposition is making to bring this independent complaints commissioner (as we are now calling the position) under the wing of the ombudsman. It clearly has not worked for many people, and I believe that that independence, being able to be completely separate from the ombudsman's office, is very important.

The Hon. J.F. STEFANI: Will the minister say whether, in fact, someone who is aggrieved by the service or the health system can still refer their complaint to the ombudsman's office? That avenue is still open, is it not?

The Hon. T.G. ROBERTS: The situation is that, if all avenues have been exhausted after reporting to the commissioner and if the individual laying the complaint is dissatisfied with the process, they can refer that to the ombudsman for investigation.

The Hon. NICK XENOPHON: Following on from the Hon. Julian Stefani's question and the minister's answer, will the minister clarify that we are only talking about processes? You can only go to the ombudsman from the commissioner's office if you are dissatisfied with a process. The ombudsman will not be able to look afresh at the actual complaint, only at the process by which the complaint was handled. Is that correct?

The Hon. T.G. ROBERTS: That is correct. However, there are some discretionary powers which the ombudsman may exercise. I guess those discretionary powers would be able to be applied if the ombudsman felt that there were problems associated with the way in which the matter was handled.

The Hon. A.J. REDFORD: I am surprised that, if someone has a complaint about the service they got at the Royal Adelaide Hospital, they can sit down and make a conscious choice as to whether they take the matter to the ombudsman or the commissioner.

The Hon. T.G. ROBERTS: I do not think that I said that. I think I said that, after the commissioner had completed his or her investigation and if the complainant felt that somehow or other the process had been flawed, then they would have the right to take that to the ombudsman. The ombudsman would then have the right to pick that up as a complaint and would be able to use discretionary powers in relation to other issues. Part 3 of the act under 'investigations' (section 13) states that unless the ombudsman is of the opinion that it is not reasonable in the circumstances of the case to expect that a complainant should resort or should have resorted to that appeal, reference, review or remedy.

The Hon. J.F. STEFANI: I need to clarify this. Clause 85 clearly provides that the state ombudsman may, if the state ombudsman thinks fit and with the agreement of the health commissioner, transfer to the health commissioner the conduct of an investigation of a complaint made to the state ombudsman before the commencement of this act. That is a transitional provision. Is the minister saying that, whilst the government is advocating two separate entities, I would not have the choice of going to the ombudsman first? Why shouldn't I? I do not understand. If you are advocating two separate entities that are operating in this state dealing with complaints from various departments (including the health commission), why could I not go to the ombudsman first?

The Hon. T.G. ROBERTS: I am advised that the clause read by the honourable member is for the transitional period, so that formula would not apply after the transitional period was completed. When the final act is in operation, if somebody did take a complaint to the state Ombudsman for investigation, the Ombudsman would be able to apply discretionary reasoning and powers. The second safeguard is that the commissioner can make a referral to the Ombudsman using the commissioner's discretion to refer to the Ombudsman. It is covered both ways.

The Hon. NICK XENOPHON: Because we are discussing a threshold issue—and the questions of the Hon. Mr Stefani are pertinent to that as they referred to discretionary powers—can the minister be more specific about how it would work? I understand the Ombudsman's office would have a role only after the transitional provisions have been dealt with, that is, for a fresh complaint that does not fall within proposed section 85 with respect to transitional provisions. It is only a question of process. It will be almost an administrative review type process.

Is the minister saying that, if the Ombudsman gets a complaint, the issue of resources raised by the Hon. Angus Redford is another important issue? Is it within the purview of the Ombudsman's power that if somebody says that, for whatever reason they do not feel comfortable going to the commissioner's office and would rather go to the Ombudsman, the Ombudsman if so minded can take on that complaint and deal with it in the same way with the powers conferred in this bill?

The Hon. T.G. ROBERTS: The question would arise for the individual to take the case to the commissioner only if it was in the private sector. If it was in the public sector they would not have that discretionary option—it would not be available to them. They would have to take it to the commissioner. The commissioner can only deal with those issues. Because the Ombudsman only deals with those issues in the public sector, if it is a complaint against the private sector you would have to take it to the commissioner. If the issue is one of a complaint in the public sector, for example, a public hospital, discretionary powers can be used by the Ombudsman to take up the case or transfer it over. The act provides:

> . . . unless the Ombudsman is of the opinion that it is not reasonable in the circumstances of the case to expect that the complainant should resort or should have resorted to that appeal, reference, review or remedy.

That is the part 3 investigation. It is covered by splitting the two responsibilities. You have two different applications, but the discretion is there for the Ombudsman to pick up the case. It is section 13(3)—I am referring to the Ombudsman Act and not the bill.

