LEGISLATIVE COUNCIL

Tuesday 21 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 Minister for Industry and Trade (Hon. P. Holloway)—

Disciplinary Appeals Tribunal—Report, 2003-2004
Regulations under the following Acts—
Electrical Products Act 2000—Labelling Standards
Liquor Licensing Act 1997—Long Term Dry Areas—Victor Harbor
Motor Vehicles Act 1959—
Fees for Examinations
Written-Off Vehicles
Road Traffic Act 1961—Fees for Inspections
Second-hand Dealers and Pawnbrokers Act 1996—Written-off Vehicles
Rules of Court—
District court—District Court Act 1991—Proceeds of Crime Act 2002
Supreme Court—Supreme Court Act 1935—Proceeds of Crime Act 2002
Budget Paper No. 3 (General Government Expenses by Function)—Corrigendum
City of Mitcham—Local Heritage—Plan Amendment Report
City of Victor Harbor—Local Heritage Item—Plan Amendment Report

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

Regional Council By-laws—
Port Pirie—
No. 5—Dogs
No. 6—Repeal of By-law No. 8—Taxis.

BAIL ACT

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

QUESTION TIME

ANANGU PITJANTJATJARA LANDS

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

Leave granted.

The Hon. R.D. LAWSON: Health services to the APY lands are provided by the Nganampa Health Service and by the NPY Women's Council. State government personnel also provide a basic 'drive in, drive out' service in areas such as child protection and environmental health. The Department of Health has particular responsibilities in relation to serving the lands, and for some years there has been a remote areas team within that department. The opposition has been informed that the Department of Health has terminated the funding for the remote areas team as of the end of the 2003-04 financial year and that it has also abolished two program support positions within the Aboriginal Services Division of the Department of Health. My questions are:

1. Is the minister aware of these cutbacks by this government?

2. Is he concerned by them?

3. What action will he take to address this situation in the Department of Health in relation to the lands.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his questions in relation to what appears to be a withdrawal of services, or a diminishing service being provided by the Department of Health to the support groups on the lands, namely, Nganampa Health and the NPY. Yesterday, the Hon. Angus Redford asked a question that was totally inaccurate in relation to the intent and substance. I hope that the honourable member's information in relation to this question is correct.

I have no knowledge of the departmental changes in relation to any diminishing of health services on the ground. Certainly, if health services are being diminished in any way, I would have thought that, as Minister for Aboriginal Affairs and Reconciliation, I would be informed of those changes. I am sure that the changes the honourable member indicates are administrative changes only and that the position of those who deliver health services within the communities is not compromised in the service delivery they are able to provide within the lands.

The services provisioning between and across departments has been worked out through the Office of the Premier and Cabinet and DAARE. Our aim is to improve the service delivery and the effectiveness of those services we have in place. So I would be very surprised if the changes in the Department of Health's restructuring, as it appears from the honourable member's question, leads to any diminishing of any support basis we have built up within the lands for the delivery of improved services to the people for whom we have responsibility.

KING GEORGE WHITING

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Agriculture, Food and Fisheries, a question about the King George whiting fishery.

Leave granted.

The Hon. CAROLINE SCHAEFER: A regional impact assessment statement was completed on the management of the King George whiting fishery and posted on the web site. It outlines the issues and the perceived regional impacts, the major stakeholders and the consultation process. On several occasions it mentions that there will be some effect on tourism and tourism related industries in regional areas. My question to the minister is: given that assessment, why were no tourism related businesses consulted in the consultation process? Why were no caravan parks or shops consulted? Why was there no consultation with one of the key stakeholders?

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

Members interjecting:

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

CAMPBELLTOWN COUNCIL

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for State/Local Government Relations, a question regarding the Campbelltown council.

Leave granted.

The Hon. J.F. STEFANI: There has been recent publicity in relation to a number of decisions made by the Campbelltown council that have been contrary to the wishes of many of its ratepayers. A number of people have contacted my office and expressed serious concerns about a recent decision made in secret by the Campbelltown council. This decision dealt with a land swap and relocation of the council's depot. Some time ago there was also legal action taken by the ratepayers association in relation to the building of new council chambers at an estimated cost of $24 million.

Ratepayers in the Campbelltown area are most unhappy about the extravagant decisions made by council in relation to a number of other projects that have been funded by the long suffering ratepayers of Campbelltown. I am informed that the recent decision taken by council has not been properly researched; nor has it been supported by a professional analysis report regarding the future needs and traffic issues; and, more importantly, there has been no impact statement on the environment, particularly the potential impact that a depot facility would have on the adjoining Torrens catchment area. This is particularly relevant in view of the recent spillage that has occurred into the River Torrens. My questions are:

1. Will the minister advise the parliament whether he has received any correspondence from the ratepayers association in relation to its concerns about the Campbelltown council's operation?

2. Will the minister table such correspondence in parliament?

3. What action has the minister taken to address the ratepayers' concerns?

4. Will the minister instigate an investigation into the operations of the Campbelltown council?

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

MINING EXPLORATION

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question regarding the funding levels for mining exploration initiatives in South Australia.

Leave granted.

The Hon. R.K. SNEATH: The member for MacKillop, Mitch Williams, released a press statement yesterday condemning the funding levels for the latest government mining initiative. Can the minister please clarify and respond to the issues raised?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I am delighted to respond to that grossly misleading press release that was put out by the Liberal Party yesterday, under the heading 'Spin city as Rann hides funding cut as a gift.' The opposition might use the words 'spin city', but, with reference to the Liberals, it is more like 'deceitsville', because that is what this press release is: deceitsville.

The shadow minister, in his press release, claimed that the former Liberal government had pledged $23.2 million over four years. The fact is that the $23.2 million in funding referred to was never cut. In fact, the program ran its course, and the current government has taken the ascendancy and recognised the importance of the mineral resources sector to the state and instigated a—

Members interjecting:

The Hon. P. HOLLOWAY: No wonder they are embarrassed. What is worse—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: —is that the shadow minister asked this question in the estimates committee. He was told in the estimates committee—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: —that his accusations were wrong, and he has repeated them. If it is good enough for members opposite to get up and call for members of the government to apologise if they get it wrong, it is good enough to call for them to apologise. Let me put the record straight. The initiative will work in collaboration with resources companies to undertake exploration activity, work on the resolution of land access issues, and promote South Australia as a preferred destination for investment by the global mining industry.

The current groundbreaking mining initiative funding of $15 million over five years that was announced in April this year at the Economic Development Summit has already exceeded the interested levels envisaged. The over-subscription of the drilling initiative alone—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: —has prompted this government to direct a further $7½ million into the program. The recent announcement of the government's mining expert panel, comprising 12 mining experts, led by Robert Champion de Crespigny, to promote South Australia's mineral and petroleum potential is another example of this government's innovative approach to assist the mining industries in this state.

Let us get to the facts. The former Liberal government had not planned to continue spending on programs, including those recommended by the resources task force, after the 2001-02 year. Based on the forward estimates for the years from 2002-03 to 2008-09, the level of spending by the Liberal Party on minerals and petroleum programs would have totalled about $100 million. However, the current government has plans to spend about $140 million over the same time period. That difference of an extra $40 million represents the extra support that this government is giving to the resources industry to create a prosperous future for the people of this state.

The shadow minister can say all he likes about what the Liberals pledge, but the fact is—and I have repeated this many times—that those pledges mean nothing in budgetary terms. It is what is allocated in the forward estimates which show the true commitment to programs, and when we came into government what we found the Liberals had provided in the forward estimates for any future mining exploration program (TEISA) was zero—diddly squat. It was also discovered that they provided no funding in future years for

other important primary industry programs, and we went through some of these, such as FarmBis and the future costs of fishery compliance. They were all missing from the budget as well, which meant we had to deal with them in our first year in government.

The South Australian community are not being conned, as the member for MacKillop says, but they are being represented at the national and international level by the highest calibre people to attract investment into the state for the future support of our health and education policies. The working relationship that the government is forging with resource companies will facilitate the expansion of our current mining industry.

As stated by the Premier in the House of Assembly yesterday, a task force has been established to enthusiastically work with Western Mining on the potential doubling in size of Olympic Dam. That is our policy, and that is what we want to achieve. Through the establishment of these working relationships with resource companies, the government is able to effectively consult before any changes to policy regarding mining activates are made. It is through this process that a possible range of mining royalties has been suggested. The minor increases suggested will still ensure that South Australia remains an attractive place for investment.

Given the virtually unlimited potential for minerals prosperity in South Australia, the search for mineral deposits is not exclusively restricted to Olympic Dam style mineralisation. The search is on for all styles of economic mineralisation. These deposits could contain nickel, copper, gold, iron ore or any number of minerals. As previously stated by me and others, South Australia is on the verge of an unprecedented minerals and petroleum boom, and it has been backed in hard cash by this government.

This government is not going to allow grossly misleading statements by the opposition spokesperson. He is somebody who should know better because, as I said, he raised this matter during estimates and he was told the correct position. We are not going to put up with this. Yesterday, during the Address in Reply, we had the Hon. Robert Lawson accusing this government of browbeating anybody who opposed it. When members of the opposition get up and put out grossly misleading information, this government will correct the record, and we have every right to do so.

SOLAR SCHOOLS PROGRAM

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Administrative Services, a question about the state government's solar schools program.

Leave granted.

The Hon. SANDRA KANCK: On 1 April I asked the Minister for Administrative Services a series of questions concerning the awarding of contracts to install photovoltaic solar panels in 200 South Australian schools. Five months later no reply has been forthcoming. I was concerned then that the local PV industry would be cut out of the solar schools installation program. It is my understanding that that is now the case. My questions to the minister are:

1. Is it the case that the Telstra subsidiary NDC has been awarded the solar schools installation program? If so, on what basis was the decision made?

2. Were tenderers advised that local employment flow-on was an essential part of any tenders to be offered?

3. Is it the case that NDC intends to use imported solar panels from India in the program?

4. What consideration was given to using Australian made panels?

5. What is the state government's assessment of the impact on the local solar cell manufacturing and installation industries of the decision to award NDC the contract?

6. Have the unsuccessful companies been advised why they were not successful, as promised as part of the tender process?

7. If NDC has not been awarded the installation contract, what company or companies have been successful in the tender?

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

EMPLOYMENT, AGE DISCRIMINATION

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Employment, Training and Further Education, a question about workers' age discrimination.

Leave granted.

The Hon. T.G. CAMERON: According to a new study, discrimination against older workers could well surpass sexism as one of the most important workplace issues. The finding is contained in a research paper recently released by Hudson, a recruitment and human resources consulting firm. The paper, which is entitled 'The aging population: implications for the Australian work force', highlights the threat of ageism becoming the new sexism in the workplace as the population ages and economic pressures mean more people will have to work later in their lives. The paper argues that the impact of age discrimination in the workplace is more than just a cultural or social issue.

The report states that employers need to take the issue of ageism seriously if they are to avoid potential costly litigation. The paper goes on to state:

> Just as organisations put in place strategies and policies to address sexism in the workplace, employers must consider the same to prevent age discrimination.

