LEGISLATIVE COUNCIL

Thursday 16 September 2004

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

PAPERS TABLED

The following papers were laid on the table:
By the President—

Reports, 2002-03—
District Councils—
Ceduna
Yorke Peninsula.

VERONICA SUPER TRAWLER

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I lay on the table a copy of a ministerial statement relating to the *Veronica* Super Trawler made earlier today in another place by the Premier.

MOTOR VEHICLES, STOLEN

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I lay on the table a copy of a ministerial statement relating to stolen vehicles made earlier today in another place by my colleague the Minister for Transport.

ABORIGINAL LANDS PARLIAMENTARY STANDING COMMITTEE

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): In my role as minister on the Aboriginal Lands Parliamentary Standing Committee, I advise that the committee has met and resolved by a majority that the following statement be made:

An issue was recently raised in parliament by an individual member of the committee concerning the termination of a contract of employment by the Executive Board of Anangu Pitjantjatjara.

The Aboriginal Lands Parliamentary Standing Committee informs the parliament that that is not a matter for the committee to resolve.

QUESTION TIME

MINISTERIAL ADVISERS

The Hon. R.I. LUCAS (Leader of the Opposition): My questions are directed to the Leader of the Government, as follows:

1. On what dates did Mr Steve Georgianis and Ms Kate Ellis resign from their positions as ministerial advisers, and were they paid as ministerial advisers for any days after the election was called on 29 August?

2. For any days after 29 August (the date on which the election was called) did Mr Georgianis or Ms Ellis have access to government supplied mobile phones or computers?

3. Given the closeness of the federal election date, will the minister undertake to provide an answer to the parliament at some stage before the parliament rises at the end of next week?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will endeavour to get an answer within the time frame required.

ANANGU PITJANTJATJARA LANDS

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

Leave granted.

The Hon. R.D. LAWSON: As members will be aware, in September 2002 the State Coroner handed down the findings of an inquest which made a large number of recommendations concerning various aspects of services on the AP lands, including recommendations relating to correctional and justice issues, many of which have been under discussion for some time. The opposition is aware that the minister recently met with the Chief Magistrate, Mr Kelvyn Prescott, who has expressed concerns about various issues impacting on the effectiveness of the courts on the lands.

We are also aware that the Department for Correctional Services has claimed that it appreciates the need for culturally appropriate and humane responses to conditions surrounding funeral leave for Anangu prisoners who are accommodated either at Port Augusta or elsewhere, there being no such institutions closer to the lands. It was proposed that the need for uniformed correctional officers to attend funerals with prisoners handcuffed was to be the subject of some agreement with the department, which suggested that the matter would be resolved by last month. It was also envisaged that additional correctional officers would be appointed to the lands. Finally, an announcement was made that three Aboriginal liaison officer positions were to be located at the Port Augusta prison, and a third position seeking to attract an Aboriginal liaison with traditional language skills. My questions are:

1. What was the substance of the concerns expressed by the Chief Magistrate regarding the effectiveness of courts on the lands?

2. Has the Aboriginal liaison officer position at Port Augusta prison, focusing on an appointee with traditional language skills, been filled?

3. Has the Department for Correctional Services implemented any agreement relating to the handling of funeral leave for Anangu prisoners?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his question and his continuing interest in matters associated with the justice issues raised. Much of the work that is being done is work in progress. In relation to the recruitment of specialised Aboriginal workers in the field to deal with some of these issues, we have found it quite difficult to fill positions, even though we want to have a greater presence of appropriate Aboriginal people in these various positions within the government's programs and plans. In the main we are finding it difficult because there are few people within the required classifications who are able to fill these positions quickly, for one reason or another. We just cannot recruit people as liaison officers, particularly in the courts as far as interpreters are concerned, quickly. They are positions that do take some time to fill. The haste with which we might want to proceed sometimes is a cause for failure. We do not want to fail. We want to make the required changes via our policy development. We have money

appropriated to correctional services to deal with Aboriginal offenders. Certainly, we want to do it properly.

A number of people in the justice arena have concerns about how we deal with Aboriginal offenders and monitor community-based orders within the remote regions. We are starting to deal with that. We now have more officers dealing with communities in order to find appropriate work for community corrections.

We now have more officers in the field to deal with community service orders and we hope that, through negotiations, we will have some communities that will take responsibility for looking after prisoners when they are on special leave for attending funerals. The honourable member knows and understands that protocols are being developed at the moment and communities in the remote regions are being spoken to. I think four communities have indicated that they are prepared to cooperate with correctional services in providing community screens or support for prisoners without cuffing. But, again, those issues will be determined by the category of prisoner who makes the request.

We have tried to make it as easy as possible for prisoners whose family members have died while they are in prison as part of the prevention of Aboriginal deaths in custody program, and we hope that the sensitivities of Aboriginal prisoners who may be some 600 to 800 kilometres away from their family and friends are taken into consideration—and that is happening. We are putting people into the field and there are recruitment programs going on as we speak.

I think the other question that the justice asked was in relation to interpreters. We are trying to deal with that problem. With the cooperation and assistance of the commonwealth we are trying to put together language programs that are able, as a secondary protective service, to offer language protection and support and develop interpreter services that allow the courts to give natural justice to offenders for whom English is their second language. It has been a struggle for the courts—in some cases hearings have had to be suspended because appropriate interpreters have not been available—so we hope to deal with that in a way that allows for appropriate interpreters being made available for those court sessions. There has been a frustration, which we are trying to work through with the courts, regarding circuit hearings in the lands where there have not been appropriate facilities or programs for alternatives to sentencing to be offered. That is the other area we are trying to develop: that is, alternatives to prison sentences to make sure that the best opportunities are provided to keep young Aboriginal people—and not just APY people—throughout the state out of gaol by offering alternatives to sentencing.

I thank the honourable member for his questions and for the opportunity to be able to present some of the steps that we are taking in trying to deal with those important questions. As I said, the protocols for funeral attendance are being finalised at the moment. Liaison officers are in the field, and my information is that they are operating out of Port Augusta into the lands. At some future time, if we are able, having one or two officers operating from the lands would probably be a better alternative, but at the moment that is the interim policy we have developed.

The Hon. R.D. LAWSON: I have a supplementary question. What was the substance of the concerns expressed by the Chief Magistrate regarding courts on the lands?

The Hon. T.G. ROBERTS: The concerns shown by all the visiting magistrates were that there were very few alternatives to sentencing for repeat offenders. The alternatives are being considered at the moment.

The Hon. A.J. Redford: You're waiting for the Northern Territory government to carry us.

The Hon. T.G. ROBERTS: The honourable member says that the Alice Springs facility would be an indication of the Northern Territory carrying the state of South Australia's responsibilities. We are trying to get a cooperative approach with Western Australia, the Northern Territory and the north of South Australia—and, hopefully, the commonwealth will become involved—in respect of cooperating and sharing resources so that, in a very remote region of Australia, we do not duplicate resources unnecessarily. In line with the question, what is happening at the moment is that, because of the many problems emanating out of this, people are being moved many hundreds of kilometres to places away from their family support services. We are trying to bring the sentencing options back so that the communities become support services for the individuals—and the same applies to health services, when looking at a facility for petrol sniffers and drug and alcohol abusers. The important thing is to ensure that the facility is not set up over the long term away from those community services.

The Hon. A.J. Redford: I'll bet my parliamentary pension that you won't set up a joint facility involving the three states between now and the next election.

The Hon. T.G. ROBERTS: I hope that Hansard has taken that down. If we are to collect that bet, there will be—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: *Hansard* will show that there was a one-sided bet made; it was an offer that I have picked up. If the parliamentary pension is on the table, I am sure the Blue Room could accommodate a function involving all the people who may or may not be affected by the bet. I thank the honourable member for that very generous offer.

STATE FOOD PLAN

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Industry and Trade a question about the Premier's State Food Plan.

Leave granted.

The Hon. CAROLINE SCHAEFER: Tomorrow, the Premier will launch—and I am grateful for an invitation to that launch—the next step in the State Food Plan 2004-07. I just happen to have an advance copy of that food plan, and one of the stated objectives in the next four years is to deliver from the food industry in South Australia $7.5 billion worth of exports by 2013. The growth targets to achieve that goal include 8 per cent per annum growth in gross food revenue, 8 per cent per annum growth in processed food value, 11 per cent per annum growth in the value of overseas exports, and 5 per cent per annum growth in the value of net interstate sales. My question is: how does the minister equate such lofty aims with the fact that our net food exports, both interstate and overseas, have fallen, along with every other export in this state, by some 8 per cent in the past 12 months?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): Over the past few days we have had a lengthy discussion on exports and how they are measured. As I pointed out yesterday, there has been a fall in exports over the past 12 months. I would have thought that the reasons for that are fairly obvious, given both the rapidly rising Australian dollar—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: —compared with the US currency and a number of other factors.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: I thank the Hon. Angus Redford for talking about factors such as SARS, and of course there was the severe drought several years ago that obviously had a big impact. However, one would expect this year, with the way the season is going and if it finishes well, that there will be a significant increase. Of course, I note that the commodities prices have a significant impact on the value of our exports, and I see from today's *Stock Journal* that the prices for wheat are high. I am sure the rural sector is rightfully very pleased about that.

In relation to what is in the State Food Plan, the honourable member has obviously seen it before I have, but I look forward to the launch tomorrow by the—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, the Minister for Agriculture's department has been preparing the food plan.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Yes, the State Food Plan. I am well aware it is being released tomorrow.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, it is being launched tomorrow. It has been prepared by my colleague the Minister for Agriculture.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, I have seen the food plan. Let us talk about the food plan. I am happy it has been brought up, because it will give me a chance to make a point further to what was being discussed yesterday. Under the State Food Plan, since the Leader of the Opposition knows so much about it, how do we measure food exports? He does not know, so I will tell him. The Hon. Caroline Schaefer should know. She would know that PIRSA developed a score card under the previous minister. And why was the food score card developed? Of course, it was developed because of problems with the statistics that are kept in relation to exports. That is why we also have score cards in relation to the mining industry—so that the statistics truly reflect what is happening within the industry. That is why there is a PIRSA food score card. That is why the statistics that come up—the figures the honourable member is talking about in relation to growth—will truly reflect what is happening in those industries.

As I said before, there are problems in relation to the statistics that the ABS provides, and there are a number of reasons for that which I will be happy to go into, but that was not the question that was asked. I look forward to the launch of the food plan tomorrow. I was fortunate in having a lot to do with it, obviously. The work for it began when I was the minister for agriculture and I took part in many of those sessions, and I look forward to seeing the final version at its launch tomorrow.

The Hon. R.I. LUCAS (Leader of the Opposition): I have a supplementary question. As the minister responsible for trade on behalf of this government, how does the minister explain that a key initiative such as the State Food Plan is to be launched by his Premier tomorrow and that he stands in this chamber and confesses that he has not even seen it?

The Hon. P. HOLLOWAY: I said I have not seen the final version—I said the member has the final version—because it is being launched tomorrow. But, of course, I am well aware of the State Food Plan. After all, I was Australia's first minister for food when we came to government. What is being launched tomorrow is, of course, the update for the next three years, from 2004 to 2007, and that will give the direction for this important industry for the next three years. Of course, that work has been based on the input of members of the Premier's Food Council and others, including me. During the past two or three years when I was minister for food, I had the opportunity to launch a number of its component parts.

The State Food Plan is comprised of the constituent plans in industries such as the dairy industry (which plan was launched very early in the term of this government), and I was also able to launch the goat industry plan. I think that my colleague in another place, the new Minister for Agriculture, Food and Fisheries, has subsequently launched the sheep plan. A lot of work has been done on the constituent parts of the State Food Plan, and they will all come together tomorrow with the launch of the new State Food Plan 2004-07 by the Premier. We greatly look forward to that event.

The Hon. R.I. LUCAS: I have a supplementary question. As the minister responsible for trade, is the minister not part of any ministerial group or committee which provides oversight to the final approval of the State Food Plan?

The Hon. P. HOLLOWAY: I am a member of the Premier's Food Council.

The Hon. R.I. Lucas: And you haven't seen the final copy?

The Hon. P. HOLLOWAY: I have not seen the final version as it is presented. We are looking forward to it tomorrow.

The Hon. R.I. Lucas: Why not?

The Hon. P. HOLLOWAY: As I said, I have not seen the final version.

The Hon. R.I. LUCAS: I have a supplementary question. If the minister now confesses that he is a member of the Food Council, which is responsible for the food plan, why has he not seen the final copy of the State Food Plan which is to be launched by the Premier tomorrow?

The Hon. P. HOLLOWAY: I believe that the Premier's Food Council is actually meeting tomorrow morning but, as sometimes happens with these things, when you present the final version, it actually has to be printed. I have been involved for some time with the drafting of the plan, more particularly when I was minister for agriculture, food and fisheries.

PRISON WORK PROGRAMS

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about prisoner works projects.

Leave granted.

The Hon. R.K. SNEATH: On occasions the minister has referred to community service programs being carried out by prisoners from the Department of Correctional Services. This work has significant benefits to the community as well as to the prisoners involved. My question is: can the minister give details of any recent work that has been undertaken at Port Lincoln?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I thank the honourable member for his continuing interest in the bush and all those people who live in it. As

members would be aware, prison community service is an initiative that has been running for some years. It was promoted under the previous government and we have continued that promotion. It was gradually expanded and is now undertaken from a number of prisons and includes many projects. It is good for morale that good stories come out of the prison services area, because there are a lot of people who work inside the service sector of the prison system who do not get a good mention. Usually press stories are related to reactions to things that happen in prisons that are done in the heat of the moment, so it is good to have some good stories.

At the Adelaide Pre-release Centre two teams of prisoners are working for the Department of the Environment and Heritage in our metropolitan national parks. Port Augusta Prison is the home base of the department's Mobile Work Camp program which works in areas such as the Coorong. In addition, the Port Augusta Prison operates a work gang of between three and five low security prisoners from the prison's cottage accommodation area that does work for the community in the local area. The Cadell Training Centre, of course, is a major source of prison community service, and many members would be aware from previous reports that I have made in the council of some of their accomplishments throughout the year.

Perhaps one of the most interesting community service projects undertaken by prisoners this year has been recently undertaken at Port Lincoln. You are all holding your breath wondering what the project is. Up to five low security prisoners from Port Lincoln Prison and a supervisor have been contracted to remove all of the Aleppo pines ranging from 100 millimetres to 4 metres in height from along several of the major roads around Port Lincoln. During the contract period the prisoners cleared over 12 kilometres of road verge, which equates to about 24 hectares. Most of the work has been undertaken adjacent to the Lincoln Highway from North Shields south to the Axel Stenross slip in the city of Port Lincoln and the western approach road to Port Lincoln. I visited those sites. For those of us who do not know, the Aleppo pine is classified as a noxious weed. It is fast-growing, very hardy and thrives on Eyre Peninsula, especially in areas surrounding Port Lincoln. It threatens some of the areas of water that are important to our native vegetation.

