LEGISLATIVE COUNCIL

Wednesday 27 October 2004

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

JOINT PARLIAMENTARY SERVICES

The PRESIDENT: I lay upon the table a report on the administration of Joint Parliamentary Services 2003-04.

LEGISLATIVE REVIEW COMMITTEE

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

Report received.

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

Report received and read.

PAPERS TABLED

The following papers were laid on the table:

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

- Reports, 2003-04—
  - Adelaide Cemeteries Authority.
  - Planning Strategy for South Australia.
  - Playford Centre.
  - South Australian Rail Regulation.
  - Speed Management.
  - Tarcoola-Darwin Rail Regulation.
  - The Administration of the Development Act.
  - TransAdelaide.
  - West Beach Trust.
- Passenger Transport Act 1994—Report—Sections 39(3b) and 39(3d), "Wandering Star".

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

- Progress in Implementation of the State Water Plan 2000 during 2003-04—A Report prepared for the South Australian Parliament by the Minister for Environment and Conservation—September 2004.

OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION COMMITTEE

The Hon. J. GAZZOLA: I bring up the report of the committee on the Occupational Health, Safety and Welfare (Safework SA) Amendment Bill 2003.

Report received.

QUESTION TIME

AUDITOR-GENERAL'S REPORT

The Hon. R.I. LUCAS (Leader of the Opposition): My question is to the Leader of the Government. Given claims that he and the Treasurer have made of a supposedly tougher financial accountability regime for Rann government ministers, can the leader indicate whether there is an expectation from the Premier that he as a minister and all Rann government ministers will read the Auditor-General's annual report as it relates to the operations of their agency?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): The expectations of the Premier for his ministers are, I think, well known. We have a ministerial code of conduct which sets out that the requirement of ministers is that they be well informed and diligent to matters.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, obviously, one would expect that, when an Auditor-General's Report comes, ministers and their officers would go through it. I am not aware of any specific direction to that effect, and I do not know that that is the sort of thing for which one actually needs specific directions. Obviously, there is an expectation that ministers will be diligent.

The Hon. R.I. LUCAS: Given that expectation of ministers, and given the claims of the Attorney-General that he is not even aware of the existence of the Crown Solicitor's Trust Account, does the Leader of the Government believe the Attorney-General, given that, in last years Auditor-General's Report on pages 674, 678 and 684, there is a clear reference to the Crown Solicitor's Trust Account?

The Hon. P. HOLLOWAY: I am not aware of the comments that the Leader of the Opposition alleges were made by the Attorney-General. I know, from my past experience, that one needs to take allegations of that kind from the Leader of the Opposition with a grain of salt. I will refer the question to the Attorney-General and bring back a reply.

The Hon. CAROLINE SCHAEFER: My question is to the Minister for Mineral Resources Development. Can the minister explain, in regard to the Auditor-General's Report, the overpayment of allowances as described in the report? What allowances were overpaid? What amount was overpaid and to whom were they overpaid?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I am not exactly sure to what page the honourable member is referring.

The Hon. Caroline Schaefer: Page 1058.

The Hon. P. HOLLOWAY: I am not even sure which department she is referring to.

The Hon. Caroline Schaefer: Yours.

The Hon. P. HOLLOWAY: It is Primary Industries. It may not necessarily relate to the minerals and energy part of it. On page 1058, it is the payment of royalties.

The Hon. Caroline Schaefer: You've already told me you don't understand that.

The Hon. P. HOLLOWAY: That is not correct. I have already informed the honourable member that that matter went back to the times when she was a minister and back to the time when the Leader of the Opposition in another place was the minister in February 1999. I will examine the question from the honourable member and give her a response. Unless the honourable member wishes to repeat it, I am not sure to which part she is referring. It is all very well for members to come in and ask questions, but they do not even say which department they are referring to.

The Hon. Caroline Schaefer: Page 1058, Payroll, Overpayments of allowances.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Yes; that is right. We did have the opportunity yesterday for members to do this.

The Hon. A.J. Redford: We gave you an extra day to read it.

The Hon. P. HOLLOWAY: Well, on the department's payroll services, I would have to refer that question to the Minister for Agriculture, Food and Fisheries. Clearly, the corporate section of the Department of Primary Industries and Resources is under his responsibility. He has access to that

matter which is referring to that broad part of the department. It would be inappropriate for me to answer in respect of another minister's portfolio in any case. I will get that information from him and bring back a response.

MAGISTRATES

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Leader of the Government, representing the Attorney-General, questions about the magistracy.

Leave granted.

The Hon. R.D. LAWSON: On the front page of *The Advertiser* of Monday 25 October, an item appeared concerning issues that had been raised by a number of South Australian magistrates. Those issues have been developing for some time and, in September 2003, a magistrate wrote to the chief justice of South Australia, the Hon. Justice Doyle, as follows:

> Re: systematic problems in the magistracy.

Reference is made to an earlier email about a proposal to establish a college of magistrates. The letter continues:

> Whilst we agree that it would be desirable for the magistracy to be united under the umbrella of a collective body with a common purpose, it would seem to be no longer possible for the Magistrates Association of South Australia to be that body. The college proposal was, effectively, a last resort that was born out of considerable desperation and frustration felt by magistrates at certain intractable, systemic problems that had been identified as ongoing and unlikely to disappear. They are problems that have had, and will continue to have, significant adverse effects on the morale of the magistracy. Indeed, some very senior magistrates have become proponents of the college and have commented that, in their experience, magisterial morale has not been worse. What has happened, and I do not think that I exaggerate, is somewhat akin to an oppression of minority shareholders, if you will allow me the latitude of expressing an analogy.

The letter continues for several pages, outlining to the Chief Justice the systemic problems referred to.

In a ministerial statement made on Monday the Attorney-General, in another place, dismissed the claims of the magistrates, describing the article in *The Advertiser* as, 'a very public wage claim.' He said:

> Today's *Advertiser* article is essentially a wage claim and an airing of internal disputes within the independent Courts Administration Authority.

The Attorney went on to denigrate magistrates who were members of the college of magistrates on the ground, as he alleged, that they were not participating in a telephone roster that the Chief Magistrate operates.

The Attorney-General did not allude to the fact that there was a meeting in May this year at which the South Australian magistracy was overwhelmingly represented, and that those present overwhelmingly voted to abolish what are termed 'remunerated middle management positions within the magistracy.' Far from this being a wage claim by certain members of the magistracy, members of the college of magistrates oppose the granting of a special allowance to those people who are selected by the Chief Magistrate—in consultation with the Attorney-General, apparently, and the Chief Justice—to provide certain supervisory functions. The contesting magistrates say that those positions should be rostered or elected from within the magistracy and that they should carry no remuneration at all. My questions to the Attorney are:

1. How does he sustain the claim that this is an industrial claim by magistrates when the magistrates making it are seeking not an increase in their remuneration but a decrease in certain remunerated positions?

2. Will he apologise to the magistrates for suggesting that they are motivated solely by industrial and financial considerations, whereas in fact the concerns outlined by them related to matters of judicial organisation, governance and independence?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer that question to the Attorney-General and bring back a response. However, I note that, in his long introduction to that question, the shadow attorney-general did not mention exactly what the college was after in relation to the after hours telephone roster. I think magistrates are very well paid—they certainly earn nearly twice as much as the backbench members of this parliament—and their superannuation scheme, if it is not already better, certainly will be in the near future. But that is another story. For those sorts of returns I think it is reasonable to expect that those magistrates should be available on that roster once a month, or whatever it is, in relation to dealing with telephone requests for warrants and the like. However, I will refer the question to the Attorney and I am sure he will be delighted to provide an answer to it.

The Hon. A.J. REDFORD: I have a supplementary question arising from the answer. Is the minister asserting that the magistrates were not prepared to involve themselves in the after hours telephone service?

The Hon. P. HOLLOWAY: I suggest the honourable member read the statement the Attorney made the other day. In my answer I simply pointed out that, whereas the Hon. Robert Lawson disputed some of the things that were said, he did not refer to that particular matter. I make no more comment than that.

ADELAIDE POLICE STATION

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I table a ministerial statement made by the Deputy Premier today in relation to the Adelaide Police Station relocation.

EXPORT COUNCIL

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Industry and Trade a question about the Export Council.

Leave granted.

The Hon. R.K. SNEATH: The government adopted a recommendation from the Economic Development Board to create an industry-led export council charged with the responsibility of producing a strategy for industry and government to build the state's export culture. A few days ago the Premier released the South Australian Export Council's paper entitled 'Beyond local, towards global—building South Australia's export culture'. Is the Minister able to provide further details on the recommendations of the Export Council's first document?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): This government well understands that a whole of industry team effort—one that is led by industry in partnership with government—is the key to building our exports. In the past decade, the value of our exports has almost doubled, growing from $3.89 billion to $7.6 billion. Our average annual growth rate during that time has exceeded the national average. It is clear that if we want to triple the value of our exports to $25 billion by 2013 we have to explore and

establish new markets in addition to boosting our existing markets.

The Export Council has made 12 recommendations which have been given in principle support by the government subject to further public consultation. Those recommendations include the council's calling on industry to take a lead role in developing export growth through the development of export focused industry associations, and that these industry associations (in turn) inform and educate their members on international markets. The Export Council intends to work with existing industry associations to ensure that they develop an export focus, but it will also provide advice and practical assistance to those sectors that do not have a single industry association yet.