The research showed that older people, through a lack of effective interaction with younger people, often adopt self-protection strategies that effectively isolate them from the rest of the work force. The report recommends a change to retirement policies to offset a projected fall in labour growth and a looming school shortage; and new policies to capture and protect mature intellectual property and to enable the transfer of knowledge to younger workers. My questions to the minister are:

1. How many, and what percentage of, South Australian workers are aged 50 years and above?

2. For the past two financial years, how many cases involving discrimination against older workers in the workplace were brought before the Commissioner for Equal Opportunity?

3. With South Australia's work force (and particularly its public sector) rapidly ageing, what policies is the government implementing to combat and protect older workers from discrimination?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his very important and timely questions for many of us in

this chamber. I guarantee that I will pass that question on to the relevant minister in another place and bring back a reply.

RAFFLEGATE

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make a brief explanation before asking the minister representing the Minister for Gambling a question about Rafflegate.

Leave granted.

The Hon. R.I. LUCAS: Mr President, as you will recall, some months ago a series of questions was asked in this chamber and another chamber in relation to the activities of Mr Steve Georganas, the Labor candidate for the seat of Hindmarsh, and his factional colleague, Senator Nick Bolkus.

Members interjecting:

The PRESIDENT: Order! Honourable members will listen.

The Hon. R.I. LUCAS: There have been several newspaper articles written around Australia on this particular issue and, as background, I refer briefly to an article by Terry Plane in *The Weekend Australian* of 28 August 2003, as follows:

> The raffle for which Nick Bolkus sold $9 880 worth of tickets to John Hadchiti, an associate of fugitive Filipino businessman Dante Tan, was 'legitimate' and drawn the day before the last federal election, it was claimed yesterday.
>
> There had been a 'legitimate raffle. . . conducted in accordance with the law', the Labor senator said. 'There were people at the draw and the prizes were Good South Australian wine. The prizes were worth more than 25 per cent of receipts.'
>
> Asked in what name the raffle was registered, Senator Bolkus said: 'It was conducted in accordance with the law under a licence available to the party; it was held by part of the party.'
>
> He 'could not remember other details' and 'that's all we want to say at this stage.'

Further, the article explains:

> The money had been handed over at a Sydney cafe for a wine raffle for Labor's campaign in the Adelaide seat of Hindmarsh, where Steve Georganas was the candidate. . . Mr Georganas was on Senator Bolkus's staff before running for the seat.

As a result of a freedom of information request—

Members interjecting:

The PRESIDENT: Order! The Leader of the Opposition has the call.

The Hon. R.I. LUCAS: —in recent weeks the opposition has received a series of documents from Revenue SA. One of those documents is a letter addressed to Mr Ian Hunter, State Secretary of the Australian Labor Party, from the Commissioner of State Taxation. The letter is under the heading 'Hindmarsh Federal Electorate Fundraiser Raffles' and states:

> As you would be aware there have recently been media reports and issues raised in Parliament concerning raffles or lotteries conducted at the time of the 2001 Federal Election for the South Australian seat of Hindmarsh.

For the sake of brevity, I will say that the letter goes on to explain the responsibilities of Revenue SA and the responsibilities of the Hindmarsh Federal Electorate Council of the ALP or of any other group. It further states:

> A preliminary group of records maintained by this Office does not disclose that the Council conducted any authorised lotteries for the purposes of the Act.
>
> Please confirm whether the council (or any ALP body, group within the ALP, or individual) undertook fundraiser lotteries during 2001, particularly to raise funds for the ALP campaign for the Federal Seat of Hindmarsh at the 2001 General Election.

Then again there is a specific list of questions, and one interesting question is the name and contact details of all prize winners as well as other information. The letter continues: 'A response to this request is required by the close of business 18 July.' That was a letter from the Commissioner of State Taxation. On 8 July Mr Steve Georganas received a letter from the State Secretary, Mr Ian Hunter. That letter states:

> Dear Steve—

very pally!—

> Please find attached a faxed letter from Mr Mike Walker, Commissioner of State Taxation, Revenue SA. Mr Walker has expressly required a response to the questions raised in his fax by close of business 18 July 2003. I hereby direct the Hindmarsh FEC to respond to the questions raised in the fax, replying directly to Mr Walker. Please supply me with a copy of your response. I advise that this letter and Mr Walker's fax has been forwarded to the following people:

Six people are listed there: President Hindmarsh FEC, whose name is missing; Secretary Hindmarsh FEC, Gerard Mcewin; Treasurer, Hindmarsh FEC, whose name is missing; member, Hindmarsh FEC, whose name is missing; member, Hindmarsh FEC, Mick Tumbers; and Senator Nick Bolkus. The letter is signed: 'Yours sincerely, Ian Hunter', with copies to Mike Walker, Commissioner of State Taxation and Geoff Walsh, ALP National Secretary.

In the information provided to the opposition there is no copy of any reply from Mr Steve Georganas in response to the inquiries from the Commissioner of State Taxation or to the directive that he received from his own party secretary, Mr Ian Hunter, to reply to those inquiries by a certain date. Given the importance of propriety and accountability in the lead-up to the federal election campaign, will the minister consult with the former ministerial adviser to the government and Labor Party candidate in Hindmarsh, Mr Georganas, as to whether he will now provide to this parliament a copy of the replies to the questions from the Commissioner of State Taxation and the directive that was issued to him by his own party state Secretary, Mr Ian Hunter, and would Mr Georganas also indicate whether two of the names of the people who have been obliterated from the correspondence and the FOI, in accordance with their request I am told by the freedom of information officer, included Senator Penny Wong and also Ms Carmella Luscri, a former adviser in one of the minister's offices?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I am reliably informed that all the matters relating to the questions raised by the honourable member have been fully investigated and replies given.

FREEDOM OF INFORMATION

The Hon. J.M.A. LENSINK: I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Administrative Services, a question about the Freedom of Information Act.

Leave granted.

The Hon. J.M.A. LENSINK: Amendments to the Freedom of Information Act were to sweep in a new era of openness and accountability through changes to the use of cabinet and commercial confidentiality and were a key plank in this government's election promise of a 10 point plan for honesty and accountability. In his second reading speech of 28 August 2002, then minister for administrative services

Hon. Jay Weatherill quoted from Labor's election policy, as follows:

> Labor will set new and higher standards. These standards will not be vague statements of intent, but will be enforced, and key elements will be made law. A good government does not fear scrutiny or openness. Secrecy can provide the cover behind which waste, wrong priorities, dishonesty and serious abuse of public office may occur. South Australians have learnt from bitter experience how detrimental secret dealings can be to the public interest.

The legislation underwent extensive examination by the parliament, including referral to the Legislative Review Committee and a deadlock conference between the chambers. It finally received assent on 6 June this year. I was surprised, therefore, after lodging an FOI request to the department of environment and heritage that in the department's reply the parliamentary exemption is quoted at the old rate of $350. Further investigation demonstrates that some 3½ months after assent this bill has not been gazetted. My questions are:

1. What is the reason for the delay in the gazettal of the FOI Act?

2. When will the act be gazetted?

3. How is this delay consistent with the government's claims that it is honest and accountable?

4. What does the government advise opposition and minor parties to do in the event that their FOI requests are hampered by the application of the old exemption rate?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I do not have responsibility for the portfolio, but some administrative changes would be needed such as changes to stationery, changes to forms and a whole range of other administrative acts that have to occur, which would take time. However, I will pass on the honourable member's question to the minister in another place and bring back a reply.

INDIGENOUS MINING VENTURE

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about an indigenous mining venture.

Leave granted.

The Hon. J. GAZZOLA: It is often the case that those issues that expose the social and economic inequality between the indigenous and non-indigenous make headlines in this state and nationally. The minister has previously reported to the council where advances have been made and where the seeds are being sown for success, such as the government's indigenous initiative of an aquaculture licence at Port Lincoln. I am also aware that there is an indigenous mining venture start-up in Whyalla. Will the minister inform the council of details of the indigenous mining venture start-up in Whyalla?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): There are some indigenous enterprise building programs occurring in this state, which, hopefully, will make a difference to the income levels of Aboriginal people within regional communities in particular. It is pleasing to see and report to the council the establishment of a new indigenous business venture in the Whyalla area. The venture, Walga Mining Contractors, is a partnership between the local Aboriginal community through the Whyalla Heritage Aboriginal Corporation, OneSteel and Henry Walker Eltin. I understand the Walga Mining Contractors has a five-year contract with Henry Walker Eltin at OneSteel's Middleback Ranges operations, and employs four people at the moment.

Furthermore, the Whyalla business community has got right behind this venture. These enterprises are being put together and they are in their infancy. They are a start towards incorporating Aboriginal people in regional business ventures to give them an understanding of and to incorporate their knowledge within the industry and then, hopefully, to pass on those opportunities through the community through the employment of particularly young Aboriginal people who find it difficult to find employment in ventures that are non-Aboriginal owned, particularly in the northern areas and the Port Augusta and Whyalla areas. These enterprises between indigenous communities, the private sector and the local business community are to be applauded and encouraged. There is recognition by the business sector, and particularly the mining sector, that there is a great deal to be gained by the building of relationships with the state's indigenous communities.

I know the Hon. Ian Gilfillan has promoted the Polly Farmer Foundation, which involves itself in the Western Australian connection between indigenous communities and the mining sector. We are very close to a partnership with the Polly Farmer Foundation, with the very good public support of the Hon. Ian Gilfillan and others in the northern regions around Port Augusta. We hope to be able to build on the relationships that have been built in Western Australia; that companies are able to forge partnerships; that we are able to bring together education facilities such as TAFE, further education opportunities, apprenticeships, traineeships and that sort of thing within our regional and remote areas so that Aboriginal people, particularly in the northern areas, are able to really achieve in relation to mining; and that the partnerships bring real economic relief not only to the people involved but also to the people living within those communities.

Elly McNamara is the Managing Director of the new venture, and I take this opportunity to congratulate him for his leadership and drive in getting this venture off the ground. I have been informed that PIRSA is also a supporter of the venture, and discussions have been held with officers in relation to training. As with aquaculture, the CEO, Jim Hallion, and his department should be congratulated on their endeavours and their encouragement for the building processes that have gone on within PIRSA quietly and without a lot of fanfare.

However, changes in attitudes are developing across agencies in relation to how we deal in remote and regional areas with a resource such as that which can be offered by Aboriginal people in this state to advance the mining interests of the state and to advance their own communities with income developed through these partnerships.

CORONERS ACT

The Hon. IAN GILFILLAN: I seek leave to make an explanation before asking the Minister for Correctional Services a question about deaths in custody reports and the Coroners Act 2003.

Leave granted.

The Hon. IAN GILFILLAN: Last year, we debated changes to the Coroners Act 1975 which resulted in the passage of the Coroners Act 2003—legislation first introduced by the Liberal government. With the support of the Labor Party, the Democrats were successful in passing

amendments to the legislation, which was interrupted by a state election. However, following that election, the new government introduced the bill. Again, we were successful with our amendments, but this time with the support of the Liberals and not the Labor Party, which was then in government.