To date, all efforts to remove them, or at least to restrict their expansion, have proved ineffective. Local authorities have tried bulldozing and burning them down, and they have even attempted to graze them out. None of these methods have proven successful. Perhaps the best way to do it is by hand. It is labour intensive, but certainly the prisoners are able to do that with the aid of hacksaws and chainsaws. I pay tribute to those involved in this project from the prisoners to those people in the department who, in some cases, have totally dedicated most of their waking hours to this project. I think there is some chance of our changing the botanical name of Aleppo pine to perhaps 'pinus John Sonus', if we have our way.

CHILD ABUSE

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Families and Communities, a question about the Senate's Community Affairs References Committee's 'Forgotten Australians' report.

Leave granted.

The Hon. KATE REYNOLDS: Much has been said by this government about the need to understand and respond to the past abuse of wards of the state. The Democrat-initiated inquiry by the Senate's Community Affairs References Committee, which examined Australians who experienced institutional or out-of-home care as children, was tabled in the federal parliament on 30 August 2004. The executive summary included the following statement:

> The committee received hundreds of graphic and disturbing accounts about the treatment and care experienced by children in out-of-home care. Many care leavers showed immense courage in putting intensely personal life stories on the public record. Their stories outlined a litany of emotional, physical and sexual abuse, and often criminal physical and sexual assault. Their stories also told of neglect, humiliation and deprivation of food, education and health care. Such abuse and assault was widespread across institutions, across states and across the government, religious and other care providers.

While tabling the report earlier this week, the South Australian Minister for Families and Communities said that his government would respond to the first recommendation of the committee by advocating for an apology to be given at the national level, but he did not comment on recommendation two of the report, which states that all state governments and churches and agencies that have not already done so should issue formal statements acknowledging their role in the administration of institutional care arrangements; and should apologise for the physical, psychological and social harm caused to the children and the hurt and distress suffered by the children at the hands of those who were in charge of them, particularly the children who were victims of abuse and assault. My questions are:

1. Will the minister inform the parliament why the South Australian government did not make a submission or even give evidence to the inquiry?

2. In relation to recommendation two of the report, will the minister now make an apology for the physical, psychological and social harm caused to children in institutional care?

3. Given that the Senate inquiry revealed extensive physical and psychological abuse suffered by wards of this state, will the minister now act to widen the terms of reference of the South Australian commission of inquiry into the sexual abuse of wards of the state to include these other forms of abuse and, if not, why not?

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

JURORS' ALLOWANCE

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Attorney-General, questions about jurors' allowances for country jurors.

Leave granted.

The Hon. T.G. CAMERON: *The Advertiser* recently carried a story highlighting the disadvantages country jurors face when serving on a jury in country South Australia. A key concern is the lack of flexibility in the country juror's motor vehicle allowance, which does not take into consideration the extra expenses incurred due to the distances they are often required to travel.

In a recent case, Mr Peter Wyers, a workshop manager from Naracoorte, was compelled to travel about

210 kilometres between his home in Naracoorte and the court in Mount Gambier each day when he served on a jury for which he was reimbursed just 20¢ per kilometre. On the other hand, if Mr Peter Wyers was a member of parliament living in Naracoorte and required to drive his motor vehicle to Adelaide on parliamentary business, he would be entitled to 58¢ per kilometre—almost three times as much. The standard juror's allowance has not risen since 1989. Imagine the outcry if the members of parliament mileage allowance had not been increased since 1989.

The Courts Administration Authority document shows that jurors receive $20 a day plus 20¢ a kilometre travel allowance, and they are entitled to claim up to a further $80 a day to compensate for lost wages, to hire replacement staff or to cover babysitting. My questions are:

1. Has the Attorney-General's department conducted any reviews to establish just how much (on average) it costs country jurors to sit on a country jury?

2. Considering the distances jurors may be required to travel and as there has been no review of the standard juror's allowance since 1989, will the Attorney-General investigate the current allowances paid to country jurors to ensure that they are equitable with their city counterparts and with country MPs?

3. Will the Attorney-General consider linking the juror's allowance to the consumer price index?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer those questions to the Attorney-General and bring back a response.

PREMIER'S ROUND TABLE ON SUSTAINABILITY

The Hon. J.M.A. LENSINK: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Environment and Conservation, a question about the Premier's Round Table on Sustainability.

Leave granted.

The Hon. J.M.A. LENSINK: Late last year the Premier completed his triad of peak advisory boards through the establishment of the Premier's Round Table on Sustainability to line up with the Economic Development Board and the Social Inclusion Unit. The purpose of the round table is, as stated, to provide advice to the Minister for Environment and Conservation and to the Premier on areas such as sustainable industry, population and responsible environmental management. The round table first met on 6 November 2003. The third term of reference for the round table is to:

> Ensure a high level of stakeholder collaboration and community participation in developing and delivering the sustainability agenda.

Due to difficulties in finding any public information about the round table (apart from a report that it was canvassing options for nuclear energy in South Australia), I sought some information under freedom of information. My questions arising from that are:

1. Given that it is a term of reference to 'ensure a high level of stakeholder collaboration and community participation', why does the round table not publicise its activities through, for example, a web site? The only web presence is an 'about' page on the Office of Sustainability's site.

2. On this 'about' page it is stated that the round table 'provides high quality, independent advice to government on issues relating to environmental sustainability.' However, the agenda for the first meeting, the round table's sole opportunity to provide advice to the strategic plan, was only sent out at 4.14 p.m. on the day before the meeting, which started at 9 a.m.

3. Does the government take the round table seriously given this short notice and the fact that only seven of the 15 members were able to be present?

4. How successfully is the round table engaging with the community and the government given the low level of public information on its activities and given that the minutes show that in a period of some two months between its meetings on 1 and 2 March and 27 April there was no correspondence?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer those questions to the Premier—as, after all, it is the Premier's Round Table on Sustainability—and bring back a response.

SPEED CAMERAS

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development, representing the Minister for Police, a question about speed camera fines.

Leave granted.

The Hon. J.F. STEFANI: Recently, there have been a number of road fatalities which, unfortunately, have occurred as a result of high speed. I am sure that most members would agree that excessive speed and dangerous driving are a lethal combination, leading to many road injuries and fatalities, and every effort should be made to change bad driver attitude. Equally, it is true that in some circumstances speed cameras are used in a manner that can only be described as a revenue raising exercise. A typical example of the use of speed cameras to raise revenue is when speed cameras are placed in 40 km/h zone areas to monitor road traffic, often booking motorists who are travelling at speeds just over 50 km/h. Such an area under speed camera surveillance has been Chief Street, Brompton, which runs from Hawker Street to Port Road. This wide street is flanked, mostly, by industrial premises. My questions are:

1. Will the minister provide details of the number of speed camera fines issued in Chief Street, Brompton, during the period 1 July 2003 to 30 June 2004?

2. Will the minister provide a breakdown of the fines issued for the above location and period as follows: number of speeding fines up to and including 50 km/h; number of speeding fines 51 to 60 km/h; number of speeding fines 61 to 70 km/h; and number of speeding fines 71 km/h and over?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will take that question on notice and refer it to the Minister for Police. The honourable member says that these devices are used for revenue raising because they are catching people doing just over 50 km/h in a 40 km/h zone. If we have speed limits of 40 km/h then I would think that, if people are doing over 50 km/h in those areas, that is a clear breach. If the honourable member thinks it is safe to be doing over 50 km/h in a 40 km/h zone, then perhaps he should be advocating some change of speed limits in the area. If we have a speed limit of 40 km/h, then any speed in excess of 50 km/h is a clear breach of the law and, presumably, is a risk to safety. I will get details for the honourable member.

The Hon. NICK XENOPHON: I have a supplementary question. What consideration has the minister's Road Safety Advisory Council given to ensuring that speed cameras are placed in locations to maximise benefits to road safety?

The Hon. P. HOLLOWAY: I think this question has been asked and addressed on numerous occasions. I am happy to get a reply for the honourable member, but it is well known that the police put considerable effort into utilising their resources where they are considered to have the greatest impact in terms of improving road safety.

The Hon. J.F. STEFANI: I have a further supplementary question. Will the minister provide an explanation as to why Chief Street, Brompton, is zoned at 40 km/h?

The Hon. P. HOLLOWAY: I think a lot of the 40 km/h zones are zoned by local government. I will endeavour to get an answer from whoever is responsible, whether it be the Minister for State/Local Government Relations or the Minister for Transport.

YELLABINNA REGIONAL RESERVE

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about Yellabinna regional reserve.

Leave granted.

The Hon. J. GAZZOLA: Since the late 1990s Yellabinna regional reserve has been the subject of a wilderness protection area nomination. In March 2003 the Wilderness Advisory Committee put forward a draft report recommending that areas be proclaimed as wilderness areas. The area is also highly prospected for minerals. How will the recent announcement of a 500 000 hectare wilderness area affect mineral exploration in South Australia?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I thank the honourable member for his question and for his interest in this area. In July the Premier announced that the government would be creating a 500 000 hectare wilderness protection area within the Yellabinna Regional Reserve. That is obviously good news for the environment, but it is also good news for the mining industry in that the remaining 2 million hectares will continue to be open to exploration and mining. Indeed, if one looks at the Yellabinna Association, which is the Yellabinna Regional Reserve and a number of other adjacent conservation and other parks, it is something in the order of 3.2 million hectares in total. So, even if one takes out the 500 000 hectares, there is a very large and significant area in that region that will be available for mining. Of course, there is also some highly prospective private land throughout that region as well.

Even better news is the fact that the remaining 2 million hectares of the Yellabinna Regional Reserve is covered by 14 exploration licence applications (ELAs). The government's announcement provides certainty to the mining industry, and events since the decision speak for themselves. Of those 14 ELAs, two have been granted and the remainder are in the process of being granted. Most of the remaining ELAs have been offered to the companies and, therefore, should be granted very soon. Within the granted exploration licences Inco, the world's second-largest nickel producer, has begun aerial surveys in its joint-venture tenements with Adelaide Resources and Platsearch. Additionally Iluka, which is the world's largest producer of mineral sands and an Australian company, has begun exploration drilling on its joint-venture, also with Adelaide Resources. Iluka currently has two granted exploration licences in the Yellabinna region and is optimistic that the region has the potential to become one of the world's biggest reserves of heavy mineral sands.

Overall, I have been advised that around half a million dollars of exploration will occur by the end of the year, and this will ramp up to around $2 million per year of private exploration expenditure in the near future. I am very happy to be able to share this information with the council and I wish all the companies involved in the region the greatest success, because this region has the potential to contribute a great deal to the increased welfare of South Australia.

HEPATITIS C

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Health, a question concerning hepatitis C screening.

Leave granted.

The Hon. SANDRA KANCK: My office has been contacted by a constituent who went to the Port Adelaide Community Health Service in 1993 to have a test for HIV. After having the test, a follow up visit was arranged to discuss the results. At that counselling session she was informed that her HIV test was negative; however, my constituent has recently discovered that she has hepatitis C and has had this for some 20 years. This revelation prompted her to contact the Port Adelaide Community Health Service to see whether it had picked up the fact that she had hepatitis C when it tested her for HIV in 1993—and indeed it had; the only problem was that it had failed to inform her. It transpires that the results from the positive hepatitis test did not arrive until after her counselling session for the negative HIV test. As a consequence, she has been living in ignorance of the fact that she has had this debilitating disease, despite it being identified 11 years ago.

I note, from answers to a question that the minister gave me on Tuesday, that since January 2002 there have been 29 deaths from hepatitis C in this state and that hepatitis C was a contributing factor responsible for 35 deaths. My questions to the minister are:

1. What guidelines are in place for community health services regarding the notification of communicable diseases?

2. What guidelines were in place in 1993?

3. Is the minister aware of any other instances where clients of a community health service were not informed of the fact that they had hepatitis or other blood-borne diseases?

4. What are the legal implications for the Port Adelaide Community Health Service in failing to inform a client of the fact that their testing had identified that they had hepatitis C?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable for her question in relation to the screening program and its importance. I will refer that question to the Minister for Health in another place and bring back a reply.

The Hon. NICK XENOPHON: I have a supplementary question. What are the potential health implications for a delay in notification of such a serious condition?

The Hon. T.G. ROBERTS: I could provide a lay answer to that question, but I will refer it to the specialist, the Minister for Health in another place, and bring back a reply.

YOUTH GAMBLING

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for

Gambling, questions in relation to youth and under-age gambling.

Leave granted.

The Hon. NICK XENOPHON: In response to a series of questions I asked on 27 March 2004, the Minister for Gambling provided information that indicated, amongst other things, that there have been no prosecutions in the past three years for under-age gambling in the casino, hotels and clubs and that the Liquor and Gambling Commissioner approves the casino's accounting and internal controls, policies and procedures manual and the casino's security procedures manual in dealing with juveniles. Further, there are on-site inspectors at the casino, as well as eight inspectors employed by the Office of the Liquor and Gambling Commissioner to inspect all licensed premises in the state. The answer made reference to approximately 370 juveniles per month in the 2003 calendar year being denied entry to the casino. My questions are:

1. Is the government committed to retaining the same level of full-time on-site inspectors at the casino? If not, what is the nature of, and timetable and rationale for, any alternative proposal?

2. How many on-site inspections of hotel and club poker machine venues have taken place in the last three financial years to deal with the issue of under-age gambling? How many instances of under-age gambling were observed and what steps were taken? Further, what protocols and procedures does the Liquor and Gambling Commissioner impose on the licence conditions of such poker machine venues to ensure compliance with under-age gambling laws? Are similar or identical procedures and protocols of the casino approved by the Commissioner used for those venues and, if not, why not?

3. Will the minister provide a copy of the casino's procedures referred to, and what do those procedures and protocols say about dealing with under-age gamblers attempting to enter the casino but denied access? Were they followed in the instances referred to in the minister's previous answer? In particular, what are the procedures in dealing with those under-age gamblers who have attempted to enter the casino but who have been denied access?

4. The minister's answer states:

> Police also play a role as part of their community policing operations in ensuring that minors do not enter or remain in gaming areas.

Will the minister provide details of the extent of such community policing operations and the effectiveness of such?