Crucial to this is that industry has the latest information to tap into opportunities and manage threats from free-trade agreements to customs procedures. The Export Council will feed market information to industry through regular communication and via the Exporting South Australia web site. The Export Council is committed to helping each industry sector to develop a mentoring program and is moving immediately to develop a model for this. The mentoring program will assist businesses to move into new export markets or export for the first time. The Export Council believes there are gaps in industry capability ranging from market awareness to an entrepreneur culture. The council will continue to focus on capability by developing initiatives, particularly within the identified sectors.

Another major area is the impact that skilled labour shortages are having on export growth. These skilled shortages are acute in the regions where the demand for skilled and semi-skilled labour exceeds the local work force. The state government will liaise with the relevant commonwealth agencies to ensure that labour shortages are appropriately measured to reflect the needs of employers in export industries, especially in regional South Australia. The Export Council has also called on the government's Training and Skills Commission to address specific export skills in its upcoming work force development strategy.

The Export Council says that a common complaint from industry is that they suffer from a regulatory burden and, as a result, the Export Council has called on the government to work with them to overcome this problem. They say that it is a deterrent to local businesses and international investors made all the more difficult by different local government regulations across the state. The council has called on the Public Sector Reform Unit within the Department of the Premier and Cabinet to find ways to reduce government red tape and clear export pathways.

The Export Council has recommended that the government consider exports as part of a business impact statement in all cabinet submissions and require government agencies to consider exports before proposing legislative or regulatory changes. Any future changes to local or state government laws and regulations should consider as a priority the impact on exporters. The Export Council calls for the forthcoming state infrastructure plan to have a focus on export industries, ensuring their needs are reflected in future infrastructure plans. Maintaining world-class infrastructure will boost the export potential of all South Australian industries by reducing business costs. In export markets a small change in the cost base could make a massive difference in sales.

Industry leaders are being backed with a major commitment from the government. In March the Premier unveiled a $300 million plan to add export growth through integrating rail, road and shipping infrastructure at Port Adelaide. Our farmers and major industries must have their product moved as quickly, efficiently and cost effectively as possible; and to facilitate this we have the $55 million plan to further deepen the Outer Harbor channel, expected to be completed by the end of 2006, as well as the completion of the $136 million stages 2 and 3 of the Port River Expressway.

The Export Council will deliver an awareness campaign that complements the work of Austrade in promoting the value of trade to all South Australians. The Export Council believes that the value of trade is not recognised by large sections of the community. They intend, first, to target those sectors that are not exporting and, later, to involve schools so the next generation is educated as well. The Export Council has encouraged industry sectors to create joint promotions where synergies exist and to work with the state government to promote South Australia, its regions and its industries appropriately. The council will make further recommendations to the government for developing the state's exports. Beyond Local Towards Global is the first step in a process that will be required to develop a full export strategy for the state. It raises issues on which we hope to obtain feedback from across South Australia.

Going forward, the Export Council has committed itself to delivering issues papers on overseas markets, services and barriers. It will monitor and review its 12 recommendations; in six months it will deliver further recommendations; in 12 months it will renew and reinvigorate all recommendations; and at 24 months a full review will take place. The Export Council will continue throughout to consult with industry. Certainly, a big job lies ahead. However, this ongoing work is bound to identify barriers to trade which can be worked on and which, hopefully, can be overcome. I thank the honourable member for his question and his interest in this important subject.

MENINGIE MARINA

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 Environment and Conservation, a question about a proposed marina near Meningie on the banks of Lake Albert.

Leave granted.

The Hon. SANDRA KANCK: The Conservation Council of South Australia has raised concerns about the intention of Kinsmen Limited to develop a marina or, as the Conservation Council prefers to call it, a canal development on Lake Albert. The New South Wales government has so much concern about canal development that its state environment policy No. 50 prohibits canal developments outright. The site in question is a Ramsar wetlands site and is one of only six areas to be declared a significant ecological asset under the Living Murray program. The development has the potential to adversely affect numerous vulnerable animal species, including the mallee fowl, the Murray cod, the southern bell frog and the eastern long-eared bat, and plant species such as the endangered Osborn's Eyebright and the Metallic Sun-orchid. As a consequence, the Conservation Council has written to the federal Department of the Environment and Heritage asking that the project be declared a controlled action under the Environment Protection and Biodiversity Conservation Act 1999.

The Conservation Council believes this proposal has the capacity to seriously undermine South Australia's push for a return of 1 500 gigalitres of additional environmental flows to the Murray. It argues that South Australia must be seen to

be demanding the highest environmental standards for developments near the Murray, or we will face the charge of hypocrisy when calling for sacrifices from other states. It will make it harder to argue for increased environmental flows. My questions are:

1. Does the minister share the concerns of the New South Wales government about canal developments?

2. Does the government support the construction of this particular marina?

3. What consultation has occurred with the Ngarrindjeri people about this proposal?

4. Will the minister discuss with his colleague the Minister for the River Murray what protections can be invoked under the River Murray Act?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for her questions. I will refer them to the Minister for Environment and Conservation in another place and bring back a reply.

GEOTHERMAL ENERGY

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about geothermal energy.

Leave granted.

The Hon. D.W. RIDGWAY: On Monday this week I asked the minister a supplementary question, following a dorothy dixer from one of his colleagues, on what makes hot rocks hot. Rocks in the Gawler Craton are hotter due to a factor known as the South Australian heat flow anomaly, which is due to the presence of naturally occurring radiogenic minerals insulated by sediment. Natural low level radiogenic decay results in extremely high heat production rates. However, on Monday, the minister attributed the reason why the rocks are hotter to gravitational pressure.

When I looked at some information from Petrotherm, one of the leaders in the field of hot rock exploration, I noted that the minister had got a number of the details in his answer wrong. Even yesterday, when he had an opportunity during another dorothy dixer from one of his colleagues to admit that his knowledge on the subject was lacking, he did not do so, which shows his disdain for the burgeoning industry and a total lack of understanding of one of the important issues in his portfolio.

The PRESIDENT: Is the Hon. Mr Ridgway coming to the question? He is starting to debate the issue, which is out of order.

The Hon. D.W. RIDGWAY: Sorry, Mr President. I will repeat the minister's response, which was as follows:

> The core of the earth is made up of hot rock. The question is where they appear closest to the surface. We are very fortunate in this state we have some of the hottest rocks closer to the surface. The idea is to inject water into them and bring it up as steam, which can be used as emission free—

He was then interrupted and stopped. The research that I undertook yesterday indicates that water is never pumped in and brought up as steam. It is kept in a high pressure closed loop and fed through a heat exchanger.

The PRESIDENT: I have explained to the Hon. Mr Ridgway that he is debating the issue. He really needs to come to the point.

The Hon. D.W. RIDGWAY: Will the minister now apologise for misleading the council on Monday 25 October with his answers, and will he also apologise to the important South Australian companies that he has misrepresented? Will he give the council an undertaking that he will obtain briefings to fully understand his portfolio?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): Will I give an apology? No.

OLYMPIC DAM

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development questions regarding the proposed increased mining of uranium at Olympic Dam.

Leave granted.

The Hon. T.G. CAMERON: According to a recent article in *The Age* newspaper, Western Mining Corporation looks set to expand its Olympic Dam uranium mining operations. Under an aggressive multi billion dollar expansion plan by Western Mining, Olympic Dam could soon be the world's biggest producer of uranium. The proposed production increase is a result of spot uranium prices surging from an historic low of $7.10 a pound at the end of 2000 to more than $20 a pound today. Annual uranium production at Olympic Dam currently ranges from 4 200 tonnes to 4 500 tonnes. Under Western Mining's expansion plans, uranium output is set to triple to 12 000 tonnes, which would make Roxby Downs the biggest uranium mine the world has ever seen. According to the report in *The Age*, booming uranium prices as well as promising exploration results from the deposit's southern extension point to an expansion being very viable. My questions to the minister are:

1. Has the government entered into any discussions with Western Mining Corporation over its plans to triple its production of uranium from 4 500 to 12 000 tonnes per year, and will the government be supporting such an increase?

2. If so, can the minister outline to the council what stage the negotiations are at?

3. Is there a timetable for the commencement of the increased production?

4. Has the government considered the implications of such a massive increase in production, including the possible environmental impact of the transportation of the uranium along country and city roads to our ports?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): Indeed, the government has been very intimately involved in the plans by Western Mining to expand Olympic Dam, and the chief executive of Western Mining and the Premier jointly announced the beginning of a feasibility study earlier this year. The government has set up a task force under an officer in my department, and it is doing everything it can to facilitate all the necessary planning that might be under way in relation to an expansion of that mine. Obviously a number of issues have to be addressed. Of course, one of the most challenging issues would be the provision of water.

A cross-government agency has been set up and it has been working very hard. I have attended a number of meetings of that group and things are progressing very well. In relation to the timetable, obviously that will depend on the decisions Western Mining makes. I do not have that information before me now, but I am certainly happy to obtain that from the company, that is, the timing in which its feasibility study will be completed, or I would be pleased to get an update about that. I am sure the company would be pleased to supply that. This government is a very strong supporter of the expansion of the Olympic Dam project. Obviously the choices the company will face—whether it will go to an

open-cut operation or further expand its existing operation—will be investigated by Western Mining.

This government is doing everything it can from its point of view to facilitate that, and we would very much hope that such an expansion would proceed because it would be of significant economic benefit to this state if that were to happen.