Without dwelling too much on the vagaries of parties in or out of power, the effects of the amendments were to require any minister whose department was the subject of coronial recommendations to report to parliament within six months and eight sitting days of the implementation of these recommendations. The act was assented to on 31 July 2003; however, it is still awaiting proclamation. Since this time, there have been a number of inquests on which findings and recommendations have been handed down. For the minister's information, they are as follows:

- 18 December 2003, findings into the death of Margaret Lindsay at the Northfield Adelaide Women's Prison;
- 13 February 2004, findings into the death of Brian Keith Dewson at Port Augusta Prison;
- 6 August 2004, findings into the death of Jeffrey Ronald Fredericks at the Adelaide Remand Centre; and
- 6 August 2004, findings into the death of Troy Phillip Turner at Mount Gambier Prison.

Had the act been effective from the date on which it was assented to, the minister would have been required to make a report on the first death, and the second would have been due on 11 October this year. With the intention of the legislation which has been assented to, why have we not had the first report? Perhaps they are in the pipeline, and he may like to explain that.

The other aspect of the question is that the act, as it was amended and finally passed, requires quite a lot of increased activity by departments lodging reports in relation to matters with which the Coroner deals. That requires increased resources and education of the officers involved in the departments. I have been advised by people close to the Coroner's activities that, unless there is adequate funding and training, it will be mayhem—and 'mayhem' was the word chosen. My question is: what resources or programs have been or are intended to be put in place to avoid the mayhem that predictably will occur when the act is finally proclaimed?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I note the importance of the question. I have no detail in relation to the proclamation of the act. I will follow that up, and I will also seek details of the programs and the resources that have been made available for those reports to be written and circulated according to the act, once the act has been assented to or proclaimed. Increased resource space will be needed for those reports to be written, and I will seek out what programs and resources will be made available once the bill has been assented to, and I will bring back a reply.

The Hon. IAN GILFILLAN: By way of supplementary question, would the minister consider actually complying with the spirit and intention of the act by conducting a practice run in respect of the first death in custody and preparing a report which would be due if the act had been proclaimed, with the second due by 11 October? Would he in the spirit of the legislation undertake to provide those reports to parliament?

The Hon. T.G. ROBERTS: I will seek advice from my department in relation to the legal and moral responsibilities that the honourable member imposes and bring back a reply.

JAMES HARDIE INDUSTRIES

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 Industrial Relations, questions about compensation for victims of asbestos related disease.

Leave granted.

The Hon. NICK XENOPHON: On Wednesday last week the Minister for Industrial Relations told a rally of construction workers and asbestos victims in Adelaide that the state government will oppose a statutory scheme for asbestos victims by James Hardie Industries. The minister told the rally that the proposed scheme, which would prevent civil action, would take away the rights of workers. A few hours ago the special commission of inquiry for the New South Wales government, conducted by David Jackson QC, handed down its findings over whether a fund set up by James Hardie Industries to compensate asbestos victims had enough money to meet all claims. The commission found that the fund set up needs at least $1.5 billion more to meet all claims.

A news report refers to Commissioner Jackson being highly critical of James Hardie Chief Executive Peter McDonald, finding that a statement by him that the asbestos liabilities had been 'fully funded' was misleading. Commissioner Jackson found that the statement was false in material particulars and materially misleading. However, Commissioner Jackson also said that the best long-term solution for satisfying asbestos liabilities would be a scheme for which that proposed by James Hardie might be a starting point. He also went on to say:

> The proposal, however, is presently in an embryo and sometimes contradictory form. More clarification is required. So, too, is much detailed consideration.

Research indicates that South Australia has the second highest per capita rate of the deadly asbestos related disease, mesothelioma, in the world and it is estimated that between 2 000 and 2 500 South Australians will die of asbestos related diseases in the next 20 years. My questions are:

1. Will the Minister for Industrial Relations hold 100 per cent to his public commitment last week on behalf of the government of South Australia that his government will continue to reject any statutory scheme to compensate victims of asbestos related disease and that the government will not contemplate in any way any scheme that would prevent civil action by asbestos victims or their families?

2. Should James Hardie continue to seek to avoid its liabilities and to compensate South Australian asbestos victims and their families, will the government consider a boycott of James Hardie products from South Australian government construction contracts, as has been considered by the New South Wales government?

3. Given the anxiety and distress many asbestos victims and their families face from the shortfall of the James Hardie established fund, will the minister provide an answer to the first question as a matter of urgency?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his very important questions and give a personal assurance that this state will do all it can to make sure that the morality of what James Hardie has done in relation to trying to avoid its responsibilities is publicly exposed and the support required for many South Australians who either have not been diagnosed yet or will be diagnosed in the future will be assisted in having justice brought to their claims in the

way that any other claims brought make sure those families do not suffer double jeopardy.

I will ensure that those families do not suffer the double jeopardy of, first, in most cases, the males in those families dying prematurely and, secondly, leaving their partners in poverty through no fault of their own. In fact, in some cases the partners themselves will contract mesothelioma from the action of washing the overalls of those they have lived with and have loved over many years. In my early life I worked in four places where I was exposed to asbestos without protection, and in two of those places I was responsible for banning asbestos from sites. That was in the early to late 1970s. So, I am fully aware of the dangers that are associated with working with these products and the fact that warnings were not issued generally about the dangers of working with those products, either in situ or in putting together asbestos parts and products. I am certainly aware of the negligence that was shown by many employers with whom I worked, not just James Hardie products but many other asbestos products. This cabinet will certainly do what it can to ensure that the lives of those people are at least made a little better by pursuing financial compensation for those affected and their families.

HIGHWAYS, NAMING

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Transport, a question about the naming of highways.

Leave granted.

The Hon. J.S.L. DAWKINS: In 1999 the previous government established a working party to assess possible highway names for unnamed major routes in South Australia. The working party was established with representatives from Transport SA, the South Australian Tourism Commission, the Local Government Association of South Australia, the Outback Areas Community Development Trust and the Geographical Names Advisory Committee. I was subsequently advised in 2001 that the working party had agreed to proceed with the naming of several routes and that it was undertaking a consultation process with relevant local government authorities.

In May 2002 I sought information in this council about the progress of the consultation process. I received an answer in August of that year which detailed the announcement of the Birdseye Highway on Eyre Peninsula and negotiations taking place between the working party, local government and the Outback Areas Community Development Trust in relation to a number of other routes. My questions are:

1. Will the minister indicate which routes have been named since August 2002?

2. Will the minister provide details of the implementation of signage to reflect the names of these routes, as well as the Birdseye Highway?

3. Will the minister also indicate the progress and consultation with relevant local authorities regarding the possible naming of other routes?

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

TRAMS

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I table a ministerial statement regarding South Australia's new trams made by the Premier today.

TAFE, OUTSOURCING

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 Employment, Training and Further Education, a question about the outsourcing of TAFE services.

Leave granted.

The Hon. KATE REYNOLDS: My office has become aware of arrangements whereby TAFE lecturers who are on leave are being contracted by private training organisations to serve as lecturers for TAFE-like courses overseas. I am aware of one program in particular which offered large financial incentives for relatively short periods of work to encourage TAFE lecturers to work overseas. I understand that these lecturers who are taking leave to work under these arrangements are using TAFE materials, handouts and lecture notes, the development of which has been paid for by South Australian taxpayers. I have also been informed that in some instances TAFE institutes have taken responsibility for the quality of these courses by acting as the auspicing body, raising the concern that, if the quality is poor, TAFE is at risk of losing its registration as a training provider.

TAFE has had severe financial difficulties in the very recent past and still requires more funding to meet demand. It appears that in some cases resources are being taken from South Australian students to be funnelled into contract ventures, including offshore ventures. My questions are:

1. Is the minister aware of the outsourcing of TAFE services to deliver training programs overseas?

2. Has the minister given approval for TAFE resources to be used to provide training programs overseas with or without auspice responsibility being held locally by TAFE institutes in South Australia?

3. Will the minister investigate these arrangements whereby TAFE lecturers are being lured by large cash incentives to take leave and then work overseas as contractors using TAFE resources to deliver training programs for non-TAFE training providers?

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

COOPER BASIN

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about exploration in the Cooper Basin.

Leave granted.

The Hon. CARMEL ZOLLO: The Cooper Basin has proved a valuable contributor to the South Australian economy. Recently, growth and interest in the Cooper has been spurred by the activities of junior companies. Have there been any recent developments in exploration in the Cooper Basin?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): There have been a number of

developments in exploration in the Cooper Basin. Yesterday, I was able to announce that Eagle Bay Resources No Liability has won the right to explore the CO2003-A acreage release block in the South Australian part of the Cooper Basin. The Western Australian based firm won from five bids which totalled $78 million. The bid from Eagle Bay Resources was worth $21.55 million in total, and includes guaranteed work of 11 oil and gas exploration wells, geo-scientific studies and 70 kilometres of seismic acquisition in the first three years of the program.

The level of interest in the block reflects the petroleum exploration industry's faith in the potential of the region and the CO2003-A block in particular. The block contains known oil and gas prospects and leads and abuts producing oil and gas fields. The Cooper Basin remains the preferred onshore Australian exploration investment destination. Yesterday, I was able to announce the opening of bidding for the right to explore for oil and gas fields in the area designated CO2004-A. This block covers nearly 1 600 square kilometres north-east of Moomba in the Cooper Basin where exploration investment returns remain high and drilling activity is forecast to reach an all time high.

This acreage release is the latest opportunity to enter the Cooper Basin through ground-floor work program bidding. The block contains and surrounds proven plays and seismically defined prospects, and it abuts producing gas and oil fields. Between 2002 and the end of August 2004, new entrant explorers were involved in drilling 33 exploration wells. New petroleum pools have been discovered in 54 per cent of these wells, and a very respectable 40 per cent of the wells have achieved a commercial success rate. It is inevitable that more oil and gas will be found in the Coper Basin, and the state government looks forward to many more successful future exploration outcomes in the Cooper Basin and elsewhere in the state.

GOODS AND SERVICES TAX

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Treasurer, a question about GST revenue.

Leave granted.

The Hon. T.J. STEPHENS: At the last election, this government promised to improve hospitals and schools, and to improve community safety. It has also portrayed itself as being tough on law and order. Last week the federal Treasurer announced that GST revenues which go entirely to the state governments have been underestimated, and that South Australia would receive an additional $238 million on top of the $757 million already generated by the GST; that is, $238 million extra. My questions are:

1. Will the Treasurer reinstate the highly successful and extremely cheap crime prevention programs so hastily removed following this government's appointment?

2. Will the Treasurer allocate funds to improving and upgrading Noarlunga Hospital's emergency department in line with the government's general election commitments?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I wonder whether the honourable member was listening to the question asked by his leader yesterday when he referred to these claims by the commonwealth government that GST revenue to the states has increased. I am sure all state governments would certainly welcome the fact, if in fact we do actually get the cash from Canberra. However, what we know from the past, certainly with the Howard Liberal government, is that it has the capacity to give money with one hand and take it away with the other hand. In yesterday's answer I referred to one very recent example where, apparently, the commonwealth has taken away that money, namely, with competition payments.

Of course, this state received approximately 50 per cent of its revenue from the commonwealth in what used to be general purpose grants; and specific purpose grants under the GST formula are replacing some of the income stream that the states receive. But, nevertheless, it remains to be seen whether the commonwealth government will give to the states with one hand and take away with the other hand. Given that this matter has been referred to the Treasurer for his comment already, I am sure he will be able to provide the answer.