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

BEACHPORT BOAT RAMP

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Environment and Conservation, a question about the Beachport boat ramp.

Leave granted.

The Hon. D.W. RIDGWAY: As members would be well aware, I have asked a number of questions in past months about the Beachport boat ramp, and it has been the centre of controversy ever since it was built in the middle of the front beach. It has been dubbed 'secretive and rushed' by local residents. Transport SA owns the temporary boat ramp. Due to inappropriate placing, it has begun to collect sand on one side, rendering it almost unusable. The cost of this temporary boat ramp was approximately $120 000, and it is clogged up with sand due to the tidal movement, to a depth of between 1.5 and 2 metres. Following the last question I asked, I was contacted by a representative of the Wattle Range Council and was informed that it was an experiment—that this boat ramp was placed in the middle of the front beach as an experiment. My questions are:

1. Will the cost of the required sand dredging be borne by the ratepayers of Wattle Range Council or Transport SA, which placed the structure in an inappropriate location in the first instance?

2. Will the Minister for Transport give an undertaking as to when a permanent boat ramp will be built, and in which location will it be built?

3. Will Transport SA, or a department of the government, pay for the remediation and return of the beach to its natural state following the completion and removal of this boat ramp at the end of the experiment?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer that question to the Minister for Transport and bring back a reply.

The Hon. SANDRA KANCK: I have a supplementary question. Will the minister also ask whether the department was warned of the danger of silting up and whether the silting up has occurred at the expense of seagrass?

The Hon. P. HOLLOWAY: I will refer that question on also.

VICTIM SUPPORT SERVICE

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Attorney-General, a question about—

Members interjecting:

The PRESIDENT: Order! The Hons Mr Sneath and Mr Redford can take their argument outside if they want to have an argument.

The Hon. IAN GILFILLAN: —the Victim Support Service.

Leave granted.

The Hon. IAN GILFILLAN: I was approached by representatives of the community who are involved with the Victim Support Service and also of SA Police, expressing serious concern at the extraordinarily long waiting period between offences and the actual attention from Victim Support Service to the victim. In fact, they were citing instances of up to 16 weeks' delay between the event and the time at which the Victim Support Service was able to give assistance and counselling to the victim. I approached Michael Dawson, the Chief Executive Officer of the Victim Support Service, and he replied by email, and, in part, it states:

> In the Adelaide office we have been operating with a long waiting period for the last few months. It has been about 14 weeks but we have just reduced it to about seven weeks.

He concludes the email by saying:

> We shall see how we are travelling when I resubmit for funding at the end of the year. We might well have to ask for funding for an extra position but we need to wait to see how we are coping.

Those who are involved in the delivery of the service—the victims who are waiting for service and people who are

involved in counselling—would unanimously agree that this is totally unacceptable and that the principle of a victim support service and counselling is based on the essential character that it will be available to the victim as soon as possible, preferably within days of the event. From information given to me by SAPOL, that is what they try to do with the limited resources they have.

As the Victim Support Service is now substantially funded by the government (although not entirely), I ask the Attorney-General, through the minister: is he aware of the extraordinarily long waiting periods that have been involved in the Victim Support Service—at least for some months, by the statement of the Chief Executive Officer? Does he believe that such waiting times are appropriate for the supply of service to the victims, and what does he intend to do about it?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank the honourable member for his question and will refer it to the Attorney-General and bring back a reply.

MEDICAL PRACTITIONERS

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Health, a question about further funding for general practitioners' clinics.

Leave granted.

The Hon. A.L. EVANS: In a recent media report in *The Advertiser* of 10 August 2004 it was stated that the GP shortage within South Australia cannot be addressed because the infrastructure for GPs is greatly underfunded. The former government assisted with the development of the Blackwood after hours clinic, and this seems to be a major success. Even though many aspects of health funding may be considered a federal issue, the current government can support existing GPs with assistance and infrastructure such as buildings or expanding medical clinics. My question to the minister is: does the government have any policy on giving financial or other assistance to GPs wishing to set up full-time or part-time practices in metropolitan and rural areas where GP shortages are being experienced?

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

CHILD CARE

The Hon. T.J. STEPHENS: 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 family daycare guidelines.

Leave granted.

The Hon. T.J. STEPHENS: I raised this issue of family daycare guidelines with the minister by way of a letter some months ago with particular reference to the quality of the glass in windows for daycare providers. As members would be aware, in smaller regional towns often the family home substitutes for a workplace, and this is especially so when it comes to childcare. I have been advised that the guidelines are unclear as to what is required in regional towns and their daycare facilities. I am also advised that, if provisions are not made to accommodate the fact that homeowners cannot afford to upgrade their homes, family daycare services on offer will cease because the providers will resign. I wrote to the minister some time ago about this issue and am still waiting for a reply from the minister's office on the matter. My questions are:

1. Will the minister provide an answer to me and the others who have written to her about this issue by the end of this sitting?

2. If not, when will the minister answer the original questions that I have asked both in the council and in correspondence?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his question. It is an obscure issue that certainly has not been raised with me in regional areas, but it is an important one.

The Hon. T.J. Stephens: Remember where the bush is, minister?

The Hon. T.G. ROBERTS: No, I understand the nature of the question. It is one that I will chase up for the reply to the original question that the member asked, and I will refer the fresh question to the minister in another place and bring back a reply.

AUSTRALIAN LABOR PARTY

The Hon. CAROLINE SCHAEFER: My questions to the Leader of the Government about the federal ALP's election policy are as follows:

1. Does the minister agree with the stated view of the federal leader, Mark Latham, that '. . . agriculture is the most subsidised section of the Australian economy with a list of tax concessions as long as your arm. This is money for jam'?

2. Does he agree with Mr Latham's stated objective of supplying exceptional circumstances drought funding only during years of drought because he believes it inappropriate to supply funding for restocking?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): In relation to the latter question, I certainly had a view on that when I was minister for agriculture. I think that it has been the view of the state for many years that the state provided assistance only in what are truly exceptional circumstances, because drought is certainly a feature of the Australian climate and Australian agriculture. I think that the farmers in this state are far more resilient and able to deal with drought than their colleagues in other states because for many years that has been a longstanding policy of the state government of both parties. I was very surprised when I was minister for agriculture and I was in a position to allow those farmers to be eligible for exceptional circumstances. I had to declare drought conditions in this state. which is not part of the way it has been done in this state; but, nevertheless, if I had not done so there would have been no eligibility for federal assistance.

These are matters for my colleague the Minister for Agriculture, Food and Fisheries, but I am certainly well aware that Mr Jim Hallion, the Chief Executive Officer of PIRSA, chaired the committee which was looking at reviewing arrangements concerning drought conditions, and I think it was agreed by all ministers—and probably I suspect the commonwealth—that the arrangements needed some review. However, I will refer the specifics of the question to the Minister for Agriculture, Food and Fisheries in another place and bring back a reply. However, in relation to the policy of my federal counterparts generally, it is up to the people of Australia to make their judgment on 9 October. I certainly

know for whom I will be voting—and it will be Mark Latham.

ADDRESS IN REPLY

Adjourned debate on motion for adoption.
(Continued from 15 September. Page 70.)

The Hon. T.J. STEPHENS: I wish to thank Her Excellency the Governor, Marjorie Jackson-Nelson, for her work over the past year. More specifically, the Governor has discharged her duties in this state's highest office with grace and diligence, and I (and I am sure also the people of South Australia) appreciate Her Excellency's important yet subtle approach to her position. Can I extend my condolences to the families of past members who passed away during the last session. I wish to reply to several aspects of the Lieutenant-Governor's address which require some comment. There are several reasons why the Rann government has not lived up to the promises and hype that surrounded its installation. The Rann opposition littered the streets with the pledge card that supposedly pledged more open government, better services and other high-minded aims.

The guarantees on that card have quickly been forgotten by this government. This is an indication that, at a federal level, the cheap gimmicks that Labor uses to gain support will be as binding as this state's Labor commitments, which is not at all. The new Labor way, the Hon. Mike Rann's way, is all hat and no cattle; it is all talk and no action. Look at the facts and members will see that this is self-evident. If members compare the state government with the federal government, they will begin to wonder what the state government has been doing for the past three years. Under the federal leadership of John Howard, the national economy has surged ahead at a sustained rate not seen in the post-war era: 1.3 million new jobs have been created and unemployment rates are at 20-year lows.

Since 2001, the federal Liberal government's tough on drugs strategy has reduced the number of people on illicit drugs by 23 per cent. In the next four years, the federal government will provide over $30 billion for education and a real increase in health spending of 17 per cent. Conversely, the South Australian Labor government has used every opportunity to duckshove responsibility to others and it has been dishonest with the people of South Australia. It has used shallow, meaningless imagery to give the perception of action when, in fact, one could wonder whether the cabinet was subject to a valium addiction. For instance, look at the unemployment statistics of South Australia. They are a damning indictment of the economic policies of this government. In trend terms, which gives the most accurate reading of the state of the economy, South Australia has the lowest participation rate in the employment market for any state or territory in the country at 69 per cent. This is 3 per cent lower than the average of the other states.

South Australia's full-time employment growth has been the slowest in Australia, and over the last 12 months the number of full-time jobs has declined—the only state to have done so. Make no mistake, the Rann government's policies are keeping South Australia from joining in the national economic boom. The opposition renews its calls for the Minister for Health to resign. The minister's lack of interest in the details and operations of her department are an outrage, and the crisis which has engulfed state hospitals falls with the minister, because she administers the money. At the Mount Gambier hospital, the level of risk was deemed to be unacceptably high, according to documents obtained under freedom of information legislation. This particular episode also speaks of the lack of local impact the appointment of the member for Mount Gambier (Hon. Rory McEwen) has had in winning additional funding for regional services for his electorate from cabinet.

At Flinders Medical Centre, further documents state that the emergency department was grossly unsafe. In both cases, the public was informed of this important information by the opposition, not by this minister. Once again, though, the government takes the public for mugs and refuses to find a minister who cares about their responsibilities or even one who is the slightest bit competent. Under this government crime has become a joke. Bail breaches have doubled under this government, and it has done nothing to correct the situation.

The message to criminals is clear: if you disregard the laws of the land you will get away with it under the Hon. Mike Rann. The government prances around saying that it is tough on crime, but the opposition has shown time and again that the police are under-resourced, with officers having to recycle uniforms, and restrictions to calls on mobile phones and cutbacks on pens have affected the morale of the force, which cannot be beneficial for the rest of South Australia. The abolition of crime prevention programs, which were so successful under the former Liberal government, has affected the confidence and feeling of security in the community.

The government pledged no new taxes, lower power costs and a smaller ministry but, as all socialist governments do, they very quickly put up taxes to become the highest taxing government in South Australia's history. Did they use this money to provide relief from high energy costs? No. Instead, they decided to buy some political breathing room by throwing the money at the Independents and buying their votes by putting them in the ministry. In New South Wales there was considerable controversy surrounding Nick Greiner's attempts to use positions in public office and taxpayers' money to secure his government's position in the parliament. The difference here is that Nick Greiner was cleared and Mike Rann's deals to shore up support are plain for all to see.

Property taxes are at record levels, and the government is also benefiting from the GST moneys which increase the budget by several hundred million dollars a year. This government is swimming in money, yet the people cannot see any benefit. That is the whole point of government: to make people's lives better, not to improve your own public image. Look at the issue that the government has with the criminal justice system. It forces the DPP to resign because they cannot get along. It budgets for only an additional seven prisoners this year. What a joke! Surely this reflects on the lack of resources that police have rather than a reduction in crime: they will only be able to catch and put away seven criminals in the next 12 months! The government then attacks and denigrates the head of the Parole Board, Frances Nelson QC, for daring to criticise the government's lack of funding and lack of knowledge and for using a ham-fisted approach in solving these important issues. Mike Rann and

his cronies are willing to vilify respected and experienced people to suit their own political ends and to criticise decisions that should be above politics, all in the best traditions of the oppressive regimes of socialist governments around the world.

What can be done to correct the problems I have outlined? The reality is that it is very difficult, because the government has a total lack of respect for the institution of parliament and for truth in government. As long as the morning headlines read well, the government does not care about the repercussions. Ministers refuse to answer questions and fail to respond to correspondence, and MPs struggle to get any meaningful information out of the Public Service due to ministerial interference.

This week I will pursue several inquiries made by constituents and myself which are yet to be addressed by the relevant ministers after nearly 12 months of inaction. Ministers frequently make false and inaccurate statements—evidence that they are not fully across their portfolios—only to make apologies and corrections in the dead of night. The government's record is quite shameful and, in my opinion, the cabinet's commission should be revoked. All around the country, the people are benefiting from strong federal leadership—everywhere except in South Australia, where the Rann government has consistently pandered not to the needs and concerns of families and workers but to *The Advertiser's* editors. In order to get a good headline, to get the snappy sound bite, this Premier will do and say anything except govern responsibly.

The Hon. D.W. RIDGWAY: I rise to support the Address in Reply. I will begin by thanking the Lieutenant-Governor, His Excellency Mr Bruno Krumins AM, for his speech, and I also thank Her Excellency the Governor, Marjorie Jackson-Nelson, for the dignified way in which she goes about her vice-regal duties. I offer my condolences to the families and friends of the Hon. Des Corcoran AO, the Hon. Tom Casey MLC and MP, the Hon. A.F. Kneebone, the Hon. R.K. Abbott, Mr John Mathwin MP and our Legislative Council attendant, Sean Johnson.

I would like to start by acknowledging the Governor's goals for this government, many of which seem admirable but which lack substance and will be hard to achieve, given this government's shabby economic credentials. There were some glaring omissions from the Lieutenant-Governor's speech. Small business is one that sticks out. This government has routinely ignored small business despite the fact that small business operators are such vital contributors to the South Australian economy.

Under this leadership 13 per cent of small business operators have closed their doors in the past two years compared with Victoria, which has had a 6 per cent increase. Three of the key areas that the government needs to get right, if it comes even remotely close to being re-elected, are electricity, gas and property. They are all basic survival needs on which people will base their votes. Those three things were noticeably absent from the Governor's speech. Gas prices have gone up by more than 20 per cent in the past two years. What is the government doing to address that situation? It is charging householders a $100 gas subsidy which is going straight into the gas industry, and charging the people of South Australia in a vain effort to mask their own ineptitude.

While the Rann government gets these basic elements wrong, it attempts to cover it up with headline grabbing, vague policies that have no basis in reality. It claims to be getting tough on bikies, but how many arrests have we seen? It claims it wants to plant three million trees and, at a recent briefing, I was informed that the government's one million trees program will cost approximately $10 a tree; so this government is spending $30 million planting trees. It claims to be getting tougher on violent crime, yet there were only an extra seven prisoners last year. The reality is that our police are still underfunded.