The Hon. T.G. CAMERON: I have a supplementary question. Now that the minister has stated that the Premier is intimately involved in the negotiations to increase the production of yellowcake at Roxby Downs, does this mean that the Premier now recants on what he said in his little booklet about yellowcake which he wrote while he was working for the then premier Don Dunstan and, if so, will he make that public?

The Hon. P. HOLLOWAY: The Premier has made his support for this project extremely public. As I said, he was present at the joint press conference with the chief executive of Western Mining supporting it, and all those questions were asked at the time.

MAGISTRATES

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Attorney-General, a question about magistrates.

Leave granted.

The Hon. A.J. REDFORD: In Monday's *Advertiser* it was reported that six magistrates expressed concern about a number of issues associated with the management of the Magistrates' Court in South Australia. The editorial of *The Advertiser* quite rightly said that the issues must be addressed quickly. On Monday, our erstwhile Attorney-General responded by saying that this is a petty industrial dispute, that they were lazy or not working hard enough, and that all would be made well by the reintroduction of the amateur judiciary. He even had a slap at the former attorney-general (Hon. Trevor Griffin)—and in that respect he cannot help himself. In any event, the response of this state's first law officer was a gratuitous and direct attack on magistrates in this state. Today—

The Hon. J.F. Stefani: Did he ever practise law?

The Hon. A.J. REDFORD: He is forever practising; he might get down to doing it for real one day! Today I have a leaked letter from the Attorney to the Chief Magistrate dated 31 March 2004. In the letter, under the heading 'Medical Examinations', the Attorney makes the following comment: 'I believe that such a power would be helpful', and then goes on to suggest that one magistrate, namely, the Chief Magistrate, have the power to direct another magistrate to undergo a psychiatric test. Rightly, this move to allow the arbitrary psychiatric examination of judicial officers has been rejected by the magistrates, who described it as an invasion of privacy; and they further said that it gave provision for a grave abuse of power.

The Constitution Act provides that the seat of a member of parliament become vacant if an MP and/or a minister becomes of insane mind. Notwithstanding that, I am completely unaware of any proposal to require members of parliament to undergo psychiatric examinations to ensure that we comply with the Constitution Act. I know that there are some who might think that some of us should be subjected to psychiatric examination but, in the case of the Attorney-General, I would suggest that the risk would be too great.

The Hon. A.J. REDFORD: My questions are—

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: He would come out confused after the Attorney—I will give you the big tip. My questions are:

1. Why should magistrates be required to undergo psychiatric examination?
2. In what circumstances will they be required to undertake such an examination?
3. Does the Attorney believe that members of parliament and/or ministers should undergo psychiatric examination in the same way as he proposes for judicial officers?
4. Does the Attorney agree that there is a risk that this proposal could provide for a grave abuse of power?
5. Is there any magistrate whom the Attorney-General has in mind who should be subject to a psychiatric examination?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will pass those questions on to the Attorney and—

The PRESIDENT: See what he does with them.

The Hon. P. HOLLOWAY: Yes; he can do with them what he likes.

INDIGENOUS AWARDS

The Hon. G.E. GAGO: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about indigenous awards.

Leave granted.

The Hon. G.E. GAGO: There is a great deal of benefit gained through the use of awards being bestowed on individuals and community groups in appreciation for their contribution to the wider community. This is particularly the case in relation to indigenous people as, often, their tireless work in supporting the community goes unheralded. Indeed, these charitable endeavours for the community are often carried out by individuals on many fronts, and I cannot applaud those people enough for their efforts, unlike those people sitting across from me who do not seem interested in this question at all.

The Hon. A.J. REDFORD: I rise on a point of order.

An honourable member interjecting:

The Hon. A.J. REDFORD: She asked for this. There has never on any occasion been any suggestion on this side of the council that would be anti-volunteer. I ask the member to withdraw the comment and, perhaps, comply with standing orders in not offering an opinion.

Members interjecting:

The PRESIDENT: Order! Disagreement has never been a point of order, but there is a question here: if the honourable member sticks to her explanation and does not make comment and pass opinion, she will not draw the sort of response she gets. The honourable member should conclude her explanation.

The Hon. G.E. GAGO: Thank you for your advice, Mr President. Given this, my question to the minister—

Members interjecting:

The PRESIDENT: There was no point of order. Disagreement is never a point of order. The Hon. Ms Gago has the call.

The Hon. G.E. GAGO: Given this, my question—

An honourable member: Don't be a sook!

The Hon. A.J. REDFORD: I rise on a point of order. The honourable member says that I am a sook; I can take any bit of abuse that I like, but I will not be maliciously accused of not caring about volunteers.

Members interjecting:

The PRESIDENT: Both sides of the council will come to order. The Hon. Mr Redford has been here a long time and is well trained in the rules of debate, not only in this council but also in public forums. He has raised two points of order which, I suspect, he knew both times were not points of order. If someone wants to call a point of order, they will immediately go into that point of order or what part of the rules is being breached, and explanations and having a right of reply is a breach of the standing orders. The Hon. Ms Gago will conclude her explanation, and ask the question.

The Hon. G.E. GAGO: Thank you, Mr President. Given this, my important question to the minister is: will he inform the council of any state government award initiatives that recognise indigenous people?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for her very important question and the difficult work that she had to go through to get the question on the *Notice Paper* and in *Hansard* so that I can reply to it.

An honourable member interjecting:

The Hon. T.G. ROBERTS: No; I am not saying that at all. A new award category for outstanding young indigenous South Australians has been created for the 2005 Young Achievers Award.

Members interjecting:

The PRESIDENT: Order! All honourable members will listen to this important answer in silence.

The Hon. T.G. ROBERTS: Thank you, Mr President. My colleague the Hon. Steph Key, the Minister for Youth, has launched the nominations for the new annual award. This Labor government is committed to fostering a greater degree of understanding and respect for different histories and cultures, with indigenous Australians having particular significance in our nation. This new award is dedicated to young indigenous people who hold the key for future generations, and it recognises and rewards their commitment to achieving excellence. Young indigenous people today need positive role models and peers to assist in the development of a stronger community and, as part of encouraging the development of young indigenous people, it is important to recognise their successes, just as we do with the broader society.

Accordingly, DAARE has been working with the Office for Youth and the Department for Families and Communities on the introduction of an Office for Youth Outstanding Young Indigenous Achiever Award to be offered as part of the annual Office for Youth Awards. The award is to recognise a young indigenous person who has provided an outstanding contribution to the wider indigenous community in achieving excellence. The criteria for the awards include:

- contribution and benefits to society;
- sacrifices made to achieve (and many sacrifices are made by people within the Aboriginal communities that the honourable member referred to in framing her question);
- personal development undertaken;
- initiative and innovation demonstrated; and
- educational and employment achievements.

Publicly recognising the achievements of a committed and successful young indigenous person in our community will serve as a role model for others, encouraging them to attain success in their own lives.

The launch signalled the call for nominations for the South Australian Young Achievers Awards 2005, which are open to all young South Australians between the ages of 14 and 16. Entry is free. Nominations close on 14 February 2005. I urge all members of this council to encourage people to nominate. Each category winner will receive $1 000 from HomeStart Finance and a trophy. One young person will be chosen as the Channel 9 and *The Advertiser* Young Achiever of the Year and will receive an additional $1 000 grant from HomeStart Finance, a trophy and a fabulous holiday for two provided by Virgin Airlines and the Wrest Point Hotel Casino complex. In addition to the Office for Youth Outstanding Young Indigenous Achiever Award, nominations are being sought for the following seven categories—and this is not a free paid advertisement:

- the Coffee Club Arts Award;
- Intencity Sports Award;
- Allianz Community Service Award;
- Boileau Business Solutions Career Achievement Award;
- AGL Regional Initiative Award;
- Faculty of Sciences at the University of Adelaide—Science and Technology Award; and
- SA Water Environment Award.

I would hope that the media picks up on the question asked by my colleague and my answer to make it as widely supported as possible so that we can get the participation rates we deserve in the presentation of these awards.

FIRE HYDRANTS

The Hon. IAN GILFILLAN: I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Administrative Services, questions relating to access to fire hydrants in the Stirling and Aldgate areas.

Leave granted.

The Hon. IAN GILFILLAN: My question, in part, was stimulated by an article in the *Mount Barker Courier* of 20 October this year entitled 'Where's the water: hundreds of fire hydrants not working'. I recollect that two years ago a colleague of mine Mr Ted Dexter made a complaint at that stage not only that fire hydrants were not operating but also that they could not be found because they had been covered over; so, this is an ongoing problem. It has been reported that in the area of Stirling and Aldgate 25 per cent of hydrants are inoperative. Examples of the problems reported to SA Water include: five out of six hydrants on Hampstead Hill Road have been completely covered by road resurfacing and cannot be found. Many of the indicator posts have had their red plastic tops destroyed, making it very difficult even to find a location to start looking for the hydrant. Other hydrants have had their lids sealed by mud or debris and need corrective action to make them accessible again.

CFS volunteers have reported that 30 hydrants identified as unusable remain in this condition despite SA Water being advised of this last year. These same volunteers are concerned that the unusable hydrants may number in the hundreds, and it is well understood that ready access to water is of the utmost priority when volunteers are fighting fires on the ground. All present indications suggest that this fire season is likely to be one of the worst on record—clearly, we must ensure that fire fighting infrastructure is available. I ask the minister:

1. When will he direct SA Water to identify, inspect and repair all fire hydrants in the Adelaide Hills as a matter of the highest urgency?
2. When will he report the progress of this operation and what is the expected date of completion?
3. What steps will he put in place to ensure not only that this situation does not occur again but also that the alarm

raised by these revelations is immediately set at rest for the populations of these areas?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his hawk-eyed observations and for the work that Ted Dexter has done in bringing this issue to the parliament for our attention. I will pass that on to the relevant minister in another place and ensure that you get a reply as quickly as possible.