In relation to getting additional money for services, this government, of course, has not only achieved major budget reform in this state by putting the budget into the black (in accrual surplus) maybe for the first time ever—certainly for many years, which is a major achievement, but also has been able to find, with some stringent but effective budget management, additional resources for many of the needy areas of our community. For example, in relation to child abuse, something like $200 million extra has been put into an area that was grossly neglected in previous years. So, this government is not only managing its budget wisely but also, where there are additional resources, it is applying those resources to areas such as health, law and order and education, which are the priorities of this government.

PROMINENT HILL

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Industry and Trade a question about the Prominent Hill copper-gold deposit in the state's north.

Leave granted.

The Hon. D.W. RIDGWAY: Last Wednesday, the Hon. Carmel Zollo asked a question of the Minister for Mineral Resources regarding mining exploration at Prominent Hill. The minister said in his answer:

> The proponents indicated that the initial resource drilling program has been completed and the amount of available ore is being calculated for the copper-gold deposit. The proponents then plan to undertake a formal feasibility study in 2004-05, after which time a development decision may see commercial operation by 2008.

Prominent Hill is situated in a remote area of the state, about half way between Coober Pedy and Roxby Downs (about 650 kilometres north-west of Adelaide) right in the middle of the Gawler Craton region. Looking on the web site of australianminesatlas.gov.au, which is a federal government web site, under 'Uranium exploration expenditure', I notice that uranium exploration expenditure in Australia for 2002 was $5.34 million. The web site goes on to say:

> Uranium exploration expenditure for 2002 includes 10 per cent of total expenditure at the Prominent Hill prospect [in South Australia], the remainder being copper and gold.

It then goes on to state:

> Exploration drilling continued during 2002, with most holes intersecting significant zones of copper and gold mineralisation. The major intersections also contained between 200 and 300 ppm uranium. Some smaller intersections recorded higher uranium grades.

Yesterday, in another place, the Premier, in answer to a question from the Leader of the Opposition, said that Labor continues to be opposed to the establishment of any new

uranium mines and reaffirmed its policy of opposing uranium mines. The Premier went on to say:

> It is like back to the future or forward to the past. There is no change whatsoever in our policy, and I am talking about mines the size of Roxby Downs.

My questions are:

1. Will the minister clarify what the Premier was saying?

2. Does the term 'mines the size of Roxby Downs' mean we will have uranium mines smaller than Roxby Downs in South Australia?

3. If the owners of Prominent Hill (Oxiana and Minotaur) find uranium, are they to dig it up, put it in a pile on the ground and put it back in the hole when they are finished?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): There is no need for my me to clarify statements made by the Premier; they are quite clear. I am very pleased with the results received at Prominent Hill; I believe there is some very minor uranium mineralisation at that site, but my advice is that it would be able to be dealt with in the course of normal mining activities. It is a copper gold mine. I am sure any mine will have a number of other elements in very small parts.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Many of them might well have uranium and other minerals. My understanding is that the levels of that mine are very low, and certainly significantly lower than they are at Roxby Downs. We are talking here about substantial copper and gold deposits, and that is essentially what will be mined at Prominent Hill. It is not a uranium mine: it is a copper gold mine, and any uranium in it will be of very small concentrations. My understanding is that the copper gold mineralisation is such that they will simply target those areas around the mine. It really is not an issue. I can understand why leading up to an election this opposition would be extremely embarrassed by the success of this government, because mining is really starting to take off in this state because of the support given by the Premier and government of this state, particularly through the accelerated mining package. I can understand why they are embarrassed and try to create a diversionary issue, but it will not work in relation to Prominent Hill. We have here a significant copper gold deposit. I have spoken with the directors of Oxiana—I had lunch with them a few weeks ago—and I think this will be a significant mine for the future of this state.

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

Adjourned debate on second reading.

(Continued from 16 September. Page 87.)

The Hon. R.D. LAWSON: The Liberal opposition will support the principle which underlies this bill. The complexity of this issue is reflected in the lengthy second reading explanation. It was significant that in another place the Attorney read only the introductory or political parts of that explanation. By that device he avoided uttering publicly the words which appear in the final paragraph of the second reading explanation, namely: 'This is undeniably difficult law, but it always was difficult law.' Those words give the lie to the Attorney-General's glib statements to the public on this matter over the years. He has sought to mislead the public into believing that the question of intoxication as a defence is a simple issue to which there is a simple solution. The Attorney's own actions and utterances over the years show that he has only a superficial understanding of these issues, which are not simple but which, as the second reading explanation acknowledges at the end, are undeniably difficult.

We have been informed that the Attorney personally gave instructions to include in the title of this bill the misleading words 'abolition of drunk's defence'. That instruction is further evidence of this Attorney's unworthiness for the title of first law officer of this state. The title of this bill is misleading. Contrary to the title, the bill does not remove the capacity for an offender to escape conviction for a criminal offence on the ground that the person was so intoxicated that the offender could not form the requisite criminal intention. This bill limits or circumscribes, but it does not abolish the circumstances in which self-induced intoxication may be used by an accused person to defend a charge. I will be moving an amendment to the title of this bill so that it is an accurate reflection of the contents of the bill and not a misleading political statement.

The Hon. Ian Gilfillan: Is your amendment on file?

The Hon. R.D. LAWSON: Yes, I gave instructions for it to be put on file today. This bill does not even mention 'drunks'. The final word in the bill which was originally introduced in another place did contain one solitary reference to drunkenness. However, in another place the Attorney-General moved an amendment to delete that word. This bill does not even refer to drunks, let alone abolition of the defence of drunkenness. This is undoubtedly complex law, and I do commend the difficult task that was admirably undertaken by the Attorney-General's adviser who prepared the second reading explanation. I urge interested members to read that which the Attorney-General chose not to read to the house.

The hand of Mr Matthew Goode in this legislation is clear. Mr Goode, a long-time adviser to South Australian governments on criminal law and a member of the Criminal Officers Code Committee, has written on this subject extensively and prepared papers (which have been distributed to members) as well as academic articles, a very helpful one of which was published in the 1984 edition of *The Criminal Law Journal* entitled 'Some thoughts on the present state of the "defence" of intoxication'. At that time Mr Goode had an academic appointment at the University of Adelaide. Whilst I commend that article and other material which has been published, I do not propose to analyse in any detail at all the cases which have influenced the common law relating to intoxication in this state. I mention them but very briefly. The decision of the High Court in the case of O'Connor in 1979 is a landmark. The decision also of the House of Lords in Beard, followed by the later decision of that court in Majewski in 1977 have created byplays and difficulties, the complexity of which it is unnecessary to delve into where we are here discussing the policy behind this bill.

I think we ought also to pay close regard to the genesis of this legislation. In 1996, as the member for Spence, the Attorney-General introduced a bill which at least had an honest title, namely, the Criminal Law Consolidation (Intoxication) Amendment Act 1996. It was a good, honest title and one which we will be suggesting in the committee stage be adopted in relation to this bill. If it was good enough for the bill he then introduced, it ought be good enough for

this current measure. The 1996 bill uncritically adopted the language of the bill which had been proposed in 1990 by the select committee on self-defence, a select committee of the House of Assembly which the then member for Elizabeth (Hon. Martyn Evans) had introduced in 1992. Rather than give my own description of that bill introduced by the member for Spence in 1996, I will read the member's own words from his second reading contribution on 28 November, as follows:

> . . . a person charged with an offence, who was in a state of self-induced intoxication at the time of the alleged offence, should be taken to have had the same perception and comprehension of the circumstances as he or she would have had if sober and to have intended the consequence of his or her acts in so far as they would have been reasonably foreseeable by that person if sober.

So, the member for Spence's idea and notion at that time (and he has never got it out of his head) was that persons who are intoxicated should be taken to have certain perceptions, comprehensions and intentions which they do not in fact have. Three points are to be made about that bill. First, it provided that a person could be found guilty of murder even though the person did not have the requisite criminal intent—a point which the mover of the bill did not appear to appreciate. Secondly, the bill now before the council is far different in its approach from the simplistic prescriptions contained in the 1996 bill. However, in his utterances on this topic the Attorney is still suggesting to the public that the concept is one and the same: it is not. I have also mentioned the fact that at least that bill introduced by the member (now the minister who introduced this bill) had an honest description in its title. However, that bill was flawed, and it rightly lapsed.

Notwithstanding its obvious flaws, the member for Spence reintroduced it in December 1997 in an effort to exploit the publicity which arose as a result of the Australian Capital Territory case of Nadruka. Realising that the bill (introduced at that time for publicity purposes) was defective and that the member had done no work to refine it, on 4 December 1997 he admitted to the house:

> I am not wedded to this particular method of abolishing the drunk's defence.

He claimed that he would be happy to adopt a version used in New South Wales. At the same time, the member made the extraordinary admission that he had only just discovered the existence of section 19A of the Criminal Law Consolidation Act, which contained a pertinent provision. In relation to causing death by dangerous driving, section 19A(8) of the Criminal Law Consolidation Act provides:

> Where, at the trial of a person for an offence against this section, it appears that the defendant was, or may have been, in a state of self-induced intoxication at the time of the alleged offence but the evidence adduced at the trial would, assuming that the defendant had been sober, be sufficient to establish the mental elements of the alleged offence, the mental elements of the offence shall be deemed to have been established against the defendant.

There was an important provision relating to self-induced intoxication already in the criminal law of South Australia, which the now Attorney-General was ignorant of at the time he introduced his initial measure. This was quite a startling admission for the Attorney to be making more than a year after he started lecturing the public on the airwaves about the niceties of the law of self-induced intoxication. Once again the member demonstrated his ignorance of the complexity of the law by suggesting that section 19A(8) provided a model for revising the law. I invite members to note how far the current bill is from the provision introduced at the end of 1997.

In July 1998 the then attorney-general, the Hon. Trevor Griffin, issued an extensive discussion paper entitled 'Intoxication in Criminal Responsibility'. Two bills for discussion were appended to that report. They were designated bill A and bill B. Bill B empowered the court to find an intoxicated person guilty of an alternative offence called 'causing harm through criminally irresponsible drug use'. The penalties were: 20 years where the offence was otherwise than murder; 15 years where the offence was non-consensual sexual intercourse; and 10 years (or two thirds of the maximum prescribed) for other co-relative offences. Bill B was not a preferred bill or even a proposed bill but was merely put up for discussion. Indeed, the paper outlined the weaknesses of this approach as follows:

- it would encourage compromised jury verdicts;
- it was impossible to properly align any appropriate penalty with any rational scale of offending;
- it would engender more trials and more issues at trial;
- it would lead to an increase in the necessity for expert evidence on behalf of the prosecution and hence the defence also;
- it will be likely to require the prosecution to prove a causal link between intoxication and the crime;
- and it lacked any coherent penal rationale because self-induced intoxication is simply not a reliable index of criminal blame worthiness.

Notwithstanding these impediments and difficulties clearly illustrated in the report, but realising that his own bill was hopelessly flawed, the member for Spence completely abandoned his own bill and substituted bill B during the committee stage of the debate. This was on 27 August 1998. This was not a serious effort at law reform but rather a political stunt.