Yesterday I was sorry and saddened to hear that the Hon. John Gazzola had nothing positive to say; he had nothing of which to be proud in relation to his government's achievements. Rather, he spent most of his time focused on industrial relations and the federal government's foreign policies. I would like to address state issues because that is what we were elected to do. While the Hon. Mr Gazzola informed the chamber of his views on the evils of free choice and capitalism, the reality is that society is changing and what was applicable in a 1970s discussion on ideology is no longer relevant to many South Australians. Perhaps this government should look at itself and its lack lustre two year record before being so critical of a federal government with multitude successes from which all Australians have benefited.

The Hon. Gail Gago was not much better in her contribution. She continued to play the game that she has played in her entire parliamentary career, namely, the blame game: it is always someone else's fault; it is always someone else who does it wrong. This government—her government—has been here for some 2½ years and the South Australian community is sick and tired of the blame game.

If we are going to look backwards, I thought it appropriate to look at some of the achievements of past Liberal governments and the failures of past Labor governments. One that springs to mind is the MATS plan, which was systematically destroyed by the Dunstan government. It is probably the single biggest factor contributing to the lack of competitiveness in South Australia. A metropolitan Adelaide transport system plan was in place for South Australia, and it would have delivered a competitive modern city to all our exporters; yet for political expediency it was systematically destroyed by the Dunstan government. The Liberal Party would have fulfilled its promise to deliver the project if it had been in power during that time.

West Lakes is a very interesting project. The development was taking place during the Dunstan era, but no allowance for rowing at West Lakes was made by the Dunstan government and there was no Football Park. The vision of that government saw no necessity for Football Park. Where would the Power be playing this Friday night if the Liberal Party had not had the vision to support the SANFL to put Football Park at West Lakes? Some other achievements of past Liberal governments include the O-Bahn busway, Roxby Downs, the Heysen Tunnels, the Southern Expressway, the Convention Centre and Hindmarsh Soccer Stadium, which, incidentally, is not now big enough to hold the capacity crowds at each match. My understanding is that another new corporate sponsor will make the Adelaide soccer team even bigger and better into the future.

The Labor government continues to knock, look backwards and play the blame game in respect of the former Liberal government. We should look at the visionless activities of the Labor Party over the past 30 years. I referred earlier to the MATS plan. In a previous contribution on the Appropriation Bill, I spoke about Outer Harbor. Container freight was a burgeoning industry around the world, yet a Labor government built a passenger terminal rather than a

container park. The Dunstan government wanted to build the Festival Centre between the Torrens Parade Ground and Government House.

What a ridiculous place to put the Festival Centre! Surely the vision, which was correct, during the Hall government was to put it exactly where it is today. We can now have the benefit of the wonderful Riverside development—another achievement under the last Liberal government. And, of course, we have the State Bank, which is still very much in our minds. The Hon. Gail Gago talked about all the problems with electricity and about how the price had gone up. Well, with interest rates where they are and almost within sight of a AAA credit rating thanks to the lowering of debt, why don't you buy it back? You are the smart financial cookie on the back bench of the Labor Party; why don't you buy the electricity utilities back?

This party seems to have a track record of never having the courage to make the difficult decisions, yet it is interesting to note that when members of their party and other members in this parliament have the courage to make difficult decisions they resort to bully boy tactics, thuggery and name calling. I have even heard people in this chamber referred to as scabs and rats. They even do it privately as well: it is standard that the government will approach members of parliament and members of the community in private if they do not agree with their points of view.

As the federal election draws nearer the difference in economic policy between Liberal and Labor becomes more apparent, and highlights some of the deficiencies of our current government. At a time when our country has gone from strength to strength slashing unemployment and government debt, our state has gone backward, with sluggish unemployment levels and many major companies either dramatically downsizing or completely ceasing operations in South Australia. The government has a shameful record on jobs, while the federal government has excelled in creating more than 1 million jobs during its time in government. The trend in jobs in South Australia is that they have dropped by 1.5 per cent in 2003-04, while jobs have increased by 6.2 per cent during the same period in Queensland. South Australia now has the highest unemployment of all mainland states.

In his address the Lieutenant-Governor spoke of the government's goal to treble exports to $25 billion by 2013. Surely this is a joke! Under this government exports have declined—and all they do is blame external factors. How is the rest of the country doing so well when our state is going backward at an alarming rate? When the Rann government came to power, exports were $9.1 billion; they have now fallen to $7.6 billion. Their lofty aim is to treble exports to $25 billion by 2013—what programs will the government put in place to ensure this happens? There was no mention of that in the Lieutenant-Governor's speech. Certainly, the industrial relations policy will not be a good step forward for improving the South Australian economy and South Australian industries.

The upcoming Fair Work Bill will take the state back into the dark days of protectionism and compulsory unionism. The Housing Industry Association has said that this bill will drive up the cost of a new home by about $30 000. This is a huge price for Labor to pay just to appease its union mates. In his address the Lieutenant-Governor also mentioned that the government was working towards fixing the River Murray with extra flows, as agreed at the recent Council of Australian Government meeting. One can only think that the Premier would have had approximately $2 million more to spend if he had not created the new ministry purely for the purpose of shoring up his shaky hold on the government of this state. The government has followed the lead of socialist governments all over the world by sneaking into office by any means possible. Even when this government pulled the wool—or should I say, the wig—over his eyes, I am sure that the member for Hammond thought that his compact with the government would be honoured. Nothing could be further from the truth.

The Minister for Agriculture, Food and Fisheries wrangled a place into cabinet ostensibly to give voice to his constituents in the South-East, but so far the Rann government and the minister have failed to deliver. The Mount Gambier Hospital has not had a funding increase, but the minister still sits in cabinet doing nothing. Only time will tell if the Minister for the River Murray will have the same difficulties and be forced to neglect her constituency. The appointment of a fifteenth minister was not about a better outcome for South Australians or bringing high intelligence or greater skills to the Premier's team: it was simply about buying votes on the floor—nothing more and nothing less. It was simply about buying support for a government which continually breaks its promises and which has no vision for the future of South Australia.

Similar to the way it tried to control the votes in the other place, the Rann government has tried to control public officers with a vice-like grip. Frances Nelson QC incurred the wrath of this government when she dared to cast some light on the handling of child protection and prisons. The Minister for Industry and Trade slammed Miss Nelson by calling her confused and shrill when she dared to speak out about the hypocrisy of the government on its pet subjects of law and order and child protection, on which it has done a lot of talking but achieved very little. This government is touting its $15 million plan for accelerating exploration as an answer to job creation in Outback South Australia. All this from a Premier who tried to stymie the development of Olympic Dam. In fact, he protested against its development in its early days. However, when he finally realised what it meant to this state, he announced that he wanted to double or possibly treble the size of production.

The Lieutenant-Governor also mentioned that the 'consistent budget surpluses are contributing to the reduction of the state's net debt and its financial liabilities'. Perhaps this is as a result of the realisation of the Labor Party's own ineptitude the last time it had the economic reins of this state. Some of these surpluses need to be spent on key infrastructure to prevent South Australia slipping into the dark ages.

The government plans to re-introduce legislation during this session to cut 3 000 gaming machines. This legislation needs to work. Most people would agree that it is very difficult to turn back the clock on something like gaming machines once they have been introduced into the community—something like trying to unscramble an egg. The government's plan is self-serving, because the Treasury stands to gain from the reduction, whilst some of the struggling clubs will be decimated as a result. It will do nothing whatsoever in relation to reform or to help problem gamblers. When the Premier announced this legislation, he said that he would be visiting and speaking to all members of parliament individually. Well, to date I have not had any contact from the Premier, other than one letter with an automatic signature on it.

The scornful treatment by the government of the opposition's call for an inquiry into the sexual abuse of former wards of the state was disrespectful to the victims and their families. The government should not forget that the victims have a vote. The victims wanted someone they perceived to be neutral—someone from outside South Australia. Whilst Justice Mullighan's credentials are not being questioned in any way, I would have thought that it would not be difficult for the government to appoint someone from outside the state with no attachment or history within South Australia. For the massive amounts of money this government has spent on its Thinkers in Residence program, bringing people from all over the world, the government could have afforded a magistrate from interstate. What are the government's priorities? The victims of such callous abuse deserve better answers.

Another hallmark of the Rann government is that it has been plagued with constant budget blowouts, and the Glenelg tram is one example. It is behind schedule and over-budget. The *Ring* cycle production is also over budget. The government provided $11 million to the Festival Centre to construct its elaborate sets. This blew out to $15 million, and the Premier (the Minister for the Arts) promptly handballed it to the Minister Assisting the Premier in the Arts. This is an event that cost the former Liberal government $8.6 million in 1998 and was heralded a success. One can only hope that the Premier will be as quick to hand over to the Minister Assisting the Premier in the Arts if this event is a similar success. The Lieutenant-Governor also said:

> My government continues to promote and support the vital economic, community and individual development role of arts centres in the APY lands.

Surely, priority number one is to help the people fix their governance problems first. The priorities of this government seem to be geared towards making itself look good in the media rather than getting stuck into helping the people in the state when it matters. Broken promises are a trademark of this government. So far, all that the people of South Australia have to show for electing the Rann government is a raft of new taxes and levies and a lift in government fees and charges that is well above inflation. A glaring example of these broken promises is that of cheaper power to all South Australians. The government has failed again to deliver on one of its most fundamental election platforms. The government's bleating that 'it was the former government' is just not washing with the community.

South Australians recognise that, with $9 billion of debt left over from the mismanagement during the Bannon era, the Liberal government had no option but to lease the electricity utilities. As prices continue to rise, the government has responded with no action, but instead it has resorted to insults. Last year, the Premier called the energy companies 'bloodsuckers' and told them to 'get stuffed'. Such petty actions do not make it any easier for average families to pay their power bills. The government's lack of vision is apparent to many in the community. A number of ministers to whom I have spoken off the record are quite sensitive when challenged about the lack of vision. This state needs leadership that is able to grapple with the many challenges faced by this state and its economy.

A recent report by Business Vision 2010 highlighted some disturbing statistics in the area of prosperity, economic growth and quality of life in South Australia. The report says that our prosperity and economic growth are limited by the following factors: the incomes of South Australians are falling behind the rest of Australia; South Australians are earning less than any other Australians in almost every industry sector; South Australia's productivity is remaining at about 10 per cent below the rest of Australia; South Australia's labour force participation rates are falling behind the rest of Australia; and South Australia's employment growth is behind the rest of Australia. When I look at this report it tells me one thing: the current government is failing to meet the key challenges in South Australia and in 2006 it will be time for a new team to bring South Australia forward and present a vision that this government is unable to present.

The PRESIDENT: During the contribution of the last speaker there were some references—properly passionately held—about decisions made by the council. It is out of order to reflect on decisions made by the council, despite the fact that the member may or may not have supported them. I will talk to him to ensure that we do not have a repetition of that.

The Hon. J.M.A. LENSINK: In speaking on the Address in Reply to the Governor's speech I commend both the Governor (Marjorie Jackson-Nelson) and the Lieutenant-Governor (Bruno Krumins) for the dignified way in which they carry out their duties. I think they are a great asset as our heads of state, if that is the right terminology, in South Australia. As someone who has worked in a previous government knows, the speech is usually put together by different ministers, so it is much more a reflection on the elected government than on the Governor or Lieutenant Governor. I wish to address a number of things in the speech, and I will go through each in turn.

One of the opening statements was in relation to the creation of wealth, and the government stated that it supports the creation of wealth and opportunities and mentions individual prosperity, families and so forth. However, in the entire speech there is no reference to one of the great injustices taking place through ripping off land tax from a number of people who have worked very hard over many years to save for their own retirement. Many of those people are of multicultural backgrounds, and I declare an interest in that my parents are in that category and quite frequently complain about this to me. It is something that the government refuses to address.

Under the title 'Growing prosperity' the speech refers to sustained economic growth. There are lots of lovely phrases in this speech along those lines but, as basic economics would teach us, sustained economic growth will not occur in this state without sustained exports. As a number of members on this side of the house have pointed out to the government, the drop in exports is alarming, and the Leader of the Government in this house is now referring not just to targets but also to stretched targets and is expressing some doubt about the accuracy of the ABS statistics (presumably because they do not tell the story that the government wants to have told) and whether such targets may, in fact, be chased in the end at all.

I look forward with great interest to seeing more information on the review of traineeships and apprenticeships. When it was last in government the federal Labor Party decimated apprenticeships and traineeships, and I think this arises from the Labor philosophy that (as I think I might have heard across the chamber as an interjection) traineeships and apprenticeships are cheap labour. That shows a misunderstanding on the part of the Labor Party of the role that these schemes play within our community in training young people.

They are a very good way of young people finding their way into trade as an alternative path to university, which is not attainable for a lot of young people who might not be

academically inclined but might be very good in other ways. I wonder whether the Labor Party would rather just see everybody put through universities so that we end up without any tradespeople; and, as we know, we already have a shortage of skilled labour in this country.

Further down, the Social Inclusion Board and the Economic Development Board were referred to as 'mobilising the public sector' which I felt was an interesting euphemism given the difficulties that the government has expressed with the activity in relation to homelessness. I think that the Premier said that he was going to give public servants the equivalent of a kick up the backside for taking their time which, at the time, we said was not an appropriate way to refer to these things. It demonstrates the lack of leadership that puts public servants in a situation where they are an easy target for blame rather than the elected government taking responsibility.

I was pleased, as members on this side of the council would be, to see that the government will release a comprehensive strategic infrastructure plan. I think that such a plan is desperately needed because the level of infrastructure investment in our hospitals, transport and education systems has fallen behind as a number of projects were put on hold. It is a threat to a number of organisations in this state that are involved in construction. In relation to exports, the Lieutenant-Governor said:

> In recognition that it is the private sector that will be generating export growth, an industry-led Export Council has been established. . .

When I heard this comment I pricked up my ears, because I thought, 'Here we go. If the export target that has been set is not met, here is instantly someone else to blame.' It would be the private sector's fault, not the government's. As to sound financial management, the government was crowing about the state's finances being on a sound footing. I point out that it is on the back of property tax increases and the GST that this government has been able to fund a number of things because of the efforts of people who have saved for their own retirement through purchasing property, through the federal government's efforts with the GST and the previous state government.

As I have placed on the record before, Standard and Poor's in October last year rated South Australia at double A plus with a positive outlook. This was balanced on an extremely strong balance sheet, and the order of importance of the underlying factors were, first, privatisation of the state's electricity assets in 2000-01; and, secondly, an effort since privatisation to address some structural imbalances in the state's ongoing performance through more sustainable government revenue and spending policies.