The Hon. J.F. STEFANI: I have a supplementary question. Will the minister also ensure that SA Water undertakes a survey of other areas which are prone to bushfires, so that the communities in those areas are equally protected if the need arises?

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

ADOLESCENTS AT RISK

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Youth, a question about teenagers involved in the sex industry.

Leave granted.

The Hon. A.L. EVANS: In a recent report by CHILD WISE called 'Speaking for Themselves' it is stated that many young teenage sex workers are falling through the gaps of welfare services, and that many experience homelessness and are in the care of the state. The report highlights the problems and isolation experienced by these young people, especially after hours. It also highlights the way many young teenagers are falling into the cycle of drug addiction, homelessness and prostitution through contacts with other more troubled youths while in state care, and it calls for more appropriate targeted housing to prevent young people from being subject to influences from more troubled adolescents.

The report also calls for 24 hour outreach and support services and pathway programs to help break the cycle of drugs, homelessness and prostitution, once established. CHILD WISE estimates that there are 4 000 children and teenagers under the age of 18 who are involved in street sex around Australia. My questions to the minister are:

1. How many children and teenagers are estimated to be caught up in prostitution in South Australia; and how many of these would be under the guardianship of the minister?

2. What strategies are currently in place to prevent children and teenagers in the care of the state from being housed in situations where they may experience negative influences from more troubled adolescents?

3. What South Australian government funded outreach assistance or pathway programs are available for young people caught up in drug addiction, homelessness or prostitution; and how is their effectiveness in breaking these cycles being measured?

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

SOUTH-EASTERN FREEWAY

The Hon. J.M.A. LENSINK: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Police, a question about the monitoring of the South-Eastern Freeway.

Leave granted.

The Hon. J.M.A. LENSINK: In an article published today in *The Mount Barker Courier* entitled 'Freeway drivers cause 12 crashes in 15 days', the following comments were made:

> Police have reported 12 crashes in 15 days on the South-Eastern Freeway—a month after an operation targeting irresponsible motorists on the road was abandoned because police resources were stretched.

It goes on:

> Officers found motorists were still speeding and tailgating—the main causes of the recent spate of crashes. . . Sergeant Brian Schmidt said Operation Freeway was supposed to run during September but 'didn't go to plan' because the station's traffic section was 'busy' with larger priorities.

My questions to the minister are:

1. Does the government acknowledge that a number of police units around the state are under resourced?

2. What priority does the government place on road safety on the South-Eastern Freeway?

3. Will the government place a higher priority on the bad behaviour of road users in South Australia?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will ask the Minister for Police to get a report from the Police Commissioner about the allocation of resources in those areas and bring back a response.

The Hon. D.W. RIDGWAY: I ask a supplementary question. Will the Minister also find out what road safety initiatives have been funded on the South-Eastern Freeway through the collection of speeding fines?

The Hon. P. HOLLOWAY: I will also get that information. As a regular traveller on that road I know that a number of monitoring cameras have been recently installed. Whether or not they are operational yet, I am not sure. However, I am sure that anyone who uses that road frequently, as I do, would be aware of their installation over the past few months. That is really a matter for the Minister for Transport. I will bring back a response.

SCHOOL BUSES

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 Education and Children's Services, a question about school bus contracts.

Leave granted.

The Hon. KATE REYNOLDS: My office has again been contacted by operators of rural bus services that are under contract to the Department of Education and Children's Services. These operators are concerned that the value of school bus contracts is continuing to be severely eroded by inadequate indexation arrangements. I am told that the current indexation is limited in scope and fails to give timely consideration to wage increases, the cost of diesel fuel as opposed to unleaded petrol, increases in government fees and charges, and increases of up to 30 per cent in insurance premiums.

In 2001 South Australia held the dubious record of having the oldest bus fleet in Australia, but I understand that the age of vehicles has now been reduced by 10 years. As a mother of two children who still travel every day to school by school bus—a round trip of about 25 kilometres—I am pleased to note that reduction. However, I understand that many operators are now reconsidering their commitment to further upgrading their fleets and some are even considering

withdrawing from providing school bus services because of that constant erosion of contract values and their frustration with the department's constant excuse that it does not have enough funds in its budget to adequately pay for the service.

Operators tell me that they have obligations that they are required to fulfil under law irrespective of the budget constraints of the government department, and they believe that the department should similarly meet its obligations. These issues have been raised by the operators through the Bus and Coach Association with DECS during the past three years. My questions are:

1. Will the minister ensure that the Department of Education and Children's Services meet its obligations by committing adequate funds to the operators of school bus services?

2. Will the minister oversee a review of the current indexation arrangements and ensure that that review takes into account insurance, fuel and wage increases?

3. Is the minister aware that apparently some of the discussions between the Bus and Coach Association and the department have stalled following the appointment of the DECS Executive Director of Business and Resource Management?

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

DRUG REHABILITATION PROGRAMS

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 Health, a question about drug rehabilitation programs.

Leave granted.

The Hon. NICK XENOPHON: Earlier today I spoke with Ann Bressington, the founder and Executive Director of Drug Beat, at the program's residence Shay Louise House at Elizabeth. I understand that the program receives state government funding in the order of $270 000 per annum. The program was first funded whilst the Hon. Dean Brown was minister, and this government has continued that funding.

The Hon. A.J. Redford: Not without some difficulty.

The Hon. NICK XENOPHON: I think the record indicates that that is the case. The Drug Beat program, unlike most other drug and alcohol service programs, is abstinence-based and it has reported a significant level of success in treating many young people with serious drug problems. I was advised by Ms Bressington that the number of calls to the program has tripled in recent years to about 750 a year, yet its funding has essentially stayed the same over the years. Previously, the program did not have a waiting list but, because of the large number of calls to the program—and many would say that it is because of word of mouth as to the effectiveness of this program—the Drug Beat program now has a waiting list. There is now a waiting list of some five months before people, desperate to get assistance to give up drugs, can get into this very effective program. My questions are:

1. Is the minister aware of the waiting time to get into the Drug Beat program at Elizabeth?

2. Will the minister advise how much money is being spent on absence-based programs, in terms of drug and alcohol rehabilitation programs, compared with money for needle exchange, methadone programs and other programs funded by the state government to deal with drug addiction and drug abuse?

3. Will the minister indicate, further to the Drug Summit in 2002, whether an audit has been carried out as to the effectiveness of various drug programs, as promised by the Drug Summit? What was the nature, extent and result of that audit?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer the important questions to the minister in another place and bring back a reply. Whether we have abstinence programs running alongside drug substitution or needle exchange programs depends entirely on the nature of the individual's habit or their reliance on drugs. The point the honourable member makes is important. Early intervention is the key to their not having to go into the realms of drug substitution and needle exchange. If we can intervene early in a young person's life to ensure the issues associated with living lifestyles that include regular drug taking are dealt with, then that is probably the point where we will save the most money in terms of long-term use of drugs within our community. I will pass the questions on to the minister and bring back a reply.

The Hon. A.J. REDFORD: I have a supplementary question. I disclose an interest as a board member of ADTARP. Does this program have the support of the Social Inclusion Unit as an important part of our drug strategy?

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

OUTLAW MOTORCYCLE GANGS

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Police, a question about outlaw motorcycle gangs.

Leave granted.

The Hon. T.J. STEPHENS: Recently, *The Southern Times* messenger carried a front page article regarding the establishment of an alleged motorcycle repair shop. The government and the local council were informed that it was not a clubhouse. Local residents were quoted in the article as saying, 'How can it not be a clubhouse when there was a Rebels flag flying and the police escorted about 70 members to the address?' The article goes on to say that the Minister for Urban Development and Planning referred the matter to the Police Commissioner for review under the government's anti-fortification laws. My questions are:

1. Will the minister update the council as to the state of the review being undertaken by the Commissioner?

2. Does the minister concede that the government's policies in regard to these elements in our community have not had the impact that the government claims?

3. Does the minister concede that these policies have simply moved the outlaw gang problem out into the suburbs near our families and children?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will pass on those questions to the Minister for Police in another place and bring back a response. In relation to the question that the honourable member asked about whether or not the new laws with respect to fortifications have been a success, it is my understanding that there was to be a review of their operation. But I will obviously check on it. It might be the Attorney-General who has the responsibility for that area. Obviously, it may well be too early to make

that assessment, based on just the one or two cases there have been. I think the honourable member's question is important, and I will endeavour to bring back a response from the minister in another place.

SEPTIC TANK EFFLUENT DISPOSAL SCHEME

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister Assisting the Minister for Environment and Conservation a question about Septic Tank Effluent Disposal Scheme reform.

Leave granted.

The Hon. J.S.L. DAWKINS: I understand that the Septic Tank Effluent Disposal Scheme (STEDS) reform program has been reviewed by the STEDS Advisory Committee. A timetable has been adopted to deliver the program to local government bodies. Apparently, work has commenced on undertaking audits of existing STED schemes. Councils have been offered a 50 per cent subsidy to undertake an audit of one scheme in their area. The audits will identify whole of life costs, ongoing maintenance requirements and sustainable pricing. My questions to the minister are:

1. Will he provide details of the STEDS reform timetable?

2. Will he also indicate when the results of the STEDS audits will be released?

The Hon. T.G. ROBERTS (Minister Assisting the Minister for Environment and Conservation): I will refer those important questions to the minister in another place and bring back a reply.

