LEGISLATIVE COUNCIL

Thursday 6 May 2004

The PRESIDENT (Hon. R.R. Roberts) took the chair at 11 a.m. and read prayers.

STANDING ORDERS SUSPENSION

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I move:

That standing orders be so far suspended as to enable petitions, the tabling of papers and question time to be taken into consideration at 2.15 p.m.

Motion carried.

FREEDOM OF INFORMATION (MISCELLANEOUS) AMENDMENT BILL

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I move:

That a message be sent to the House of Assembly granting a conference as requested by that house; that the time and place for holding it be the Plaza Room at 1.30 p.m. today; and that the Hons G.E. Gago, J.M. Gazzola, I. Gilfillan, R.D. Lawson and A.J. Redford be the managers on the part of this council.

Motion carried.

HEALTH AND COMMUNITY SERVICES COMPLAINTS BILL

In committee.

(Continued from 5 May. Page 1497.)

Clause 13.

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

Page 13, after line 26—Insert:

(5) Nothing in this section prevents the HCS Commissioner, or a member of the HCS Commissioner's staff, acting as a conciliator under this act.

For those members who have not been following this as closely as others, this amendment is consequential upon an earlier vote when we amended clause 4, page 6, line 21.

Amendment carried; clause as amended passed.

Clauses 14 to 16 passed.

New clause 16A.

The Hon. NICK XENOPHON: I move:

Page 14, after line 22—Insert:

Other reports

16A (1) The HCS commissioner may, at any time, prepare a report to the minister on any matter arising out of the exercise of the HCS commissioner's functions under this Act.

(2) Subject to subsection (3), the minister must, within two weeks after receiving a report under this section, have copies of the report laid before both houses of parliament.

(3) If the minister cannot comply with subsection (2) because parliament is not sitting, the minister must deliver copies of the report to the President and the Speaker and the President and the Speaker must then—

(a) immediately cause the report to be published; and

(b) lay the report before their respective houses at the earliest opportunity.

(4) A report will, when published under subsection (3)(a), be taken for the purposes of any other act or law to be a report of the parliament published under the authority of the Legislative Council and the House of Assembly.

This relates to allowing for giving statutory authority for the HCS commissioner—and I think the amendment should reflect the word 'commissioner', rather than 'ombudsman'—to at any time prepare a report to the minister on any matter arising under the exercise of the commissioner's functions under this act; and that these reports must be tabled before both houses of parliament within two weeks of receiving a report or, if parliament is not sitting, that copies must be given to the President and the Speaker, in other words the Presiding Officers; to immediately cause that report to be published; and to be laid before both houses at the earliest opportunity.

This picks up on amendments currently in the parliament in relation to the Auditor-General's office to allow for reports to be tabled and published. I would think this would assist in the transparency of the commissioner's functions and office. It is a question of reporting to the parliament with respect to any reports that have been prepared. For instance, if there is a matter that the commissioner is concerned about of significant public importance that the community ought to be alerted about, it gives an opportunity for that to be tabled in the parliament or, if there is some urgency to that, to be published via the Presiding Officers.

The Hon. T.G. ROBERTS: This clause is supported. It is consistent with the reporting requirements of other similar statutory authorities. The provision assists in assuring accountability and transparency of the commissioner.

The Hon. SANDRA KANCK: The Democrats think this is a sensible move. Obviously we have the annual report coming to parliament, but there may be occasions where there needs to be something that is put out on the public record with a sense of urgency and this is a very good way to accomplish it.

The Hon. A.J. REDFORD: The opposition supports this amendment. I note that the Hon. Mr Nick Xenophon has expressed it is inconsistent with his new found principles that reporting is better through a minister than directly to parliament. But, that comment aside, we support the clause.

The CHAIRMAN: Order! Before proceeding, can I say that I think, Hon. Mr Redford, it would be helpful if comments like 'new found principles' were left out of the conversation.

The Hon. NICK XENOPHON: I therefore do not need to make a personal explanation, Mr Chairman. I think the Hon. Mr Redford said, 'the new found principles about reporting to the parliament rather than to ministers': that is a misrepresentation of my position. I think it should be placed on the record that that is just an unfortunate comment.

New clause inserted.

Clauses 17 to 20 passed.

Clause 21.

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

Page 15, lines 27 and 28—Leave out ', needs and wishes' and insert:

and any requirements that are reasonably necessary to ensure that he or she receives such services.

We believe that this improves the bill.

The Hon. T.G. ROBERTS: The government's position is that we oppose the amendment. We find it unnecessary that we would have to go to the point of making an amendment to the original bill. The government's position is that background needs and wishes are those that would be provided in a culturally sensitive way or where special consideration has to be made. It is not something to encourage people to make unnecessary demands on services, but it is a part of the charter. It does not give anyone rights; it does not infer rights to make demands. It is a way of describing

what would be regarded as an all-encompassing, approachable health service for people from different backgrounds.

We might find it comforting as an Anglo-Saxon based individual in a community to find our way around the health system okay when accessing our needs and requirements, but I know, as Minister for Aboriginal Affairs, that there are a lot of people who do not access health services because they do not feel comfortable in approaching those hospital services for their needs on the basis that all is not well in relation to how they are made to feel welcomed or wanted, or that they have rights, necessarily. So, it is a way of setting people at ease, I guess, through a charter and putting in lights the fact that we are there to take into account every individual's background, their individual needs and requirements, and to be aware that publicly we are showing sensitivity to the way in which we deliver services.

The Hon. NICK XENOPHON: I have a question for both the minister and the mover of the amendment. Is 'needs and wishes' something that is used in other legislation dealing with these sorts of issues, either here or interstate? To what extent would the ambit of the commissioner's role be circumscribed or restricted in any way by the amendment moved by the Hon. Mr Redford? It seems to me to be a very marginal issue between the two. Could either member give an instance where this would make a difference in terms of an actual complaint? What would it mean in practical terms, because it seems to be quite marginal? Can either member give a specific example to say, 'It would be dealt with differently, in this way, if this amendment gets up,' or otherwise? I think it would be useful for the committee to know that.

The Hon. A.J. REDFORD: I would hate to be accused of holding up this committee—as I was last night—but I will endeavour to explain; and I hope the Hon. Sandra Kanck forgives me for attempting to answer a question from the Hon. Nick Xenophon. The government's amendment refers to the terms 'needs and wishes', which is fairly subjective in terms of its application. Whereas the opposition uses the term 'meet any requirements', these are of the groups referred to earlier in that clause, that are reasonably necessary to ensure that they receive such services. In other words, it imports a sense of reasonableness in terms of what the charter will prescribe in terms of delivery of health services.

The Hon. SANDRA KANCK: I indicate that the Democrats will not be supporting this amendment. This gives instructions effectively to the new health complaints commissioner, or ombudsman, or whatever title it has, as to what things must be taken into account when developing or reviewing the charter. I think the way it is written at the present time reflects what health consumers are telling me.

I think if this is what the health consumers are saying, and these are people who have had problems in the main, then we should listen to what they are saying. As that reflects what they are saying, I think this is what should be there as the instruction to the new health services ombudsman or commissioner.

The Hon. T.G. ROBERTS: Part of the question raised was the government's position in relation to why it is in the charter that the words are standard wording that exist in other charters in the ACT, the Northern Territory, Queensland and Tasmania. The meaning of the needs and wishes of the consumer must also be in the context of what the service provider can reasonably be expected to provide and that that service is appropriate.

In the commissioner's position, they must consider these issues, under clause 24, for grounds for complaint. So, it is a standard charter. I can understand somebody with a legal background saying that, well, that is pretty broad and it could mean anything to anybody. There has been an evolutionary inclusion of those words within charters.

The Hon. NICK XENOPHON: I do not think there is much in it, but I will support the amendment for these reasons: I think it is more focused. It makes it clear in a statutory sense that is must be reasonably necessary and I do not think that the government can point to anything that takes away from it. I think it is more focused, 'needs and wishes.' I am 'concerned' is something that is almost too vague, and the fact that the amendment actually focuses us on what is reasonably necessary to achieve an outcome does not trouble me. So I think that it is probably preferable and I think it makes the legislation more focused in its approach.

Amendment carried; clause as amended passed.

Clause 22.

The Hon. A.J. REDFORD: In relation to clause 22, it says that the minister on receipt of the draft charter can do a couple of things. Firstly, the minister can approve the charter or the variation or require an alteration to the charter or a variation. I just wonder whether the government can explain what circumstances might lead to a minister requiring an alteration to the charter that is submitted to the minister by the commissioner.

The Hon. T.G. ROBERTS: There are no instances that the government has in relation to any illustrations that might apply, but it is using standard words in other legislation, the same as the previous. The standard in other states and territories—ACT, Northern Territory, Tasmania—have similar wording.

The Hon. A.J. REDFORD: That may be the case, but I just wonder: what is the principle which the government is seeking us to support here, for giving the minister a right of veto over a charter prepared by the commissioner?

The Hon. T.G. ROBERTS: I am advised that if there are any factual errors, errors of law, or conflict with other legislation, then the minister could change the wording.

The Hon. A.J. REDFORD: So, am I to understand that the government is indicating that the minister is likely to interfere only if there is some legal issues that might arise and certainly will not seek to interfere with the commissioner's preparation of a charter based on policy or other considerations? **The Hon. T.G. ROBERTS:** No, only the areas that I have mentioned and they fall within the province of legal mechanics of legislation. Factual error I guess would be something that would be a standout fact that needs to be altered.

The Hon. A.J. REDFORD: Will the minister in making a decision to either not approve or vary a charter consult with the relevant stakeholders?

The Hon. T.G. ROBERTS: It is a requirement under the act, under clause 21, that, in consultation and developing it for reviewing the charter, the commissioner must invite submissions from and consult with, to such an extent as may be reasonable, interested persons, with a view to obtaining a wide range of views—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: In developing or reviewing the charter, you would have to consult. If you were changing—

The Hon. A.J. REDFORD: With due apologies to the Hon. Sandra Kanck for taking up their time, can I just say, the

question is not about the consultation process leading to the development of a charter. It is about a consultation process that might have to take place if the minister should seek to either reject or amend the charter.

The Hon. T.G. ROBERTS: For the reasons I have previously outlined for changing the chart, there would be an obligation to consult various stakeholders.

Clause passed.

Clause 23.

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

Page 17, after line 14—Insert:
(ea) a member of parliament; or

This is simply to allow a member of parliament to make complaints to the commissioner. I could not possibly imagine any opposition to this suggestion.

The Hon. NICK XENOPHON: I support the amendment.

The Hon. T.G. ROBERTS: I take it that that is a member of parliament making a complaint on behalf of himself or on behalf of his constituents.

The Hon. A.J. Redford: Or both.

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

Amendment carried.

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

Page 17, lines 21 and 22—Leave out all words in these lines after 'died'—and insert:
a person who can demonstrate to the HCS Ombudsman that he or she had an enduring relationship with the deceased person, or a personal representative of the deceased person

We have discussed this at some length. This amendment proves the right to make a complaint for any person who can demonstrate to the commissioner that he had an enduring relationship with the deceased person or a personal representative of the deceased. The policy rationale is that the amendment recognises that there is a wide range of caring relationships between people and ensures a person who has been in a close relationship with the deceased person is able to make a complaint on behalf of the deceased person and is not excluded from doing so because the type of relationship with the deceased has not been included under this bill.

The amendment also simplifies the bill by removing the need to state the various categories of relationships, for example, close relative or putative spouse, and provides interpretations of these in the bill.

The Hon. A.J. REDFORD: The opposition recognises that this is consequential and supports it.

The Hon. NICK XENOPHON: I support the amendment.

Amendment carried; clause as amended passed.

Clause 24.

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

Page 18, lines 28 to 30—Leave out paragraph (j).

I think it is apparent and I will not seek to divide. Clause 24 provides that 'a complaint may be made (and may only be made under this act) on one or more of the following grounds'. Paragraph (j) provides that a complaint can be made on the ground that a health or community service provider has acted unreasonably by not taking proper action in relation to a complaint made by the user about a provider's action of a kind referred to in this section. My understanding is that the intent of deleting that paragraph is to avoid complaints against providers (bearing in mind that this is the private sector) which bear no relationship to what resources to which the provider might have access.

The Hon. T.G. ROBERTS: We will not be supporting the amendment. The effect of the opposition's amendment is to delete a provision which allows a complaint in circumstances where a provider has acted unreasonably by not taking proper action. The clause relates to good complaint handling procedures and, as part of the provision of quality services, allows a complaint to be made to the commissioner in circumstances where a consumer believes that a service provider has acted inappropriately in handling his or her complaint. Complaint handling procedures are recognised as part of good management and the commissioner will need to determine the reasonableness of the complaint or whether the provider has acted unreasonably in handling the complaint, and then determine whether any other further action is necessary. It is an important ground for a complaint. There is no basis for removing this clause.

The Hon. NICK XENOPHON: I support the government's position. The fact that there is a requirement of reasonableness in the context gives me some reassurance and, for that reason, I do not support the amendment.

The Hon. SANDRA KANCK: I indicate Democrat opposition to the amendment and we agree with what the minister has said.

Amendment negatived.

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

Page 19, after line 8—Insert:
(3a) Subsection (1)(a) does not apply in relation to a decision to discontinue the provision of services to a particular person where the health or community service provider is under no duty to continue to provide those services.

Again the meaning of the words are apparent. Basically what it says in relation to complaints made pursuant to clause 24 and grounds upon which they can be made is that a complaint that a health or community service provider has acted unreasonably by not providing a service or by discontinuing a service does not apply in relation to a decision to discontinue the provision of services to a particular person where that provider is under no duty to continue to provide those services.

I have served on boards that will fall under the supervision of the commissioner. I was a member of the Guide Dogs board for about a decade. We were constantly under strain in terms of what services we could or could not provide, and over that 10-year period there were occasions where, because of funding pressures, we had to withdraw certain of our services from time to time. The reason we withdrew those services is that we wanted to maintain other services which we as a board, in consultation with our clients, felt had higher priorities. I think it would be inappropriate and unfair to subject organisations such as the Guide Dogs to a process that will be time consuming and costly in relation to a complaint where there was no duty to provide that service in that sense. This is the reason for that amendment, and the opposition believes that it is a sensible measure.