The private member's bill had been criticised in written submissions from the President of the Bar Association, Mr Michael Abbott QC, and Mr David Peek (now David Peek QC), Chairman of the Criminal Law Committee of the Law Society. Their submissions were measured, careful and well argued positions. It is interesting to see the response of the person who now holds the office of Attorney-General to those submissions. He said:

> The drunk's defence has been a good little earner for Mr Abbott and Mr Peek over many years.

That appears at page 1936 of *Hansard* of 27 August 1998. 'The drunk's defence has been a good little earner for Mr Abbott and Mr Peek over many years.' That was a reprehensible response and is typical of this Attorney-General in that he does not respond to the arguments but attacks the person. It is typical not only of this Attorney-General but also of this government. As I mentioned yesterday, in my Address in Reply, this government's approach, for example, to criticism from Frances Nelson, has been not to address the arguments but to attack the person. There we saw in 1998 a rational and serious response from two leading criminal lawyers, and they are dismissed as being merely self-interested. Of course, it is true of this government that it not only attacks any messenger but, if the messenger happens to be a lawyer, accuse the lawyer of merely being interested in his or her fees.

The sadness about that type of response is that it trivialises this whole issue. It clearly demonstrates that the member was not interested in understanding the complexities of the issue: he was simply looking for a cheap headline. Notwithstanding the genesis of bill B, in committee Liberal members of the

House of Assembly decided to support it, and it passed on the voices without dissent.

On 3 November 1998, the then director of public prosecutions, Paul Rofe QC, had the temerity—some would say the courage—to write to all members of parliament to say that, in his view, none of the proposals (that is, including bill A and bill B) were better than the existing law, and I would be confident that Mr Rofe would have exactly the same view of this measure currently before the parliament. Mr Rofe expressed the following opinion:

> It is fair to say that all the alternatives will require a cumbersome and complex direction to the jury. It will also result in juries opting for an alternative when the reality of the situation is that had that option not been available they would have convicted of the principal offence.

In December 1998, the then attorney-general, the Hon. Trevor Griffin, introduced another bill, which had the effect of incorporating a new part A of the Criminal Law Consolidation Act, which provides that a person who becomes intoxicated in order to strengthen his or her resolve to commit a crime cannot escape conviction (section 268) and that an accused person must specifically request the judge to address the jury on the issue of intoxication if he or she wishes to raise it (section 269).

That bill duly passed both houses, with the grudging support of the member for Spence. However, ever political, he threatened Liberal members that he would (to use his expression) 'summon the genie of populism' over the next three years (page 252 of *Hansard* of 24 March 1999). By that admission, the Attorney was clearly patronising members of the public, referring to the 'genie of populism'. What every member of the community is entitled to is not people looking to popular policies, but people who are looking to good, solid, sound and workable policies which are principled, not necessarily popular.

I must admit that the bill presently before this council is a more sophisticated, more subtle and more acceptable law than any which the member for Spence previously introduced or promoted. The Attorney should finally acknowledge that this issue is far more complex than he has ever admitted to. Why else, one might ask, when the bill, having been promoted at the last state election campaign, took so many months to be introduced into the parliament. When it was introduced, the Attorney had yet further amendments to make to his own bill. This is a different bill from the one which the Attorney filched from the Hon. Trevor Griffin (the so-called bill B).

That bill created the alternative offence of criminally irresponsible drug use with a graded scale of penalties. This bill creates the alternative of causing serious harm by criminal negligence. The offence of causing serious criminal harm by negligence has not yet been introduced into the criminal law of this state, and it would appear that this bill supposes that the Statutes Amendment and Repeal (Aggravated Offences) Bill, which is presently before this council, will pass, because clause 23 of that bill contains a proposed offence of causing serious harm by criminal negligence.

I indicate that the Liberal opposition is opposed to the introduction of this new offence of causing serious harm by criminal negligence. I will not go through the reasons again, except to say that negligence is a concept which is best left out of the criminal law. There is a civil remedy for negligence; it is well understood. It is inappropriate to seek to introduce the terminology of the law of negligence into the criminal law.

It is true to say that the proposed penalty for the alternative offence of causing serious harm by criminal negligence for an intoxicated offender, where death does not result, is four years. Whereas, under proposed section 23 of the Statutes Amendment and Repeal (Aggravated Offences) Bill the penalty is five years. If that is the case, why is there a lesser penalty for an intoxicated offender? One of the cases that has been referred to from time to time over the years in relation to this matter is a case by the name of Gigney, a decision of Judge Lunn, sitting as a judge alone. In that case, the offender was a prisoner at the Cadell Training Centre where there was an illicit still of some kind. This particular prisoner became very drunk and absconded from the training centre in a prison officer's car, and he was charged with escaping lawful custody and, I think, the illegal use of a motor vehicle.

The judge, sitting alone, determined that the offender was so drunk that he was unable to perform the specific intent necessary for either of those offences, namely, escaping lawful custody and the illegal use of a motor vehicle. In those circumstances, the offender was acquitted. The Attorney-General has described that result as unacceptable, stupid and inconsistent with what the community would regard as appropriate.

During the committee stage, I would like the minister to indicate whether it is true to say that, if that fact situation were to arise again after this bill comes into operation, the result reached by Judge Lunn would be the same again, because the alternative verdict provided for in the current bill is causing serious harm by negligence. In the case where there is no harm, physical or otherwise, caused to anyone, the alternative would clearly not be available.

I should indicate that the Law Society has expressed opposition to this bill. In a letter dated 1 April to the Attorney, the concerns of the society's Criminal Law Committee are expressed in some detail, and I think it is appropriate to put on the record the comments of the Law Society. I do this not because I am a member (of which I happen to be proud and which interest I declare), but because the Law Society has, over the years, taken a close interest in these matters and, generally speaking, the Criminal Law Committee has been opposed to various proposals in this direction. I do not share some of the concerns of the Law Society and neither does my party, but it is worth putting those concerns on the record. The letter states:

> Thank you for the opportunity to comment upon the above Bill, as per your letter of 24 February 2004. . . The Society does not support the introduction of this legislation on the basis that it effectively removes fundamental principles of justice.

The bill had been sent to the Law Society under cover of a letter dated 24 February. The Attorney had introduced the bill on 23 February, so there was no prior consultation with the Law Society on this matter in which it had expressed so much interest over the years. The letter continues:

> Overview.
>
> In our submission the Bill is an unnecessary and extreme response to a perceived problem which rarely arises in the Criminal Justice system. With great respect, what the Attorney-General proposes goes much further than the superficial attraction of holding the occasional drunken person responsible for their actions. In reality the proposed legislation will erode the common law rights of all South Australians.

I interpose to say that I do not agree with that proposition. I do not consider that there is any erosion of common law rights in relation to this measure. I do not believe there is any such thing as a common law right to get drunk and assault

people or commit criminal offences. I think the Law Society has overstated the position. I do, however, accept the position that no person—no citizen—should be found guilty of any criminal offence unless the necessary elements of that offence are established. The Law Society letter continues:

At the very 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.

It must be remembered and steadily borne in mind when considering this Bill that there is no actual defence (to a criminal charge) of 'drunkenness' per se. It is not and never has been a defence to a charge of assault or any other crime to say that a person perpetrated the act whilst under the influence of alcohol or drugs.

The law as it presently stands does allow evidence of intoxication to be raised to show that the defendant acted unintentionally and involuntarily at the time of committing the alleged offence. This evidentiary principle is inappropriately labelled the 'drunk's defence' and as such is apt to incite community hostility and distrust towards the law.

The principle that criminal liability should only attach to intentional and voluntary acts is based upon, what we suggest, is a generally shared community view. It has long been accepted that, in a civilised society, punishment which flows from a breach of the criminal law should only be meted out to those who wilfully and deliberately break the law. In the very rare case where a person becomes so intoxicated that they are incapable of forming any intent to commit a crime, it seems rather odd that they should be held liable for an offence which was never even contemplated. It is akin to holding the mentally ill responsible for a crime committed in a delusional state because they forgot to take their medication.

I interpose once again that I do not agree with the way in which that sentiment is expressed. That seems to be an exaggerated example. However, the Law Society goes on to state:

As well as being based on sound and long held principles, the present law in South Australia, as it relates to intoxication, is easy to apply and makes good sense. If the current law is so unsatisfactory and poses such a threat to the administration of justice, how is it that it is not possible to point to a single case in South Australia where the current law has resulted in an injustice?

Once again I interpose that the case of Gigney to which I earlier referred is the one example which has been produced of a clear case in this state where the defence of a person in a self induced intoxicated state has succeeded. The Law Society continues:

The single case (Nadruku—an ACT Magistrates Court decision) is cited to purport to justify the abolition of a fundamental common law principle and High Court decision which has remained unchallenged for over 25 years. In the Committee's view the proposed legislation is wrong in principle, unnecessary and inconsistent with community expectations of maintaining proper standards of fairness in the administration of justice.

The legal position

Evidence of intoxication is tendered to assist in determining whether or not the accused possessed the requisite fault element in relation to the unlawful act. Intoxication is not in itself a defence to a criminal charge.

They cite Viro v the Queen 1978. The Law Society quotes Justice Murphy in the case of R v O'Connor 1980 as follows:

The inferences to be drawn from intoxication are not all one way: evidence of intoxication may result in absence of proof beyond reasonable doubt of the requisite fault element, or a more ready acceptance that the fault element exists on the supposition that intoxication reduces inhibitions.

The Law Society continues by stating: 'There have been numerous law reform proposals that have looked at how intoxication should be taken into account in assessing criminal responsibility. . . ' The Law Society also makes reference to the reports of the Law Reform Commission of Victoria and other Law Reform Commission papers, as well as a report of the Criminal Law Officers Committee of the Standing Committee of Attorneys-General, Chapter 2 on the general principles of criminal responsibility, the final report of 1992. The Law Society claims, I think correctly, that all of those reports recommended the approach adopted in O'Connor. The society goes on:

Further, the division of crimes into those where intoxication is relevant and those where it is irrelevant has been rejected by the Model Criminal Code Officers Committee [in its 1992 report, which] recommended that the High Court decision in R v O'Connor should be followed.

In a discussion paper prepared for the South Australian government in July 1998, Matthew Goode writes:

Parliaments tend to the opinion that letting defendants such as Mr Nadruku escape the criminal sanction is scandalous and should not be allowed to happen. In this they may well be representing the views of the public as a general proposition—certainly a vocal section of the general public. The courts and law reform bodies tend to say that letting the occasional defendant such as Mr Nadruku escape the criminal net is a small price to pay for keeping away any alternative which will be complex, confusing and unjust to others. If both views may be conceded to have some justice, taken from their particular perspective, what then?

That question was posed by Mr Goode. The Law Society continues:

The Victorian Law Reform Committee in its report 'Criminal liability for self-induced intoxication' made the point that it 'will be rare for an accused person to be acquitted of a crime because evidence of intoxication in cases like that of Nadruku are exceptions to general practice.'

The committee further stated:

It is crucial that legal principles be applied consistently and simply on the basis of the evidence available. The Committee concludes that the proposition arising from O'Connor's case that a person should not be held criminally responsible for an unintended involuntary or act is logical, easy to apply and makes good sense.