TEACHERS REGISTRATION AND STANDARDS BILL

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to child protection and the Teachers Registration and Standards Bill made earlier today in another place by the Hon. Jane Lomax-Smith.

LAND MANAGEMENT CORPORATION

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Infrastructure, a question about the Land Management Corporation.

Leave granted.

The Hon. J.F. STEFANI: I refer to the 2001-02 and 2002-03 annual reports of the Land Management Corporation. I note that, during these periods, the Land Management Corporation sold land totalling $19.085 million. The key sales for the year 2001-02 included the following:

- Northfield (Northgate Stage 2) residential development site for $2.54 million;
- Seaford residential development site for $3.88 million (the Land Management Corporation retained a 50 per cent share comprising $1.94 million);
- Aldinga residential development site for $436 000;
- various industrial and residential allotments for $1.14 million; and
- residential land to Golden Grove and Mawson Lakes joint ventures for $1.98 million.

In addition, for the year 2002-03, the Land Management Corporation concluded the following sales:

- Northfield (Northgate Stage 2) residential development site for $6.42 million;
- a school site at Northfield for $0.58 million;
- transport corridor sites at Seaford and Noarlunga for $1 million;
- various industrial, residential and rural allotments for $1.2 million.

I also note in the 2001-02 report that the Land Management Corporation managed the sales of surplus sites on behalf of other government agencies to the value of $10.5 million; and, for the year 2002-03, the Land Management Corporation finalised sales for other government agencies amounting to $13.9 million, comprising surplus sites totalling 17 hectares. My questions are:

1. Will the minister provide details and the name of individual companies or entities which purchased each of the abovementioned key sites for each of the financial years 2001-02 and 2002-03?

2. Will the minister provide details and the name of each individual purchaser for the sales of properties which were disposed of on behalf of other government agencies by the Land Management Corporation during the two reporting financial periods mentioned previously?

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

MATTERS OF INTEREST

ITALIAN CHAMBER OF COMMERCE AND INDUSTRY, ADELAIDE

The Hon. CARMEL ZOLLO: One of the most active ethnic chambers in our community is the Italian Chamber of Commerce and Industry (ICCI). Many members would be aware of the information forums, business lunches and trade promotion visits that are scheduled on a regular basis. The chamber also hosts incoming trade exhibitions, as well as facilitating those wanting to do business in Italy. Like other ethnic chambers, ICCI utilises the skills and talents of its members' heritage and business links in its promotion of trade and commerce between Italy and South Australia. South Australia's and Australia's trade with Italy is significant. Understandably, we would prefer the trade deficits with Italy to be turned around into trade surpluses.

There is scope for South Australian and Australian business to generate new exports to Italy beyond the supply of mining, agricultural and defence products. For example, a growing market in stone, such as granite and sandstone, is a feature of recent trade to Italy. Along with the Hon. Paul Holloway, the Minister for Industry and Trade, and the Hon. Julian Stefani, I was pleased to receive an invitation from Dr Simone De Santi, the Consul of Italy in South Australia and the then president of the Italian Chamber of Commerce and Industry, Cav. Don Totino, to join them for a presentation and dinner, with Assessore Ambrogio Brenna, the Minister of Industry and Trade from the Tuscan region of Italy. Minister Brenna was here to look at potential trading and was keen on sourcing joint ventures, collaborations and partnerships between Tuscan and SA businesses. Clearly, enormous opportunity exists between our two states.

Guests were treated to a dynamic presentation of the Tuscany region, described as one with an important role in the economic integration of the Mediterranean basin and the

rest of the European continent. Tuscany is synonymous with the words 'style' and 'quality'. The region's primary contribution in manufactured products is provided by the fashion sector, comprising a large number of segments such as textile, clothing, leather, shoes, goldsmith and furnishing products, with a total production of approximately 20 billion Euros. The nucleus of the Tuscan industrial system is founded on a network of small companies or industrial clusters that are active in the typical 'made in Italy' activities, which operate predominantly in the medium-high segments of the international markets.

Several weeks ago, many of us joined the Council for International Trade and Commerce SA (CITCSA) for its 10th annual awards night. The evening was supported by SA Great, with minister Holloway giving the keynote speech. CITCSA's 10th annual awards night deserves its own special and separate mention, but I would like to place on record my congratulations to all those in CITCSA for a tremendous evening of recognition and celebration. To Mr Nick Begakis AM, as Chairman of CITCSA and Ms Trish Semple, the Chief Executive Officer, and all the staff, I offer particular appreciation and congratulations. I am pleased to say that on the evening ICCI was announced the International Chamber of the Year.

The chamber's major achievements in 2002-03 include a strong push in establishing stronger trade relationships for South Australian products and companies with Italian counterparts. It has also branched out into non-traditional export areas, as well as moving closer to finalising a stronger and more cohesive national alliance with sister chambers in Australia.

ICCI has also recognised the importance of establishing protocols for future trading relationships between South Australia and Italian companies, and we have seen very strong performance by chamber clients in the promotion and sales of South Australian product into Italy from various industries, including fresh processed foods, wines, stone building products and hides. I congratulate the South Australian Italian Chamber of Commerce and Industry for its outstanding achievement, and acknowledge the excellent work of Mr Teo Spinello, the Secretary General, who is involved in the day-to-day running of the chamber, and his support staff. The chamber now has a new President, Mr Robert Berton. I take the opportunity to wish them continued success. I also place on record the commitment of Don Totino for his stewardship over the past seven years and wish him well in all future endeavours.

NUCLEAR WASTE

The Hon. D.W. RIDGWAY: I rise to speak today on the naivete of the current state government. Its attitude towards potential resources in our outback is shameful, given the prospective rewards that resources such as hot rocks—which the Minister for Industry and Trade appears to know very little about—and uranium could have for South Australia. In a recent article in the *Adelaide Review* titled 'The perils of populist politics,' the author, Geoff Anderson, asserts that scoring cheap political points by pressing the electorate's button on nuclear dumps could have a costly down side. The Rann government turned the issue of a low-level nuclear repository into a scare campaign purely for the purpose of winning votes.

A blanket 'no dump' policy will not work in the long term because, like most initiatives of the Rann government, it is a knee-jerk reaction to public sentiment rather than a considered policy. This government's blatant hypocrisy on the nuclear issue is quite outstanding. On one hand, we have a Premier stating quite vocally his support for the expansion of the Western Mining Corporation's Olympic Dam operations and investing $50 million in such an expansion. On the other hand, he told the federal government that South Australia would not agree, under any circumstances, to a low level nuclear waste storage facility. Will the Premier ever put on record the reasons for his hypocrisy?

The government has tried unconsciously to appeal to both sides of the nuclear argument by deceiving the populace on the facts and attempting to be all things to all people. The Premier says that his government will assist WMC to expand Olympic Dam, but then his Minister for Mineral Resources refuses to allow any new uranium mines, even in the mineral-rich Gawler Craton area. They welcome the discovery of copper and gold at Prominent Hill but shun the discovery of uranium. Where is the sense in that? They refuse to allow a low level nuclear waste repository but seemingly turn a blind eye to the fact—and this is a fact—that there are already 35.4 million cubic metres of low to medium level waste stored in the tailings dams at Olympic Dam.

Geoff Anderson puts the proposed dump into perspective by saying that the capacity of the repository the federal government is planning for South Australia is around 10 000 cubic metres, to be developed over 50 years. Surely, most honourable members can see that 10 000 is paltry compared to the 35 million that we already have. The Premier and his ministers cannot ignore the issue of nuclear waste for much longer; it is already here in substantial amounts. The government is terrified to import radioactive products but is strangely silent on the issue when it comes to exporting and watching its coffers fill.

Even the Premier's mentor, Don Dunstan, was open to the idea of using nuclear technology and the storage of nuclear waste. He visited Britain, Sweden, the Netherlands, Germany and France. Maybe the Premier should follow his example by investigating new ways and developments in nuclear waste disposal. The federal Labor policy on nuclear waste appears to be at odds with the state policy. The federal web site states that 'Labor does, however, acknowledge that Australia has a responsibility to manage nuclear waste material that has been produced in Australia.' The state government appears to endorse the policy of 'ignore it and it will go away.' Those of us with the sense of realism—unlike members opposite—know that the way to deal with nuclear waste is not to bury your head in the sand in a vain attempt to live out some pre-federation state rules fantasy and ignore the fact that Australia has to store its waste responsibly and enact sensible solutions.

Yesterday, the Minister for Mineral Resources Development even tried to convince the council that the hot rocks phenomenon is due to gravitational pressure, lest he use the 'r' word—radiogenic. This government needs to decide where it stands on the uranium issue once and for all so that it can educate the community rather than instilling fear and mistrust. I hope the Minister for Mineral Resources Development will attend the upcoming South Australian Chamber of Mines breakfast on 4 November, and I hope that he pays close attention to the briefing by the company PetraTherm.