The Hon. NICK XENOPHON: Does this apply to where an organisation says, 'We are providing a particular service to a particular class of people and we have run out of money. We do not have the resources or the expertise any more to deal with it, so we will not provide it'; or is this about one individual saying, 'We do not want to provide that service to you'? I am trying to understand whether it is a resource issue or whether it a decision that we will not give a service to a particular person.

The Hon. A.J. REDFORD: In answer to the honourable member, if one reads the clause, it is broader than simply a resource issue. It basically says that, if there is no obligation to provide the service, they should not be subjected to complaints in relation to that service. That might sound broad at first, but I will provide some examples. Let us say that the Guide Dogs organisation—I am sorry to pick on Guide Dogs—get funding from the government to provide a particular service. If you read the clause, that would not apply because it was obligated to provide that service as a condition of getting funding. However, if it were doing it as part of its volunteer activities and there was no public funding involved or anything of that nature, in the opposition's view it should not be the subject of a complaint, because it makes a decision that it is not going to provide that service.

I know that the government will come back and say that it opposes this. It will say, 'What if a service is provided badly?' I know that the Hon. Nick Xenophon would understand that if you get a bad service or a negligent service, even if it is given in a voluntary capacity, the laws of duty of care apply and people have remedies. I know that he is disappointed with the Ipp reforms, but there are still some remedies left. There is still some recourse in that circumstance.

The Hon. NICK XENOPHON: Just to follow that through, and I am grateful to the Hon. Mr Redford for expanding on it, I understand that, where there is government funding for a particular service, that is a clear case. However, if the organisation has a fairly broad charter, it actually does provide a service to a particular person and, if that person is dissatisfied with that service, and then the organisation says that it will not continue to provide that service to that person, does that mean that this amendment will prevent that person from complaining about the service they receive in the first place, notwithstanding that that service was not necessarily one that it had to provide but the organisation had a discretion to provide it? Does that make sense?

The Hon. A.J. REDFORD: I think I understand what the honourable member is referring to. It is difficult because it is a hypothetical situation. It depends on the basis upon which the service was withdrawn. If it was withdrawn because of some kind of breach of equal opportunities, there would be remedies. It would depend a little on the circumstances, I suspect.

The Hon. T.G. ROBERTS: The advice given to me on the hypothetical situation is that, if the service were to be withdrawn, there would be no remedy.

The Hon. SANDRA KANCK: The Democrats will not be supporting this. An example of where a consumer could be left out in the cold with this clause, if it is inserted, is in a town where there are two GPs and someone gets behind in their payments—a member of the family, for instance (and this is a real situation). I think that the Hon. Angus Redford would probably recognise the region I am talking about. This is an example of where someone in the family has incurred debts with a medical practice and other members of the family have been denied access to that medical practice on the basis that they do not have any obligation to provide that service to the family and there is another doctor in town. That has been done. I believe that this clause would leave that consumer in that situation with no way out. I simply cannot support this amendment.

The Hon. NICK XENOPHON: I am grateful for some further drafting advice I have just received from parliamentary counsel. I will put this example to the minister and the Hon. Mr Redford: you have a medical practitioner in the private sector who has a particularly difficult patient (for whatever reason); in the doctor-patient relationship, the doctor does not want to see the patient any more and the doctor says, 'I just cannot deal with you any more'. Is it the case that the patient can complain or is that situation fettered by the question of reasonableness? What would that involve? For instance, if the patient swore at the doctor or was verbally abusive, is that reasonable or not?

If the patient who was verbally abusive happened to have Tourette syndrome, does that mean that they would be acting unreasonably? As I understand the issue, the nub of it is where a provider or a community service says, 'Look, we do not want to continue to provide you with a service'. It comes down to the issue of reasonableness. I am just trying to work out where it fits in and the circumstances. I am sure that there will be some cases where an organisation will say, 'We cannot continue to provide this particular person with a service.' Could the minister elaborate on that?

The Hon. T.G. ROBERTS: The circumstance that the Hon. Sandra Kanck raised was a real one, particularly in country areas where access is difficult. The question—

The Hon. R.I. Lucas: What would the commissioner do in that circumstance?

The Hon. T.G. ROBERTS: Well, I am just about to explain. Clause 24 should be read in the broader context of the bill. In particular, clause 32 provides the basis upon which the commissioner can dismiss a complaint. If the commissioner determines that the complainant is not entitled to make a complaint or it is frivolous, vexatious or not made in good faith, the commissioner can dismiss the complaint. The Ombudsman already looks into those sorts of issues with pharmacists and other people in the medical industry—

The Hon. Nick Xenophon: The state Ombudsman?

The Hon. T.G. ROBERTS: At the moment there are people who make complaints to the Ombudsman, which I have been made aware of, who complain against the way that pharmacists—

The Hon. R.I. Lucas: A private sector pharmacist?

The Hon. T.G. ROBERTS: Yes; I am saying that there are people who make complaints. I am not saying that they are taken up, but—

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: They take complaints to the Ombudsman because they believe that the Ombudsman can fix their complaint, but it is generally not the case. In the way they take the case up, there are no grounds for it in the private sector for a start. There is a good reason why complaints now, under the commissioner, would be handled—they would be handled in a sensitive way—but they would not be taken up if a complaint were frivolous, vexatious or not made in good faith. In those cases, the commissioner can dismiss the complaint. That is what happens now. I will not elaborate on it because it confuses the issue.

The Hon. R.I. LUCAS: What will the commissioner's powers be to resolve the problem that the Hon. Sandra Kanck has raised and that the Hon. Terry Roberts says is a very real problem?

The Hon. T.G. ROBERTS: The commissioner can take up the complaint and investigate the circumstances in which the complaint has been made and decide whether to take it up as an investigatory complaint or dismiss it on the grounds that it is a complaint that is frivolous, vexatious or not made in good faith. It gives them the option to be able to take it up.

The Hon. R.I. LUCAS: I understand that he or she could take it up and could dismiss it if it is frivolous or vexatious.

I am asking: what, in the end, under the government's proposal, will the commissioner be able to do about the set of circumstances? A private doctor in a country area (as outlined by the Hon. Sandra Kanck) has adopted a course of action. The commissioner takes up the complaint because, in his or her judgment, it is not frivolous. What powers does the commissioner have to resolve the issue? Can the commissioner direct the doctor to do anything?

The Hon. T.G. ROBERTS: The commissioner can take up the complaint, investigate and make a report. That can involve conciliation but, ultimately, he cannot direct—

The Hon. R.I. LUCAS: So, the commissioner can talk to the person and investigate the complaint, if it is not vexatious, make a report and so on. Ultimately, when push comes to shove, if the GP continues to act in the way he or she had been acting, there is nothing the commissioner can do to change that in any way to the satisfaction of the consumer.

The Hon. T.G. ROBERTS: The imposition of the investigation has to be endured by the person providing the service, and the commissioner has the right to investigate the issue but, ultimately, he or she cannot direct that person to deliver the service.

The Hon. R.I. LUCAS: I want that clarified on the record, because the Hon. Sandra Kanck raised the issue, and the Hon. Terry Roberts has said that this was an important issue that was being addressed. It is important to clarify exactly what we are talking about. In the light of that, in the event of the circumstances the Hon. Sandra Kanck has raised, if the GP refuses to provides copies of records, or to have a meeting with the commissioner, what happens? If I am a country GP and the commissioner, or one of his or her officers, rings and says that they want copies of my records, or they want to talk to me, and I say that I am too busy and I do not want to talk to the commissioner, am I committing an offence for which there are penalties?

The Hon. T.G. ROBERTS: In clause 46, the doctor or service provider has to be a part of the investigatory process. Under clause 47, the commissioner has to obtain information and investigate. Under clause 48, they have search powers and warrants to investigate, and they have the power to examine witnesses. As the honourable member says, in many cases just the ability to investigate a complaint—

The Hon. A.J. Redford: A penalty in its own right.

The Hon. T.G. ROBERTS: Yes. The advertising that goes with that sort of investigation would be enough to prevent the use of 'frivolous or vexatious' or 'not made in good faith'.

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: Well, nobody can direct that somebody deliver a service.

The Hon. R.I. Lucas: The documents, the search and so on.

The Hon. T.G. ROBERTS: There are financial penalties, with a maximum penalty of $5 000 for not participating.

The Hon. NICK XENOPHON: The debate has been quite useful. My view is that I will not support the opposition's amendment, but I flag that, in the context of the matters raised by the Hon. Mr Lucas, I think it is important that it be noted that the whole issue is one of reasonableness—whether the provider has acted reasonably or not. I am concerned that, if there is to be an investigation of a GP in a busy rural practice, it ought to be taken into account that some super practices in the metropolitan area are very organised and have lots of resources and, clearly, they can respond much more easily than a GP in a regional community—and we know the sorts of pressures that rural GPs are under. I think there is an issue—

The Hon. R.I. Lucas interjecting:

The Hon. NICK XENOPHON: The Hon. Mr Lucas talks about country GPs: it is not that country GPs have a different Hippocratic oath. However, in terms of their responding to a complaint, perhaps when we get to clause 46 some questions will be asked and consideration given to taking into account the circumstances and resources of a provider who is being investigated and the timeliness with which they can respond.

The Hon. R.I. LUCAS: I strongly support the comments and amendments of my colleague, the Hon. Mr Redford. I also endorse what I think the Hon. Mr Xenophon is suggesting, namely, further consideration later on by him (and, hopefully, other members) of some of the powers. The question raised by the Hon. Sandra Kanck—

An honourable member interjecting:

The Hon. R.I. LUCAS: Well, the matter of reasonableness and the issues for small GP and country practices raised by the Hon. Sandra Kanck. I was not aware that the commissioner has the power to search, discover and break in. I thought this was a conciliation process with, ultimately, no powers.

I am assuming that country GPs of the like that the Hon. Sandra Kanck is talking about are aware that these powers are about to be visited upon the commissioner. One of the intentions from consumers and others is the sort of circumstance that the Hon. Sandra Kanck has outlined. As I said, I have not followed the debate closely but listened with interest to the issues that the Hon. Mr Redford has raised. In relation to this issue, I am grateful that the debate that has ensued has thrown it up. I hope that the Hon. Mr Xenophon and others will look more closely at some of the further amendments of the Hon. Mr Redford in relation to this broad issue.

In particular, the Hon. Mr Xenophon might be prepared to look at further amending some of those issues now flagged in relation to penalties and, as I said, the powers to 'search and destroy' and require various requirements from country GPs. Not just country GPs, obviously because, as the minister indicated, pharmacists and a number of other private sector service providers evidently are already having complaints made about them to the Ombudsman, and I presume they will therefore go to this new commissioner. I support my colleague on this issue.

The Hon. J.F. STEFANI: I wish to make two observations. One is the case that the Hon. Sandra Kanck has referred to. We have a GP who, from his or her own assessment, has withdrawn the service, substantially because the payment is not forthcoming. So if through some pressure the service provider is required to continue providing the service, it is quite possible that, assuming that at the other end the service receiver is unable to, in effect, finally pay, we have a breach of the Insolvency Act, because we are providing a particular person who is in fact trading insolvent, if I can put it in broad terms. The second observation I want to make is this: if the service provider has withdrawn the service, what happens in the meantime to the person who requires the service to be provided in terms of his or her health whilst the investigation is going on? Where is that person left?

The Hon. T.G. ROBERTS: I thank all members for their understated contributions: 'search and destroy'; 'break in'! It sounded as if we were on the battle grounds in Iraq for a while, when we are talking about a bill for the protection of consumers and a complaints bill that for reasons unknown to

me the opposition has taken offence to. Most of the clauses that we have picked up in this bill came out of a bill drafted under the previous government. I am not sure where either member was when it went to their caucus to discuss the issues associated with it. I did not see any press statements made by the Hon. Mr Lucas in relation to Mr Brown's bill when it included—

The Hon. R.I. Lucas: It hadn't got to the parliament.

The Hon. T.G. ROBERTS: Do you have a party process or not? That is the only question. The previous government's bill had in it the same powers as this to which members are violently objecting, and it also had the powers of a royal commission. The honourable member is probably a bit surprised about that, but we are not using a sledgehammer to crack a walnut. It is quite a reasonable position to adopt, to protect consumers and to provide cause for a complaint to be investigated. That is as much as we are doing. It does not pit the—

The Hon. T.G. Cameron interjecting:

The Hon. T.G. ROBERTS: Those are the honourable member's own words, that they have the power to break in.

Members interjecting:

The Hon. T.G. ROBERTS: To break in? I did not say anything about breaking in.

Members interjecting:

The Hon. T.G. ROBERTS: Here we go! The government has stated its position and the opposition has stated its position: let us have a vote.

The committee divided on the amendment:

AYES (9)

Cameron, T. G.	Dawkins, J. S. L.
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)

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

Majority of 1 for the noes.

Amendment thus negatived; clause passed.

Clause 25.

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

Page 19, lines 17 and 18—Leave out subclause (1) and insert:

(1) A person may complain to the Commissioner orally or in writing.

(1a) If the Commissioner receives an oral complaint, the Commissioner must require the person to confirm the complaint in writing unless the Commissioner is satisfied that there is good reason why the complaint should not be made in writing.

(1b) The Commissioner may require a person making a complaint to provide—

(a) his or her name and address; and

(b) reasonable information about the grounds on which the complaint is made; and

(c) details of any action that the complainant has taken to attempt to resolve the matter with the health or community service provider; and

(d) any other details considered by the Commissioner to be reasonably necessary to enable the complaint to be assessed under Division 2.

(1c) The commissioner may assist a person to make a complaint if the person requests or requires assistance.

This amendment promises to be a little more definitive about the process that is involved in the actual making of a complaint. The form of complaint in the bill as presented by the government is left entirely to the commissioner, whereas the opposition believes that it ought to be more prescriptive as to exactly how a complaint is to be initiated, who is to initiate it and what information the commissioner is entitled to require from a complainant. Also, it requires the commissioner to assist a complainant in making a complaint.