Conclusion.

It is submitted that the question of how intoxication should be taken into account in determining criminal responsibility is inherently problematic because of the tension generated between an approach based on principle and an approach based on policy. However, to hold an accused liable for depriving him or herself of the capacity to act voluntarily or intentionally would provide an unjustifiable exception to fundamental common law principles. What should be impressed upon policy makers is that acquittals on the basis of intoxication are rare and that there is some reason to believe that those accused who raise intoxication will show some elements of awareness of intention sufficient to warrant conviction.

It is there citing a paper by Shiner in the *International Journal of Law and Psychiatry* Volume 13 (1990). The Law Society continues:

We point out that the only instance where this issue is said to have resulted in an acquittal concerned a matter in the summary jurisdiction of ACT. We are not aware of any other case where intoxication has ever resulted in a complete acquittal.

I interpose, reference to the case of Gigney to which I referred and in respect of which I have asked the minister to indicate whether this bill will have any effect upon such a fact situation. The Law Society continues:

What is envisaged is a change to the fundamental basis of criminal liability. That is, the criminal law is not intended to exact punishment for serious criminal offences unless the accused person had a necessary awareness or criminal intent at the time of the performance of the act in question.

The reality is that drunkenness is not accepted by juries as a basis upon which to conclude that a person did not have a criminal intent.

It is interesting that the two cases most discussed in this context are cases decided by lawyers: Nadruku by a magistrate sitting without a jury; and Gigney, a case decided by a judge sitting alone. Perhaps if the robust commonsense of

the jury had been hearing those cases the result might well have been different. The Law Society continues:

> It is dangerous to change the approach to the proof of a crime because of what must be no more than a theoretical possibility or because of an idiosyncratic result in a single Magistrates Court in ACT which has no precedent status in this state.
>
> We point out that the terms of the proposed amendment is difficult to follow, may not be understood by juries and will likely result in appeals and longer trials.
>
> It is worth noting that the Criminal Code (NT) has a provision which addresses the issue in plain language. Section 7(1)(b) sets out a presumption that the accused foresaw the natural consequences of his or her conduct unless the intoxication was involuntary. This suggests that self-induced intoxication will be irrelevant to the question of intention. This approach appears to work well in the Territory without apparent criticism or injustice.
>
> If there must be some legislative intervention on this topic we commend the approach adopted by section 7(1)(b) of the Northern Territory legislation.

I read that long contribution into the record because it is important that the record show that this measure was not universally supported in the community.

The Hon. Ian Gilfillan: Are the Liberals going to oppose it?

The Hon. R.D. LAWSON: The Hon. Ian Gilfillan asks, 'Are we going to oppose it?' I indicated at the very beginning that we do support the principle which underlines this legislation. We are unhappy about the wording of it. We think that the wording is unnecessarily complex, but we do not see it as our task to set about redrafting by some other words or finding some other formula for what is indeed a complex situation. I would ask the minister to indicate in his second reading speech why the government chose not to adopt the model suggested by the Criminal Law Committee of the Law Society; that is, the model contained in section 7(1)(b) of the Criminal Code of the Northern Territory.

There is one difficulty which I should mention at this juncture. Because of the inter-relationship between this bill and the Statutes Amendment and Repeal (Aggravated Offences) Bill, today I will not be able to take this matter through the committee stage because, if the amendments we propose moving in relation to that bill are accepted, I believe the appropriate terminology rather than being 'negligently causing serious harm by criminal negligence' would be 'recklessly causing serious harm', with appropriate penalties. I thank the Attorney-General for making available Mr Matthew Goode for helpful briefings, and I will be seeking a briefing with Mr Goode on that particular point before finalising the committee stage.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will begin my response and then seek leave to conclude my remarks so that we can debate the committee stage on another day. I take the opportunity to thank members who have contributed to the debate. I thank the Hon. Ian Gilfillan on behalf of the Australian Democrats for his contribution even though he vehemently opposes the bill. I do so because the Democrats have raised important issues of principle. At the heart of the contribution of the Hon. Mr Gilfillan are two principles. The first is that the bill is unnecessary because the mischief which it addresses has never occurred. The second is that the bill is contrary to the fundamental legal rights at the heart of the Australian criminal justice system. Both matters mirror comments from the Law Society. There is no doubt that these matters can be argued but they are not as black and white as the honourable member and the Law Society contend.

As to the first point, acquittals do occur. It is true that they are not common, but they do happen, and when they happen the parliament and the legal system are left in no doubt what the public thinks. The principle here might, with justice, be reframed to be whether the law should reflect what the society and the public think is the just result in any possible case. That leads neatly to the second point: exactly what is the principle at the heart of the criminal justice system?

The Law Society conveniently ignores the fact that the rule sought to be introduced by this bill is roughly the same as that which was the law in this country until 1979—the rule that three out of seven High Court judges defended with vigour, the rule that has been defended with vigour in the United Kingdom since the 1920s and the rule that is in force in Queensland, Tasmania, Western Australia, the ACT and New South Wales. The answer to the principle argued for was made recently by Lord Simon who, in this precise context, said:

> It is all right to say, 'Let justice be done though the heavens fall,' but you ask us to say, 'Let logic to be done even though public order be threatened,' which is something very different.

In Majweski (1977) AC443 at 495, Lord Edmund Davies commented on this, as follows:

> If such be the inescapable result of the strict application of logic in this branch of the law, it is indeed not surprising that illogicality is long reigned, and the prospect of its dethronement must be regarded as alarming.

At that point, the Hon. Robert Lawson raised some issues which I will seek to address when we debate this bill at a later time. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

STAMP DUTIES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 20 September. Page 117.)

The Hon. IAN GILFILLAN: I indicate Democrat support for this bill, except for two matters to which I will refer in my contribution. This bill contains 11 amendments relating to the payment of stamp duty on motor vehicles. While we support most of its provisions, there are a couple we do not. I also note that the opposition in another place also expressed concern about a number of elements, so with support we may be able to remove the two offending clauses. First, I will speak to measures within the bill that we support.

The bill ensures that electronic lodgement of an application to register or transfer the registration of a vehicle is subject to duty. It also adds an exemption from stamp duty for a person transferring ownership of a vehicle to their spouse where the registration of the vehicle has lapsed, thus fixing what has been an omission in the current legislation. Further, the bill removes the potential for double duty, where another instrument transferring property in the motor vehicle exists but has not been lodged for stamping prior to an application to register. We will also see an expansion of possible refunds to allow a person who is entitled under the Motor Vehicles Act to receive a pro rata refund of registration fees also to receive a pro rata refund of the stamp duty on renewal certificates for compulsory third party insurance.

The bill seeks to remove the requirement of stamp duty to be separately denoted on the certificate of a vehicle. We understand that this is to bring the legislation into line with current practice. The bill establishes a power for the commis-

sioner to seek a valuation or appoint a valuer. When the minister concludes the debate, I will be interested to hear the extent to which it is expected that the commissioner will have cause to take this measure. Perhaps he will respond to that question at that time.

The bill clears up a few technical points, ensuring that councils continue to receive stamp duty exemptions for motor vehicles following the enactment of the Local Government Act 1999, replacing the Local Government Act 1934. It aligns exemption provisions in the act with new parts VIIIA and VIIIB of the commonwealth Family Law Amendment Act 2000 and addresses a drafting matter that arose from the amendments to schedule 2 of the act by the Statutes Amendment (Corporations-Financial Services Reform) Act 2002.

However, the two points of the bill we oppose, are, first, the limiting of exemptions currently available to a totally or permanently incapacitated person to only one vehicle, which we believe is an unnecessarily restrictive and unreasonable imposition and, secondly, the government's seeking to prevent a primary producer being relieved of stamp duty when converting a vehicle registration from a conditional registration to a full registration. That seems to us to be a rather petty imposition on a section of the community for whose circumstances this government frequently appears to express lack of understanding and sympathy. These two elements will be opposed—hopefully, with the support of the opposition—as we believe that they highlight unfortunate targets of the government to increase stamp duty revenue in quite a trifling but significant way. We do not accept the argument supporting them.

With those observations, I indicate that we support the second reading, and I am sure that eventually, in some form or another, we will support its passage through the council.

The Hon. J.S.L. DAWKINS secured the adjournment of the debate.

TOBACCO PRODUCTS REGULATION (FURTHER RESTRICTIONS) 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 explanation of the bill inserted in *Hansard* without my reading it.

Leave granted.

This Bill seeks to amend the Tobacco Products Regulation Act (1997) and the Tobacco Products Regulations 1997.

Tobacco smoking is the single biggest cause of premature death, disease and disability in Australia. This imposes substantial economic and social costs on the South Australian community.

Smoking is the single largest preventable cause of death in Australia and tobacco use has been estimated to cost Australia $21 billion a year in health care, lost productive life and other social costs**.** Smoking, more than any other identifiable factor, contributes to the gap in healthy life expectancy between those most advantaged and those most in need. Thirty South Australians die each week from diseases caused by smoking tobacco and smoking related diseases account for 75 000 hospital bed days in the State each year.

In late 2002, the Government established a Hospitality Smokefree Taskforce in response to growing concerns about the health and comfort of staff and patrons in licensed premises and gaming venues.

The role of the Taskforce was to provide advice to the government on ways to further protect patrons and staff in hospitality areas from exposure to passive smoke.

The Taskforce explored the many complex issues relating to the introduction of further bans, with much discussion on how best to protect the public from exposure to tobacco smoke while allowing businesses and the community to adequately prepare for any changes.

As a result of this extensive process and the ensuing public debate and consultation, a phase-in process was recommended. It was considered the best way of balancing the competing forces of protecting workers and patrons from unwanted and unreasonable exposure to tobacco smoke—and protecting the financial viability of the hospitality industry **and** the jobs of hospitality workers.

The Government determined that it would be unreasonable not to allow a phase in program for those venues affected by the ban. Businesses know where they stand and the public will expect them to make appropriate arrangements to accommodate the new laws as they roll out.

When announced in November 2003, this raft of decisions by the Government, meant that South Australia was the first State to name a date to ban smoking totally in enclosed public areas. In addition a range of other measures agreed to will particularly target the reduction of smoking in young people.

This package puts South Australia's reforms ahead of every other jurisdiction in the country.

The South Australian Labor Party platform made a commitment to strengthen legislation and to reduce the incidence of smoking by young people. This commitment to the young people of South Australia was endorsed in our State Strategy. We have set a target to reduce the number of young people smoking by 10% over the next decade.

Before honourable members come to debate the provisions of this Bill I ask that we all remember one critical thing and that is the harm caused by tobacco. Strong measures are needed to reduce the number of young people that are taking up smoking. We need to create an environment that helps current smokers to quit and those who quit to remain smoke free.

Environmental Tobacco Smoke

The provisions in this Bill will protect South Australians from exposure to environmental tobacco smoke in the places in which they work and relax.

This Bill strengthens and consolidates provisions for smoke-free workplaces and smoke-free enclosed public places, including hospitality settings in South Australia.

Passive smoking is an occupational health and safety hazard and public health risk; it is not an issue of comfort or choice. The National Occupational Health and Safety Commission recently recommended that exposure to environmental tobacco smoke should be eliminated from all Australian workplaces.