The Hon. A.J. REDFORD: Section 13(3) of the Ombudsman Act provides, for the benefit of the honest Julian Stefani:

> The Ombudsman must not—

I emphasise 'must not'—

> investigate any administrative act where—
>
> (a) a complainant is provided in relation to that administrative act with a right of appeal, reference or review to a court, tribunal, person or body under any enactment or by virtue of Her Majesty's prerogative; or
>
> (b) the complainant adds a remedy by way of legal proceedings, unless the Ombudsman is of the opinion that it is not reasonable, in the circumstances of the case, to expect that the complainant should resort or should have resorted to that appeal reference, review or remedy.

First, there is a clear direction that he must not investigate unless there is a good reason. I imagine you may have a legal remedy, but the Ombudsman says he will not expect the complainant to go to court because it costs too much money. That is not the issue with the health and community complaints commission. If you look at a complaint about a public hospital, there is provided to a person who has a complaint about a matter in a public hospital a right of appeal, reference or review to a person or body under any enactment.

In this case the complainant is provided with a remedy to the health and community service complaints commissioner, and therefore pursuant to section 13(3) the agency would be quite within its rights to say, 'Mr Ombudsman you cannot deal with this because there is a right to have this dealt with by the commissioner'. Section 13(3)(a) is the section that prevents a complainant from going to the Ombudsman to complain about the act of a public hospital.

It would be a very serious thing if someone had to go to the Ombudsman to complain about the process of the commissioner. One would expect that to be rare. For all intents and purposes, if I have a complaint about the Royal Adelaide Hospital or the Queen Elizabeth Hospital I really have only one place to go, namely, the commissioner. I am sure the minister in a candid and frank moment would agree with what I have just said.

The Hon. T.G. ROBERTS: The honourable member is close to the position I described. The only difference is that the agency cannot be discriminatory about who picks up what, but the Ombudsman will finally determine the position.

The Hon. A.J. Redford: It could be challenged in court.

The Hon. T.G. ROBERTS: The Ombudsman would ultimately make the final decision.

The Hon. J.F. STEFANI: I thank the minister for clarifying the position between a private and public hospital. My question obviously was directed to public hospitals because I fully realise that the Ombudsman does not have any powers over private hospitals. My concern is, now that the Hon. Angus Redford has referred to the Ombudsman Act in relation to his powers, that the Ombudsman has no authority if this act becomes law to deal with any complaints.

If someone was particularly concerned about referring the complaint to the commissioner, for whatever reason, then that person has no option and we have cut off the opportunity for them to go to the Ombudsman. We all consider the role that the Ombudsman has played in the past to be an important role and the confidence of that office has been built upon the fact that the Ombudsman is responsible to the parliament. As with the Auditor-General, the Ombudsman is an officer responsible to the parliament and reports to the parliament on the investigations and complaints that are referred to his office. I do have some concerns that, if the government is promoting the concept of two separate functions by the commissioner and the Ombudsman, we should provide the opportunity. Is it possible to do that by way of an amendment to the act whereby, if a complainant wishes to refer the complaint to the Ombudsman, we give that opportunity to that person to do so?

The Hon. T.G. Roberts: It is in the bill.

The Hon. J.F. STEFANI: However, because of the mechanism of the act controlling the Ombudsman's function, the Ombudsman will say that there is a section in the act which says that, if there is another body that can deal with this complaint, he will not deal with it. We have really put the Ombudsman in a corner. The minister shakes his head but I am not convinced.

The Hon. T.G. ROBERTS: I am advised that the discretionary powers still remain with the Ombudsman. The honourable member talked about resources, but obviously if it is a general complaint, it would be referred to the commissioner. If it is something out of the ordinary about which the Ombudsman feels his discretionary powers need to be used and he needs to take it up as an issue, then he has the power to do that. In general terms, the complainant would be referred to the commissioner if it is a health issue because that is where the expertise for investigation and problem solving will be, and the commissioner may decide, for whatever reason when he uses his discretionary powers, to accommodate that complainant. However, in relation to the general applications that come before the Ombudsman, he would refer them to the commissioner.

The Hon. SANDRA KANCK: I remind members that the issue that I think we are dealing with here is whether or not the health and community services complaints commissioner will be independent or whether they are going to be in the Ombudsman's office. It seems to me that much of the other stuff we are dealing with at the moment is distracting us from that matter. I just thought I would try to concentrate members' thinking back to where we are.

The Hon. A.L. EVANS: I have been inclined to support the government on this but I have some concerns. Maybe the minister can explain this to me: why does the Ombudsman have to report to parliament and the commissioner does not? I do not like that. What is the reasoning behind it?

The Hon. T.G. ROBERTS: The situation is that the powers of the commissioner are such that the commissioner reports to the minister, the minister is then responsible to the parliament under the Westminster system and, in this case, the bill has made the minister's responsibilities transparent. We have just argued about the employment of a commissioner and the dismissal of a commissioner: that is all decided and determined by the parliament. The responsibility for the role of the commissioner is overseen and administered by the minister who is then responsible to the parliament. The Ombudsman's role is directly to the parliament. The government feels that the commissioner's role and function in determining matters within the public and private health systems, the checks and balances, are adequate in his being able to deal through a minister who is responsible to parliament.