The Hon. T.G. ROBERTS: The effect of this amendment is to require all complaints to be confirmed in writing and to provide further information that the commissioner may require. It is not possible for all complainants to make their complaints in writing. The commissioner should have discretion to accept a complaint in a manner he or she has approved or determined so that all service users have an equal opportunity to make a complaint to the commissioner. The bill is worded to allow the greatest ease and flexibility in the lodgment of a complaint.

It recognises social, literacy or other reasons for disadvantage in making a complaint. It also allows the commissioner to provide assistance to a person making a complaint, including assistance to put the complaint in writing. It is covered in all ways. Clause 25(2) also provides that a complainant disclose all the grounds of the complaint at the time at which it is made to the commissioner. The amendment, if passed, would restrict the ability of some people in society to formalise a complaint. They would see it as all too hard, throw up their hands and walk away, and the complaint would not be laid. It may be that they will seek advice, and the advice may be costly.

The Hon. NICK XENOPHON: In terms of the manner in which a complaint is to be determined, will that be available for public scrutiny, is it something that will be clearly transparent or is it a case that if someone—a whistleblower, perhaps—makes a phone call and says, 'Look, these terrible things are happening at this particular health service/hospital'? Is it at the discretion of the commissioner to determine whether it is dealt with or will the commissioner take the view that the complaint must be in writing, because, if it has to be in writing, some people just will not do that?

The Hon. T.G. ROBERTS: The honourable member's question is valid. Anonymous complaints cannot be made. Part 4, 'Complaints Division', within section 23 sets out who can complain, and it is quite prescriptive about that.

The Hon. A.J. Redford: Why do you say that anonymous complaints cannot be made?

The Hon. T.G. ROBERTS: An anonymous complaint can be made but the anonymous complainant would have to go through certain procedures to enable the complaint to be taken up. I think that that is a protection against vexatious and other time-wasting ways in which complaints are laid. If the honourable member wants me—

The Hon. Nick Xenophon: Is not the seriousness of the complaint taken into account, though?

The Hon. T.G. ROBERTS: If enough anonymous complainants contact a commissioner, or even contact the Ombudsman in his duties, that generally starts to send signals to people that, perhaps, something is wrong. There are, of course, exceptions to that. If people in business are organising complaints against a particular service, you must be able to filter that out. You do not want to be taking anonymous calls from persons who are acting in a less than ethical way.

The Hon. SANDRA KANCK: I have some reservations about this amendment, and I will give an example. It is not quite in the same league but, because it is personal, I can talk about it with some authority. About 25 years ago, when I was

living in New South Wales, I contacted the Medical Registration Board and asked for some details about a psychologist who was treating a friend of mine. I had observed that the psychologist was emotionally and psychologically manipulating and controlling her. I never lodged a formal complaint. It was only a telephone call, but they went straight to their records while they were talking to me and said, 'Oh, this man has had complaints made against him of a similar vein when he was practising in Tasmania.'

Because I did not formally lodge a complaint, I did not know what had happened after that. My friend and I had a bit of a tiff over my intervention in this matter, but 12 months later she contacted me. In fact, my friend came to visit me and she said that I had done the right thing. The registration board had investigated that doctor and had then put controls on some of his visits, and so on, to public hospitals in the Sydney area. That happened as a result of a phone call. I was not buying into a health complaints mechanism per se at that time, nevertheless, my phone call resulted in appropriate action. Nobody asked me to put anything in writing, but the right thing happened as a consequence of that phone call. What the Hon. Mr Redford is proposing in his amendment, as I see it, would slow down that process.

The Hon. J.F. STEFANI: While I appreciate the contribution of the Hon. Sandra Kanck, today it would be very doubtful whether anyone would take any such action on a telephone call. In fact, it is harder to get details of your own bank account without quoting all sorts of information—and I have had experience of that. It seems to me that the legislation as proposed by the government is somewhat less prescriptive as to how the complaint can be determined by the commissioner.

Again, I have had some experience in trying to be a responsible member of the community by reporting smoking cars. I was advised by the Department for Environment and Heritage that my complaint would not be followed up unless I put the details in writing and included my name and address, the registration number and a description of the car, where it was, and so on. We have a much more serious matter here: we are dealing with complaints about health services. While there is discretion for the commissioner to receive complaints in a manner that he or she may deem appropriate, I feel somewhat disposed to have a more formal prescription of the process because that may certainly stop a lot of people complaining for nothing, if there was a way in which they could understand how their complaint should be lodged.

I have some sympathy with the proposed amendment because it does require a person to give their name and address, reasonable information about the grounds upon which the complaint is made, and so on. I think that is an initial part of understanding how a person should proceed to lodge a complaint. That might be quite legitimate in the process.

The Hon. T.G. ROBERTS: The Hon. Mr Xenophon is seeking advice, but under 'making a complaint', paragraph (k) provides that the commissioner can make a particular complaint 'in the public interest'. In relation to the Hon. Sandra Kanck's point, if you aggregate telephone calls, in most cases you can pinpoint a potential or real problem. The point that the Hon. Mr Stefani makes is one that argues against his own case. If you have something more serious than smoking cars, such as health, and you have a broad range of people in the community, many of whom can sit down and write a letter about smoking cars, or whatever it is, then that will get immediate attention.

If you are not familiar with bureaucracy—in fact, if you are afraid to deal with bureaucracy (which a lot of people are) or intimidated by bureaucracy—then a telephone call may be the only way in which you can express a view or an opinion. The commissioner has the flexibility to be able to work out whether it is a genuine case that requires the individual to come in to make a written complaint; or the commissioner can make a decision, 'I have had 13 calls on that matter today. I think it needs some further scrutiny or investigation.' I think we have to make it as easy as possible.

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: Well, what the government is saying is that it should be made easier rather than more difficult.

The Hon. NICK XENOPHON: I will not support the amendment. My understanding is that under the Ombudsman Act it is not prescriptive. It is up to the Ombudsman to determine how a matter is dealt with. I think it will be on the commissioner's head if he or she did receive a complaint about a serious matter and did not follow it up. I think that would be the subject, no doubt, of a review by the Ombudsman's office.

Amendment negatived; clause passed.

Clause 26.

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

Page 19, line 22—Leave out 'two years' and insert:
one year.

The effect of my amendment is to amend the period in which a complaint must be made from two years to one year. I will explain the scheme in which this operates. That is a prima facie time limit, but then that time limit can be extended by the commissioner in a particular case. Clause 26(2) provides:

(a) [If the commissioner is satisfied] a proper investigation of the complaint should still be possible; and
(b) whether the complaint should still be amenable to resolution under the provisions of this act; and
(c) whether it would be in the public interest to entertain the complaint; and
(d) any other matter considered relevant. . .

I doubt whether people clearly remember details of conversations and events six months after an event, let alone a year after an event. A year seems to be a period of time upon which parliaments have settled quite regularly. You have to lay a complaint under the Summary Offences Act within 12 months. For many years until the late 1990s it was only six months in which you could lay a complaint for a prosecution. It does a number of things. It enables the commissioner to operate on the best evidence and encourages people to get on to make their complaints and have the complaints disposed of relatively quickly. Secondly, it enables the commissioner to deal with cases based on the best evidence.

It is not good public policy to allow people to sit around at their leisure and wait two years to make a complaint and then expect a commissioner or any other authority to quite properly deal with these matters. That is not to say there will not be occasions in relation to serious and important matters where that time limit could be extended.

The opposition is not seeking to amend clause 26(2), which gives the commissioner broad powers and a broad residual discretion to take complaints after one year if he or she feels that it is in the public interest. There is a broad discretion in any event. With those few words, I expect the government will heed the wisdom of my words and support the amendment.

The Hon. SANDRA KANCK: I ask the mover how this compares with the Ombudsman Act.

The Hon. A.J. REDFORD: I will just check that while the minister responds.

The Hon. T.G. ROBERTS: The government's position is that two years is considered a reasonable time in which to make a complaint. This time provides for an equitable complaint mechanism which ensures that complainants are not disadvantaged by their emotional or physical wellbeing at the time of the complaint occurring; and that they have had time for recovery before needing to make a complaint. Interstate legislation varies from five to one year to no time specified. In the light of this variation two years seem to be appropriate.

Consumer and community groups lobbied to say that one year was too restrictive. So, there are issues associated with people's emotional and physical well-being that may delay complaint. Some people may dwell on an issue for a long time. It is not a matter of sitting around waiting to go and make the complaint. Some people have social, physical and emotional problems that prevent them from doing it straightaway.

The Hon. A.J. REDFORD: In answer to the Hon. Sandra Kanck's question, section 16 of the Ombudsman Act states:

> Subject to this section a complaint under this Act must not be entertained by the Ombudsman if it is made after 12 months from the day on which the complainant first had notice of the matters alleged in the complaint unless the Ombudsman is of the opinion that, in all the circumstances of the case, it is proper to entertain the complaint.

If that is of assistance to the member.

The Hon. SANDRA KANCK: Again, under those circumstances I am prepared to accept the member's amendment, because it is basically consistent with the current Ombudsman Act.

The Hon. T.G. ROBERTS: There are a couple of issues before the matter is put. There are some issues associated with tissue storage and protection that have longer time frames in relation to the use or potential abuse. It could be embryos or it could be other tissue. These are matters affected within the health industry. There is also the issue of stillborn babies being buried in unmarked graves. That issue went over a 10, 15 or 20 year period. The issue of disposal of human remains in universities and tertiary institutions also had a long lead time. You would not like to see some of those issues being ruled out. I am sure that the discretionary processes may be able to be triggered, but I would not like to see them ruled out by a restrictive time frame.

The committee divided on the amendment:

AYES (12)

Cameron, T. G.	Dawkins, J. S. L.
Gilfillan, I.	Kanck, S. M.
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 (8)

Evans, A.L.	Gago, G. E.
Gazzola, J.	Holloway, P.
Roberts, T. G. (teller)	Sneath, R. K.
Xenophon, N.	Zollo, C.

Majority of 4 for the ayes.

Amendment thus carried; clause as amended passed.

Clause 27.

The Hon. NICK XENOPHON: Subclause (1)(b) provides:

> The HCS Ombudsman may, at any time, require a complainant—to verify all or any part of the complaint by statutory declaration.

Can the minister say what is envisaged by that? Will this be done as a matter of course, or in what circumstances will it be required? Are there any views as to how it has been done within other jurisdictions? Will statutory declarations be the matter of course? What does the government envisage is a threshold for which a statutory declaration will be required?

The Hon. T.G. ROBERTS: The policy rationale is that the commissioner may request a complainant to provide additional information or documents and request a complainant to verify a complaint by statutory declaration. So it is not the declaration itself; it is the additional information.The previous government's bill was similar; the ACT, the Northern Territory and Tasmania are similar; Queensland is similar, with additional provision for the complainant to reveal identity in an affidavit; and Victoria, Western Australia and New South Wales are similar.

Clause passed.

Clause 28 passed.

Clause 29.

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

> Page 21, line 10—Leave out:
> 'HCS Ombudsman may in such manner as the HCS Ombudsman' and insert:
> 'commissioner may in such manner as the commissioner'

On my understanding that is consequential, and I am optimistic that the government and the Democrats will recognise it as such.

The Hon. T.G. ROBERTS: The government and the Democrats recognise it as consequential.

Amendment carried.

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

> Page 22, after line 7—Insert:
> (13) For the purposes of conducting any inquiry or informal mediation under this section, the commissioner may obtain the assistance of a professional mentor.
> (14) The commissioner may discuss any matter relevant to making a determination under section 28 or with respect to the operation of this section with a professional mentor.

In dealing with this amendment, I will take it as a test clause for the proposal by the opposition to enable the commissioner to appoint a professional mentor to advise the commissioner, or a person acting as an investigator under this part, or any matter relevant to an investigation. For the sake of relevance, the clause allows the commissioner to utilise the services of the professional mentor in dealing with complaints and, in particular, at each stage of the complaint and, in relation to the clause that is before this committee, the preliminary inquiry.

The commissioner (whoever that person may be) will be responsible for quite a broad range of services from the complexity of a heart surgeon to the difficulty that might apply in relation to the conduct of a psychiatrist or psychological practice to the difficulties associated with providing a health service through a hospital and so on. It is the view of the opposition that a professional mentor will assist the commissioner to undertake and embark upon those processes.

This parliament has recognised this on many occasions in many other fields of endeavour. When we have a medical conduct board, a professional doctor sits on that board. When we have legal disciplinary matters, not only do we have lay people but we also have lawyers involved, and so on with dentists, builders and various other people. We think that this

would assist the commissioner to come out with the best outcomes. I wait with a great deal of interest to hear from the government as to why this proposal should be rejected.

The Hon. T.G. ROBERTS: The government is opposed to the amendment on the basis that it is a preliminary investigation. It is an unnecessary amendment. It is most unlikely that the commissioner would need the services of a professional mentor at the preliminary inquiry stage of an investigation. Provision already exists for the appointment of professional mentors under clause 12 to assist the conciliation process and under clause 44(2), which allows the commissioner to obtain expert, or any other advice, as part of an investigation. The role and the obligation of the mentor is described in clause 40. What we are saying is that, at the preliminary stage of whether an inquiry will lead to further action, a mentor is not required.

The Hon. SANDRA KANCK: Will the Hon. Mr Redford explain a little more what a professional mentor is? There is no definition. I have a particular understanding of what a mentor is when you are supporting and encouraging someone, but this sounds to be something different again.

The Hon. A.J. REDFORD: I would have to say, from my professional experience, a mentor is someone who helps a professional through the process. I can only refer the honourable member to the terms of our amendment which would add proposed clause 55A, as follows:

(1) The commissioner may appoint a professional mentor to advise the commissioner or a person acting as an investigator under this part on any matter relevant to an investigation.

(2) The commissioner or other person may discuss any relevant matter with the professional mentor.