Mental health, which, as we know, is in crisis, was also mentioned. Mental health is a very complex area. A couple of paragraphs down—and they probably should have been mentioned together—the issue of young offenders and repeat offenders was mentioned. This government has neglected that particular area where there are a number of people who are caught up in our court system who cross over with the mental health area. They need intensive intervention. I note that this government likes to borrow tricks and terminology from Tony Blair who once said that he wanted to be tough on crime and tough on the causes of crime.

I would say that this government has not been tough on the causes of crime at all, because we need to pay much greater attention to the issue of repeat offenders, why they end up back in the system and why they get there in the first place. There are a number of areas that have been highlighted by Frances Nelson who, rather than being thanked for her commitment to the cause, has just been vilified along with a number of other people who have been vilified in the past 12 months for pointing out that maybe the government does not have the right direction.

There has been much talk lately about flows for the River Murray. I point out that it was the Howard Liberal government that made the first commitment to any sort of funding for this vitally important cause and put its money on the table. Some of the states had to be dragged kicking and screaming, yet now they all want to claim credit for it. The South Australian Heritage Council was also mentioned, and we heard that we will be seeing legislation about this in the future, yet all the great funding announcements will be used for advisers, legislation and management. I have asked questions in this place before about whether that will equate to any tins of paint, but I think I will be left sadly wanting a correct response.

In relation to fostering creativity, I would like to be positive about this point and mention Baroness Professor Susan Greenfield. The Adelaide Thinkers in Residence was an initiative of Diana Laidlaw. I commend Professor Greenfield for her work in highlighting the need for us to concentrate on science and the benefits that it can bring to the state. As someone who graduated with a science degree, I think that it is an invaluable area on which we need to focus more, especially in relation to a number of our future industries. We will be able to reap a great deal in the future by doing that.

The Premier's reading challenge has been a farce. Once again, independent schools have been targeted by Labor—it is all very well for Labor people to be educated by the independent school system! I used to find it quite interesting when I debated young Labor people across the chamber in our mock parliaments that, when we did a headcount of who had attended independent schools and who had attended public schools, more often than not, more young Liberals had attended public schools than had attended independent schools. It suits members of the Labor Party to send their own kids to independent schools and to have been through the independent school system but, because they are an easy target, they pick on them, and therefore they have been excluded from the Premier's reading challenge, which is an absolute disgrace if they believe in equity and providing services to all the young children in this state.

A couple of areas that were sadly neglected within the speech were housing and people with disabilities. We know from a number of campaigns which have been highlighted to a number of members and some of the protests that we have received that those areas are not being addressed. For those areas to have been omitted is quite glaring. I finish by referring to a comment which Terry Plane (who could not be described as being conservative by any stretch of the imagination) made in his final column in *The Messenger*—and I have referred to this in part previously—that is, that generally governments achieve more zeal in their first year in office than in subsequent years when they become conservative. If that holds true, we have already seen the best of the Rann government. If that matches the rhetoric of this government which says that it is reformist and forward looking, then I think the people of South Australia are in dire trouble.

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

CRIMINAL LAW CONSOLIDATION (ABOLITION OF THE DRUNK'S DEFENCE) AMENDMENT BILL

Second reading.

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

That this bill be now read a second time.

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

Leave granted.

This Bill, as its title suggests, seeks to amend the criminal law to abolish what is commonly known as "the drunk's defence". To put it another way, the Bill seeks to overturn the majority decision of the High Court in *O'Connor* (1979) 146 CLR 64. That is not easy to do. The law to which we seek to return was itself complicated and controversial. To understand what the Bill seeks to do, it is necessary to look at the history of the law on intoxication as a "defence" to certain crimes.

The modern history on intoxication and criminal liability begins in 1920 with the decision in *Beard* [1920] AC 479. In that case, the accused was charged with murder. He was intoxicated at the time he committed the offence. The highest court in England was asked to review the law on the relationship between intoxication and criminal responsibility. The decision itself sparked a great deal of analysis and debate but, whatever the decision was supposed to mean, there is no doubt about what it was taken to mean.

The decision established the law to be the following. Almost all serious offences—with very few exceptions—require proof of some kind of criminal fault that is personal to the accused, commonly intention or knowledge. Serious offences are classified into two groups—crimes of "specific intent" and crimes of "basic intent". The rule is that the accused may use evidence of self-induced intoxication to show that he or she did not have the "specific intent" required for "specific intent" offences, but may not use evidence of self-induced intoxication to show that he or she did not have the "basic intent" required for "basic intent" offences".

That was the common law in Australia until 1979, when the High Court decided *O'Connor*. In that case, the accused was seen by an off-duty policeman opening the policeman's car and removing a map-holder and a folding knife from the glove-box. When the policeman asked the accused what he was doing, the accused fled. The policeman caught him and they struggled. In the course of the struggle, the policeman was stabbed with the knife. The accused said that he was heavily intoxicated through a combination of alcohol and tablets with hallucinogenic effect. The evidence of intoxication was, however, weak. He was charged with the offences of stealing and wounding with intent to resist arrest, both of which are offences of 'specific intent'. The trial judge directed the jury in accordance with the *Beard* rules. The jury believed that the defendant was so intoxicated that he did not form those specific intents required for those offences and, instead, convicted him of unlawful and malicious wounding, a crime of 'basic intent'.

The defendant appealed conviction on the ground that the *Beard* direction was wrong. The High Court split 4/3 on the question. The majority ruled that the *Beard* rules were wrong and that they should not be replaced with any special common law rules at all. If there were to be any changes to the common law general principles, they should be imposed by the Parliament. The result of this decision was that, at common law, intoxication could be used to deny, on the facts, that the accused had any kind of fault element for any kind of offence at all.

The Government believes as a matter of policy that this decision is wrong. It promised at the last election to reverse it. This Bill fulfils that promise. As with the *Beard* rules, the Bill does not say that intoxication is never relevant to criminal liability; it will be relevant in some cases and not others.

The policy behind the Bill is, however, easy to explain. In justifying the *Beard* rules in the later decision of *Majewski* [1977] AC 443, members of the House of Lords made statements with which the Government thoroughly agrees. For example:

> "If there were to be no penal sanction for any injury unlawfully inflicted under the complete mastery of drink or drugs, voluntarily taken, the social consequence could be appalling. … It would shock the public, it would certainly bring the law into contempt and it would certainly increase one of the really serious menaces facing society today.

and

> "If a man of his own volition takes a substance which causes him to cast off the restraints of reason and conscience, no wrong is done to him by holding him answerable criminally for any injury he may do while in that condition. His course of conduct in reducing himself by drugs and drink to that condition in my view supplies the evidence for *mens rea* [criminal fault], of guilty mind certainly sufficient for crimes of basic intent. … The drunkenness is itself an intrinsic, an integral part of the crime, the other part being the evidence of the unlawful use of force against the victim. Together they add up to criminal recklessness.

General public policy aside, another problem is that the common law may lead to undeserved acquittals. Some would say that it does not matter if the general principles are right if they get to the wrong result—or that the judgment that the principles are right is in itself shown to be wrong by their results. These acquittals are not common but they do occur—and when they occur, the public shows what it thinks of them. The decision in *O'Connor* itself caused a public controversy. More recently, there was the decision in the ACT Magistrates Court in a case known as *Nadruku*. The defendant was a prominent member of a professional rugby club. He began drinking in various licensed premises at about 1 p.m. on a Saturday. Just after midnight, the defendant struck two women within 10 minutes. He was charged with common assault. There was no doubt that he struck the women concerned. The case turned on intoxication. The ACT, like South Australia and Victoria, is ruled by the common law and hence the *O'Connor* principles.

The defendant gave evidence. He said that he was drinking at a rate of about three schooners of full strength beer an hour. He had about 12-20 of these and then consumed about half a bottle of wine, and then resumed drinking beer. He was understandably less precise about how much he consumed after that. He did not eat anything during that period, nor could he recall the assaults. There was good evidence that, by the time he was taken to the police station after the assaults, he was "comatose"—barely conscious. Expert evidence was also presented. The effect of it was that the blood alcohol level of the defendant at the time could have been anything from 0.3 to 0.4 and that such levels were capable of causing death from respiratory failure. The defendant had built up some tolerance to alcohol but must have been in a state of "alcoholic blackout" or "serious organic interruption in his brain". The Magistrate acquitted him, saying simply: "That the degree of intoxication is so overwhelming to the extent that the defendant, in my view, did not know what he did and did not form any intent as to what he was doing.".

The acquittal provoked some outrage—not least from the Magistrate himself. Although not commenting on the law, he said of the defendant's behaviour: "The two young ladies were unsuspecting victims of drunken thuggery, effectively both being king hit. The assaults were a disgraceful act of cowardice.

Not only are these acquittals, although rare, unacceptable, but the fact that the current law makes them possible is unacceptable. The law must be changed to accord with what the public expects of it. It is clear that the public does not condone drunken violence. Nor will this Government. The question is not whether to do something—the question is what to do.

A moment's thought will show that complete abolition is not an acceptable answer. Suppose one of the women hit by Nadruku had died. If the law was such that intoxication was wholly irrelevant to criminal responsibility, Nadruku would be deemed guilty of murder. That would not be the right result. It would, wrongly, classify Nadruku together with those who kill intentionally or recklessly. That would not only value his conduct wrongly, it would devalue theirs. No comparable jurisdiction has ever taken that position. The hypothetical Nadruku may be a thug, but he is not a murderer. On the other hand, it would not violate commonsense to classify him with those who cause death by dangerous driving or other criminally negligent behaviour and convict him of manslaughter. And, if death did not occur, it does not violate commonsense to convict him of assault.

But how do we get to that result? An obvious alternative would be to return to the *Beard/Majewski* rules which governed the common law position in Australia and hence in South Australia

between 1920 and 1979. In general terms, those rules would acquit of murder and convict of manslaughter. This may be the right result, but such an option poses problems that I will enumerate.

1 The basic principles of general criminal responsibility have changed and become more complicated than when *Beard* was decided. For example, in the last 50 years, the common law developed the notion that the act which caused the crime must be committed "voluntarily" for liability to attach. Notable examples of involuntariness which defined, and continue to be at the centre of, the genre were sleepwalking, spasms or convulsions, concussion and, more controversially, reflex actions and hysterical dissociation. It is also clear that a person may be so intoxicated by drink or drugs (or both) so as to act involuntarily. The *Beard* rules do not cope with this. If the law is to be changed, voluntariness must be addressed. In essence, this must mean that the voluntariness of any act would be assessed on the fictional basis that the accused was sober and, hence, it would be presumed that the accused acted voluntarily.

2 The law on criminal fault has also changed. In Australia, there has been less stress on intent and more on liability for recklessness. The *Beard* rules do not address this at all. That has not been a problem in England, because the English definition of recklessness, until very recently, judged the accused against the standard of conduct expected of a reasonable person and, of course, the reasonable person is not intoxicated. In Australia, the test for recklessness does not include reference to a reasonable person. This too must be addressed in any solution.

3 More fundamentally, the major problem with framing the *Beard* rules into legislation is that no-one can agree on what is and what is not "basic intent" and "specific intent". How then did the rules work? The answer is that, in practice, before *O'Connor*, where the *Beard* rules applied, the classification of offences into those of "specific intent", where the accused could argue intoxication, and those of "basic intent", where the accused could not argue intoxication, was done by simply listing all the offences that had been the subject of judicial decision. Over the years, the courts had decided a great number of appeals on the subject and, while the general principles were unintelligible, authority decided the classification of the offence. If there was no authority, one waited for it.

Clearly, then, the *Beard* rules pose formidable difficulties. But there is an alternative. The Model Criminal Code Officers Committee was directed by the Standing Committee of Attorneys General to devise a solution. It did so. It has an effect similar to the *Beard* rules, but not identical. The basis of this solution is an attempt to define "basic intent" rather than try to define the slippery notion of "specific intent". The result is that self-induced intoxication cannot be taken into account to deny voluntariness and the intention with which the act was done, but can be taken into account to deny any other fault element, whatever that might be. It is this approach to reinstating a version of the *Beard* rules that forms the basis of the amendments proposed by this Bill.

The general principles work in the following way. All serious criminal offences consist of "physical elements" and "fault elements". Together, these elements make up a crime. All physical elements and all fault elements must be present at more or less the same time to make a person guilty of the crime. These elements are set by the *legal* definition of the offence. In South Australia, the crime and, hence, its elements, may be set out in legislation by Parliament or they may be wholly created by judges at common law, or they may be a mixture of both sources. In general terms, physical elements describe or define matters or events external to the accused. In equally general terms, fault elements describe or define either the state of mind *of the accused* in relation to the offence that must be proved for guilt to attach, or a hypothetical state of mind by which the accused must be legally judged for guilt to attach.

Physical elements may be conduct and circumstances that describe conduct or consequences, or both. Conduct may consist of an act, an omission or a state of affairs, but is usually an act. Fault elements often attach to these physical elements. Invariably, for example, an act must be done intentionally for criminal liability to attach. An act must also be done "voluntarily" in the sense described before. This can be illustrated by the crime of murder. Generally, so far as physical elements are concerned, murder has two physical elements. It requires proof of any act (the conduct) that causes death (the result). Murder has no legal element that is a circumstance. Fault elements attach to these physical elements. The act must be done intentionally. There are various alternative fault elements for the result, but an intention to kill, recklessness as to death, an intention to cause grievous bodily harm, or recklessness as to the causing of grievous bodily harm, will all suffice. As a matter of completeness, there is also a category of constructive murder but, for present purposes, that can be left aside.

The key to the proposal contained in the Bill is in proposed section 268(2). The effect of it is that, if (a) the prosecution establishes the physical elements of the offence against the accused (called in this Act the "objective elements of the offence") and (b) the accused is grossly impaired by self-induced intoxication, then (c) the conduct (act, omission or state of affairs) is assumed to be both intentional and voluntary. As the example points out, that does not necessarily mean that the accused will be guilty of the whole offence. If the crime alleged requires proof of fault for a circumstance or a result, for example, the fault elements for that circumstance or result are not presumed, and it is open for the accused to deny those fault elements by reason of self-induced intoxication.

In the case of homicide, as the example points out, that means that the accused cannot use self-induced intoxication to deny that the act that caused death was both voluntary and intended. The accused can, however, use self-induced intoxication to deny any fault required as to the result caused by his or her act. Ordinarily, that will not avail much, for there is a natural alternative lesser offence of manslaughter, which requires proof of criminal negligence as to the result. It is not possible to use self-induced intoxication as an answer to an allegation of criminal negligence.