The Hon. A.L. EVANS: I do not like jobs for the boys, and those kinds of concepts really concern me. I think there should be greater independence. It was hinted tonight—and we did not get a direct answer on that question—that that was likely to be the case. That worries me, too.

The Hon. T.G. ROBERTS: Can I add that, in relation to the honourable member's other concern about the transparency of the commissioner's role, in the circumstances it is appropriate to make a referral under this provision, that is, assessment 28, and refer the complaint to the other person or body. That is in division 2, assessment No. 28. If there is any confusion about the role and the powers of the commissioner, it is included. The Hon. Sandra Kanck raised the point that we are getting away from the clause which we are debating and we are getting into a whole range of others areas which we will deal with as we go through the bill, as we did last night. The independence of the position is described in clause 11; that is, in performing and exercising his or her functions and powers under this act, the commissioner must act independently, impartially and in the public interest and, if they do not, then you could take that issue—

The Hon. R.I. Lucas: Can't the minister change the functions?

The Hon. T.G. ROBERTS: Change the functions to include?

The Hon. R.I. Lucas: Does the minister not have the power to change the functions of the commissioner?

The Hon. T.G. ROBERTS: By regulation or back to parliament. That is in clause 11 under independence.

The Hon. J.F. STEFANI: Will the minister clarify for the sake of the record whether the commissioner has the same investigative powers as the Ombudsman? We all recognise that the Ombudsman has extensive investigative powers in calling for documents and seeking information that otherwise may not be available in the normal course.

The Hon. T.G. ROBERTS: To reinforce the position of the independence of the individual being interviewed for the job under the Public Service Act in relation to the commissioner's role, as individuals they must be able to convince the people who are employing them that they are able to act independently, impartially and in the public interest. If they cannot demonstrate that and if they do not have the qualifications required for the job—for instance, if they are coming out of the minister's office and are party hacks or it is jobs for the boys or girls—then they cannot be employed under the Public Service Act. It means that if—

The Hon. A.J. Redford: Rubbish! You're making it up as you go along. That is not true. Where do you get that from?

The Hon. T.G. ROBERTS: If they cannot demonstrate that—

The Hon. A.J. Redford: Do you think we're stupid?

The Hon. T.G. ROBERTS: You are trying to confuse the honourable member. He has asked me a sensible question and I am giving him a sensible reply. We have had a situation in this state where the system of public employment has never been questioned in relation to the independence of people in positions such as this. If they cannot show impartiality and act independently and in the public interest, this parliament will determine the matter.

The Hon. R.I. LUCAS: I have been following this aspect of the debate more closely than other aspects. The statement that the minister has just made is palpable nonsense in relation to the Public Service Act. I have spoken in this chamber on a number of occasions (and I am happy to refer the minister to various contributions) about the way in which the provisions of the Public Service Act have been used to ensure that friends of this government have been appointed to very senior positions within Treasury and a number of other positions within various government departments and agencies. I will not divert the debate to give a detailed account of those issues. I just want to say that the assurance that the minister is giving the Hon. Mr Evans and other members is just not true, and I hope that the Hon. Mr Evans will not be misled by the assurance that the minister has endeavoured to give.

I have listened to the concerns and the issues that the Hon. Mr Evans has raised with the minister, and I congratulate him. He is concerned about issues of independence and accountability. The minister has not answered the questions that the Hon. Mr Evans has put, and they are reasonable questions, in relation to independence and accountability. As I understand the structure of what the parliament is being asked to support, it is that, in almost an unprecedented way, we have a situation where the minister, under clause 9 (or whatever it is), has the power to amend the functions of the commissioner.

The Hon. A.J. Redford: Clause 9(1)(m).

The Hon. R.I. LUCAS: In all my time in the parliament, I cannot recall an example where a supposedly independent and most important office can have its functions changed by the minister. The minister has to go through a process of regulation, as I understand it from the Hon. Mr Redford, but we have seen—

The Hon. A.J. Redford: No, not in this state. This isn't even a regulation.

The Hon. R.I. LUCAS: That is even worse. This is an extraordinary provision in the legislation. We supposedly have an independent commissioner. That commissioner has a series of functions that have been given to him or her by the parliament and we are all voting on it to say, 'Okay, here is the independent commissioner.' I have listened to hours of debate (and I have not entered it, so forgive me for entering it at this stage) about this independent commissioner—ombudsman, or whatever you want to call it—and here are the powers that we as a parliament are about to give this independent commissioner. But we are being asked to support a set of circumstances where the minister can say, 'Well, I am going to add to those functions.' Heaven only knows what particular additional function the minister might choose to add to what is supposedly an independent commissioner and office supported by this parliament.