(3) If a complaint is made against a registered service provider, the relevant registration authority may request the commissioner to appoint a professional mentor under this section.

(4) On receiving a request under subsection (3), the commissioner must consult with the relevant registration authority and, unless there are compelling reasons for not doing so, must appoint a professional mentor.

(5) If a person who is appointed as a professional mentor under subsection (3) is a member of the relevant registration authority, the person must not take part in any proceedings of the registration authority concerning the registered service provider that are related to the subject matter of the investigation of this part.

In this case the mentor is the mentor to the commissioner and not a mentor to the doctor.

In relation to the normal complaints, the matter of whether or not the commissioner needs to speak to a mentor is a matter entirely for the commissioner, but there may well be a need for the commissioner to talk to a mentor. I can say from my experience in the law—and I know the Hon. Nick Xenophon will be quick to agree with me—that, when a commissioner is adopting a process, it is appropriate for the commissioner not to consult with people. They almost have to act in a quasi judicial fashion. We are dealing here with the commissioner's task of, on some occasions, considering some quite technical and professional issues about what is an appropriate medical procedure and so on.

It may well be that the issue could be dealt with more speedily and simply by an approach by the commissioner, which would be permitted under this clause, to allow a mentor who is well respected and skilled. The other alternative is not to have this, and then you go through a whole process of hearings with expert witnesses, which is how the court system operates. This is simply a provision to enable the commissioner to engage in it. It is not as if we are telling him that he must do this. However, particularly in relation to these two clauses, in terms of preliminarily assessing a matter, he can obtain the advice and assistance of a professional mentor. I do not know what harm it does, but the government is finding it pretty negative.

The Hon. NICK XENOPHON: I have a question for the Hon. Mr Redford in relation to this amendment because the two are tied enemies. As he has set out his amendment to clause 55A, it envisages that it is discretionary; so, whether 55A would apply, it does not arise unless this amendment is passed. In the context of this amendment, I think it is relevant to ask this question: could there be a professional mentor where there is a complainant and the commissioner thinks that they ought to get advice from a child protection advocate, for instance, or from a disability services advocate? Would that be envisaged? I think I understand what the honourable member is trying to do.

The Hon. A.J. Redford: I think I understand your question.

The Hon. NICK XENOPHON: He thinks he understands my question; that is a good sign. We both understand each other. Could the Hon. Mr Redford respond to that?

The Hon. A.J. REDFORD: A professional mentor is not prescribed, and for good reason. The honourable member has alluded to one good reason—it may well be that we are not just talking about consulting with a doctor. You might be talking to someone who is quite an expert in a case who might not be recognised as an expert in a court room. If I can be anecdotal, I remember a case I was involved with that I think was the state's first battered women's syndrome, as they called it, in defence of a murder charge. I remember the judges sitting there saying that they would be happy to hear expert evidence from psychiatrists and psychologists who had read about this in books, but they were not happy to hear evidence from Ele Wilde who ran a womens' shelter and had to deal with battered women on a daily basis, which was an extraordinary thing. We did not want to be confined in that sense. The example that you give would fall into that category.

The Hon. NICK XENOPHON: Would the wording of subclauses (3) and (4) restrict you to that?

The Hon. A.J. REDFORD: It might, and I am happy to debate the detail of that because we will put that separately when we get to that stage.

The Hon. SANDRA KANCK: I am wondering about the comparison that the Hon. Mr Redford made with a court case where you bring in expert witnesses. That is an open process that allows the people involved in that court case to hear what is being said and to challenge it. However, if the commissioner or an investigator gets a professional mentor and receives opinions, the person who has lodged the complaint has no way of knowing that those opinions have been given and is not therefore in a position to query it or put a counter view.

The Hon. A.J. REDFORD: I think it is a fair point. There is a balance here. The commissioner may well seek to engage a professional mentor and have a closed conversation and come up with an irrational answer—at least an answer that seems irrational to the complainant—and then not seek to explain it. I think that the commissioner would then have to explain their position. I think that it is a matter of balance. Do we put some of these providers through a preliminary investigation with the potential of a more formal investigation and various other things or do we get the commissioner knowing what the parameters are right from the early stages?

I would have to concede to the honourable member that there is a risk that the commissioner might sit there and run it like a closed shop; however, on balance, I think that that is

less likely to happen. I think that the commissioner is likely to explain what the professional mentor has said. Certainly, it would be obtainable under FOI legislation and ultimately, if it were a serious breach, we would get our hands on that. It is likely that the commissioner would disclose what the mentor was saying to the complainant. At the end of the day, if they did not, you would have a fairly unhappy complainant. On the other hand (and I have done it myself), you look at the way some professionals operate and think, 'That is bizarre. I would not do that', until you have an explanation from the experts to explain why things happen in a certain way. The member makes a point, but I think that, on balance, our clause improves the issue.

The Hon. NICK XENOPHON: My understanding is that the concerns that the Hon. Sandra Kanck had with respect to a mentor and the mentor's advice to the commissioner and the openness of that would apply equally to an expert that the government's bill allows for to provide advice to the commissioner—perhaps more so. I will stand corrected by the minister, but I believe that is the case. The issue of process concerns me in respect of whether it is unfair for the complainant in the case of a professional mentor and for the person being complained against. That is something that the Ombudsman's office should have appropriate jurisdiction over.

Given that this is discretionary, I cannot see that the government could possibly say that this in any way takes away from the functions of the commissioner or the rights of parties. I do not have any difficulty in supporting this amendment. There is an issue with clause 55A that I have alluded to where I am interested in whether there could be a mentor for a complainant such as an advocate for child protection or the sort of case that the Hon. Mr Redford alluded to. I will support this amendment.

The Hon. SANDRA KANCK: I appreciate the Hon. Mr Redford's answer. Having thought about it some more, particularly in the community services area, I recall a particular case in FAYS (in fact, I recall a number of them) where allegations were made against somebody and, FAYS, using its discretion, obtained this sort of expertise to comment on the case. It was very much hired gun stuff that was very much to the disadvantage of the client. So, I am unhappy with it. My experience is that it can be abused and I think that, because of that, I will vote against it.

Amendment carried.

Progress reported; committee to sit again.

SUPPLY BILL

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

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I move:

That this bill be now read a second time.

This year, the government will introduce the 2004-05 budget on 27 May. A Supply Bill will be necessary for the first few months of the 2004-05 financial year until the budget has passed through the parliamentary stages and received assent. In the absence of special arrangements in the form of the Supply Act, there would be no parliamentary authority for expenditure between the commencement of the new financial year and the date on which assent is given to the main Appropriation Bill.

The amount being sought under this bill is $1 500 million. Clause 1 is formal, clause 2 provides relevant definitions and clause 3 provides for the appropriation of up to $1 500 million.

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

FREEDOM OF INFORMATION (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to the time and place appointed by the Legislative Council for holding the conference.

SITTINGS AND BUSINESS

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I move:

That the council at its rising adjourn until Monday 24 May 2004.

Motion carried.

[Sitting suspended from 1.03 to 2.15 p.m.]

FREEDOM OF INFORMATION (MISCELLANEOUS) AMENDMENT BILL

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I have to report that the managers have been to the conference on the bill. We received from the managers on behalf of the House of Assembly the bill and the following resolution adopted by that house:

That the disagreement to the amendments of the Legislative Council be insisted on.

Thereupon the managers of the two houses conferred together and it was agreed that we should recommend to our respective houses that the agreement as circulated be agreed to.

Consideration in committee of the recommendations of the conference.

The Hon. P. HOLLOWAY: I move:

That the recommendations of the conference be agreed to.

I am pleased that, after some significant amount of time and debate, at last agreement has been reached in relation to the bill. The Freedom of Information Act is a very important part of government and is very important to good government. Significant amendments were made to the act just prior to the 2002 election and the new government that came to office sought further changes to it. As a result of those discussions, I believe that the new legislation, once these amendments have been agreed to, will further strengthen the FOI Act, and I believe it will put it up there with the best freedom of information legislation in the country. I am pleased that these important changes that are included in the bill—and they are quite significant changes—will, as soon as the agreement has been adopted and the act proclaimed, come into force.

The Hon. R.D. LAWSON: I rise to indicate support for the motion moved by the minister. The government introduced a Freedom of Information (Miscellaneous) Amendment Bill in 2002. It contained a number of improvements to the freedom of information legislation, but it also contained a number of matters which restricted access and made it more difficult for citizens to gain access to documents and information in the possession of government. The Legislative Council collectively adopted a policy which was, in effect,

to support any changes which facilitated access to documents and information, but to oppose any of the government's proposals which had the effect of restricting access.

I believe that the result of the conference has been that the government has backed down on insistence upon amendments which, in significant ways, would have restricted access and that, to a very large degree, the amendments moved in this council and carried in this council by a majority of this council have been implemented. In a couple of respects they have not been totally implemented, and satisfactory compromise has been reached. Whilst I will not run through all of the amendments, I think it is worth placing on the record a number of points in relation to the amendments.

There were proposals to alter the objects clause in the legislation. The government had one version. In the council we adopted another. However, the compromise which was reached, namely, that we do not insist upon our objects, was one that, notwithstanding that we were not insisting on our amendments, reflected the government's changing its position on the objects in a way that is satisfactory. The next significant amendment, which was the subject of much discussion and negotiation, was a proposal that would have allowed the exemption of officers' personal documents.

The government wanted to insert a provision which suggested that officers and agencies were not required to produce documents under FOI unless those documents were in their possession as an officer. The Legislative Council took the view that that provision was already implicit in the act, and we were not convinced that the government's proposal was an improvement. Indeed, we suspected that it was a restriction. I am glad that the government has backed down on that and that the position of the Legislative Council has been upheld.

The amendments, which would have had the effect of restricting the citizen's rights of appeal against decisions of review officers originally proposed by the government, have also been abandoned in accordance with the wishes of the Legislative Council, and that is an initiative which I welcome. One of the most controversial of the amendments was one moved by the Hon. Mr Gilfillan, which would have removed the capacity of government to charge members of parliament for FOI requests. The current situation is that a member may not be charged a fee for an FOI request except where the cost of that request or the fee for that request would exceed an amount by regulation at $350 per application.

The Hon. Mr Gilfillan moved an amendment which was carried in the council and which removed altogether the capacity of government to place any limitation. However, there will be an undertaking by the government, which will be placed on the record in another place, to alter the regulations to increase the threshold fee from $350 per application to $1 000 per application, which sum will be indexed so that, as charges increase over the years, the $1 000 limit will also increase. By that means members will continue to have the important access which they should have under freedom of information and the government will not be able to unreasonably restrict access by insisting upon the payment of excessive charges.

There were amendments made in this chamber which preclude charges from being levied for matters other than administrative and photocopying matters, so that fees cannot be inflated, for example, by seeking to recover the cost of Crown Law advice, or seeking to charge management time, or any other device to inflate the charges. As a result of amendments, which were carried in this place and which will survive the restoration of the section removed on the motion of the Hon. Mr Gilfillan, costs will now be limited to reasonable administrative costs, and the fee or charge that can be required in respect of the costs of the agency will be limited to finding, sorting, compiling and copying documents necessary for the proper exercise of a function and undertaking of the consultations required by this act in relation to that function. Those consultations are not consultations with lawyers or others: they are consultations with third parties and people whose interests might be affected by the release of documents.

While we were prepared initially to support the Hon. Mr Gilfillan's proposals, given that there has been a fee in the past and given that under the Liberal administration the fee had never been charged to any member—I gather that fee has not yet ever been charged under the current administration, notwithstanding threats—we are satisfied to accept the undertaking of the minister and will ensure that regulation is appropriately introduced. Any attempt by any future government to alter that regulation will of course be subject to disallowance by either house of parliament. One of the justifications—and I think it is an appropriate one—for maintaining a cap on members of parliament is that in the past there was a cap. Freedom of information, notwithstanding claims of the government, has not been abused by members of parliament. Appropriate mechanisms are in place to ensure that the public interest is preserved whilst giving members reasonable access.

The only other amendments that should be mentioned are those which were made by the Legislative Council and which the government has now agreed to support. They relate to provisions for the payment of legal costs in the event of appeals. As a result of amendments made in this chamber, the capacity of government agencies to recover costs from citizens has been reduced, and citizens can only be ordered to pay costs of pursuing their rights if they act unreasonably, frivolously or vexatiously. The government was initially resistant to our amendments in this regard. I am delighted that they have seen the good sense and the justice of what was proposed in the Legislative Council, and the government in the House of Assembly will not be insisting upon those amendments. I commend the motion.

The Hon. IAN GILFILLAN: I indicate profound disquiet that the opposition has buckled under what must have been some sort of persuasive argument to accept the push by the government to maintain a charge on MPs. I was appalled when minister Weatherill actually contemplated this as being in total contradiction to the concept that a member of parliament will be seeking information for the good of the electorate—constituents—and there should be no charge. It does not matter how soft it may sound with the sort of modifications that the Hon. Robert Lawson has just expounded to the chamber. The fact still remains that there will be a head power in the act for a future government to impose a much more restrictive cost regime on members of parliament, so I am not consoled about that, certainly not in the long term.

The Democrats come back to a strongly held contention that, as a matter of principle, no freedom of information legislation in South Australia should have any charge on a member of parliament seeking information on an FOI application. That continues to be our position.

Motion carried.

ALDINGA RESIDENTIAL DEVELOPMENT

A petition signed by 142 residents of South Australia, concerning the proposed Aldinga residential development, and praying that this honourable house will impose a moratorium on this site to coincide with the 12 month moratiums placed on other local sites to enable thorough archaeological and environmental studies to be carried before any developments are to proceed, was presented by the Hon. P. Holloway.

Petition received.

MITSUBISHI MOTORS

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I seek leave to make a ministerial statement.

Leave granted.

The Hon. P. HOLLOWAY: I would like to provide some clarification in regard to my answer to a question on 5 May 2004 in relation to Mitsubishi Motors. With regard to my answer to a supplementary question by the Hon. Rob Lucas, I wish to make it clear that eight of the executive positions in the Department of Trade and Economic Development have been filled. This includes the recently filled position of Director, Office of Trade, for which I am advised a contract has yet to be signed, but the position has been offered and accepted.