STUDY ADELAIDE

The Hon. G.E. GAGO: I was recently honoured to represent the Hon. Stephanie Key, Minister for Employment, Training and Further Education, at the launch of Study Adelaide, a newly designed marketing strategy to promote

Adelaide as the premier study destination for overseas students. The project was developed by Education Adelaide and was conducted in partnership with Adelaide City Council and the South Australian Tourism Commission. The new branding is endorsed by South Australia's main education providers—Adelaide University, Flinders University, the University of South Australia, the public schools system and TAFE South Australia—to assist them in attracting overseas students to study here in Adelaide. This marketing strategy will ensure that our educational institutions can compete successfully against other institutions in the global marketplace. All of South Australia's educational institutions will be promoted under the same study destination brand.

This unified singular marketing brand—an umbrella approach—means that institutions can pool their resources effectively to increase the number of international students choosing Adelaide as a study destination. The education sector is undoubtedly one of South Australia's biggest strengths and a potential growth market. Adelaide is being promoted as the best learning environment because of our low cost of living, our easily accessible services concentrated in the CBD, our great climate and, of course, our relaxed lifestyle compared with Australia's other capital cities. All of these factors make Adelaide stand out as an exceptional study destination.

The successful promotion of South Australia to potential international students is an important component of our state's economic growth and development. I was interested to learn that education is South Australia's largest service export industry and the eighth largest industry overall. Each year South Australia attracts about 13 500 international students, which results in an extra $300 million being generated for our economy. International students also boost our economy by directly supporting 2000 local jobs in the accommodation, food and service sectors.

Education Adelaide's new marketing strategy will also contribute to achieving one key goal of the government's State Strategic Plan; that is, to increase South Australia's number of overseas students by 50 per cent over the next 10 years. We are already making inroads to achieving this goal, as evidenced last year when we achieved a 22 per cent rise in student enrolments. This figure is more than double the national average. The growth of our education sector can also contribute to South Australia being a more tolerant and diverse multicultural society.

I am confident that increasing the number of international students studying in Adelaide will lead to our existing population showing more compassion towards people from different racial and religious backgrounds. Another potential advantage of increasing our numbers of international students is that some students may decide to migrate to Adelaide and bring their families here as well. This influx of skilled migration will benefit our work force, help to curb our declining population, and enrich our cultural diversity.

It is the role of Education Adelaide to promote South Australia's educational providers in a huge and lucrative overseas education market. I also inform members that I was privileged to represent minister Key last Friday at an Education Adelaide garden party which was held at Government House and hosted by Her Excellency Marjorie Jackson-Nelson. The event was held to officially farewell our latest group of international students. It was attended by about 500 students who have recently graduated from their chosen courses. All the students were presented with a certificate of appreciation and a commemorative gift as a symbolic gesture that the South Australian community valued the time that they spent here. I am sure that these students will become ambassadors for this state on their return home because, no doubt, they will tell their family and friends that Adelaide is a friendly, relaxed and fantastic place to visit.

DRUG ARM

The Hon. J.S.L. DAWKINS: Drug Arm North East is the Tea Tree Gully-based branch of Drug Arm Australasia. It recently launched a project designed to improve the future perspectives of former drug and alcohol users between the ages of 12 and 25. Get Set, as the project is known, involves a number of camps—one of which is to be held at Woodhouse Activity Centre at Piccadilly from 3 to 5 December this year. It also involves regular meetings where ongoing training and support is provided to mentors and peer leaders.

The name of the project is designed to emphasise the project's mission, which is to provide life, learning and leadership skills to people aged under 25 who have been affected by drugs or alcohol, and to empower these young people to make informed decisions about their behaviour by providing information and support. The project involves and focuses upon young people who are able to demonstrate that they have not misused drugs for a period of two or more years, mentoring younger participants who have used illicit drugs. The ultimate goal of the project is to support young people leading healthy and drug-free lifestyles.

In order to benefit the participants of Get Set, the project has eight objectives. Two of these objectives include the establishment of a network of support for the youth members, including an individual mentor, and another is to increase the skills and knowledge of the youth leaders and adult mentors through adequate training. The project also involves a number of strategies to encourage participants to develop community initiatives designed and implemented by them. Drug Arm resources are made available to those participants who can demonstrate that their initiative will help to reduce drug use in the north-eastern suburbs. The project will conclude on 30 June 2005 with a graduation ceremony held to celebrate the achievements and learning of the participants.

Get Set is funded by the Community Partnerships initiative of the commonwealth Department of Health and Ageing's National Illicit Drug Strategy. I wish to pay tribute here to those involved in the project, including the Prime Minister, the Hon. John Howard, who lent his weight to the cause against drugs at the recent Drug Arm function in Tea Tree Gully. I also recognise the contributions of the federal member for Makin, Trish Draper, as well as Drug Arm North East Coordinator Ms Bianca Moerman, Family and Youth Services, the Drug and Alcohol Services Council, and the City of Tea Tree Gully.

Other great supporters of Drug Arm's work in the state are Mr Aldo Crotti of San Remo Pasta, who provides the northern outreach service with a vehicle, and Ms Wendy Higgins of Mortgage Choice, who provides a vehicle for the southern outreach service. These groups and individuals have played a fundamental role in the success and operation of the Get Set project, in particular, and Drug Arm SA in general. I also pay tribute to the peer leaders, mentors and participants in the Get Set project and wish them all the best in their learning, skills development and, ultimately, their commitment to leading a drug-free lifestyle.

The project's outcome will be of substantial benefit to the individuals involved and the wider community. Get Set will have a positive impact on the future of young people participating and will be of great benefit to the north-eastern

suburbs. I have heard of a number of success stories from previous participants in the program, and I believe that we should be doing everything we can to encourage healthier lifestyles and, more particularly, drug-free lifestyles. I look forward to hearing more about the positive life changes in young people involved in this important project.

DISABILITY SERVICES

The Hon. KATE REYNOLDS: Honourable members would be aware of the campaign currently being run by Dignity for the Disabled, the coalition of parents of young adults with intellectual and physical disabilities. This campaign has highlighted to the public, through the media, the extent of the crisis in the disability services sector. Sadly, that crisis is far greater than the $3.2 million which has been denied to the Moving On program.

At a forum on 30 September organised by Disability Action and the Disability Information Resource Centre participants talked of the shame and humiliation they suffer because they cannot get assistance to shower more than once a fortnight—that is right, once a fortnight. One woman told her advocate that she was given advice by a personal care agency and a hospital that she should get a stoma (a bag to collect her urine and faeces) because she would not get enough care hours in which she could be taken to the toilet. Implanting stomas into people does not provide an acceptable solution.

One man explained to the same forum that his stoma regularly bursts during the long hours that he is left on his own. He cannot get himself a drink or something to eat on his own because he is paralysed from the neck down. Every morning he has two hours of care to get him out of bed at about 7 a.m., and at 11 p.m. a carer assists him to get back into bed. The carer sleeps at this man's home, but between the hours of 9 a.m. and 11 p.m. this man has to fend for himself. He calls a taxi to bring his lunch and, at times, out of sheer desperation, he has resorted to asking the cab driver to take him to the toilet and to empty his stoma. Sometimes the bag bursts all over his clothes and the floor and he is forced to wait until the carer arrives at 11 o'clock that night before he can be cleaned up.

These stories tell of a system of neglect, not a system of care. One woman who has been waiting for a cushion for her wheelchair for over six months asked at a recent public meeting why the Minister for Disability had not responded to her pleas to provide more money to the Independent Living Equipment Program. The minister responded that the community had to be convinced that it was worthwhile spending more money on disability services. This woman suffers excruciating pain, needs extra treatment, and is at risk of acquiring severe health complications as a result of not receiving an appropriate cushion to sit on in her wheelchair. I challenge the minister to spend one day with this woman before he denies her request again.

Last week, I spoke to a mother who has waited two years for a new wheelchair for her daughter. This 15-year-old girl spends more time in her mother's arms than in a chair or a bed, because suitable equipment is not available. Wheelchairs, lifters, continence aids and communication devices are not optional extras for people with disabilities. Disability Action and other advocacy services have lobbied as hard as they can over many years for an increase in funding for equipment, personal care and respite services, day programs and supported accommodation in this state. They, like me, acknowledge that additional funding has been provided in every budget cycle under this government, but that funding still does not come anywhere near meeting the needs of the community.

The Disability Advocacy and Complaints Service dealt with over 60 clients with unmet needs over the last 12 months. They wrote letters to the Minister for Disability, the Treasurer and the Premier to draw attention to the plight of people with disabilities. Six of their clients have died during the course of their campaign. Some of those six people died feeling abandoned and uncared for and, understandably, very bitter. Recently the Disability Advocacy and Complaints Service was told to stop writing letters to the minister or attempting to make appointments with the minister about the unmet needs that exist in the community. These services are just doing their job—and it is not easy. One of the last steps in the complaints process is to try to talk to the minister. This is the last step before going to the media or the opposition parties—frequently, the Democrats.

When the minister says he is not prepared to listen or respond to an advocacy organisation, what he is really saying is that he is not willing to listen or respond to people with disabilities on whose behalf these organisations are acting. If I had to choose between dignity and a AAA credit rating, I would go for dignity every time.