In essence, that is a blank cheque to a partisan government. I make no specific personal criticism of this minister; let us take it beyond this minister. We are voting on a structure that will be there for other ministers and other governments; let us not personalise it. We are being asked to look at a set of circumstances where a minister—this one or someone in the future—can just say, 'Okay, I am going to change the functions of this independent commissioner.' I challenge the minister and I challenge the government and those who are supporting the structure that is being talked about. If you are going to argue to me, as a member, that this is a very powerful and independent office—independent of the government, independent of partisan influence and accountable—that we have a structure where we all vote on some functions, but then we say, 'We will let a person, a minister, change those functions at any stage in the future', why on earth would we support a structure like that?

I think that the situation at the moment is that, through the hours and hours of debate, it is becoming increasingly complicated and complex. I think that sometimes we just need to revisit some of these fundamental threshold questions. We sometimes get lost in the detail a bit. But let us just go back to the fundamental question. I think it is refreshing to have had a fundamental and a threshold question from the Hon. Andrew Evans in the way that he has put it. It was a pretty simple question. He just asked why it was that this body that is independent is reporting to parliament rather than to a minister and, from that, this whole debate has ensued.

I think the Hon. Andrew Evans deserves a response from the minister. Why do we have a structure such as the one that has been set up, and why do we have a set of circumstances where a minister can set about changing the functions? And then it leads on to the other questions that the Hon. Andrew Evans and other members have pursued at other stages during the debate.

The Hon. T.G. ROBERTS: It is a pity that we are moving down through the bill from place to place, but it is quite obvious that some members have seen that there is some confusion in some people's minds about the interpretation of the bill and have used it as an opportunity to create more confusion. The clause itself is in every other jurisdiction in every other state in Australia. It is not as though South Australia has made some new form of application to the bill to weaken the process or to undermine the integrity of the public service in relation to how they deal with people—if the faith and comfort that we have in the public service at the moment is dropping so low that, as we are drawing up bills, we have to make up stories in relation not just to the application of the bill or the act but also to the way in which the act is framed.

I described how the act was framed to prevent anyone from getting through the net in relation to jobs for the boys and jobs for the girls if they did not have the qualifications required to carry out that job. I cannot give an ultimate guarantee that someone out of the minister's office will not be a candidate because, ultimately, what I would be doing would be blackballing an individual from making an application for a job with the public sector.

As members know, people in the public sector move about, not only within states and departments but also throughout Australia. Those people have professional integrity. They bring a CV with them, they bring their own integrity to the applications for those jobs and place that before the people who choose them.

The Hon. Sandra Kanck: That will happen whether it is an independent office or whether they are working in the Ombudsman's office.

The Hon. T.G. ROBERTS: That is right. It is not complicated: it is not a revolutionary position in relation to what we are trying to achieve. We are trying to have something that matches this state's powers in relation to the rest of the states. I think that uniformity is a good thing. If something is uniformly bad, I certainly would not agree with it. In this case, in relation to its application to the commissioner, I think we should look at having the same as other states so we do not get that confusion.

The other thing is that the functions were in the previous government's act. The requirement for the commissioner to perform functions as conferred by the minister is a standard clause with standard wording. It is identical to the previous government's health complaints bill (clause 1(m), if the member wants to check) to perform other functions conferred on the commissioner by the minister by or under this or other acts. It is standard wording for drafting, and it is something that is used quite regularly. Again, it is not wording that is used to deceive people to believe that we are using words to weaken an act or weaken the role and function of the body we are dealing with.

Why would we set up a body if we are not going to have it act in an ethical way? Why would we set it up to fail? What would be the point of that? The government has to face the electorate in two years. I am sure that, if we weakened any part of the act by its wording, we would pay for that in electoral terms. I caution members about trying to inflame the situation to cause further confusion.

The Hon. NICK XENOPHON: I will do my best to confine my remarks to the amendment before us. The Hon. Andrew Evans raised some issues about reporting to parliament. There are some amendments on file that I will move in relation to that, and they may or may not address some of the Hon. Mr Evans' concerns. Obviously, that will be dealt with at a later stage. Similarly, in relation to the Hon. Mr Lucas's comments about clause 9 (m), I think that I can expect that there will be a spirited discussion when we deal with it.

The Hon. Angus Redford raised a threshold issue concerning this amendment. Previously, I said that I understand the government's rationale that there ought be a specialist commission in the same way that we have an electricity ombudsman, a public advocate and other statutory bodies that have certain functions. However, I think that some of the questions asked by the Hon. Mr Redford relate to pertinent concerns about the independence of the commissioner and the commissioner's office, and the interrelationship with the current ombudsman's office. Again, the issue of independence arises under Clause 11. I am sure we will discuss it at that stage.