The majority of workplaces already have voluntary smoke-free policies, but not all. Too many workers in blue-collar sectors such as factories, workshops and small workplaces are still involuntarily exposed to environmental tobacco smoke at work.

Currently, 31% of South Australian restaurant and bar workers are exposed to passive smoking at work with the associated risks to their health.

Recent litigation also highlights the legal risks for all areas in the hospitality industry that are not smoke-free. Throughout Australia, there is an increasing number of out of court settlements and damages awarded through workers compensation and common law related to passive smoking. A recent study conducted by US Health Physicist, Professor James Repace, commissioned by the NSW Department of Health, estimated that each year 70 NSW bar workers are dying prematurely due to occupational exposure to tobacco smoke.

Separation and ventilation are not solutions. Smoke drifts and spatial separation of smokers and non-smokers offer inadequate protection. South Australian research concluded that ventilation does not offer a solution. Eliminating smoking indoors is the only way to protect worker health and reduce the recruitment of new smokers.

Smoking is now prohibited in restaurants, nightclubs and bars in five US States and hundreds of municipalities in the USA and Canada. These include major cities such as Ottawa, New York, Los Angeles, San Francisco, Boston, Dallas, and Miami, as well as cities such as Lexington, Kentucky, in the heart of America's 'tobacco country'.

California has had smoke-free bars since 1998, and studies of the Californian experience have found that the law has become increasingly popular and has led to improvements in bar-workers' respiratory health.

It is time for South Australia, also, to join Ireland, Sweden, Norway, New Zealand, and India, as well as other Australian states, to legislate to protect its workers from passive smoking.

Exposure to environmental tobacco smoke in enclosed public places is also a public health issue. In 2001, a representative survey of over 3000 South Australians, aged 15 and over showed that more people are exposed to passive smoking in hospitality venues, than in any other place (including private homes). 36% of South Australians report that they have been exposed to passive smoking in a hotel or bar in the past two weeks. The majority of South Australians are aware of the health consequences of passive smoking and are concerned about their own exposure to passive smoking.

The evidence demonstrates that smoking bans in workplaces would not only protect non-smokers from the dangers of passive smoke, but they would also have the important secondary benefit of reducing the number of cigarettes smoked in a day by smokers, and even encourage quitting. There is anticipated to be a reduction in the recruitment of young people to smoking. As a consequence, smoking bans in workplaces are likely to help reduce South Australia's smoking rate.

There will be complete bans on smoking in all workplaces, except in the hospitality and gaming industry, from October 31, 2004.

Enclosed Shopping malls, many of which already have voluntary smoke free policies, will now be required to be smoke free from October 31 2004.

Restaurants and cafes have had five years to become fully accustomed to being smoke-free. Any exemptions in this sector will be removed on October 31 2004.

There will be a phased in approach to smoking bans in bars, nightclubs, bingo and gaming areas, including the high roller room in the Casino, and these will be smoke free by October 31 2007. As part of this phased in approach, smoking will be banned within one metre of all service areas in licensed hospitality venues, including gaming tables at the Adelaide Casino, from 31 October 2004. There will be an exception for narrow bars that have only 3 metres between the drinks service counter and the wall. If 75% of their drinks service counter borders an area that is less than 3 metres wide, proprietors shall make 25% of their drinks service counter and floor area smoke free instead (if it is not designated a non smoking bar).

There is now increased community support for smoke-free public places and workplaces. In 2002, three-quarters of South Australians said that they wanted smoke-free bars, nightclub and gaming venues. The responses to the 2003 public consultation about the proposed smoke-free legislation were 92% in favour of smoke-free enclosed public places and workplaces.

South Australian research suggests that not only would smoking bans make visiting hotels and bars more enjoyable, most South Australians predicted that it would increase rather than decrease how often they attended these venues. Even smokers predicted that a smoking ban would make little difference to their patronage of hospitality venues.

Other Measures –effective 31 October 2004

The original Bill made changes to Section 44 and consultations are still occurring about this matter. The Government expects to bring in further amendments to this Section at the committee stage. That not withstanding, this legislation introduces broader restrictions on tobacco promotion. It prevents the advertising of a tobacco product in the course of a business for any direct or indirect pecuniary benefit. This definition does not capture non-pecuniary advertising such as tobacco logos on a t-shirt that a member of the public might wear. It will not prevent the incidental use of tobacco in a community dramatic production or in the context of a television program. It is important to protect children from tobacco advertisements and other inducements to take up smoking.

A 2002 survey of nearly 3000 South Australian Secondary School children demonstrated that great progress has been made in reducing smoking uptake in South Australian young people. Rates of smoking are at their lowest point ever recorded, having virtually halved over the past two decades. However, we must remain vigilant with our efforts to discourage young people from taking up a habit that kills one in two long term users. The research showed that experience of smoking increases markedly with age. At the age of twelve, 74% of boys and 84% of girls have never smoked at all. Whereas, by the age of sixteen and seventeen, 19% of these young people are regular smokers.

Since 1999, controlled purchase operations have been conducted in both metropolitan and rural areas. This involves supervised, trained young people (usually from 13 years to 15 years of age) attempting to purchase tobacco products from retailers. They are instructed not to lie about their age and will produce valid identification if asked.

Despite the publicity surrounding this process, one fifth of retailers throughout the State are still selling cigarettes to minors. In 2002, 23% of children reported having bought their last cigarette from a retailer. It is unacceptable that children are able to purchase cigarettes easily and this Bill introduces a number of measures that will enforce compliance.

This Bill seeks to make employers vicariously liable for the sale and the supply of tobacco by their employees to children aged less than eighteen years. This means that employers will need to train their staff to seek valid proof of a purchaser's age to ensure that those who purchase cigarettes are aged eighteen or above.

The sale of herbal cigarettes is to be restricted to retailers who have a merchant's licence. Whilst not containing nicotine, herbal cigarettes still release tar and other cancer-causing agents into the body and the air. There is evidence that young people have been introduced to smoking through the use of these products. Restricting the sale of herbal cigarettes under licence will mean they are available only through licensed outlets.

There will also be restrictions on mobile sales of cigarettes and bans will be imposed on mobile trays and also on toy cigarettes. Mobile sales and trays are a common form of marketing in nightclubs. My Departmental officers have often reported nightclub tobacco vendors dressed in tobacco-company colours approaching young patrons with trays of tobacco for sale or sampling. Research has demonstrated that smoking relapse often occurs under the influence of alcohol in a social setting and so this Bill will prohibit this form of blatant youth advertising and recruitment.

A business should not be able to promote a smoking permitted area as a marketing strategy. This legislation makes it an offence to display a sign or undertake an activity which advertises that a business welcomes or permits smoking on its premises. Allowing business to promote smoking environments goes against the intent of this legislation.

Licensing and display measures—effective 31 March 2005

As children have been 100% successful in buying cigarettes through vending machines under our current system, restrictions on access will be tightened. Vending machines will become employer operated (through purchase tokens) or will need to be placed in a gaming room that is age restricted.

The legislation includes the introduction of a tobacco merchant's licence fee to sell tobacco products for each retail outlet. Under previous arrangements it was possible for large franchises, such as supermarket chains, to pay a single licence fee for multiple outlets. This has led to inequities for small business proprietors who pay the same fee for their one retail outlet as a supermarket chain does for its multiple stores. The shift to a single tobacco merchant's licence fee for each outlet will remove this inequity. It also ensures that the local manager is liable for compliance.

Each tobacco outlet will be required to prominently display their tobacco merchant's licence certificate adjacent to the point of sale as part of their licence conditions.

In order to ensure tobacco retailers the number of points of sale to a minimum, tobacco outlets will be limited in their points of sale.

The provisions of this Bill will begin coming into force on 31st October 2004. Licensing and display measures affecting retailers from March 31st 2005 and further restrictions on bars and gaming areas will occur on October 31st 2005. By October 31st 2007 there will be completely smoke free workplaces and enclosed public places in South Australia.

During this time there will be an extensive communication campaign to ensure the legislation and its implications are well understood. The introduction of these measures will also be accompanied by a Business Consultancy Service for licensed country hotels and clubs to assist them in adapting to the new legislation.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal. The commencement provision and the *Acts Interpretation Act 1915* will allow different provisions of the measure to be brought into operation at different times.

Part 2—Amendment of *Tobacco Products Regulation Act 1997*

4—Amendment of section 4—Interpretation
A number of new definitions are added for the purposes of the amendments.
A wide definition of ***advertise*** is introduced.
Definitions of ***public place workplace*** and ***shared area*** are provided for the extended ban on smoking.
Shared area is an area in multi-unit premises the use of which is shared by persons from various parts of the premises that are in separate ownership or occupation, for example, lobbies, lifts, garages, etc. The ***workplace*** definition is based on the *Occupational Health, Safety and Welfare Act 1986* definition with certain exceptions such as occupied residential places, self-employed persons' workplaces and work vehicles that are not shared.
The new definition of ***enclosed*** is intended to remove subjectivity in deciding whether a ***public place***, ***workplace*** or ***shared area*** is sufficiently enclosed to warrant application of the proposed smoking ban. Under the new definition, a space will be enclosed if the total actual ceiling and wall area exceeds 70 per cent of the ***total notional ceiling and wall area*** (which is based on a continuous horizontal ceiling and continuous walls).
Tobacco product is now widened to include any product that does not contain tobacco but is designed for smoking. This will mean that such products will only be able to be sold by licensed tobacco retailers and all other provisions relating to tobacco products will apply to such products.
5—Insertion of section 4A
A provision is added to exclude any power of the Independent Gambling Authority to restrict the sale or consumption of tobacco products.
6—Amendment of section 9—Licence conditions
The conditions of a tobacco retailer's licence may include—
- a condition under which the holder of the licence will be prevented from selling tobacco products except at a single place specified in the condition (with the effect that a separate licence will be required by the person for any or each other place at which the person sells tobacco products); and
- a condition that will restrict the points of sale of tobacco products within the place at which the holder of the licence may sell tobacco products under the licence.

7—Substitution of heading to Part 3
Part 3 is now to deal only with the supply or promotion of tobacco products.
8—Repeal of section 28
Section 28 currently defines ***tobacco product***, for the purposes of Part 3, to include any product that does not contain tobacco but is designed for smoking. This definition is now unnecessary in view of the change to the general definition of ***tobacco product*** in section 4.
9—Amendment of section 32—Tobacco products in relation to which no health warning has been prescribed
A reference to the Minister for Human Services is replaced by the Minister (that is, the Minister to whom the Act is committed).
10—Repeal of section 33
This section, which requires health warnings in tobacco advertisements, is to be deleted. This provision is unnecessary in view of Commonwealth laws and the proposed changes to section 40.
11—Substitution of section 36
The prohibition on the sale of confectionary designed to resemble a tobacco product is extended to other non-confectionary products designed to resemble tobacco products.
12—Substitution of section 37
This section currently restricts the location of cigarette vending machines to licensed premises under the *Liquor Licensing Act 1997*.
Under the proposed new section, a person will be prohibited from selling cigarettes or any other tobacco product by means of a vending machine unless—
- the machine is situated in a gaming machine area under the *Gaming Machines Act 1992*; or
- the machine is situated in some other part of licensed premises under the *Liquor Licensing Act 1997* and can only be operated by obtaining a token from, or with some other assistance from, the holder of the licence or an employee of the holder of the licence; or
- the machine is situated in a part of the casino in which the public are permitted to engage in gambling activities under the *Casino Act 1997*.