LOWER MURRAY IRRIGATION FLATS REHABILITATION PLAN

The Hon. CAROLINE SCHAEFER: Mr President, in the five minutes I am allotted I will not be able to fully elaborate on the issue that I wish to discuss, but you may well remember two years ago when this government took office my arguing bitterly that they had, in effect, extracted somewhere between $10 million and $15 million from the Lower Murray Irrigation Flats Rehabilitation Plan by demanding a whole new planning process. I have a letter from a disgruntled dairy farmer. Of the 120 dairies that existed two years ago 36 now remain. One of those brave people has written a letter, expressing the concerns and frustrations they have with this government and the process as it is. In my limited time, the best I can do is to read extracts from that letter. The letter states:

> There are only four weeks left for all the irrigators on the Lower Murray Swamps to sign up for trusts etc to transfer government owned assets to landowners [but very few have signed]. . . [They] still do not have swamp water licences—only allocations and no highland water licences as yet. . . concept design plans have been drawn up, but because the engineer was not paid farmers have not as yet even seen the written plans or the $ quotes involved. We have had verbal estimates but nothing in writing. On our farm I will need to find $80 to $100 000 over rehab funding, but it could be much more—yet I am being told to sign & accept responsibility and ownership of plans we have not as yet even seen. . . Pressure to establish these trusts is running very close to coercion in its legal sense. Still there are errors in hectare areas Section numbers on some properties. . . I have resubmitted my section numbers and areas for the seventh time!!. . . The pump shed [of which they have been asked to take ownership and which has been inspected] is full of white ants, and sheets of asbestos—

But they have been told that the pumping shed will be replaced using rehabilitation funding, which was the funding to re-establish the infrastructure on their properties. The letter continues:

> There is a complete refusal to reimburse overcharged money. . . an environmental levy of $17.50 per ha was charged instead of $13.50. This is an annual amount of $250 000—

which the government has swallowed up and has completely refused to reimburse—

in excess of $12 million of the $22 million allocated by minister Hill for rehabilitation of the Lower Murray has been swallowed up in consultants, surveys, reports etc yet not one shovelful of dirt has been shifted. . . Is not $12 million in two years excessive.

I would say that it certainly is. The letter continues:

> In summary, we must sign for these trusts in the next couple of weeks. There are no safety reports. . . We do not have written quotes on what it will cost to implement these government plans. We do not have official licences to show banks for equity etc and in some cases we are still arguing over areas, sections etc. We are unsure of ELMA water in the future. We must sign and transfer all our waters into trusts for eligibility for rehab funding. I find it alarming that after spending $12 million of taxpayers money there is still such a high degree of uncertainty in this whole rehabilitation of the Murray. [There is less than $12 million] left for the actual onground works and why farmers are being pressured to cooperate with the government—when the government won't tell us how much it will cost or give us answers to our questions.

This government stands condemned. Indeed, I feel ashamed I have not fought more strongly for these people. I, too, was silly enough to trust the statements of the government two years ago.

AUTISM

The Hon. A.L. EVANS: I want to speak this afternoon on early intervention research programs for autism. The Early Intervention Research Program, run by Dr Robyn Young, is based at Flinders University. The program provides intensive intervention for children with autistic spectrum disorder, or those assessed as being at risk of developing autism between one and five years of age. The program is researched based but is meeting an acute need in the community. Demand for places in the program is very strong and, while waiting lists have been significantly reduced from eight to 10 months, successful applicants must still wait three months. This is still a significant amount of time lost on an essential window of opportunity to make gains in a young child's development in addressing the typical deficits of autism spectrum disorder. Dr Young's program began in February 2003, with the first intake of six children. A further 62 children have been through the program, with two more starting on 8 November.

Autistic disorder is a pervasive development disorder affecting every area of a child's development. Children with the disorder typically display problems with social interaction, communication and various behaviours such as difficulty with change and sensory stimuli and repetitive stereotypical behaviours. Early intervention is critical not only for the children involved and their families but also for the community as a whole. Successful intervention leads to fewer resources being required later in life, particularly if the children can successfully be integrated into mainstream schooling. Further, the lifelong support needed by such children is reduced or avoided altogether. In addition, the heavy toll on marriages and family life is relieved.

Autism is being picked up in children at an early age. International research has focused on early and intensive behaviour interventions, especially in children's preschool years. Studies overseas are showing that this type of intervention is highly effective in improving long-term outcomes for children. However, more studies are needed to evaluate effectiveness and also to devise better targeting of intervention. Dr Young reports that her program is attracting international attention, and a steady stream of overseas students have been involved in the program as part of their postgraduate studies. Families are making extremely heavy sacrifices to access and afford this type of intervention in South Australia.

The applied behavioural analysis employed by Dr Young's program has been used in a wide range of overseas studies and is continuing to be the treatment of choice among many professionals overseas and in Australia. In Western Australia, government funding is assisting to make this type of intervention accessible and affordable. The improvement that Dr Young is seeing in the children who have participated during the initial phase of the intervention has been impressive, with marked improvements in behavioural difficulties. Strong improvements were measured in response to name and verbal commands. These improvements will have important ramifications for the integration of these children into mainstream schooling. Other significant gains in family stress reduction were also measured.

In the second home-based stage of the intervention, the family is called upon to continue the intensive intervention. Parents and grandparents are often trained to administer the therapy to the child, or other trained professionals are employed. Limitations to improving the effectiveness of home-based intervention currently include very significant financial and other costs to families associated with the daily demands of therapy on top of their normal demands and stresses in coping with one or more autistic children in the family.

With adequate funding to overcome these limitations, it is hoped that affected families will gain better access to intervention that will enable their children with autism to reach full potential and have better integration into the community. This will ultimately be beneficial not only for the child and their family but also for the wider community.

AUDITOR-GENERAL'S REPORT

The Hon. R.I. LUCAS (Leader of the Opposition): I move:

> 1. That a select committee be appointed to investigate and report upon issues relating to unlawful practices raised by the Auditor-General in his 2004 annual report and, in particular, all issues related to the operation of the Crown Solicitor's trust account and the $5 million 'interagency loan' between the Department for Administrative and Information Services and the Department of Water, Land and Biodiversity Conservation and all other related matters.
> 2. That standing order 389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only.
> 3. That this council permits the select committee to authorise the disclosure or publication, as it sees fit, of any evidence or documents presented to the committee prior to such evidence being reported to the council.
> 4. Standing order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

In moving this motion, I say at the outset that the debate on this motion (and I would hope therefore eventually the work of this select committee) will cover some very significant and critical issues in relation to public administration and financial management in South Australia. It will also potentially significantly impact on the careers of some senior public servants and, in my view, on the careers of some ministers. Mr President, as you and members would be aware, some weeks ago the Auditor-General's Report raised a series of issues in relation to what the Auditor-General described as 'unlawful acts and improper procedures' and a series of other concerns that the Auditor-General expressed about financial accountability and public administration under the Rann government.

In particular, the Auditor-General raised some concerns in relation to the operations of the Crown Solicitor's trust account, and we now know that there have been at least 20

to 30 transactions moved in and out of that particular trust account. He also raised concerns about a series of other issues, in particular, the issue of a mystery loan between minister Weatherill's old department (the Department for Administrative and Information Services) and minister Hill's department (the Department of Water, Land and Biodiversity Conservation). In my view, these issues strike at the heart of the Rann government's claims of financial accountability in South Australia. In my view, a stench surrounds the Rann government on this issue, and it will be the task (I hope) of the select committee (if it is established) to get to the bottom of this issue or series of issues.

The opposition believes that the Rann government's strategy in relation to this issue, in particular, has been to scapegoat one former senior public servant, Ms Kate Lennon. All the sins of the government and its administration would appear to have been visited upon this one particular public servant. I would hope that, with the establishment of the select committee, Kate Lennon and, indeed, others who we know have supported some of the views put by Kate Lennon on the broader issues will also be able to present evidence to the select committee. As I said, I think a clear strategy has emerged from the Rann government in relation to this issue. The spin doctors have been spinning as quickly as they can—

The Hon. Sandra Kanck: The strategy is to kick a public servant, isn't it?

The Hon. R.I. LUCAS: And one particular public servant so far—and that has been Kate Lennon, as the Hon. Sandra Kanck has indicated. I think it is important that Kate Lennon has complained from her viewpoint of a lack of natural justice in terms of the way in which her issue has been treated. A select committee which is not dominated by government members will give Kate Lennon and other public servants the freedom and the capacity to fairly present their views. They will need to respond to questions of members of the select committee and to defend their actions. As I have said, if any person, minister or public servant can be proved, after being given the opportunity to present their case, that they have, in the Auditor-General's words, committed unlawful acts, then ministers and/or public servants will need to accept individual responsibility in those cases.

Ultimately, it will be for the select committee to listen to the evidence and to make some judgments in relation to those issues, but at least a select committee of this chamber will allow those public servants who, in our view, have so far been used as scapegoats to be given the opportunity to put their side of the case to a select committee. Mr Acting President, as you would be aware, games have been played in a committee related to another place in relation to this issue. The opposition genuinely and in the first instance sought a review of some of these issues through the Economic and Finance Committee. That is a committee dominated by government members. We have seen the unfortunate circumstance in the last six months where three inquiries were agreed by the Economic and Finance Committee and, when it became apparent in all three cases that it might be embarrassing to the Rann government, the government members closed the inquiries down summarily. That is, the committee had advertised for evidence and witnesses, but the view was that it may well be embarrassing to the Rann government and the government used its numbers to close the inquiry down.

I believe that the government made a huge strategic blunder last week when it engineered a set of circumstances, using its numbers on the Economic and Finance Committee. The circumstances were that, without any advice to the opposition members, they were going to move a motion at the opening of the meeting to call for the Auditor-General to answer questions. I think all members who have worked on committees know that, generally, even if there is disagreement, the issue of who comes to present evidence is an issue discussed by members of the committee. It is generally a unanimous view, but it is not always so. It may well be that there is a majority view that a particular witness should come. However, in these circumstances, the government members conspired to engineer the circumstances for the Auditor-General to appear without any knowledge of the opposition members.