I believe it is important to debate some of the matters raised by the Hon. Mr Redford in terms of this threshold issue. Can the minister assure us that, given the powers of the ombudsman under that enabling legislation, if a member of the public has had a problem with a public sector health or community service that would be covered by this act, the ombudsman would have the power not only to look at the administrative actions of the commissioner's office but, if the ombudsman was so minded, to go back di nuovo, back to scratch, and say 'I will look at the whole complaint from scratch to see whether I come up with a different conclusion'—in a sense, to review what the commissioner has done? Is that power clearly available by way of a safety valve or safeguard?

The Hon. T.G. ROBERTS: The answer is unequivocally yes.

The Hon. A.J. Redford: You cannot say that.

The ACTING CHAIRMAN (Hon. J.S.L. Dawkins): Order! The minister is on his feet.

The Hon. T.G. ROBERTS: I think that is the point being made. The ombudsman will make that decision, and he has the ability to make it. There is nothing in this legislation that prevents him or her from using his or her discretion to pick up and investigate a complaint as they would any other matter that came before the ombudsman. They can use that discretion.

The Hon. A.J. REDFORD: That is palpable nonsense. If I described it accurately, it would be unparliamentary language. It is very clear if you look at the section. It states that it is the ombudsman's decision and, if the ombudsman makes a wrong decision, then the wrong decision could be

justiciable. I do not know whether the Hon. Nick Xenophon has section 13 in front of him: I will show it to him at the conclusion of my remarks. It states that he must not investigate. Secondly, it refers to an administrative act where the complainant is provided in relation to that administrative act—that might be a service from a public hospital—with a right of appeal to another body unless the ombudsman is of the opinion that it is not reasonable to expect that a complainant should resort to that body.

So, for the ombudsman actually to make a decision that he will investigate an administrative act, for example a badly administered health service, in lieu of the health and community complaints commissioner, he has to decide or come to a conclusion that the health and community complaints commissioner has failed. It is an issue if it does not come to that or it is a failure, because he has to be of the opinion that it is not reasonable for someone to make a complaint to that body.

The Hon. T.G. Roberts: How will he determine that?

The Hon. A.J. REDFORD: At the end of the day, it is a very convenient way to sweep things out of the path of the ombudsman. If you look at the subsequent clause that the Hon. Rob Lucas alluded to, you can effectively give an axe to the government to hack away at the jurisdiction of the independent ombudsman, and give it to the jurisdiction of a so-called independent health and community complaints commissioner who is directly accountable to a minister.

The ACTING CHAIRMAN: Order!

The Hon. NICK XENOPHON: For the record, I want to confine myself to the Hon. Mr Redford's amendment. Of course, the issue of the ombudsman's jurisdiction is relevant in the context of this debate. I agree with the Hon. Mr Redford that, for the ombudsman to decide to take on a complaint—perhaps we are at cross purposes with the Hon. Mr Redford, but I do not have the benefit of having section 13 of the act in front of me—and to look at this complaint in the public sector in the first instance, rather than the commissioner's office, certain threshold requirements need to be met. Given the wording of the act, the ombudsman would have to decide that it is not reasonable in the circumstances of the case to expect that the complainant should resort or should have resorted to that appeal, reference, review or remedy, and that would include the commissioner's office.

My understanding is that, if someone has gone through the process of a complaint within the public sector through the commissioner's office, and if that person says that the conclusion reached by the commissioner was absolutely wrong because it was a flawed process, or the fact-finding was wrong for whatever reason, then that person can go to the ombudsman. The threshold requirements referred to by the Hon. Mr Redford—I do not disagree with him in so far as someone going to the ombudsman in the first instance rather than to the commissioner—would be a question of the ombudsman being able to investigate any administrative act; the ombudsman's act refers to administrative acts quite broadly.

I am happy to hear from the Hon. Mr Redford about that. I think that it is an important threshold issue of the Hon. Mr Redford that deserves our respect and consideration, but my understanding is that there is a safety valve for the Ombudsman, in so far as it relates to public sector matters, to look at any complaints that the commissioner has dealt with, review that and if necessary go back to scratch. I do not know what the minister or the Hon. Mr Redford says about that, but that is important.

The Hon. R.I. LUCAS: It is readily apparent that this bill is not going to pass this chamber this evening in its entirety.

The Hon. P. Holloway: That is because you Liberals do not want it and you never have. You have done everything you can to obstruct it.

The Hon. R.I. LUCAS: Perhaps we ought to just throw you out for your disorderly behaviour.

The ACTING CHAIRMAN: Order! The Leader of the Opposition is on his feet.

The Hon. R.I. LUCAS: I was trying to suggest something constructive in relation to this debate, which is whirling around and around—and I think that the Hon. Mr Xenophon has raised a number of important questions and issues. It is quite apparent that this legislation is not going to pass tonight and we are going to at least be debating it tomorrow. At the moment this all seems to be hinging on interpretation of the Ombudsman's powers under section 13(3) of the Ombudsman Act and how he would apply it. I would have thought that there was a pretty simple way of trying to establish that: that is, that some contact is made—preferably by representatives of the government but, if not the government, somebody else—between now and tomorrow morning to see whether or not the Ombudsman would indicate how he would interpret that provision of the act in a legal sense. Of course, the Ombudsman may choose not to indicate a view, and that is entirely his prerogative.