In response to a further supplementary question by the Hon. Julian Stefani, I stated:

> . . . officers in relation to running some of the industry funds have gone to Treasury.

I have subsequently been advised that this has not occurred yet as discussions are still taking place in relation to the future management of the Industry Investment Attraction Fund following a recommendation from the Economic Development Board.

QUESTION TIME

TRADE AND ECONOMIC DEVELOPMENT DEPARTMENT

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the Leader of the Government a question about chief executives for the Department of Trade and Economic Development.

Leave granted.

The Hon. R.I. LUCAS: Members will be aware that the issue of a chief executive for this department has been a saga extending over two years now. Early in 2002, Mr Roger Sexton was appointed as the chief executive of what I will call the key economic development agency because the agency name has changed throughout the two years on a number of occasions. Later in 2002, the department was split into two: one part continued to be headed by Mr Sexton and the other part, for a period, was headed by a series of acting appointments. In 2003, Mr Roger Sexton left the employ of the government in relation to being chief executive of the key economic development agency and, in essence, there have been acting appointments since then. In late 2003, the former minister, I think the shortest lived minister ever for industry, Mr Rory McEwen, appointed—

The Hon. R.D. Lawson: Least achievements ever!

The Hon. R.I. LUCAS: Least achievements as well, as my colleague says. He appointed a Mr Stephen Hains as what was called an implementation chief executive of the Department of Business, Manufacturing and Trade. I must say, prior to that, of course, there had been the saga with the former minister when, after national advertising, Mr Geoff Whitbread had been offered the position of chief executive of the department, contract discussions had commenced, and then subsequently an offer was not made for what are yet unexplained reasons as to Mr Whitbread's final appointment by cabinet.

As I said, we then reached the stage in late 2003 when the minister for this area, Mr McEwen, announced the appointment of Mr Stephen Hains. I understand there was no panel process under the Public Sector Management Act in relation to this. I am advised that the Premier (who, of course, represents an area in and around the Salisbury area with Mr Hains) was the key driver in tapping Mr Hains on the shoulder for this six month appointment.

At the announcement and subsequently, the former minister on behalf of the Rann government made it absolutely clear that Mr Stephen Hains would not be anything more than the implementation chief executive for a six month period (expiring at about this time) and that he would not be considered for the position of the chief executive of the department. In recent weeks, some concern has been expressed to me by officers within the department that the government obviously has been having trouble in filling the position after national advertising and that the government might be considering breaking its commitment in relation to the promise it had given not to appoint Mr Stephen Hains.

Those officers say that, if that story were true, they would be concerned. They have indicated to me that they have spoken to Mr Hains and others, they have related to Mr Hains and they have acted with Mr Hains on the clear understanding from the Rann government that Mr Hains was appointed for only a six month period and would not be their long-term boss or chief executive. Will the minister assure this council that he will not break the promise made by the Rann government that Mr Hains would not be considered for the position of the long-term chief executive?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I am pleased to announce that Mr Raymond Garrand has been selected as the new chief executive officer of the Department of Trade and Economic Development. Raymond brings extensive experience into that role and I look forward to working with him and the new leadership team in driving the new strategic direction of the agency.

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: Raymond will commence his appointment on 1 June. Stephen Hains has agreed to stay on as chief executive until 31 May, that is, the end of this month, and he will continue to assist in the restructure process until 30 June.

I offer my appreciation to Stephen Hains for the work he has done in the restructure process. He will complete the job for which he was appointed. Of course, in answer to the Leader of the Opposition's question, he will not continue in that role beyond 31 May, but he will continue to assist in the restructure until the end of June. I would like to offer my appreciation to Mr Hains for the work he has done and the dedication he has given to the task. I am pleased that those changes have been placed in today's *Gazette*. I believe that,

with the appointment of the new CEO, who will take up the job after 1 June, the new Department of Trade and Economic Development will move forward.

The Hon. R.I. LUCAS: I have a supplementary question arising from the minister's answer. Can the minister confirm for the council that Mr Ray Garrand is the same Mr Ray Garrand who was the senior economic adviser to the Bannon government and Lynn Arnold during the whole period of the State Bank scandal and who, in fact, gave evidence to the State Bank royal commission which placed Mr Garrand's economic and financial expertise in a rather unflattering light?

The Hon. P. HOLLOWAY: I do not agree with the latter assessment. Mr Garrand has had a very distinguished career. He graduated from Flinders University with an honours degree in economics. After completing his studies, he commenced work as an economist in the Department of Prime Minister and Cabinet in Canberra. He has since worked for nearly two decades at the highest levels of government in Australia focusing on economic development issues and having experience with the commonwealth, South Australian and Queensland governments. He is a former economic adviser to governments and premiers in South Australia and Queensland. It was 1990, so let us not misrepresent it as the Leader of the Opposition is keen to do about any role he might have played in the State Bank, given that he was involved as an adviser from 1990 to 1993, I think. Let us get that straight.

He has also acted as adviser to the Queensland premier and he operated his own economic and business consultancy practice in Queensland for six years, working predominantly with the private sector on major resource and energy projects. He was also director of a mining and engineering company, Ausenco Limited. Of course, Mr Garrand has acted in the position of deputy chief executive of the Department for Business, Manufacturing and Trade. I think that we are fortunate to have someone of Raymond Garrand's calibre to take up this very important function.

The Hon. J.S.L. DAWKINS: I have a supplementary question arising from the minister's answer. Will the review of business enterprise centres conducted by Mr Hains, during his period as acting head of DTED, be completed before he leaves that position?

The Hon. P. HOLLOWAY: I believe that report has been completed. It is really now up to me to make the decisions in relation to that matter.

The Hon. R.I. LUCAS: I have a supplementary question arising from the minister's answer. Will the minister confirm that Mr Ray Garrand, prior to the last state election and straight afterwards, prior to the appointment of senior officers, was in South Australia unofficially advising Mike Rann, the current Premier, in relation to economic and financial policies during the last state election?

The Hon. P. HOLLOWAY: I am not aware of what role Mr Garrand had at that particular time. As I have already indicated, Mr Ray Garrand is a person with significant qualifications and experience and is eminently suited to the task. In fact, it was during his university education that he received a number of awards for outstanding results, including the chancellor's letter of commendation for outstanding results, the Economics Society of Australia's prize in economics and so on. Since that very eminent university career, he has, like a number of other economists in this state, moved on to significant positions at state and federal levels. I reject the scurrilous accusations that the Leader of the Opposition is making.

The Hon. J.F. STEFANI: I have a supplementary question. Given that the minister said he is not aware, will he find out whether he was, in fact, involved in giving advice to the Labor Party during the last election campaign and straight after and bring back a reply to this chamber?

The Hon. P. HOLLOWAY: I am happy to find out what role Mr Garrand played. I am not aware what his function was. If he chose to help out in some private capacity, that would be his business. I will endeavour to find out and provide an answer.

The Hon. R.I. LUCAS: I have a supplementary question. Will the minister inquire of the Treasurer whether or not, straight after the period of February-March 2002, Mr Ray Garrand was located in and around offices in the state administration block and seen regularly by Treasury, Premier and cabinet officers advising incoming ministers and officers in relation to the economic and financial policy of the new Rann government?

The Hon. P. HOLLOWAY: Given Mr Garrand's qualifications and experience, I am very pleased if he is providing advice to the government.

Members interjecting:

The PRESIDENT: Order! Character assassination of bureaucrats who are unable to answer is never a pretty sight, especially when it is being done out of order.

NEMER CASE

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development a question about the Nemer case.

Leave granted.

The Hon. R.D. LAWSON: On page 60 of the report of the Solicitor-General on the matter of Paul Nemer and associated issues, Mr Kourakis QC states:

> The validity of the direction given in the Nemer case, and the success of the appeal, has focused attention on the Attorney-General's position and powers within the context of this debate.

He goes on to speak of the spectre of directions motivated by popular politics alone. In paragraph 214 of his report, he states:

> It is here that the special position of the Attorney-General as a parliamentarian and minister of the Crown and the Crown's first law officer is critical. In exercising the power to direct, the Attorney-General must act independently of his or her ministerial colleagues.

I remind the council that, on 30 July this year, the Premier issued a media statement that attracted widespread publicity. It stated:

> Premier Mike Rann has outlined a four-point action plan in response to the Nemer shooting.

He said, 'I want to see this case appealed.' On 13 August 2003, the minister in his then position as attorney-general issued a direction to the Director of Public Prosecutions, which direction was duly gazetted. My questions to the minister are: did he, as attorney-general, before issuing a direction, have any discussions with any of his ministerial colleagues concerning the issuing of the direction and, if so, with which ministerial colleagues?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I was certainly well aware of the responsibilities that fall upon the Attorney-General in relation to issuing such instructions, and I take full and total responsibility for the decision to issue that instruction to Mr Rofe to appeal the Nemer case. Obviously, there was plenty of discussion at the time in relation to the case and its consequences. As I am sure we are all aware, the Hon. Robert Lawson himself was involved in giving his views in public in relation to the appeal and, certainly, there was much public discussion at the time. However, in relation to the decision to direct the Director of Public Prosecutions to appeal, that was my decision as attorney-general and mine alone.

The Hon. R.D. LAWSON: I have a supplementary question arising from the answer. With which of the minister's ministerial colleagues did he have discussions about issuing instructions in the Nemer case?

The Hon. P. HOLLOWAY: I would have thought that was a leading question, but I repeat my answer: the decision was mine and mine alone. Obviously, the Nemer case generally and the issues surrounding it were matters of considerable public discussion.

The Hon. A.J. REDFORD: As a further supplementary, which of those other ministers did this minister speak to?

The Hon. P. HOLLOWAY: I am not going to divulge what was discussed in cabinet, and it would be entirely improper for me to do so. Again I repeat: I was fully aware that that decision to appeal was ultimately mine and mine alone, and I take responsibility for that.

The Hon. A.J. REDFORD: As a further supplementary, was any instruction, direction or advice given to the minister by the Premier?

The Hon. P. HOLLOWAY: No, no instruction was given to me. As I said, the decision was mine and mine alone.

The Hon. A.J. REDFORD: As a further supplementary question, was any advice given to the minister?

The Hon. P. HOLLOWAY: In relation to making that decision, as one would expect I obviously sought the advice of a number of people, particularly those from the legal profession, as I think it was appropriate to do. Any attorney-general in making such a momentous decision would do so.

The Hon. T.G. CAMERON: As a further supplementary question, did those people you spoke to include the Premier?

The Hon. P. HOLLOWAY: I am not going to continue this. What I said is quite clear. I repeat that the decision was mine and mine alone. Of course the Nemer case was discussed broadly within the community. Everyone was talking about the Nemer case. Heavens above: was there anyone in this state who did not talk about the Nemer case and have a view on the Nemer case at the time? However, the decision to appeal was mine and mine alone and in that matter I acted alone. In relation to the advice I took, it was the advice that I sought in a legal matter. I took that decision alone and I take full responsibility for it.

The PRESIDENT: Order! When the minister is asked a question he is entitled to be heard in silence. There is too much exuberance today, for some reason or another.

NATIONAL COMPETITION POLICY

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the minister representing the Minister for Agriculture, Food and Fisheries a question about National Competition Policy payments.

Leave granted.

The Hon. CAROLINE SCHAEFER: It is well known that the state generates some $56 million in National Competition Policy payments as an incentive to increase contestability under the rules of the ACCC and penalties are incurred by certain industries if they are considered not to comply with the competitive guidelines. It is also well-known that the barley industry has incurred a penalty of approximately $3 million of that approximately $56 million or $57 million while it seeks to retain its orderly marketing system. In today's *Stock Journal* minister McEwen has announced, under the headline of '$3 million: The cost of keeping barley's single desk', that he will charge the industry $3 million to compensate for that lack of penalty payment.

I point out that, as the article says, NCP payments are a bonus to the state's coffers and no actual fine would be administered, yet minister McEwen talks of the industry having to pay the fine. It is important that we all understand that there is no fine involved: it is a lack of a bonus payment, if you like. I quote the *Stock Journal* article as follows:

> 'If industry believes the single desk is of such benefit, then they can pay the competition payment. I don't think the growers would ask my government to pay the $3 million,' he said.

My questions are:

1. Does the minister concede that his statement to the *Stock Journal* is factually incorrect?

2. Which sections of the grain growing industry did he consult before reaching his decision?

3. Which individuals did he consult before reaching his decision?

4. Was a community impact study done or statement prepared? If so, may we have a copy of it? If not, why not?

5. Perhaps the minister would like to have a go at this himself. Does the government intend to use the McEwen formula and charge all industries, which have incurred competition payment penalties, to top up the state's coffers?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer all those important questions to the Minister for Agriculture in another place and bring back a reply. I will not have a go at the last question: I will refer it to the minister.

The Hon. IAN GILFILLAN: As a supplementary question, does minister McEwen not agree that the single desk is just another form of collective bargaining or collective negotiating, and how does the minister anticipate extracting $3 million from the barley producers in South Australia?

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

The Hon. J.F. STEFANI: My supplementary questions are:

1. Does the minister intend specifically recovering the competition payment lost by the chicken meat industry, which was assisted by this chamber and by the former minister, in getting what I consider to be a fair deal?

2. Has the minister made representation to the NCC in relation to its policy, because the former minister was undertaking some representation to that organisation?

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

DEFENCE SECTOR SCHOLARSHIP

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Industry a question about our defence sector.

Leave granted.

The Hon. CARMEL ZOLLO: South Australia has long faced the challenge of attracting and retaining talented individuals, people who are crucial to improving the state's knowledge base and who will assist us in an innovative approach to growing our businesses as well as our economy. Will the minister advise of any initiatives to support the retention of such individuals in South Australia's defence sector?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I thank the honourable member for her question, and I am very pleased to say that EDS has provided a scholarship through the University of Adelaide to assist people in the defence sector. That scholarship, which will amount to some $8 000, will be a significant benefit to boosting the defence effort in this important area of our state. I thank the honourable member for asking the question, and I take this opportunity to place on the record my thanks to EDS Australia for providing this important scholarship, which will significantly contribute to what is a very important industry in our state.