That fact explains proposed section 268(4) and (5). The aim of these subsections is to provide negligence based fall-back offences for offences against the person. Since these fall-back offences require, for liability to be established, only criminal negligence as to the resulting harm, the accused cannot plead intoxication to deny the required fault element.

Three further matters require comment. The first is a refinement of what it means to analyse the legal elements of an offence in this way. Under the proposed scheme, self-induced intoxication is relevant to fault as to results. In this it reaches the same position as does the rule based on "specific intent". The difficulty with the proposed scheme lies in the distinction between conduct on the one hand and circumstances on the other hand. This problem was never confronted by the *Beard* rules and needs more detailed explanation. The line between what is conduct and what is a circumstance—and, therefore, what is fault as to conduct ("basic intent") and what is fault as to a circumstance (not "basic intent") is neither fixed nor easy to draw. For example, it might be thought, for the offence of illegal use of a motor vehicle, that the fact that it was a motor vehicle as opposed to anything else is so tied up with the act of illegal use that the fact of being a motor vehicle is part of the act. On the other hand, it might be thought that, for an offence of illegally catching undersized lobster, that it was undersized lobster that was caught is sufficiently independent from the act of taking it as to warrant saying that the fact that it was undersized lobster is not part of the act of catching but a separate element of the offence. This sort of analysis is a matter of degree. It will be a question of law to be decided for any given offence. It is clearly not possible to state in this Bill what the result for all cases will be. It will have to be left to judicial determination.

The second matter that requires mention is the problem of fault elements that have no physical elements. These are quite common. They are commonly expressed as doing something "with intent to" do something else. The result need not have actually happened. What is punished is the doing of the act with the intention of achieving the forbidden result. A good example is wounding with intent to cause grievous bodily harm. It is not necessary that any grievous bodily harm actually happened. What is punished is the wounding with the intent that it would happen. Under both *Beard* rules and the proposed scheme, intoxication can be used to deny the further intent, but cannot be used to deny the intention to commit the act performed—in the example, the wounding.

The third matter that requires comment is the confusion that sometimes arises between an act and its consequences. For example, the offence of malicious wounding can, it could be argued, be viewed in two distinct ways. The first way is that the act is the wounding itself. If this view is taken then, under the *Beard* rules and the proposed scheme in this Bill, an accused could not deny forming an intention to wound by claiming that he or she was intoxicated at

the time. The second way is to separate the act from its result—the causing of the wound. If this view is taken, then the wounding becomes a result and, under the *Beard* rules and the proposed scheme in this Bill, an accused could deny forming an intention to wound by claiming that he or she was intoxicated at the time.

This is a real problem. Under traditional intoxication rules before *O'Connor*, the first view is the correct one. But that position was complicated (unintentionally) by developments in the 1960s and 1970s. At that time, the common law courts were developing the role of recklessness in the criminal law as a supplement to intention and knowledge and, in so doing, widening the basis of criminal responsibility. That was true of a number of offences, but among them were wounding and assault. For the courts to reach the position where an assault or a wounding could be committed recklessly, they had to separate the act from its results. This was so because, as a matter of common-sense, people do not *act* recklessly. They act intentionally or knowingly, being reckless as to the consequences of what they do. Reckless drivers are not reckless about the act of driving—they are reckless about the consequences of their intentional act of driving. So to have reckless wounding, for example, the courts separated the act and its wounding effect. A good example is *Hoskin* (1974) 9 SASR 531. What the courts did not pick up was that, in so doing, they created an anomaly in the area of intoxication—for if wounding (for example) was an act and a result, then the fault in relation to the result *should have been* a specific intent. The anomaly was never addressed because *O'Connor* removed the need to address it a few years later and because there was very well established law that wounding was a crime of basic intent, however analysed.

The closest anyone came to finding that this problem existed was Barwick CJ in *O'Connor* itself. He said (at 76-77):

> Further, the question distinguishes in relation to intent, between the physical act and its result as embodied in the indictment or charge: it speaks of the act constituting the assault. This precision in statement may, in my opinion, be important. In the present case, for example, the conviction is of unlawful wounding. But the physical act which supported it was the stabbing with a knife. Doubtless, such an act would be likely to wound. But in relation to intent, it is important, none the less, I think, to distinguish between an intent to use the knife and an intent to wound. In a sense, wounding is a result of the stabbing: perhaps an immediate result. In what follows, I have taken a minimal position in relation to intent and say that at the least an intent to do the physical act involved in the crime charged is indispensable to criminal responsibility. It thus becomes unnecessary for me to discuss in relation, for example, to a charge of unlawful wounding, whether or no there must be an actual intent to wound; that is to say, an intent to produce the described result of the physical act which is intended to be done.
>
> This is not to say that, in my opinion, an intent to produce a result is not included in the relevant mens rea. In relation to many charges of what are styled crimes of "basic intent" an intent to produce a result will be found to be necessary from the very description of the crime. It may be that such an intent is universally required. But, for the purpose of the present discussion, it seems to me to be unnecessary to explore that question. It suffices for my present purposes that at least an intention to do the physical act involved in the crime charged is indispensable to criminal responsibility.

Of course, Barwick CJ did not need to resolve this problem. His decision, and that of the court, made it unnecessary to do so, for the old rules requiring the distinction were swept aside. Restoring the law does require a solution. It must be that an "immediate result" of the kind referred to by His Honour is a part of the act. The purpose of this Bill is to restore a set of rules very close to the old *Beard* rules. The old rules were anomalous in some ways. This was one of them. Pure logic cannot be applied in every situation. Wounding and assault should be treated as if they simply required an intentional and voluntary act, namely to wound and assault respectively, for the purposes of the drunk's defence, whatever may be the position as to liability for reckless behaviour. That has always been the position under the *Beard* rules and is intended to be restored under this Bill.

This is undeniably difficult law. But it always was difficult law. The Government promised to remove the drunk's defence. This Bill is designed to restore the common law before the decision in *O'Connor* so far as that is possible.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

4—Amendment of s 267A—Definitions

This clause inserts a number of definitions of words and phrases for the purposes of the proposed amendment to section 268. In particular, proposed subsection (2) provides that intoxication resulting from the ***recreational use*** of a ***drug*** (defined to include alcohol) is to be regarded as self-induced. Proposed subsection (3) provides that if a person becomes intoxicated as a result of the combined effect of the therapeutic consumption of a drug and the recreational use of the same or another drug, the intoxication will still be regarded as self-induced.

5—Amendment of section 268—Mental element of offence to be presumed in certain cases

Current subsection (2) is to be deleted and new subsections substituted. Proposed new subsection (2) provides that if the objective elements of an alleged offence are established against a defendant but the defendant's consciousness was (or may have been) impaired by self-induced intoxication to the point of criminal irresponsibility at the time of the alleged offence, the defendant is nevertheless to be convicted of the offence if the defendant would, if his or her conduct had been voluntary and intended, have been guilty of the offence.

New subsection (3) provides that new subsection (2) does not, however, extend to a case in which it is necessary to establish that the defendant foresaw the consequences of his/her conduct or was aware of the circumstances surrounding his/her conduct.

New subsection (4) provides that if—

(a) the objective elements of an alleged offence are established against a defendant but the defendant's consciousness was (or may have been) impaired by self-induced intoxication to the point of criminal irresponsibility at the time of the alleged offence; and

(b) the defendant's conduct resulted in death; and

(c) the defendant is not liable to be convicted of the offence under subsection (1) or (2); and

(d) the defendant's conduct, if judged by the standard appropriate to a reasonable and sober person in the defendant's position, falls so short of that standard that it amounts to criminal negligence,

the defendant may be convicted of manslaughter and liable to imprisonment for life.

New subsection (5) substantively mirrors new subsection (4) except that it relates to conduct that results in serious harm (rather than death) to a victim. Such conduct would constitute the offence of causing serious harm by criminal negligence, the maximum penalty for which is imprisonment for 4 years.

Proposed new subsection (6) provides that a defendant's consciousness is taken to have been impaired to the point of criminal irresponsibility at the time of the alleged offence if it is impaired to the extent necessary at common law for an acquittal by reason only of the defendant's intoxication.

6—Amendment of section 269—Question of intoxication must be specifically raised

The amendment proposed to section 269(1) would mean that the question of intoxication may be put to the jury if either the defendant or prosecutor specifically asks for that to occur. The current situation is that only the defendant can ask that the matter of intoxication be so put.

The Hon. A.J. REDFORD: Mr President, I draw your attention to the state of the council.

A quorum having been formed:

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

That standing orders be so far suspended as to enable the bill to pass through its remaining stages without delay, or at least until the debate is adjourned.

Motion carried.

The Hon. IAN GILFILLAN: I indicate the Democrats' opposition to this bill. Our attitude to it has been clearly expressed previously. We have grave concerns about the title of the bill. I find it almost too distasteful to use the bill's name in this place. We find ourselves confronted with bill after nonsense bill, dangerous bills that attack the foundations of our legal system, and this one is a prime example. There is no 'drunk's defence' per se. The 'drunk's defence' is a misnomer in the title of the bill, an erroneous statement not borne out by the facts. The so-called 'drunk's defence' is a furphy created by unscrupulous parties to add to the fear and hysteria surrounding law and order in this country. I would like to turn to the South Australian Law Society's opinion on this bill as provided to the Attorney-General's Office. It states:

> . . . the Bill is an unnecessary and extreme response to a perceived problem which rarely arises in the criminal justice system.

The question must be asked: how rare is this problem? Does it exist at all? The answer is that in South Australia it has never occurred. We are introducing a bill to deal with a so-called mischief which has never occurred. The Law Society points out that there is one case in the ACT Magistrate's Court—a case which sets no precedent for any other Australian jurisdiction—where someone was found to have been so intoxicated that he could not have formed the criminal intent to carry out his actions.

The reality is that juries manage this piece of their work very well. Juries are not going to acquit because someone needed to consume a large amount of so-called Dutch courage before committing a crime. Apparently, the Attorney-General does not trust juries—that is the gist of this bill—and, as a result, we have a confusing hodgepodge of nonsense. What is the risk of this so-called hodgepodge? I again turn to the Law Society's opinion, which states:

> At the heart of our democratic system of justice are certain fundamental rights which every South Australian is entitled to take for granted. One such right (which this Bill seeks to abolish) is the notion that a person should not be convicted of a criminal offence unless that person intentionally acts in such a way as to break the law. The proposed legislation seeks to convict people who do not intend to commit crimes.

So, we find at the odious heart of this bill proof of the Attorney-General's discomfort with the Australian legal system and his ongoing willingness to interfere with fundamental legal rights.

I am not quite sure that it is as sophisticated as that. I think this is another example of a knee-jerk reaction whereby the government—I will not accuse all the members of the government in this place and any other place of sharing that view—believes that the way to fulfil its role is to adopt a knee-jerk, populist, sensational headline grabbing approach on any issue where it has previously calculated that it will be to its political advantage to do so.

It is very easy to sell on late night radio jock programs. You portray that, because people are intoxicated, they are acquitted of horrendous crimes. Who is going to argue and say, 'On no, that's not right'? This is a classic example of what this government has virtually firmly entrenched in its reputation as a spurious knee-jerk reaction which is very damaging to long-term balance in the justice system of South Australia. To take a little kudos: it really proves, yet again, the essential need for the balanced justice conferences, which I conduct in this place from time to time—I know, Mr President, that you have attended several—in an attempt to get some balanced debate and discussion on issues such as this.

I am sorry that some of our colleagues have not been able to avail themselves of these balanced justice conferences, because I believe that, if they did and if they took part in the debate, they would realise (as have the Democrats) that this legislation is an insult to the parliament and should be thrown out.

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

SITTINGS AND BUSINESS

Adjourned debate on motion of Hon. P. Holloway:

That, unless otherwise ordered, for the duration of this session—

1. The council meets for the dispatch of business on Monday at 2:15 p.m.; and
2. Government business shall on Mondays be entitled to take precedence on the *Notice Paper* of all other business.

(Continued from 15 September. Page 58.)

The Hon. R.I. LUCAS (Leader of the Opposition): In speaking to this motion I indicate that the Liberal members share some of the concerns that have been expressed by the Leader of the Australian Democrats. It might surprise you, Mr President, and other members of this chamber to know that the Liberal members' preferred position when this was first debated was that the council continue to sit three days a week but for more weeks in the year and that, if there were to be an intention from the government of the day that there should be an increase in the number of sitting days in a year, that should be achieved by an increased number of sitting weeks but continuing to work on the basis of a three-day sitting week.

The Labor Party does not have many members within its ranks who represent country areas, but for country members the difficulty of having to spend four days in a week in Adelaide is significant in terms of representing their electorates and also in terms of balancing their family and work requirements. If I could also speak on behalf of the majority of members who live and work in the city, many city-based members in the House of Assembly have put the view to me that they would prefer to have the Monday and Friday available to work in their electorates. That is a better balance, as they would put it, for electorate work as opposed to parliamentary work when the parliament sits.

We do not think that increasing the number of sitting weeks in a year is too onerous a responsibility for members. I do not have the exact numbers at my fingertips, but I suspect that we sit for about 17 weeks in a year; it depends on whether or not members count the two weeks that estimates sit. I think the Legislative Council sat two days in one week and two days in another week, so whether you count them as two sitting weeks or one is a technical argument. We sit for about 17 weeks. If we wanted to increase the number of sitting days with a three-day sitting week, we do not think it is too onerous for members to sit for approximately 21 or 22 weeks in a year. There are still many other weeks in a 52-week year when members of parliament (who are not taking many other tasks other than just sitting in parliament, I hasten to add) could undertake all their responsibilities, as well as their parliamentary responsibilities. A sitting schedule of 21 or 22 weeks in a year would still allow plenty of time for ministers to undertake their minister-

ial responsibilities, as opposed to their parliamentary responsibilities.

The simple reason why this government would not allow the opposition's proposition, as I understand it, is that it has the support of the member for Mount Gambier and I think—I am not entirely certain of this—the member for Chaffey in terms of their particular point of view on this issue. The simple answer is that the Rann government does not want to expose itself to increased sitting weeks in the parliament, because it means an extended period of question time over a longer time. The Rann government, sadly, has demonstrated in its three years an unwillingness to be open and accountable in many areas. We have seen it in relation to its approach on freedom of information. It refused for almost two years to answer simple questions, such as, 'Who works in your office? What are they paid? How much do you spend on overseas trips and renovations?' They are relatively simple requests about which previous governments have been open and accountable, but this administration is unprepared and unwilling to be open and accountable. It is for those reasons that the government is unwilling to extend the number of sitting weeks.