I can see that there are possible interpretations that members are flagging, but let me flag another one. As the Hon. Angus Redford has read it out, the provision is clearly 'the Ombudsman shall not, except' and then there is this particular provision. One other possible reading for the Ombudsman—and one which I do not think you could criticise him for if he was to go down that path, though I am not suggesting that he would—is that he could say that there is a valid process that has been established by the parliament for these sorts of complaints from public hospitals and he does not intend to become the second round of appeals for every dissatisfied customer that goes through the first process. That is, he will interpret the provisions in a way that, basically, says that there is a valid alternative route.

I think the point that the Hon. Angus Redford made earlier was that you could understand it if a costly court process was the only alternative, but in this case you are not looking at a costly court process—there is this alternative process. The Ombudsman may well interpret his act at his discretion—and after all it is his act—and all we are doing today is going round and round in circles looking at what he might do. Isn't it a simple proposition that someone should ask him how he would interpret that particular provision of the act?

Perhaps the Hon. Mr Xenophon—as the independent fence-sitter between the opposing forces in relation to these issues—might be charged with the responsibility of having a quick chat with the Ombudsman in the morning to see whether he is prepared to indicate legally (we are not asking him for a political decision) how he is going to interpret that act. He may well say he is not interested in putting his views and will make his decision if and when the act is passed. If that is the case we will have to vote accordingly.

I think that is a process that ought to be explored. There are a couple of ways of keeping that option alive; that is, let's keep that amendment alive. It is always possible to recommit at the end of the clauses—the Hon. Mr Xenophon will be familiar with that particular process. If, further down the track, the Ombudsman wants to change his position—having kept this proposition alive for the moment on the clear

understanding that that does not mean that he is locked into it but is only doing so to try sort this out—at the end of the committee stage the honourable member can recommit for reconsideration of the clause and, if he wants to return to another position at that stage, he could vote accordingly. But at least this way there will be a process of getting on, seeing whether we can establish something via the Ombudsman and keep it alive with the possibility for the Hon. Mr Xenophon and others to recommit and to vote the clause down or further amend it—whatever needs to be done—before the passage of the third reading.

The Hon. SANDRA KANCK: I am tired of the game playing. We have been on this amendment now for an hour and a half. I move:

That the amendment be put.

Motion carried.

The committee divided on the amendment:

While the division was being held:

The CHAIRMAN: I think that there has been some confusion. Before tellers are appointed, it is possible for the Hon. Mr Redford to withdraw his call for a division. To resolve the confusion, I would then put the question again.

The Hon. A.J. REDFORD: I have absolutely no doubt that some people were confused, and I withdraw my call for a division on the basis that the question is put again.

The CHAIRMAN: To resolve the confusion that obviously has been caused, the member has sought leave to withdraw his call for a division.

Leave granted.

The CHAIRMAN: Obviously, members were not aware of the position. The question before the committee was that there be a health and community services complaints commission, which members will remember was in line with the previous motion that was won by the Hon. Mr Redford. The honourable member's amendment is in three parts. I put the question: that the first part of the Hon. Mr Redford's amendment to delete subclauses (1) and (2) be agreed to.

Question carried.

The CHAIRMAN: The next question is: that the Hon. Mr Redford's amendment to insert new subclause (1) be agreed to.

Question carried.

The CHAIRMAN: The final question is: that the Hon. Mr Redford's amendment to insert new subclause (2) be agreed to.

The committee divided on the question:

AYES (9)

Dawkins, J. S. L.	Lawson, R. D.
Lensink, J. M. A.	Lucas, R. I.
Redford, A. J. (teller)	Ridgway, D. W.
Schaefer, C. V.	Stefani, J. F.
Stephens, T. J.	

NOES (10)

Gago, G. E.	Gazzola, J.
Gilfillan, I.	Holloway, P.
Kanck, S. M.	Reynolds, K. J.
Roberts, T. G. (teller)	Sneath, R. K.
Xenophon, N.	Zollo, C.

PAIR

Cameron, T.G.	Evans, A. L.

Majority of 1 for the noes.

Question thus negatived; clause as amended passed.

Clauses 6 to 8 passed.

Clause 9.

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

Page 11, line 22—After 'health' insert:
or community

The effect of the amendment is to correct a clerical error only with the omission of the words 'or community' in subclause (2).

The Hon. A.J. REDFORD: We support the amendment.

Amendment carried.

The Hon. A.J. REDFORD: I move:

Page 12, lines 20 and 21—Leave out paragraph (m).