The defence industry, of course, has been identified by the Economic Development Board as one of those sectors which has a great potential growth for the state. It is an industry sector in which this state has had significant expertise for some years as a result, of course, of the presence here of the DSTO (Defence Science Technology Organisation). I am pleased to be able to give my personal support and that of the government to EDS for providing this important scholarship that will enable a selected student to work through the university course to improve their expertise in this important area, and also to retain within the state people who can contribute to this very important industry.

CRIME PREVENTION

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about crime reduction.

Leave granted.

The Hon. IAN GILFILLAN: As the chamber well knows, the minister is Minister for Correctional Services, which embraces, quite profoundly, the area of reducing recidivism and crime generally, so I believe this question is properly directed to him. A document which has been circulated by the Australian Institute of Criminology, headed 'Crime prevention reduction matters' and dated 9 March this year, states:

> A 'whole of government' approach to crime prevention is very widespread in Australia.

That is why I look forward to the answer. It continues:

> There is a common emphasis on the 'whole of government' approach because the causes of crime are complex and multi-faceted. Successful crime prevention action requires the coordinated effort of many agencies in partnership with community and business groups.
>
> Organising to implement a 'whole of government' program has significant practical implications for how normal business is transacted. Many existing processes may need to be changed, or at least adapted.

I indicate that both the US and the UK have adopted this approach and the following dot points apply:

- The need for processes such as pooled budgets;
- Partnership arrangements (e.g. non-government/voluntary sector, private sector, other levels of government such as local government);
- Revisions of relationships between provider and client;
- Coordination of service delivery and tendering with partner criteria;
- Integrated planning and triple bottom line analysis. . .
- Innovative community consultation, engagement and joint management arrangements;
- Joint databases and customer intake and referral mechanisms; and
- Joint performance measures and indicators.

> This means that the adoption of a 'whole of government' approach to crime prevention must be thoroughly planned for across all the program delivery levels. It also means that the policy and program process must be seen as a single integrated system rather than a series of discreet or loosely connected parts. A strong and responsive crime prevention agency is essential to guide this process. Crime prevention cannot implement itself.

I am confident that the government is determined to be tough on crime and spend much time on public announcements, fulminating about what the abhorrent effects of crime are in this state, so the minister will be able to give us a detailed answer in respect of how this state has been able to adapt the whole of government approach which the ACI says is very widespread in Australia.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): Justice is a part of the justice portfolio, so I will refer parts of the question to the Attorney-General in another place. In relation to a whole of government response, that is a part of this government's way of dealing with matters associated with crime and the potential for crime to be reduced in relation to some of the recidivism that is appearing, particularly among Aboriginal offenders. We have a very high rate of incarceration which we are trying to reduce. We have a whole of government approach progressing in the Port Augusta region in relation to a program that is running there—and I understand the former government was involved in its development—and working in cooperation with local government, as well as our own agencies. We have the support of the Port Augusta council and the senior officers group which supports the City of Port Augusta Social Vision Action Plan. That in itself is a whole of government program.

Along with other committee members, I visited Port Augusta and the Davenport community recently, and we will follow up by visiting the city council to discuss some of the issues that the Davenport community raised with us. So, looking at the impact of whole of government response is one of the programs that we are running at government level through Aboriginal Affairs. There may be other departments that are involved in the whole of government approach and, as I said, I will refer that question to the Attorney-General and bring back a more detailed reply.

There are some programs that are running not just in Port Augusta but are starting to be put together in the metropolitan areas, and DAARE is putting together what we are calling action zones within regions where offending is higher than what would be regarded as normal offending rates within those communities. We have declared the Ceduna area, the Riverland and, as I said, Port Augusta, as action zones, where all of the agencies are brought together to look at the cause for disadvantage as much as the cause for crime, so that

Family and Community Services, Health and Education are all a part of a round table that first of all gathers the accurate statistics that are not only the cause of dislocation and crime but also the cause for abuse: for child abuse, alcohol and drug abuse and, hopefully, we will be able to impact on those figures by being ahead of the plan.

It is early days, and I have some frustration in being able to get a complete picture from the information that was given, particularly in the early days of these programs. That is starting to change. The information now is being round tabled. The relevant departments are sitting around with a particular minister as champion for those programs. I would hope that we will be able to report results very soon.

The Hon. J.F. STEFANI: Can the minister advise the chamber whether there have been specific programs developed for re-offenders, particularly in the younger age group and, if so, what sort of programs has the government initiated?

The Hon. T.G. ROBERTS: I will refer that question to the Attorney-General in another place, as well. I do know that there are programs being run out of the Education Department through the Minister for Education in relation to truancy, which we would hope would impact on offending behaviour by finding out what they doing. That program is also running in Port Augusta. But it is to find out why young Aboriginal people are not attending school—if they are not attending school in numbers—and dealing with the issue through truancy, and then deal with anti-social behaviour from that starting point. It is not only directed at young Aboriginal people; it is directed community-wide, and I think we have to take that approach.

The Hon. IAN GILFILLAN: Has the minister actually seen this document, number 21, of the AIC? I suspect that perhaps he has not, although he made a wonderful fist of the answer. Could I ask him to request either his colleagues or himself to prepare a paper in response to what is a generic whole of government approach to crime?

The Hon. T.G. ROBERTS: If the honourable member would like to avail the paper to me as Minister for Aboriginal Affairs, I will make sure it receives the attention that is required for a whole of government look at the approach that is being indicated by that paper.

The Hon. R.D. LAWSON: I have a supplementary question arising out of the earlier answer given by the minister to this question. What crime prevention programs has the Department of Correctional Services participated in or contributed funds to?

The Hon. T.G. ROBERTS: The Department of Correctional Services does not participate in any direct programs, as indicated by the honourable member. What we try to do while we have influence over inmates within prison is to target our rehabilitation programs to prevent reoffending, but reoffending has a lot to do with the home climate into which people are released. Employment opportunities (which we have talked about in this chamber previously), drug and alcohol abuse programs running in prisons and extending outside, support services for prisoners—accommodation and housing being key features—and counselling on anger management and potential reoffending behaviour are areas in which correctional services takes part but not in a government cross-agency way.

The Hon. J.F. STEFANI: I have a further supplementary question. Will the minister provide details of what specific recommendations arising from the Drugs Summit have now been incorporated into the whole of government approach to community offending?

The Hon. T.G. ROBERTS: I understand that a response to the Drugs Summit request is being drafted or has been drafted, but I will find out at what point that program is at. I may be able to obtain a copy for the honourable member, but I will certainly give him a report on its progress and bring back a reply to this chamber.

SCHOOLS, ACADEMIC PERFORMANCE

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Education and Children's Services, questions about state high schools and academic performance.

Leave granted.

The Hon. T.G. CAMERON: South Australia is set to become the only mainland state not to publicly release details on a school's year 12 results. The Queensland government recently announced that it will overhaul its school reporting systems with the proposal to release, for the first time, a snapshot of year 12 results from every high school. In 1984, the Senior Secondary Assessment Board of SA decided details of which schools the top students attended was not public scrutiny. SSABSA is also exempt from freedom of information laws. Currently, SSABSA provides limited statistics to individual schools which measure the particular school against state means and a like school's measure. The South Australian education minister, Jane Lomax-Smith, said that she would work towards more information being made available but has ruled out what she calls a league table which ranks schools in order of academic performance, describing them as top of the pops, misleading and quite unhelpful. My questions are:

1. Why is South Australia the only mainland state that does not release details regarding academic performance of our high schools?

2. Has any market research been conducted by the education department of parents with students in year 12 to discover whether they believe it would be useful to know how their children's schools are performing statewide and, if not, why not?

3. Considering the government has brought South Australia into line with the nation on many other issues, will the minister make some attempt to ascertain parents' views on this issue and reconsider her position?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer those questions to the Minister for Education and Children's Services in another place and bring back a reply.

MURRAY RIVER

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to the River Murray current water resource situation and outlook made earlier today in another place by my colleague the Minister for the River Murray (Hon. John Hill).

CHILDREN IN DETENTION

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I also lay on the table a copy of a ministerial statement relating to children in detention made earlier today in another place by my colleague the Minister for Families and Communities (Hon. Jay Weatherill).

WATER SUPPLY, GLENDAMBO

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Regional Development a question on Glendambo and its water supply.

Leave granted.

The Hon. T.J. STEPHENS: I have previously made members aware of the water supply situation in Glendambo, which is now at crisis point. I recently received a submission from the Glendambo and District Progress Association that I believe the government also has. It details the fact that in the last two years the water in the town has become totally unusable, to the extent that the town bore has become inoperable. An officer from the Outback Areas Community Development Fund attempted to provide a solution which would improve the water supply in the town, but the deterioration is such that this proposal is no longer viable. The only other solution would be a desalination plant which would require recurrent funding to operate the plant.

The current proposal is for an extension of the pipeline at Woomera—some 76 kilometres south-east of Glendambo—which would involve a one-off cost of approximately $800 000. Given that approximately 800 people either pass through or stay in the town on any given day, my questions are:

1. Is the minister prepared to consider this proposal with some urgency?

2. Will the minister meet with the Glendambo and District Progress Association to discuss this proposal?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I thank the honourable member for his question. Probably the Outback Areas Trust has been handling this issue more than my department, but I will inquire of my colleague and, between the two of us, we will make sure that those matters are considered. We will see exactly what information has been provided by the Glendambo residents' association, which is what I think the honourable member said, and we will see what steps the government can take to assist in the matter. I will take the question on notice, consult with my colleague and get back to the honourable member.

ARTS FUNDING

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development, representing the Minister for the Arts, questions about arts funding.

Leave granted.

The Hon. D.W. RIDGWAY: I refer to an article in *The Advertiser* of last Tuesday entitled 'Robbing Peter to Pay for Headlines' by Tim Lloyd. The first paragraphs state:

> The Premier and arts minister, Mike Rann, has overseen huge changes in arts funding in the two years and two months since taking office. He has adopted a policy of spending up big on arts projects while cutting a swathe through the funding that actually supports South Australian artists. It has enabled him to appear to be promoting the arts Dunstan-style in South Australia while he is actually chopping it to pieces. The changes have undermined the hard grind of local subsidised art work and promoted bread and circus festivals.

It is interesting to note that, in volume 1 of the State Strategic Plan on page 13, the report card section lists the state government's achievements. One of these achievements is investing $11.1 million directly into the development and production of new creative work by artists and small to medium arts organisations—the heart of arts in South Australia. *The Advertiser* article continues:

> The Arts Industry Council estimates over the past two budgets [the Premier] has cut $1.24 million more in old funding than he has invested in new funding.

The article went on to say that the Minister for the Arts has cut $775 000 from the Arts Industry Development Scheme and that it will be cut by a further $875 000 this year. In light of that, my questions are:

1. Will the minister explain how the funding cuts are consistent with the goal of fostering South Australian creativity and ingenuity as set out in the State Strategic Plan?

2. Are there any moves to introduce a new funding stream for individual artists in the face of the cuts to the Arts Industry Development Scheme?

3. What will increased funding do to individual artists to increase South Australia's ranking on the Richard Florida Creativity Index?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I am sure that the Premier will be delighted to respond to that question with an explanation of the priorities that he is bringing to the arts sector.

ABORIGINAL LANGUAGES

The Hon. G.E. GAGO: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation questions about Aboriginal languages in schools.

Leave granted.

The Hon. G.E. GAGO: On 28 April, there was an article in the *Yorke Peninsula Country Times* entitled 'Another step in Narungga language revival'. The article explains that a group of children, between the age of three and 13 years, created the illustrations for a new series of language readers at a special workshop held at Moonta. Tanya Wanganeen, who is a language teacher, said:

> Allowing the children to illustrate the books gives them a sense of ownership.

Given this, my questions are:

1. Is the minister aware of the Narungga language revival program?

2. Is the minister aware of any other school Aboriginal language programs?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for her ongoing interest in Aboriginal affairs and country people. I am aware of the initiatives that the honourable member has raised. The Progress Association representing the Narungga people has received a community benefit grant to develop resources, and a range of initiatives are coming to fruition. These include a Narungga dictionary, a CD-ROM and a children's dictionary, both nearing completion. It is pleasing that the Narungga children are being involved in the development of these resources.

Part of this initiative is the dual naming of places on Yorke Peninsula, and I understand that the Narungga community is working with the Department of Environment and Conservation on this project. We congratulate people such as Tanya Wanganeen, the language teacher, and Christine Eira, from Flinders University, who are doing all they can to protect, enhance and pass on Aboriginal language. It is becoming far more popular for people to take courses in Aboriginal language now as a second language.

I also inform honourable members that some good work is being carried out in Port Augusta. Stirling North, Carlton reception to year 9, the Augusta Park Primary, Willsden Park Primary, Port Augusta West Primary and Flinders View Primary have been developing an indigenous language course resource. This has been made possible by a grant from the Department of Education and Children's Services multicultural committee. The project includes the development of audiovisual resources, and includes tapes, CDs and videos.

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

The Hon. T.G. ROBERTS: Kaurna Plains school, as well as other schools, encourages Aboriginal language to be taught. I thank the honourable member for his support. The commonwealth is now encouraging applications to be made for the preservation of language which, hopefully, the state can partner so that together we can protect, enhance and teach language as part of reconciliation and the promotion of the culture of our first Australians.

ANANGU PITJANTJATJARA EXECUTIVE

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development, representing the Premier (whom I remind you, Mr President, was the minister for Aboriginal affairs from 1989 to 1992), a question about communication with the AP executive.

Leave granted.

The Hon. KATE REYNOLDS: On 15 March 2004, in a media release the Deputy Premier stated:

> Crown law has advised that the APY executive may—

and I stress 'may'—

> not be valid since last December and that it now has questionable authority to spend state government money on services in areas where it is needed.