13—Substitution of section 38
Section 38 currently contains a prohibition on the sale of tobacco products to children. This is replaced by—
- a provision that makes it an offence for a person to go amongst persons in premises carrying tobacco products in a tray or container or otherwise on his or her person for the purpose of making successive retail sales of tobacco products; and
- a tighter prohibition on the sale of tobacco products to children that extends the offence to the proprietor of the business by which such a sale is made and requires the production of evidence of age of a kind fixed by regulation (this is intended to be certain photographic evidence).

14—Amendment of section 39—Power to require evidence of age
This is a consequential amendment only.
15—Amendment of section 40—Certain advertising prohibited
A wider prohibition on the advertising of tobacco products is introduced.
16—Substitution of sections 44 to 47
These sections contain various smoking offences that are now unnecessary in view of the wider prohibition on smoking in proposed new section 46.
A new control is introduced prohibiting the display of signs or any practice designed to promote a business as welcoming or permitting smoking on its premises.
Proposed new section 46 bans smoking in any enclosed public place, workplace or shared area.
Certain detailed temporary exceptions are allowed for licensed premises.
In licensed premises (other than the casino) with multiple separate bars, the ban does not apply until the end of October 2007 in separate bars or lounge areas designated by the licensee as smoking areas if—
- any designated smoking area does not include—
- the area within 1 metre of any service area; or
- in the case of a narrow bar, 25 per cent of the bar area (adjoining 25 per cent of the length of the drinks service counter); and
- at least 1 of the separate bars in the premises is not a designated smoking area; and
- no more than 1 of the designated smoking areas consists of or includes a dining area.

In licensed premises (other than the casino) with a single separate bar, the ban does not apply until the end of October 2007 in an area of the bar designated by the licensee as a smoking area or in separate lounge areas designated by the licensee as smoking areas if—
- the area within 1 metre of any service area is excluded from any designated smoking area (however, this condition does not apply to a narrow bar); and
- any designated smoking area in the bar does not exceed 50 per cent of the total area of the bar and is not alongside more than 50 per cent of the length of the drinks service counter in the bar; and
- any dining area in the bar consists of or includes the part of the bar not within the designated smoking area; and
- no more than 1 of the designated smoking areas consists of or includes a dining area.

In the casino, the ban does not apply until the end of October 2007 in bars or lounge areas designated by the licensee as smoking areas if—
- any designated smoking area does not include—
- the area within 1 metre of any service area; or
- in the case of a narrow bar, 25 per cent of the bar area (adjoining 25 per cent of the length of the drinks service counter); and
- no more than half of the bars in the casino are designated as smoking areas; and
- no more than 1 of the designated smoking areas consists of or includes a dining area.

Until the end of October 2005, in a gaming area, the smoking ban does not apply in an area designated by the licensee as a smoking area if—

· the area within 1 metre of any service area is excluded from the designated smoking area; and
· in the case of a gaming area in which gaming machines may be operated (not being the casino)—
· the designated smoking area does not contain more than 75 per cent of the gaming machines; and
· the gaming machines not in the designated smoking area consist of a single row or grouping of machines separated from the designated smoking area by not less than 1 metre; and
· in any other case—the designated smoking area does not exceed 75 per cent of the total area of the gaming area.

From the end of October 2005 until the end of October 2007, in a gaming area, the ban does not apply in an area designated by the licensee as a smoking area if—
· the area within 1 metre of any service area is excluded from the designated smoking area; and
· in the case of a gaming area in which gaming machines may be operated (not being the casino)—
· the designated smoking area does not contain more than 50 per cent of the gaming machines; and
· the gaming machines not in the designated smoking area consist of a single row or grouping of machines separated from the designated smoking area by not less than 1 metre; and
· in any other case—the designated smoking area does not exceed 50 per cent of the total area of the gaming area.

For the purposes of the above provisions—
· a "narrow bar" is one whose public area is not more than 3 metres wide alongside the drinks service counter;
· a "gaming area" includes a place where a bingo session is being conducted.

17—Amendment of section 71—Exemptions
This is a consequential amendment only.
18—Amendment of section 81—Vicarious liability
A new stricter vicarious liability provision is added.
19—Amendment of section 87—Regulations
These are consequential amendments only.

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

PITJANTJATJARA LAND RIGHTS (REGULATED SUBSTANCES) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 16 September. Page 91.)

The Hon. J.S.L. DAWKINS: Mr President, I draw your attention to the state of the council.

A quorum having been formed:

The Hon. NICK XENOPHON: I rise to speak in support of the second reading of this bill. The issues involving the AP lands indicate that there is an enormous level of misery, dispossession and displacement. In its report on this bill the government points out that the recent press coverage of conditions on the AP lands graphically illustrates the misery the practice of petrol sniffing inflicts not only on those who participate in it but on all community members. This bill is about recognising the seriousness of the conduct of those persons who are trafficking in petrol and other substances that so damage the people on the APY lands. It looks at increasing penalties as a deterrent to conduct that causes so much misery.

In order to give the government an opportunity to respond at an appropriate time, I foreshadow amendments I will be moving in general terms to outline my concerns and to give members notice of this. I foreshadow that the current provisions with respect to those who are allowed to enter the lands are too restrictive. It is restricted to a certain class of people, including members of parliament, people with the authority of the minister and people with the authority of the APY Lands Council, to give some instances. However, the government has acknowledged in the opening paragraph of its report to the parliament in its second reading explanation of this bill that it was recent press coverage of conditions on the APY lands that graphically illustrated the misery caused by the substance abuse of petrol sniffing.

Miles Kemp, the *Advertiser* journalist, and other media outlets that covered this story made a substantial difference in bringing the terrible conditions, the blight of petrol sniffing, to the attention of the people of South Australia. That is why I foreshadow an amendment that a representative of a news media organisation be allowed to go on to the lands and that an exemption apply to those people, as I believe there is a positive role for the media to play to ensure appropriate scrutiny and debate of what has been occurring and to ensure that the programs the government has promised to implement are implemented. I do not doubt the sincerity of the minister in wishing to bring about positive changes on the lands, but it gives an opportunity to monitor in a positive way the—

The Hon. R.K. Sneath interjecting:

The Hon. NICK XENOPHON: To start again, after the very unhelpful interjection, it is important that there be appropriate scrutiny of what occurs on the lands, that the people of South Australia have that level of disclosure and knowledge of what is occurring. I am convinced that, if it was not for the recent media scrutiny, in particular the front page *Advertiser* story of several months ago by Miles Kemp and other journalists involved, we would be at this stage today in terms of talking about this as an issue of the utmost importance to bring about changes and reform for the betterment of the people on the APY lands. So, that is why it is important to allow media organisations onto those lands.

I also foreshadow that I will move an amendment with respect to regulated substance misuse offences and a mandatory referral to an assessment service. The Controlled Substances Act, under section 34 and subsequent sections, refers to a system of mandatory referral for assessment. It treats the abuse of a controlled substance as a health issue, rather than a criminal issue, and there is a legislative scheme in place, which provides for a regime to ensure that there is a system in place for appropriate treatment of a person who is using a controlled substance, but a controlled substance does not include the act of petrol sniffing. However, as I understand it, the by-laws for the APY lands set out that petrol sniffing is an offence. My research to date has not disclosed—

The Hon. R.D. Lawson interjecting:

The Hon. NICK XENOPHON: I am very grateful to the Hon. Mr Lawson, who has pointed out that petrol has been declared to be a drug for the purposes of the Public Intoxication Act—

The Hon. R.D. Lawson: In the last month.

The Hon. NICK XENOPHON: —in the last month. Therefore, there is an acknowledgment that on the APY lands it is, in a sense, a controlled substance, and a statutory scheme is in place for dealing with someone who is abusing a controlled substance to get the necessary help—to have a system of mandatory referrals and the like. There is a broader debate that is not appropriate at this time about the effectiveness of section 34 and whether there is a need to expand that section to strengthen it. However, I think that, at the very least, this parliament has an obligation to consider expanding

the provisions of section 34—in a sense, to insert the provisions of section 34 of the Controlled Substances Act within this bill—to ensure that the statutory framework is in place to assist those who are abusing a controlled substance to receive the necessary assistance, and that there is a statutory scheme in place that provides assistance and protection to health workers.

With respect to the authorised entry on the lands, I indicate that I am also proposing to include, as well as media organisation representatives, a person who provides an assessment and treatment service established by the minister, in accordance with this proposed section. These are important matters. I would like to think that there is a non-partisan approach to doing whatever we can to assist the men, women and children of the APY lands in every way possible to rid them of the scourge of petrol sniffing and all the terrible associated problems that arise from it. I would like to think that the amendments I have foreshadowed will play some role in assisting an aim which I think is the aim of every member of this place.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): We have only just received the amendments, and the honourable member has apologised to me in relation to that. I have had talks with the Hon. Kate Reynolds from the Democrats, and she has not seen the amendments, either. Prior to that, I was considering taking the adjournment and then moving the next day into the committee stage of the bill. Unfortunately, however, the amendments are longer than the bill itself. That is no reflection on the honourable member; this council is set up to take amendments and make improvements to bills, where necessary. It just means that the government's position now will be to discuss the amendments more broadly.

We will have to wait for those people who have an interest in the outcome of the bill which, in its first draft, was to deal with regulated substances, but this goes much further than regulated substances. In fact, there are issues here that are being sensitively discussed with the APY people in relation to changes that the government, like-minded people and perhaps members of the standing committee would like to see discussed and, as the honourable member puts it, to look at these issues in a non-partisan way so that we come away with the best possible outcomes.

In relation to section 4A, 'Authorised entry onto lands', this is a key issue in relation to the way in which the APY see the protection of their culture and their way of life in the lands. Perhaps we see it differently. There has been the suggestion that, if the lands were far more open than they are now and it did not have restricted entry, the situation that has developed over the last decade would not have occurred. There would have been more people to observe the deteriorating conditions in which the APY people were living and more attention would have been paid by a range of people, so that the deteriorating conditions people were living in would have been interrupted and there would have been greater government support, or greater support, for APY had those circumstances been known.

That is an argument about those people who already have unauthorised entry that then has to be weighed up. Some are selling petrol, drugs and alcohol, and some are running substances—some unregulated and some regulated—into the communities and contributing to the deteriorating lifestyle. I think that there are questions that have to be weighed up if we are to have serious consideration of the amendments. They will have to be considered far more widely, and I am sure the Democrats and other Independent members will take time out to consult their constituencies. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

VISITOR TO PARLIAMENT

The PRESIDENT: I draw honourable member's attention to the Mayor of the Southern Midlands Council, Mr Colin Howlett, who is present in the gallery today. On behalf of all members, I would like to welcome him to our chamber.

ADJOURNMENT

At 4.31 p.m. the council adjourned until Wednesday 22 September at 2.15 p.m.