Much of this was covered in the earlier debate. As the Hon. Robert Lucas said, this is quite unprecedented. This is the axe that will be used to severely undermine and take away from the Ombudsman his jurisdiction, simply by shifting substantial slabs of the current Ombudsman's jurisdiction into the jurisdiction of this public servant.

The Hon. NICK XENOPHON: My question is to both the Hon. Mr Redford and the minister. I understood from the minister's earlier contribution when this general issue was being discussed that paragraph (m) was in legislation proposed by the former government. If I heard that right, that concerns me because, if that was the case, clearly there has been a change of view on the part of the opposition from a policy perspective.

The Hon. T.G. ROBERTS: I am advised that the same clause was in the previous government's legislation.

The Hon. NICK XENOPHON: The minister says that the former government had an identical clause in its legislation. I still think that we have an obligation under the Hon. Mr Redford's proposed deletion of this paragraph to explore this. Given what the Hon. Mr Lucas said earlier in his contribution, notwithstanding that it may have been in legislation of the former government and it might be in other jurisdictions, what will be its effect? Will it mean that, if this bill passes in its current form, the commissioner will take over certain functions from the ombudsman's office? So, my first question is: will paragraph (m) mean that, potentially, further functions will be taken away from the ombudsman's office? Secondly, because paragraph (m) refers to conferring other functions on the commissioner by the minister, could it mean that, for instance, the minister could confer a function that would in some way fetter the role of the commissioner in dealing with existing functions so that there would be a tension or a conflict between the two?

In other words, with the wording 'to perform other functions' the minister has a very broad discretion. Will the minister have the power to say, 'You will do these things in such a way', and would that have the inevitable consequence of creating a tension with the commissioner's existing powers? Finally, why will the government not consider having any other functions conferred on the commissioner by the minister by regulation so that there is at least some form of parliamentary scrutiny?

The Hon. NICK XENOPHON: I am not sure whether it is appropriate to move a further amendment at this stage, but I move a further amendment as follows:

Page 12, line 20—Leave out:
'by the minister or'

By removing the words 'by the minister or' it would take away the discretion of the minister at the stroke of a pen to confer additional or other functions on the commissioner, and any other functions to be conferred on the commissioner would have to be by or under this or other acts. My understanding is that it would have to be either within the terms of

this act, other enabling legislation or by regulation. At least there would be a measure of parliamentary scrutiny and, by deleting these words, the minister cannot by the stroke of a pen alter the functions of the commissioner. That is my understanding. It is short notice and I hope that satisfies honourable members, but I am more than happy to take any additional interrogation as required.

The Hon. T.G. ROBERTS: The government supports the amendment.

The Hon. A.J. REDFORD: We support it because it means that paragraph (m) now no longer needs to exist. If we want a heap of extra words in there that mean absolutely nothing, which is the effect of this amendment, by stealth we have achieved our initial aim. It would have been easier had the Hon. Nick Xenophon simply supported our position in the first place.

The CHAIRMAN: The question is that the words in the beginning of paragraph (m), down to but excluding 'by the minister or', stand part of the paragraph. If they stand, the amendment moved by the Hon. Mr Xenophon will be put. If they are struck out, the question will then be that the remaining words in paragraph (m) stand as part of the paragraph. The simplest solution would be for the Hon. Mr Redford to withdraw his amendment and the Hon. Mr Xenophon's amendment would then be tested. There has been general agreement by everybody. The Hon. Mrs Kanck has not expressed her opinion, but I assume unanimity will prevail.

The Hon. A.J. REDFORD: The Hon. Sandra Kanck is irrelevant in this case. We prefer our position, but we are used to the Hon. Nick Xenophon darting in and out and drafting things on the run. We hope it will achieve the same outcome, and I therefore withdraw whatever I moved.

Amendment withdrawn.

The CHAIRMAN: I thank the Hon. Mr Redford for his cooperation, but it is offensive to consider that any member of the committee is irrelevant and it ought not be put on the record. If not unparliamentary, it is very close to it.

Amendment carried; clause as amended passed.

Clauses 10 and 11 passed.

Clause 12.

The Hon. A.J. REDFORD: I move:

Page 13, lines 3 to 11—Leave out subclauses (1) and (2) and insert:

(1) The Commissioner may establish such committees as the Commissioner thinks fit to assist the Commissioner in the performance of his or her functions under this Act.

Basically we are saying that the minister should not have any role in this. We are trying to improve the independence. I know that the government would support any measure that would improve the independence of this and I do not anticipate taking much of the committee's time on this issue.

The Hon. T.G. ROBERTS: The government opposes the amendment. The effect of the opposition's amendment will be to remove the ministers' directions and ensure that the commissioner is seen to operate independently. This clause is amended in another place to take account of the concerns raised by registration authorities, consumer groups, non-government organisations and other professional organisations. The commissioner would be able to operate independently of the government and the minister will not require ministerial approval to establish a committee, but he is still required to keep the minister informed through the process of consultation prior to establishing the committee. The government has already addressed this issue.