The following day, the AP executive instructed its legal representatives to write to the Deputy Premier asking for a copy of this crown law advice. No written response has been received to date—nearly two months later. The legal representative has since made numerous verbal requests and has apparently been told by the Deputy Premier's office that 'we are looking for it'. More than a month after the original requests, and when the Premier was visiting the lands on 20 and 21 April, the Executive Officer of the AP executive asked a staff member of the Premier's office for a copy of the crown law advice and was told that it was forthcoming.

I understand that this has still not been received. I am aware that members of parliament are not required by law to seek permission to enter the lands, but the usual protocol for commonwealth and state members of parliament visiting the lands is to give reasonable written notice of their visit, specifying the time, place and purpose of that visit. I have been told that the Premier and his office did not do this. I have been told that at various times during their visit to the lands the Premier's party was not, as is the usual practice, escorted by an Anangu guide or an interpreter. Finally, I understand that, despite the fact that the Collins report has already been tabled in the parliament and provided to the media, it has not as of 2 p.m. today yet been provided to the AP Executive, the very body that features in many of the statements and in the recommendations. My questions to the minister are:

1. When will the AP Executive be provided with either the Crown Law advice, as has been promised, or at least a comprehensive summary of that advice?

2. Why was the AP Executive not given a copy of the Collins report?

3. When will the AP Executive be given a copy of the Collins report?

4. Will the Premier undertake to provide a copy of future reports to the bodies that are the subject of reports by Mr Collins, either before or at the same time as the parliament or the media?

5. Why did the Premier breach the usual protocols in relation to the giving of notice, escorts and interpreters for his visit to the AP lands and will he and state government ministers commit to following these protocols in the future?

6. In relation to future visits to the lands, will the Premier and state government ministers commit to meeting with the AP Executive upon arrival, as is also the usual protocol?

The PRESIDENT: Just before the minister answers that question, I have noticed that there is a propensity for long questions and numerous questions, which we have had a discussion about in the past. I want further attention paid to it in the future.

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): And might I add that there was also a fair bit of opinion in that. In fact, there was an enormous amount of opinion in that. However, I will pass on those questions to the Premier and leave it to him to provide an answer.

The Hon. J.F. STEFANI: As a supplementary question, will the minister have a copy of the legal advice tabled in parliament and will the minister seek the indulgence of the Premier to write an apology as to his entry to the lands without following the protocols?

The PRESIDENT: Order! Members need to understand that when a minister takes a question and says 'I will refer that to the appropriate minister,' the only supplementary question that is legitimate is 'Could the minister also ask the minister to consider this question as well?' Members are not to engage in opinion or debate.

The Hon. P. HOLLOWAY: The honourable member's question really just contains an opinion about what might have happened or an allegation.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: It does. Of course it contains an allegation. The Leader of the Opposition denies that. He must have studied a different language than I did at school. Anyway, I will leave it up to the Premier as to whether or not he wishes to respond to those allegations.

LOTTERIES COMMISSION

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the leader of the government representing the Treasurer a question about the Lotteries Commission.

Leave granted.

The Hon. NICK XENOPHON: On 30 March this year I asked the minister questions about the Lotteries Commission, its relationship with Gtech Corporation, and whether it was intended to have new games that were based on well-known family board games, particularly in an online fashion, and related issues as to the impact of such games on problem gambling. The response from the minister earlier this week contained support for the age at which to purchase lottery products to increase from 16 to 18.

The Hon. R.I. Lucas interjecting:

The Hon. NICK XENOPHON: 'Outrageous', the Hon. Mr Lucas said. The minister also responded that the SA Lotteries Commission is committed to ensuring that its games and promotional activities are not targeted towards minors, and this is reflected in internal policies and procedures; that SA Lotteries is committed to harm minimisation and responsible gambling; and that any new advertising communications require the approval of the government's Cabinet Communications Committee. The answer goes on to say that market research is also undertaken to determine community attitudes and likely behaviours in advance of any new game initiatives being progressed.

On 11 November 2003, the Hon. Mr Redford asked questions of the Minister for Gambling about the Lotteries Commission and documents he had received under FOI involving advertising campaigns conducted by SA Lotteries, including the web site for Oz Lotto targeting Tour Down Under spectators, and another relating to instant scratchies aimed at compulsive/impulsive purchasers known as 'fast laners' and described as a 'primary target'. The material also disclosed that advertisements are to be aimed at family programs, such as *Backyard Blitz*. Another involved a family oriented Mother's Day promotion in terms of trying to encourage people to seek family security. My questions are:

1. Does the minister acknowledge that the answer given earlier about the harm minimisation and responsible gambling programs this week is fundamentally at odds with SA Lotteries' own internal marketing campaigns as previously referred to?

2. Is the market research referred to primarily aimed at increasing market share rather than harm minimisation, and will the government release such market research publicly, or at least have it scrutinised by the Independent Gambling Authority to determine the likely impact of such research in terms of problem gambling?

3. What specific criteria does the government's cabinet communication committee have with respect to looking at harm minimisation and problem gambling measures?

4. Considering the material referred to by the Hon. Mr Redford in his question on 11 November 2003, has the committee failed properly to consider any harm minimisation and responsible gambling measures?

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

MITSUBISHI MOTORS

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development a question about the criticisms made about Mitsubishi's management.

Leave granted.

The Hon. J.F. STEFANI: On 23 April, in evening radio interviews, senior government representatives, including the Premier and the Treasurer, made certain comments. During an interview, the Hon. Kevin Foley revealed that he had undertaken an urgent and secret trip to Japan over Easter at which he talked with Mitsubishi management, but he said that he had had no luck with DaimlerChrysler. He said:

> In fact, I tried to move on from Tokyo to Germany. That request for meetings was refused. This is a $15 billion crisis for the Mitsubishi group worldwide. This is about management failure in the United States and worldwide for Mitsubishi.

On 24 April another comment was made during some interviews on radio and in the print media. The Premier has been quoted as saying that 'they have been let down by management failure worldwide'. In view of these rather sarcastic and damning comments made by two senior ministers of the government, including the Premier, what opportunity has the government now to have talks with senior management in Tokyo? Will such caustic comments damage relations with senior management?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I am sure that when the Premier and the federal minister for industry (Hon. Mr Macfarlane) visit Tokyo in a week or so they will put, on behalf of this state and this country, the best possible case for the future of this company. The point is that, throughout this entire exercise, the Premier and the Deputy Premier have been very strong in their praise of the operations of the Mitsubishi company here in South Australia. Indeed, in his ministerial statement on Monday 3 May the Premier said—

Members interjecting:

The PRESIDENT: Order! I remind all members of their obligations under standing orders 181 and 182. I especially speak to the Hon. Angus Redford about his obligations in relation to making disparaging remarks at any time. Just because you are out of order and it is an interjection, the same rules apply. They will be enforced much stronger in future.

The Hon. P. HOLLOWAY: In his ministerial statement on Monday 3 May, the Premier said:

> They [the problems] Mitsubishi face have nothing to do with the work force at the Tonsley park and Lonsdale sites of Mitsubishi's South Australian operations, and nothing to do with the leadership of CEO Tom Phillips and his management team.
>
> Both the management and work force of Mitsubishi in South Australia have done a wonderful job in turning the South Australian operations around and I pay tribute to them all. They deserve and have, I am sure, the support of us all.

I am sure anyone who reads the newspapers would know the background to some of the issues involving Mitsubishi, with the fact that Daimler Benz holds 37 per cent of the shares in Mitsubishi Motors worldwide. Of course, there has been the issue about funding of the restructure package.

The reason why the Deputy Premier will be visiting Tokyo is that he has met with those officials from Mitsubishi worldwide on a number of occasions. He is familiar with the background of the matter. I have every confidence that he and the federal minister Mr Macfarlane, on behalf of this state, will put the best possible case for South Australia. The fact that the Deputy Premier has met with those people on a number of occasions will only assist the case. I think all those people know that will happen. Really, I think the juvenile, pathetic interjections from members such as the Hon. Terry Cameron, who has made a career out of that sort of negativity, will be treated with the contempt they deserve.

REPLIES TO QUESTIONS

HOUSING TRUST

In reply to **Hon. A.L. EVANS** (30 March).

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

1. Would the minister advise whether the government intends to sell all the Housing Trust properties at Stow Court, Fullarton?

The Stow Court site of the South Australian Housing Trust (SAHT) consists of 104 flats built in 1955 on 2.42ha of land at Fullarton, including the original Stow residence converted into four flats, while a further two townhouses were built in 1993.

Some of the original design elements of these flats, including shared laundry facilities provided in separate out-buildings, no longer meet the needs of ageing tenants, or tenants with complex needs. Work is also required to meet current building regulations, such as installation of fire separation walls between flats and changes to staircases.

Building components such as asbestos roofs, steel-framed windows and electrical wiring require replacement, and renovation work is required to interiors, kitchens and bathrooms to improve amenity standards. New and separate front and rear entrances for ground floor flats are also required, to improve accessibility for ageing or mobility-impaired tenants.

The SAHT has recently called tenders for a Land Use and Development Study of the Stow Court site, in order to manage these upgrades and renovations.

The study will address possible sale, partnership, upgrade and redevelopment opportunities of a portion of the site, namely 26 of the total 106 units at Stow Court. The study is expected to be completed by mid-July 2004.

The sale of all or part of this portion of the site is one possibility, and decisions will be made following consideration of the Land Use and Development Study.

2. If not, would the minister advise what the government intends to do with the site?

Until the Land Use and Development Study is completed, and has been considered by the SAHT Board, it would be pre-emptive to speculate on what will be done with the portion of the site that is the subject of the study.

The remaining 80 flats will not be affected by the study and it is intended that they will be retained in the long-term, for the continued provision of public rental accommodation.

3. Would the minister advise the number of applicants assisted and provided with a bond to access private rental properties for the period July 2000 to June 2003?

Between 1 July 2000 and 30 June 2003, 44 920 bonds and bond guarantees were issued by the SAHT to households who had secured a private rental property.

4. Understanding that in March 2000 the South Australian Housing Trust introduced changes to the management of its waiting list, would the minister advise how many applicants on the waiting list categorised as priority 1 or 2 decided to apply for bond assistance to access the private rental market for the period 1 July 2000 to 30 June 2003 rather then remain on the waiting list?

Applicants to the SAHT can apply for private rental assistance services while waiting for a public housing allocation. From 1 July 2000 to 30 June 2003, 2858 category 1 and category 2 applicants received bond assistance to access the private rental market.

The SAHT does not have information on the number of these households who elected to cancel their applications rather than remain on the waiting list. However, the number is likely to be minimal, as applicants classified as category 1 or category 2 are assessed as having urgent or high needs respectively. For these applicants, the private rental market is generally not a viable long-term option, so most would be reluctant to remove themselves from the waiting list.

CHILD ABUSE

In reply to **Hon. A.L. EVANS** (1 December 2003).

The Hon. T.G. ROBERTS: The Minister for Families and Communities has advised:

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

The article, in the Sunday Mail on 30 November 2003, stated that one of the child deaths was 'still the subject of a coronial inquiry'. This was not meant to imply that only one child was referred for coronial investigation, but that Family and Youth Services (FAYS) records indicated that one death was still under investigation. Nine of the ten deaths were reported to the coroner. The death of the other child occurred in Victoria, with police investigation ensuing in that state.

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

The specific nature and cause of the ten deaths is detailed below.

1. The child sustained severe internal injuries. FAYS had had one prior notification of suspected child abuse, which was investigated. However, the child was not found on that occasion to have been harmed.
2. The child sustained extensive injuries. FAYS had had no prior child protection notification concerning this child.
3. The cause of death has not been identified. FAYS had received no previous child protection notification, and there had been no prior contact with the family for any reason.
4. The child died from an overdose of medication. There had been no previous notification of suspected child abuse or neglect relating to this child.
5. No previous child protection notification had been received by FAYS, and there had been no prior contact with the family for any reason.
6. The child died from a morphine overdose. There had been no previous notification of suspected child abuse or neglect relating to this child.
7. The cause of death was due to shaking and injuries inflicted with a blunt instrument. FAYS had received no previous child protection notification, and there had been no prior contact with the family for any reason.
8. The child sustained severe brain damage consistent with being shaken. A prior notification related to the child's mother discharging herself from hospital against medical advice. There was no further child protection notification prior to the child's death.
9. The cause of death was recorded as a failure to thrive and inflicted injuries. There had been no previous child protection notification received by FAYS, nor any prior contact with the family for any reason.
10. The child was put to sleep in the parent's bed, with the child found deceased the next morning. There had been no prior child protection notifications concerning this child.

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

Of the six cases where FAYS had had prior contact with the family, only two were cases where FAYS had previously been notified in relation to the subject child. In two other cases FAYS had provided support services, and in another two cases, there was documented family history, but it was not specific to the subject child.

An internal review, conducted by FAYS, found that in each of those cases where previous child protection notifications had been received specific to the subject child, appropriate action was taken by FAYS workers based on the information that was available at the time.

No disciplinary action has been deemed necessary.

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

In six of the ten cases, FAYS was not informed of the existence of the child until after that child's death and, therefore, no action was taken.

In two cases, FAYS' knowledge of the children concerned was not in connection with child protection notifications, but the provision of support to the family/carer.

In the two cases in which child protection notifications had been received, in one case, no harm was found on investigation. In relation to the other child, the notification of concern related to the mother of the child discharging herself from hospital against medical advice. Information provided at the time indicated that the mother appeared to be appropriately attached to the child and there were a number of other agencies connected to the family. It was considered, based on this information, that there was no requirement for further FAYS involvement.

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

In many of these situations, criminal proceedings have been instigated against the care-giver/s. One case is still before the Coroner. Action will be taken to address any concerns the Coroner might raise.

Supplementary Questions

6. Does the government acknowledge that it may have breached its duty of care to those children, given the circumstances of these particular cases?

There has not been a breach of duty of care in relation to these children, given the information that was available at the time of FAYS' involvement in relation to these child and family situations.