No logical reason was given by the Leader of the Government when he spoke to the motion—or indeed anyone—as to why the four sitting days in a week experiment is supposedly working. I think most members—Labor, Liberal and Independent—believe it has not worked. On most occasions both houses sit on a Monday. In the early part of the session the Legislative Council sits, and the Leader of the Government is desperately trying to find things to do on the Monday afternoon. There is a logical reason for that, as well. The caucuses of both major parties do not meet until Tuesday morning. The Labor government caucus does not meet until Tuesday morning and the Liberal Party's joint party room meeting does not occur until Tuesday morning, and, inevitably, key decisions are taken at the party meeting. Therefore, during debate on the Monday, government and opposition members can only say, 'We are not yet in a position to indicate where we are in relation to this.'

Why do the caucuses not meet on the Monday morning? There is a combination of factors. The government has cabinet, and issues such as that necessarily have to be factored into the program. Both parties have country members who have to travel and also have to do some work in their electorates, in terms of the weeks when parliament is sitting. Increasingly, there are a number of factors with this experiment which have demonstrated why the four day sitting week has not worked as well as those who originally supported it would like. That is why we are sympathetic to some of the propositions put forward by the Hon. Sandra Kanck. That has been our position and continues to be our position.

The reason why at this stage Liberal members will support the motion is that, if we did not—and clearly we have the numbers to defeat it, with the support of the Democrats and Independent members—we would potentially as a council leave ourselves exposed to the position where the media, led by *The Advertiser* and others that have no great love of the Legislative Council as an institution, would say, 'The Legislative Councillors are too lazy to sit for the day; members of the House of Assembly are prepared to work, but the Legislative Councillors want another day's holiday and are not prepared to work'.

We are not a position to force or impose extra sitting weeks. It makes sense to have both chambers sitting in sync, if I can put it like that. I concede that we have some changes towards the end of the session but, by and large, this debate is or should be one for the parliament as a whole. Ultimately, we can take a different point of view, but I would prefer this to be resolved more broadly for the parliament. Do we continue to sit 17 four-day weeks or maybe 21 or 22 three-day weeks as a compromise in terms of getting the number of sitting days that might be required?

On behalf of Liberal members, we support the direction and the statements made by the Hon. Sandra Kanck. The issue of three-day weeks has been our position right from the word go. We do support extended sitting weeks. We are not going to support the opposition, but we will support the motion, because we do not want to expose the Legislative Council as an institution or Legislative Councillors to what I would deem to be ill-informed criticism that we are not prepared to undertake the same amount of work that House of Assembly members are in terms of the number of sitting days.

The Hon. NICK XENOPHON: At the risk of horrifying the Leader of the Opposition, I am substantially in agreement with the position he has set out. I think it is a very sensible position—

The Hon. R.I. Lucas: Amazing!

The Hon. NICK XENOPHON: I can feel a personal explanation coming on from the Leader of the Opposition. I have long been an advocate for an increased number of sitting days, and in the previous parliament with the previous government I moved to ensure that there was a minimum number of sitting days, but that was not supported by the major parties. I was pleased to see an increase in the number of sitting days with this government—it is an improvement over what occurred with the previous government and, indeed, under previous Labor administrations over the years if you look at the statistics in terms of the number of sitting days. However, as an experiment I think it could have worked much better in terms of accountability if there were an increased number of sitting weeks to ensure that the executive arm of government was made accountable and that we did not have large breaks between sitting weeks.

I think what the honourable Leader of the Opposition has said is eminently sensible, but for the same reasons I cannot support the position of the leader of the Australian Democrats. It would be misconstrued if we were out of sync with the House of Assembly and I do not think that is desirable, but I urge the major parties to consider the issue of the four day sitting week and to look at having an increased number of sitting weeks on the basis of three day weeks. I think that would enhance accountability and would mean more regular scrutiny of the executive arm of government. That is what this and the other place should be about in our Westminster system, and for those reasons I cannot support the views of the Hon. Sandra Kanck, although she does make some very good points, as does the Leader of the Opposition. I think that we ought to revisit the basis of the sitting weeks to ensure that we have as many, if not more, sitting days but do it on a three day per week basis.

The Hon. A.J. REDFORD: I agree with the sentiments expressed by my leader, the Hon. Rob Lucas, but there is one issue I think we should take into account when dealing with our sitting times, and that is the way this parliament, in particular, is structured. We have a lack of ministers in this place, and since the last election we are finding that the bulk

of legislation introduced into this parliament is introduced in the lower house. In the first few weeks of a session or a sitting period we are seeing that the lower house—the House of Assembly—sits for extended hours while we get up relatively early. I am sure it has been noted by some—

The Hon. P. Holloway: That has always been the case, though.

The Hon. A.J. REDFORD: That is exactly right. I have put to the Leader of the Government—and I have put it in my own personal capacity on previous occasions, not on behalf of the Liberal party—that it might be sensible if as the Legislative Council we came up with a sitting regime that dealt with that specific issue. That is, I do not see any reason why we need to sit for even three days this week—we certainly do not need to sit for four days next week. But, towards the end of the session we could slot in extra weeks for the Legislative Council to deal with the business that is brought before us in a more reasonable fashion. It seems to me that if the Legislative Council just showed a little bit of foresight it could actually sit three days a week for more weeks, particularly towards the end of a session. That would enable us to deal with the government business in a reasonable fashion.

I know that members here have all experienced occasions when we have sat when the lower house has not—we did that last year. I do not know whether other members share this view, but I have to say that when we are sitting in the absence of the lower house—for all sorts of reasons, and I make no criticism—we seem to work better together, we seem to get through the business in a more efficient way, and we seem to be able to deal with our debates more appropriately. My experience and my view is that, when we sit down and think about how this ought to operate, the Legislative Council ought to sit for as many days as we do now, but we ought to sit three days a week and have more weeks where we sit—and some weeks in the absence of the other place—towards the end of the session. That would be a reasonable way within which we could deal with our business. The two ministers who are here would have more time to deal with their ministerial business, and I know that they have particularly onerous and heavy workloads.

I think that would be something well worth looking at. I know that the argument might go that they do not want us sitting at different times, because that extends the number of sitting weeks and that could cause political problems (and I know that this government would not be as cynical as to think that), but at the end of the day I am not sure that is actually the case. With great respect to the leader of the government, I just think it would be more reasonable for us to sit three days a week and add in what we lose in sitting days with, say, two or three extra weeks of sitting towards the end of a session. I urge the government to sit down and think about that, because there is no reason for us to be entirely in step with what happens in the other place.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank honourable members for their comments, and it might surprise them that I do actually agree with a lot of things that have been said. I think that the four-day week has been somewhat of a mixed success. This government certainly gave a commitment to sit for more days, and we have done that. We sit for about 70 days a year. In the past, not just with the previous government but with other governments, I think the number of sitting days has been as low as down in the 30s, particularly when there have been elections. This government has honoured its commitment to sit that minimum number of times. However, there are some problems if you extend the number of sitting weeks, which is the only other way in which you can increase the number of days, other than sitting four days a week, particularly for ministers who have to attend ministerial conferences. It is often difficult to work a program around that, particularly when one takes out the usual adjournments we have over the Christmas-New Year period, as well as the winter recess, which is accepted as being a time when members can organise visits and so on.

Another thing that needs to be considered is that we have the budget session, which is obviously a busy time for government ministers, in particular, with the preparation of the budget when there are lengthy meetings at that time. It is important for good government, if for nothing else, that we have the time during that period, particularly for the ministers, to be able to devote themselves to those causes. Nevertheless, I agree with some of the sentiments expressed that we could perhaps try to do something else in the future. The rules we adopt now will essentially carry us through to about this time next year, and at that point in time we will not be that far away from the next election—it will be the remainder of 2005 and we will almost be into the next election. However, I would expect that after the next election, whatever the outcome of that might be, there will be changes. I am certainly not suggesting that we have things absolutely right now, and I for one agree with those who think we could do it a little better.

In relation to comments made by the Hon. Angus Redford about balancing the program, I have actually tried to do that over this session. It is not really such an issue now at the start of the session in the middle of a four-year period, because we have a number of bills which were part way through discussion in the previous parliament which we can introduce. If one looks at the *Notice Paper*, there are already 10 items, other than the Address in Reply, and I would expect that next week we will be able to move into the discussion of legislation. So, it is not so much an issue for us at this time, at the start of the session, because we have those bills carrying over.

In relation to the problem referred to by the Hon. Angus Redford, although there are only two ministers in this place, we have the capacity to introduce bills in the council that might be introduced by other minister in the lower house, and that is what I employed at the start of last session, for example, to ensure that there is some balance in the workload. So, there are other ways around it.

The other point I would make is that, by sitting these additional days, particularly the four-days a week, at least it has put more rationality into the time we sit. In fact, I have looked at the figures, and the number of hours we have sat has not been all that much greater than when we sat fewer days in the past. However, what it does mean is that the hours we do sit are much more reasonable. In other words, during the 2½ years this government has been in office, you could count on the fingers of one hand the number of times we have sat beyond midnight—I think we have gone beyond 11.30 or midnight on only about three occasions. Even then, it has usually been on the last day of the sitting, when we have had to complete the business.

Since we have had the new system, we have not had the criticism of 'legislation by exhaustion', where parliament sits into the early hours of the morning, and I think that needs to be weighed up against the comments that have been made. Further, I cannot let this opportunity pass without observing

that under the previous government, when the parliament tried to increase the number of sitting days, there was no more vehement opponent than the Hon. Rob Lucas. So, I think one can take his comments on this debate with a grain of salt.

This government promised to increase the number of sitting days, and we have done that. I concede that the formula is not necessarily ideal, and perhaps we can find some way of improving it, perhaps along the lines suggested by the Hon. Angus Redford, by weighting the sittings more towards the end of the session rather than the start of the session, and that is something we can look at in the future.

Finally, I will make a couple of other comments in relation to the debate. I do not necessarily concede that the four-day week is more onerous for country members than the three-day week. If we are sitting the same number of days but have to be here more often, that will involve more travel for those country members. Arguably, they will spend a lot more time travelling than they would if we were sitting fewer weeks, so they will arguably spend less time travelling.

The Hon. A.J. Redford: That is not what they say.

The Hon. P. HOLLOWAY: I know that but, if you are sitting for 23 weeks rather than 17 weeks, you have 23 trips rather than 17.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: They may not support it, but the point I am making is that they do not necessarily concede that, ipso facto, if you are sitting more weeks, there will be more travel involved, particularly for those members who live in the more remote parts of the state, and that must inevitably mean that there is more time away from electorates. However, these are things we can consider.

Members interjecting:

The PRESIDENT: Order! I will be forced to make a presidential statement about this matter.

The Hon. P. HOLLOWAY: As I say, I appreciate the comments that have been made, because this affects us all. If we can find a better way of organising it, let us do so. But it is not as easy as members would think to build our program of sitting weeks around many factors. Members should remember that the Democrats originally criticised it and did not want us to sit during school holidays, so this year we agreed to that to allow families to have their time and for members to be able to see their children. So, we removed those weeks and do not sit during the school holidays. The government made that concession and that is fine and we have no problem with it, but it reduces the number of weeks available to sit. I am happy to further discuss this with members in the future.

In conclusion, I thank members for their indications that they will allow this motion to pass, even if it is without any great enthusiasm, and I indicate that I am happy to discuss with members suggestions for better arrangements.

Members interjecting:

The PRESIDENT: Order! I am sure we would all much prefer to have four days of interjection rather than three days.

Motion carried.

PITJANTJATJARA LAND RIGHTS (REGULATED SUBSTANCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 September. Page 60.)

The Hon. R.D. LAWSON: I rise to indicate that members of the Liberal Party will support the bill.

Members interjecting:

The PRESIDENT: Order!

The Hon. A.J. REDFORD: Mr President, I am finding it really difficult to hear the speaker over the gaggle of voices on the other side.

The PRESIDENT: Order! There is too much audible interjection on my right.

The Hon. R.D. LAWSON: Notwithstanding the fact—

The Hon. G.E. Gago interjecting:

The PRESIDENT: Order! The Hon. Mrs Gago will cease to apply the lash.

The Hon. G.E. Gago interjecting:

The PRESIDENT: Order! The Hon. Gail Gago will come to order.

The Hon. R.D. LAWSON: Notwithstanding our support, this is a cynical measure and a publicity stunt. In effect, it gives a band-aid to a person suffering multiple complex injuries. Why is it cynical? This legislation increases the penalties for the supply of petrol for the purpose of inhalation on the Anangu Pitjantjatjara Yankunytjatjara lands and gives police the power to seize motor vehicles which might be used in connection with the supply of these illicit substances.

We are cynical about this measure because it arises out of a visit by the Premier to the lands in April this year. The Premier was accompanied by the media and he said, 'We are going to get tough on petrol sniffing in the lands and will seize the motor vehicles of people engaged in this trade, and we will introduce legislation to do that.' I remind the council that this was the same visit during which the Premier also went to Pukatja (which, many members will know, is the old settlement of Ernabella) and was due to meet the community council there. We know what happened during that visit from a letter sent to the Premier on 30 May by the municipal services officer of the community. Her letter states:

> When you visited the lands at the end of April we were looking forward to meeting you after we received a fax at the Pukatja community office telling us to expect you. I got the council members ready for a meeting with you and we had the kettle boiling for a cup of tea. When you didn't arrive I drove across the creek to see where you were and found you outside the TAFE building in front of the newspaper cameras. Unfortunately, I didn't see you again.

That is the attitude of this government to the people on the lands—get good footage on the television cameras and news bulletins here in Adelaide but do not be too concerned about what actually happens on the lands. Talk tough but do nothing.

Speaking of talking tough, the Premier told the cameras, 'We are going to introduce legislation to give the police the power to seize vehicles being used in the petrol trade on the lands.' What does the existing legislation say? The Pitjantjatjara Land Rights Act 1981 has a special section, section 42d, which provides:

> (1) A person shall not be in possession of petrol on the lands for the purpose of inhalation.

There is a penalty of $100, and we certainly agree that is an inadequate penalty, and in this bill before the council the penalty has been increased. Section 42d also provides:

> (2) A person shall not sell or supply petrol to another person. . . if there are reasonable grounds for suspecting that—

the petrol is to be used for the purpose of inhalation. That offence carries a fine of $2 000 or imprisonment for two years. Again, we agree that that is an inadequate penalty

today for dealing in petrol for the purpose of inhalation. The section goes on to provide:

(3) A member of the police force or a person acting under the authority of a member of the police force may confiscate and dispose of any petrol that he or she reasonably suspects is to be used—

for that purpose. Section 43 goes on to say that the government may make regulations relating to the policing of these provisions and provides:

(7) A member of the police force may seize and impound any vehicle reasonably suspected of having been used in connection with the supply of alcoholic liquor to any person on the lands in contravention of a by-law.