The committee divided on the amendment:

AYES (11)

Dawkins, J. S. L.	Evans, A. L.
Lawson, R. D.	Lensink, J. M. A.
Lucas, R. I.	Redford, A. J. (teller)
Ridgway, D. W.	Schaefer, C. V.
Stefani, J. F.	Stephens, T. J.
Xenophon, N.	

NOES (9)

Gago, G. E.	Gazzola, J.
Gilfillan, I.	Holloway, P.
Kanck, S. M.	Reynolds, K.
Roberts, T. G. (teller)	Sneath, R. K.
Zollo, C.	

Majority of 2 for the ayes.

Amendment thus carried.

The Hon. A.J. REDFORD: I move:

Page 13, line 13—Leave out 'the Minister or the HCS Ombudsman' and insert:

the Commissioner

I move this amendment with some trepidation. This is a consequential amendment (and I hope members take my word on this).

The CHAIRMAN: Patronising comments are never helpful.

Amendment carried; clause as amended passed.

Clause 13.

The Hon. SANDRA KANCK: I rise at this point to put on the record my concern at the way the opposition has been dealing with this bill. We began on Monday, and we debated it most of Tuesday.

The Hon. R.I. LUCAS: I rise on a point of order. I ask what clause the Hon. Sandra Kanck is addressing.

Members interjecting:

The CHAIRMAN: Order! I understand that the Hon. Mrs Kanck is talking to clause 13, which is the next clause of the bill.

The Hon. SANDRA KANCK: As I was saying, we began this process in committee on Monday. We spent most of Tuesday on it. We have spent since half past 8 debating it tonight, and we are up to clause 13. This is an 85-clause bill. I do not know what game the opposition is playing at, but I heard the Hon. Mr Holloway interject about an hour ago that this opposition has never wanted these protections for consumers, and I believe that is the case in terms of the behaviour of members of the opposition that we see here tonight. They have brought no glory on themselves whatsoever.

I have already read into the record tonight the information from the Consumers Association that showed that most consumers do not how to go about the processes and are scared about the processes of lodging a complaint. Here we have legislation that will help consumers and, over and over again over the last three days I see the opposition simply putting everything it can in the way of normal health consumers as impediments. The opposition should be ashamed of itself.

Honourable members: Hear, hear!

The Hon. A.J. REDFORD: I will respond on behalf of the opposition. Whilst this has taken some time, this is an important and significant bill. If the Hon. Sandra Kanck—

The Hon. P. HOLLOWAY: I rise on a point of order. Under standing order 299, it is out of order for the Hon. Angus Redford to discuss matters that are not relevant to the clause before us.

The CHAIRMAN: That is the ruling that I applied last night. I have to uphold the point of order that the honourable member raises, because that is the standing order. I shall run the gauntlet of—

The Hon. R.I. Lucas interjecting:

The CHAIRMAN: The honourable member asked what clause the Hon. Mrs Kanck was talking about, and she said clause 13. The Hon. Mr Holloway raised the point of order that the Hon. Angus Redford was talking about something that is not the subject of this—

The Hon. R.I. Lucas interjecting:

The CHAIRMAN: No; the honourable member asked what clause Mrs Kanck was talking about, and she said clause 13.

The Hon. R.I. Lucas: And you ruled that in order.

The CHAIRMAN: No; I did not. I answered the question that the clause she was talking about was clause 13. The honourable member called a point of order.

The Hon. A.J. REDFORD: I seek leave to make a personal explanation. In the statement made by the Hon. Sandra Kanck my position and that of the opposition has been substantially misrepresented, and what I propose to do now is respond to the misrepresentation she purportedly made when purportedly addressing clause 13. It would be only fair, and I know that you, Mr Chairman, would believe that it is only fair that, given the unwarranted and unfair attack on the opposition, we would have an opportunity to respond. I know that the government would not be afraid of hearing a response from the opposition. If the Hon. Sandra Kanck cares to look at the record, there has not been any repetition in terms of what has been said.

There has been a freewheeling debate in which every single member has had an opportunity to participate, and we have had a very close look at this particular piece of legislation, irrespective of what people's positions might have been in the past. I invite the Hon. Sandra Kanck to look at the voting records to see that most of the amendments that the opposition has moved have been successful.

The CHAIRMAN: Is that a personal explanation about matters where the honourable member believes that he has been misquoted or misunderstood?

The Hon. A.J. REDFORD: Yes.

Progress reported; committee to sit again.

AUTHORISED BETTING OPERATIONS (BETTING REVIEW) AMENDMENT BILL

The House of Assembly agreed to the bill without any amendment.

LOCAL GOVERNMENT (FLOOD MITIGATION INFRASTRUCTURE) AMENDMENT BILL

The House of Assembly agreed to the bill without any amendment.

ADJOURNMENT

At 10.48 p.m. the council adjourned until Thursday 6 May at 11 a.m.