7. Given the increase in community concern about this issue—not just deaths, but abuse of children generally – can the minister say when the government will be releasing its response to the Layton report?

The Child Protection Review made over 200 recommendations dealing with a range of service, structural and legislative issues across government agencies and the community sector.

Public consultations on the recommendations made by the Layton Report were completed in July 2003.

Since then, the government has been developing a whole of government response to the report aiming to make sure we have the best possible child protection system in place. The government's immediate focus is on enhancing services and making the child protection system work better for children and young people and their families.

Since Robyn Layton handed down her report, this Government has committed an extra $58.6 million for child protection initiatives over four years.

Some of the major actions that have been undertaken by the government include:

- the establishment of a special paedophile taskforce and hotline within SAPOL;
- the removal of the statute of limitations for initiating sexual abuse prosecutions;
- the creation of a new Special Investigations Unit to investigate allegations of abuse of children in care by foster carers or workers;
- the provision of $8 million over the next four years to employ new school counsellors;
- the development of new guidelines for appropriate Internet access in schools;
- the allocation of $8.3 million extra funding over 4 years for children under the guardianship of the Minister;
- the allocation of $8.3 million over 4 years to improve the alternative care system;
- the allocation of $6 million over 4 years into violent offender and sexual offender treatment programs;
- the establishment of new programs working with identified indigenous communities to care for children;
- plans to reform child pornography laws;
- the establishment of a new school-mentoring program involving 80 teacher mentors working with 800 students across 45 schools;
- improving screening by police of people working with children;
- the provision of an additional $500 000 to SAPOL to provide police screening of people working in the non-government sector;
- working with the Family Court to streamline the process in disputes where there are allegations of child abuse;
- the provision of an extra $12 million over 4 years for early intervention programs to support families at risk;
- calling for and releasing a workload analysis of Family and Youth Services, the results of which are currently being actioned; and
- the creation of a new Department for Families and Communities.

In addition to this, a further 73 full-time positions have been created in Family and Youth Services at a cost of $3.6 million per annum to provide better services for children at serious risk, and to support children under the guardianship of the Minister.

These are just some of the many actions this Government has taken so far in response to the Layton Review in order to develop an effective child protection policy.

SUPERANNUATION FUNDS MANAGEMENT CORPORATION OF SOUTH AUSTRALIA (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 November. Page 516.)

The Hon. R.I. LUCAS (Leader of the Opposition): I rise to support the second reading of the bill. This bill was introduced many months ago, and I am sure it will become apparent during the debate that there has been strong opposition to some aspects of the legislation from the Public Service Association. I understand the Rann government and its officers have been seeking at varying stages over the past year or so to try to reach agreement with the Public Service Association about its concerns on the legislation. As I will outline in a little while, as I understand it, that has been done unsuccessfully in reaching any agreement with the PSA.

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! The honourable Leader of the Opposition is on his feet and other conversations are out of order.

The Hon. R.I. LUCAS: The proposed amendments to the legislation cover three broad areas. The first one is to allow Funds SA to invest and manage funds on behalf of such government and related bodies as the Treasurer sees fit. The second is the power to remove government nominated directors to Funds SA on such grounds as the Treasurer sees fit. The third is to increase the powers of direction and control to the Treasurer, but with restrictions prohibiting the direction to Funds SA in relation to an investment decision dealing with property or the exercise of a voting right.

In relation to the first area, I have been advised that the first amendment would allow some funds such as the Visiting Medical Officers Superannuation Fund, the Metropolitan Fire Service Superannuation Fund, the Lotteries Commission Superannuation Fund and the SA Ambulance Service Superannuation Fund to potentially come within the definition of a potentially eligible superannuation fund that would be able to apply to invest with Funds SA.

The scheme of arrangements, as I understand it, would be that the trustees of the various funds would come to a decision. If they would like to follow this process they would then need to seek approval of the Treasurer, and the Treasurer, acting on behalf of the government, might or might not agree that, if this legislation passes, the provisions of this legislation would allow Funds SA to manage and invest the funds of those superannuation bodies. The way this scheme of arrangement has been structured also allows funds of a public authority to be transferred to Funds SA. That, of course, means that it will hinge on what the interpretation of 'public authority' will be in relation to these issues.

During briefings on this legislation, I in particular sought to get some advice from the government advisers as to whether or not WorkCover would be covered by the scheme of arrangement that was being proposed in the legislation. That is, could WorkCover, together with the Treasurer, agree to have the funds of WorkCover invested by Funds SA, rather than the WorkCover board? It did not surprise me that, when I put that question to the briefing, at that stage they were not able to give me a direct answer. They undertook to go off and get legal advice on it. I will summarise some of that legal advice but, in essence, it says that, 'Yes, it is possible, with the Treasurer, working together with WorkCover'—and bearing in mind that we are going to look at WorkCover

legislation which I think seeks to give the power to the minister to control and direct WorkCover.

I am not sure whether there is any restriction intended in relation to that power but, if there was not, you might have a situation where the Rann government could direct the minister for WorkCover to direct the WorkCover board to enter into this scheme of arrangement, that the Rann government could direct the Treasurer to approve it, and that you might have a situation where the WorkCover funds—and I am sure the employers in South Australia would want to have some say in this—are taken over by Funds SA. As I said, I do not know enough about the WorkCover legislation, or the final state of that legislation, to know whether or not there is to be any limit or restriction on the power of the direction of the minister over the WorkCover board and its operations. If there is a restriction, in those circumstances the minister would not, obviously, be able to direct the WorkCover board along these lines.

In the advice I was seeking from the government, I was provided with the following advice, ultimately from the Treasurer:

> The amendments to section 5 allow the investment of monies on behalf of approved authorities. An authority will be approved pursuant to the discretion of the minister under section 5A. To be considered by the minister under section 5A an authority must satisfy the definition of a 'public authority' contained in section 3.
>
> The definition of public authority includes:
>
> (a) a government department
> (b) a minister
> (c) a statutory authority
>
> (i) that is an agency or instrumentality of the Crown; or
> (ii) the accounts of which the Auditor-General is required by law to audit,
>
> and includes any body or person responsible for the management of an eligible superannuation fund.
>
> On the specific question you have raised regarding the inclusion of WorkCover as a public authority I have sought legal advice. A summary of the main issues of this advice is contained below.
>
> WorkCover is a body corporate established by the WorkCover Corporation Act. It holds property on behalf of the Crown and is subject to the general control and direction of the minister (section 4). Its members are appointed by the Governor (section 5).
>
> I am advised that these facts mean that WorkCover is an instrumentality of the Crown. This means that WorkCover is a public authority within the meaning of the definition proposed to be inserted into the bill. It is worth noting that the Public Finance and Audit Act has no bearing on this matter.
>
> Based on this advice, it would appear that WorkCover meets the definition of a public authority thereby enabling Funds SA to invest funds on the corporation's behalf.
>
> Notwithstanding this fact, it is not the government's intention at this time to have Funds SA manage the WorkCover portfolio.

I note the Treasurer's phrase 'at this time'. I use WorkCover only as an example. There are many other bodies which might come within the definition of a 'public authority'.

Clearly government departments and the minister would appear to be quite logical, but when one moves into the area of a statutory authority—the accounts of which, for example, the Auditor-General is required by law to audit—and then finally includes 'any body or person responsible for the management of an eligible superannuation fund', clearly there a wide variety of public bodies might be caught under this definition of a 'public authority'. During the committee stage, we would like to explore in greater detail what some of these public authorities might be. I am sure there would be a list within government of public authorities that could be placed on the record for the benefit of members and, as I said, particularly when one looks at a statutory authority, the accounts of which the Auditor-General is required by law to audit.

Many authorities are established by statute and quite a number of those might have their accounts audited by the Auditor-General. For example, I am wondering whether or not it applies to TAFE governing councils or school councils or governing councils of schools. Certainly, in the broad, both those bodies are established by statute and certainly can be regarded by many as being an authority established by statute. Certainly their accounts, as I understand it, are required to be audited. I am not sure whether they are required to be audited by the Auditor-General—that might be a let out in relation to those particular bodies. However, at this stage, I do not intend to explore any other examples. It will be an issue which we will need to explore in greater detail during the second reading debate and also in committee to see whether or not those bodies are caught up. Whether or not, for example, the universities are caught up in this arrangement would be an interesting question.

Certainly, they would clearly be bodies established by statute and I think that there is an option—I stand to be corrected—for the accounts to be audited by the Auditor-General. In relation to this whole area, there is sufficient cause for the committee to consider some potential amendments in this area. Currently I have had drafted—I am looking at the final copy at the moment—by parliamentary counsel a possible amendment in this area where the Treasurer's power could be limited by moving an amendment to ensure that this power is undertaken only by regulation and therefore could be disallowed by the parliament.

If, for example, the government was able to direct a body such as WorkCover to have its funds invested by Funds SA, and if that was not in the public interest and a majority of members of the parliament believed that it was not in the public interest, then, as long as it was done by regulation, there would be the capacity for that regulation to be disallowed. Under the government's proposal, the power rests solely with the Treasurer and the minister. I am sure that the majority of members in this chamber, including even some of the government members, would not want this Treasurer to have that sort of power unrestricted. I can see warm agreement from the nods and smiles of members in this chamber with those comments that I have just put on the public record.

The second broad area that is canvassed in the bill is the power to remove government nominated directors to Funds SA on such grounds as the Treasurer sees fit. I acknowledge that there are some other boards where this wider power seems to exist. It seems to exist, for example, with SA Water and TransAdelaide. On the other hand, there are some significant bodies such as WorkCover and the Motor Accident Commission where it does not. I think that the WorkCover legislation is seeking to incorporate this unlimited power of the minister or Treasurer to sack a board member, but the current legislation does not allow it.

When one looks at equivalent bodies to Funds SA in other states, again, the record is mixed. For example, I am advised that the Queensland Investment Corporation does have a similar power to that being sought by this Treasurer, but the Victorian Funds Management Corporation, for example, does not have such power. The Public Service Association has been (and remains, as of a discussion I had last week) strongly opposed to this government proposal. The Public Service Association, rightly, is putting the view to members as to what is the reason why the Treasurer wants this greatly increased power just to sack the directors of Funds SA. I add

(just to be fair to the government) that we are talking about government appointed directors rather than elected directors.

The PSA, nevertheless, is asking the question, 'Why does this Treasurer want the power to sack directors from Funds SA without reason or cause?' There are already wide powers of dismissal within the Funds SA legislation. Of course, in recent discussions about the Director of Public Prosecutions and others we have seen ministers claim limited powers to be able to dismiss or remove particular officers. There is already a wide power of dismissal, which certainly appears to give the Treasurer all of the power that he might need to get rid of a non-performing director of Funds SA. Section 10 of the Funds SA legislation provides:

> The governor may remove a director from office—
> (a) for misconduct or;
> (b) for failure or incapacity to carry out the duties of his or her office satisfactorily or;
> (c) without limiting paragraph (b)—for non-compliance by the director with a duty imposed by this act.

When one looks at that, certainly there are reasonably broad grounds for a non-performing director to be dismissed by the Governor.

The Liberal Party's position is that it has not been provided with any evidence from the government on why these greatly increased powers are required by the Treasurer. In the reply to the second reading debate, we invite the minister, on behalf of the Treasurer, to outline in detail the reasons why the Treasurer wants these increased powers to sack directors of Funds SA. Certainly, at this stage, no evidence has been provided in the second reading on the problem with the current arrangements, nor is it in the briefings provided by government officers, and nor have examples been given of why the Treasurer needs the increased powers to sack directors of Funds SA.

On that basis, the Liberal Party's position is that it is not prepared to support this amendment. However, we leave open the small window of opportunity (and I emphasise 'small') that, if the government is prepared to be frank with the Legislative Council and indicate why it has cause to seek these increased powers, we would at least further consider our position.

The final issue that is canvassed in the legislation is that of the increased powers of the Treasurer of direction and control, but with certain restrictions. Currently, any such direction must be in writing and included in the annual report of the corporation. I understand that the government's position is that it has very significant exposure to the performance of Funds SA and that the Treasurer needs to be able to oversee effectively the operation of the fund. Certainly, in general terms the Liberal Party does not disagree with the nature of that argument.

The government further argues that it is appropriate that the Treasurer direct Funds SA in relation to the employment policy as generally applies in the public sector. I have been advised that all similar funds interstate are subject to similar powers of direction. At this stage, our position is that generally we are prepared, potentially, to support this change, but we will move to have any direction gazetted within seven days of the direction being issued. We considered the proposition of its being tabled in parliament but, in the event that a direction was issued just prior to a state election, for example, and the house was not sitting, we believe that it is in the public interest that, if the Treasurer is to direct Funds SA in a particular way, that should be notified publicly very quickly, so that if there is to be public debate it can proceed soon after the direction has been issued to the directors of Funds SA. I

In the reply to the second reading debate and at the committee stage we will seek much more detail on why the government wants this additional power to direct and control in certain circumstances, and we will seek the detail of the problems in relation to the employment policy reference in the second reading explanation. We will also examine other areas that the Treasurer might interpret this new power to involve.

In particular, we will want to know how the government and the Treasurer will interpret the powers that prohibit directions in relation to investment decisions, dealings with properties and the exercise of voting rights. It is in everyone's interest that Funds SA is managed efficiently and effectively on behalf of superannuation members within the Public Service. Obviously, it is also in the state's interest that its funds performance be at the highest possible level. Certainly, during the period when I had the fortune to be Treasurer, the Funds SA performance was very good compared to other indicators.

It is important that, under this government, Funds SA's performance continues to be very good when compared to other industry indicators. With those words I indicate that the opposition supports the second reading. We will be tabling some amendments for consideration during the committee stage and seeking some detailed responses from the government through the Treasurer.

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

EFFLUENT REUSE

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I table a ministerial statement made today in the other place by the Minister for Environment and Conservation on treated effluent reuse. I note that the statement includes the tabling of statistical information about the reuse of treated effluent since 2000-01.

ADJOURNMENT

At 4.04 p.m. the council adjourned until Monday 24 May at 2.15 p.m.