So here is a power that already exists in relation to the trafficking of alcohol. The regulation-making power is quite wide. There is also a power in the Anangu Pitjantjatjara corporate body established under the act to make by-laws relating to the sale of petrol or any other illicit substance.

In response to the recommendations made by the Coroner in September 2002, and because the government had done nothing about the matter, in May I introduced an amendment to the Public Intoxication Act. The effect of that was to bring under the Public Intoxication Act petrol for the purpose of inhalation and to give it the powers that are conferred under that act to deal with the problems of substance abuse, and to give the police and authorities appropriate powers. The government did not debate that legislation, which was introduced solely in response to a recommendation of the Coroner. However, I noticed that unannounced and without any fanfare after 20 years the government made the regulation on 24 July this year under the Public Intoxication Act to include petrol as a substance under the Public Intoxication Act.

I welcome the fact that the government did that, but I deplore the fact that it did it behind the backdoor belatedly and notwithstanding that the recommendation had been made many months before; and notwithstanding the fact that it has not yet put in place any mechanism for appropriate detoxification and drying out facilities for those people on the lands. This is a cynical measure by this government. It is a band-aid because it is all very well to talk tough about seizing vehicles. Has it seized vehicles in the past under the existing powers? Has it actually effectively policed these provisions? It was only after the tragic deaths in March this year of a further group of young men that the police department finally decided that it would roster on and off the lands' seven police officers and have a more or less permanent police presence on the lands.

What has the government been doing to enforce the existing regulations? I would have to say that it is precious little and, more importantly, it has done little to implement those recommendations that were made in September 2002 after this government came into office. Notwithstanding the fact that it is a cynical measure, the people on the lands have been calling for these provisions and I have received communications to that effect from a number of people on the lands and most recently from the Women's Council which delivers health programs to the lands.

I have received messages recently from the Women's Council, as I am sure a number of other members have, urging the passage of this bill. It is interesting that, as recently as 7 September, the Women's Council has reported that there is still no permanent presence of sworn police, although I believe that the extra officers who are there on a fly-in, fly-out basis are six in number plus four weekly rotating inspectors. It is still very short of a permanent presence in each of the larger communities. Of course, that is what the Women's Council wants to see happen. There are also statements that the issue of substance abuse is still endemic on the lands.

We certainly will not hold up this measure. We support the increased penalties, but there is no point in simply increasing penalties for matters of this kind. One has to police the penalties that exist; one has to catch the offenders; one has to deliver treatment programs to those who are affected by substance abuse; and one has to have appropriate courts and correctional facilities, community corrections officers and the like, if we are to get on top of this scourge. I indicate that we support the passage of the bill.

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

CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL

The Hon. T.G. ROBERTS (Minister for Correctional Services) obtained leave and introduced a bill for an act to amend the Correctional Services Act 1982. Read a first time.

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

That this bill be now read a second time.

The Correctional Services Act 1982 (the principal act) is currently under review. This bill addresses issues that require amendment to support the current practice of the Department for Correctional Services (the department). The philosophies, attitudes and practices of the department have changed over time and the principal act does not currently reflect those changes.

The bill seeks to expand the authority of the chief executive of the department in regard to a prisoner's leave of absence from prison. The amendment would allow the chief executive to revoke any of the conditions placed on a prisoner who has leave of absence from prison. The principal act provides for leave conditions to be varied by the chief executive but does not allow them to be revoked. The bill also seeks to give the chief executive the power to impose further conditions on a prisoner who has leave of absence from a prison.

The bill proposes to insert a new section 27A in the principal act. There is currently no provision for prisoners to travel interstate for short periods or to manage prisoners who are in this state on leave from an interstate prison. The bill will address the issues of authority and responsibility for prisoners on leave in South Australia from interstate and will include the authority to respond in the case of the escape of an interstate prisoner while in this state. All states have agreed, and a number have already introduced legislation, to provide for prisoners to be allowed to take leave of absence interstate. The leave may be required for medical, compassionate or legal reasons.

The bill seeks to amend section 29 of the principal act which deals with work undertaken by prisoners. The bill provides for additional control of prisoners who might engage in work that is not organised by the department. The amendment proposed will require the prisoner to have the permission of the manager of the correctional institution in which the prisoner is held before the prisoner can be engaged in work, whether paid or unpaid and whether for the benefit of the prisoner or any other person. This is aimed at preventing a prisoner from carrying on a private business from prison but

is not intended to prevent a prisoner from undertaking tasks that are just of a personal nature.

Section 33 of the principal act deals with prisoner mail. The bill makes provision for tighter control of the mail that prisoners are allowed to send and receive while in prison. An additional item is to be included in that list of mail that is deemed to contravene the principal act; that is, mail that contains material relating to, or that constitutes, work by the prisoner that the prisoner is not authorised to perform. This will also maintain consistency with the amendments to section 29. The principal act does not currently allow for the random search of prisoners. The bill seeks to amend section 37 of the principal act by inserting a subsection that provides for the random search of prisoners' belongings for the purpose of detecting prohibited items. This will bring the principal act into line with current practice for the control of prohibited substances in the prison environment.

Current section 37AA provides for the drug testing of prisoners by way of urinalysis. The definition of 'drug' has been expanded to include alcohol. It is proposed to enable the presence of drugs or alcohol in a prisoner to be tested by means of an alcotest or a prescribed procedure. Such a procedure would be prescribed by regulation and would consist of the taking of a sample of urine, saliva or sweat for testing, and the manager of a correctional institution could require a prisoner to undergo testing—

- on the prisoner's initial admission to the institution;
- on the prisoner's return to the institution after an absence;
- if the manager reasonably suspects the prisoner of unlawfully using a drug;
- if the manager wishes to ascertain the incidence of unlawful drug use in the institution;
- in some other circumstance determined by the chief executive officer (for example, prior to approving a period of home detention, whilst on home detention, prior to being granted parole, etc.).

The bill proposes to amend section 37A of the principal act to restrict home detention to the last year of a fixed non-parole period. The amendments will also ensure that prisoners who receive a sentence of 12 months or less will not become eligible for home detention until they have served at least half of their sentence in prison.

Other amendments contained in the bill seek minor changes to the principal act that will enable all authorised officers, both public and private, to be able to effectively carry out day-to-day prisoner management. Sections 85 and 85B of the principal act are to be repealed and replaced by provisions that are updated and reflect better the current practice and philosophy of the department. Current section 85A is concerned with the exclusion of persons from correctional institutions. From time to time, it is necessary to evict or bar visitors to institutions. This may be as a result of the visitor contravening the principal act by, for example, bringing in or attempting to bring in prohibited items, or their bad behaviour. The bill proposes an expanded section 85A that provides more detail about how, and in what circumstances, a person (other than staff) can be required to leave an institution. The new section will also allow for the banning of a person from a specified correctional institution or all correctional institutions.

Section 85B currently provides for the power to detain and search non-prisoners and vehicles entering a correctional institution and is mainly applied to visitors to institutions. The new expanded section 85B proposed goes into some detail about the sorts of searches that may be carried out on persons who are not prisoners, and vehicles, entering an institution. It also provides that, if the driver of a vehicle detained for the purposes of being searched does not comply with reasonable directions in relation to the search, the manager may cause the driver and the vehicle to be refused entry or to be removed from the institution. Information about the detention of persons under the section will have to be provided in an annual report submitted under the principal act.

Some of the changes recommended in the bill are necessary to allow the correctional system to operate more effectively and provide the legal framework necessary to prevent the potential abuse of the system by prisoners, while others are of a minor 'housekeeping' nature that will assist in the effective operation of the private prison. I commend the bill to members. I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of Correctional Services Act 1982

4—Amendment of section 4—Interpretation

This amendment proposes to insert a number of definitions in section 4 of the principal Act, including definitions of alcotest, drug (which is expanded to include alcohol), drug test (includes an alcotest and any other prescribed procedure), nearest police station and prescribed procedure.

5—Amendment of section 27—Leave of absence from prison

The amendments proposed to section 27 will mean that if a prisoner is granted leave of absence from prison by the Chief Executive Officer, the prisoner will be able to be released in the custody of, and be supervised by, an officer or employee of the Department. The amendment further provides for the Chief Executive Officer to be able to vary, revoke or impose further conditions on a prisoner's leave of absence from prison under this section. A prisoner may not be granted leave of absence in circumstances set out in the regulations.

6—Insertion of section 27A

New section 27A makes provision for a prisoner to take leave outside of South Australia.

7—Amendment of section 29—Work by prisoners

It is proposed to insert a new subsection (5) into the current section to provide that a prisoner in a correctional institution is not entitled to perform remunerated or unremunerated work of any kind (whether for the benefit of the prisoner or anyone else) unless the prisoner has permission to do so by the manager of the correctional institution.

8—Amendment of section 31—Prisoner allowances and other money

9—Amendment of section 33—Prisoners' mail

These amendments are consequential on the amendment proposed to section 29 of the principal Act.

10—Amendment of section 37—Search of prisoners

It is proposed to insert a new subsection that would allow the manager of a correctional institution to cause a prisoner's belongings to be searched for the purpose of detecting prohibited items.

11—Substitution of section 37AA

It is proposed that the manager of a correctional institution may require a prisoner to undergo a drug test in any of the following circumstances:

- on the initial admission of the prisoner to the institution;
- on the prisoner returning to the institution after being absent;
- if the manager reasonably suspects that the prisoner has unlawfully used a drug;
- for the purpose of ascertaining the incidence of unlawful drug use in the correctional institution;
- in any other circumstance that the Chief Executive Officer thinks fit.

A prisoner uses a drug if the prisoner consumes or smokes, or administers to himself or herself, the drug or permits another person to administer the drug to him or her.

12—Amendment of section 37A—Release on home detention

Section 37A(1) gives the Chief Executive Officer a discretion to release a prisoner from prison to serve a period of home detention. The proposed amendments to section 37A will provide that the exercise of the Chief Executive Officer's discretion is subject to the limitations set out below. Each of the limitations that is relevant in relation to a particular prisoner's sentence must be satisfied before the prisoner can be released on home detention.

A prisoner who is serving or is liable to serve a sentence of indeterminate duration and has not had a non-parole period fixed cannot be released on home detention.

A prisoner cannot be released on home detention unless—

(1) in the case of a prisoner in respect of whom a non-parole period has been fixed—the prisoner has served at least one-half of the non-parole period;

(2) in any other case—the prisoner has served at least one-half of the prisoner's total term of imprisonment,

and the prisoner satisfies any other relevant criteria determined by the Minister.

The release of a prisoner on home detention cannot occur earlier than 1 year before—

(1) in the case of a prisoner in respect of whom a non-parole period has been fixed—the end of the non-parole period;

(2) in the case of a prisoner in respect of whom a non-parole period has not been fixed but whose total term of imprisonment is more than one year—the day on which the prisoner would otherwise be released from prison.

13—Amendment of section 52—Power of arrest

14—Amendment of section 85—Execution of warrants

These amendments correct a drafting oversight. The proposed amendments will simply insert "officer or" wherever "an employee of the Department" is mentioned.

15—Substitution of sections 85A and 85B

Current sections 85A and 85B are to be repealed and new sections substituted.

85A.Exclusion of persons from correctional institution

New section 85A provides that, regardless of any other provision of the principal Act, if the manager of a correctional institution believes on reasonable grounds that a person lawfully attending the institution in any capacity (other than a member of the staff of the institution) is interfering with or is likely to interfere with the good order or security of the institution, the manager—

(1) may cause the person to be removed from or refused entry to the institution; and

(2) may, in the case of a person who visits or proposes to visit a prisoner pursuant to section 34, by written order, exclude the person from the institution until further order or for a specified period.

If the Chief Executive Officer believes on reasonable grounds that a person who visits or proposes to visit a prisoner in a correctional institution pursuant to section 34 is interfering with or is likely to interfere with the good order or security of that or any other correctional institution, the Chief Executive Officer may, by written order, direct that the person be excluded from—

(1) a specified correctional institution; or

(2) all correctional institutions of a specified class; or

(3) all correctional institutions,

until further order or for a specified period.

The manager of a correctional institution may cause any person who is attempting to enter or is in the institution in contravention of such an order to be refused entry to or removed from the institution, using only such force as is reasonably necessary for the purpose.

85B.Power of search and arrest of non-prisoners

The manager of a correctional institution may—

- with the person's consent, require any person who enters the institution to submit to a limited contact search, and to having his or her possessions searched, for the presence of prohibited items; or
- if there are reasonable grounds for suspecting that a person entering or in the institution is in possession of a prohibited item, cause the person and his or her possessions to be detained and searched; or
- if there are reasonable grounds for suspecting that a vehicle entering or in the institution is carrying a prohibited item, cause the vehicle to be detained and searched.

If a person does not consent to a limited contact search, the manager of the correctional institution may cause the person to be refused entry to or removed from the institution, using only such force as is reasonably necessary for the purpose.

If a prohibited item is found as a result of a search, or a person fails to comply with a requirement lawfully made for the purposes of a search—

- the manager may cause the person/driver to be handed over into the custody of a police officer as soon as reasonably practicable and to be kept in detention until that happens; and
- the item may be kept as evidence of an offence or otherwise dealt with in the same manner as a prohibited item under section 33A may be dealt with.

If the officer or employee who carries out a search of a person suspects on reasonable grounds that a prohibited item may be concealed on or in the person's body, the manager may cause the person to be handed over into the custody of a police officer as soon as reasonably practicable and to be kept in detention until that happens.

The manager must, on detaining a person under this proposed section, cause a police officer to be notified immediately.

In any event, if a person or vehicle can be detained under the proposed section for the purposes of being searched, the manager may, instead, cause the person or vehicle to be refused entry to, or removed from, the institution , using only such force as is reasonably necessary for the purpose.

The annual report submitted under the principal Act by the Chief Executive Officer in respect of a financial year must include particulars about the number of persons detained pursuant to this proposed section during the year and the duration of each such detention.

This new section does not apply to a person who is a prisoner in the correctional institution.

16—Amendment of section 89—Regulations

This amendment is consequential on the insertion of new section 37AA.

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

ADJOURNMENT

At 5 p.m. the council adjourned until Monday 20 September at 2.15 p.m.