The Treasurer in another place put on public record—he was not entirely clear; to be fair to him, he indicated—that members of his staff had been in contact with the Auditor-General prior to that meeting of the Economic and Finance Committee. We are not aware of whether government members of the Economic and Finance Committee also had discussions with the Auditor-General prior to the meeting of the committee.

Nevertheless, evidently at very short notice, the Auditor-General was ready; he had three or four officers, volumes of material and case law which just happened to be ready. I think the phone call went in at about 9.30 or 9.40 and, fortuitously, at 10.20, I think it was, the Auditor-General appeared, as I said, with two or three staff to present the voluminous material and case law as evidence to the committee. I think that is an example of the way the government has used its numbers. In that case, it engineered witnesses without the opposition's knowing and, therefore, was able to prepare, ask questions and be briefed about witnesses who were coming before the committee.

In the previous instances I indicated that, when it became embarrassing, the government just closed the inquiries down. Because the media lost particular interest in those issues of the Economic and Finance Committee, it was barely reported. There was one story, I think, in the media about the government using its numbers to close the inquiry. Today I am told that the government members have now had a change of heart. The opposition has withdrawn its motion. The government has now decided that it wants to go ahead with its own inquiry in the Economic and Finance Committee. I think that this occurred after the Hon. Sandra Kanck indicated publicly that she, on behalf of the Democrats, would support the establishment of a select committee in the Legislative Council.

The government members have a change of heart and are now instituting their own government members' inquiry—if I can portray it that way—in the Economic and Finance Committee. Again, it has the significant disadvantage of being government controlled and dictated to in terms of when witnesses might come; whether the opposition is actually ever told that there is going to be a witness called; whether or not an inquiry might be closed down if the media happens to lose interest; and whether or not particular witnesses are, indeed, called. Of course, the nature of the balance of power in the Legislative Council is such that the government of the day, whether it be Liberal or Labor, frankly, is not a position to be able to so dictate the operations of an upper house select committee. It is, therefore, and has been for some time now, the opposition's clear preference that there be a select committee of the Legislative Council and not the standing committee inquiry of the House of Assembly.

As I have indicated, this inquiry will allow Kate Lennon and others who have been used as scapegoats to present

evidence. I also believe that, in my view, if all the information is revealed, at least one minister will either have to resign or be sacked as a result of the work that this inquiry will need to undertake. I intend to outline the case and the reasons why in this motion, at least in the initial stages. I have indicated publicly that, in relation to the critical issue of the Crown Solicitor's trust account and the Attorney-General's defence in this issue, I have found it almost impossible to believe the Attorney-General's position. With the provision of further evidence provided to me today which I have outlined, my position has hardened even further in relation to this. It is sad for me to say but, frankly, I have to say that, as an individual, I do not believe the Attorney-General's position on a significant number of these issues.

Let me outline what the Attorney-General has essentially been saying, because we do know that the Auditor-General was sufficiently concerned about some written documentation that he had seen which, in summary, the Auditor-General said, at least on the surface, might give an indication that the Attorney-General was aware of the operations of the Crown Solicitor's trust account—and he took sworn evidence from the Attorney-General. In contrast with the $5 million between minister Weatherill's and minister Hill's departments, I understand that the Auditor-General not only did not take sworn evidence—I stand be corrected on this, but I will check—but also did not even speak to those ministers for him to eventually make the judgment that he did, where he said that he believed that those ministers were not aware of that transaction. The Auditor-General took sworn evidence from the Attorney-General, and in the Economic and Finance Committee the Auditor General summarised the Attorney General's case, that is, that the Auditor-General said that the Attorney-General gave sworn testimony that:

1. He did not know about the existence of the account.
2. He did not know anything about its operations.
3. He did not know anything about the misstatement in the financial statements of the Attorney-General's department.
4. He was unaware, when he went to the bilaterals with the Treasurer, that the Attorney-General's department was in possession of cash balances which were undisclosed.
5. In terms of his appearance in the Parliamentary Estimates Committee, he was also unaware of the fact that there was this cash balance in the background.

I want to refer specifically to the first element. I repeat again for members that this is sworn testimony taken on oath in front of the Auditor-General. My legal colleague advises me that, if someone gives sworn testimony on oath, and if that sworn testimony is wrong, then that person can be found guilty of swearing a false oath. Mr President, you will be aware that that is a criminal offence and, certainly, it would mean the end of that minister, in this case, the Attorney-General.

So, we are talking about serious stakes here in relation to the position of the Attorney-General. His sworn testimony to the Auditor-General was, 'I, Michael Atkinson, did not know anything about the existence of the account.' It was not the issue of the operations of the account and the movement of transactions in and out. Michael Atkinson, the Attorney-General of this state, gave sworn testimony as the Attorney-General that he did not even know of the existence of the Crown Solicitor's trust account. Let me outline some information. Upon coming to government, all ministers are provided with an incoming brief, which outlines in some detail issues that public servants within the ministerial departments believe that ministers must know. All ministers read their incoming brief. It was fortuitous that the opposition managed to FOI all copies of the incoming briefs of ministers, and I want to refer to the incoming brief of the Attorney-General who is in charge of the justice department.

In the incoming briefs, the Attorney-General, Mr Atkinson, was clearly advised as listed under Administered Items of the Department. These include the Crown Solicitor's trust account being 'used to record the receipts and disbursement of moneys pertaining to the financial settlement of legal transactions between parties'. The incoming government briefing folder to the Attorney-General Mr Atkinson explicitly told him of the existence of the Crown Solicitor's trust account. It explicitly told him of the account's existence. There is more. I refer members to the annual reports of the Attorney-General. Each year every minister has to present an annual report to the parliament. As a former minister, I am aware that this is a report from the Chief Executive of the department to the minister, and the practice is that a draft, or number of drafts, of that report are provided to the minister by the Chief Executive prior to final approval; then, of course, the minister would have a copy of the final report tabled in the parliament.

Let us look at the last two annual reports of the Attorney-General. The Attorney-General's own annual report tabled in parliament for 2001-02, on page 108 clearly lists, under 'Administered items,' 'Crown Solicitor's trust account—used to record the receipts and disbursement of moneys pertaining to the financial settlement of legal transactions between parties'. There are a number of references; I will not bore the parliament with all of them. On page 116, under the heading of 'Other Liabilities, current items,' is the clear reference to administered items under which it lists the Crown Solicitor's trust and moneys of 2002 and 2001. Under 'Non-current items,' again, it lists the Crown Solicitor's trust, which is obviously a reference to the Crown Solicitor's trust account, with an indication of $5.591 million at the end of 2001-02. That is the Attorney-General's own annual report presented to the parliament with clear reference to the Crown Solicitor's trust account.

The Attorney-General's annual report of 2002-03 has highlights on a number of pages; on page 43, for example, there is a broader reference to continuing the development of the practice management system including task management and trust accounting. It is talking about the general issue of trusts. On page 106 of the Attorney's own annual report is a listing of trust accounts; surprise, surprise, listed under the trust accounts are five but, in particular, I refer to the Crown Solicitor's trust account, which is clearly listed in the Attorney's own annual report. I refer to Appendix A, which gives a breakdown of the total amounts of money being held in all the trust accounts and the movements in trust accounts within the Attorney-General's Department. I refer to page 118 where under 'Other liabilities, current administered items,' the Crown Solicitor's trust is again listed; under 'Non-current administered items,' again, the Crown Solicitor's trust is listed in those financial statements. The Attorney-General's own reports to the parliament for those two years indicate that he knew of the existence of the Crown Solicitor's trust account, even though he swore testimony to the Auditor-General that he did not know of the existence of the Crown Solicitor's trust account.

There is more. I refer members to the Auditor-General's reports. Clearly, in this year's Auditor-General's Report we do not have the audited accounts for the Attorney-General's Department because of these issues in relation to the Crown Solicitor's trust account, and we are still awaiting the

financial audit from the Auditor-General on the 2003-04 record. I take members back to the 2002-03 audit, which is the most recent one. Mr President, I asked the Leader of the Government today, and I am sure that you would have been interested in his response, a simple question: given the government's claims of stringent financial accountability, would it be an expectation on him and all ministers to read the Auditor-General's reports on their own departments? In summary, the Leader of the Government said yes—and I would have expected him to say so—that would be an expectation of ministers. Look at the Auditor-General's Report for last year, the most recent one, and on page 674 is a reference to trust accounts with all the listings. On page 678 is a listing of administered items to the department, trust accounts, and the Crown Solicitor's trust account.

On page 684 is a listing of the financial accounts under 'Administered items, current and non-current,' which lists the level of funds within the Crown Solicitor's trust account. There are also other sections in the Auditor-General's Report which make clear reference to the Crown Solicitor's trust account.

In summarising that—and I have gone through it in some detail—I am saying that we have an Attorney-General who has given sworn testimony on oath to the Auditor-General that he did not know that the Crown Solicitor's Trust Account even existed. He said it again on radio this morning—that the first he even knew of the existence of the account was in August this year. I have demonstrated that the Attorney-General must have known because his incoming briefing folder refers to it, the annual reports presented to him refer to it, and the Auditor-General's Report refers to it. So, in my view—and I cannot speak for other members—it is impossible to believe that the Attorney-General did not know of the existence of the Crown Solicitor's Trust Account.

As I said, this is not entering into the discussion about his knowledge of the movement of funds in and out of the account, which will be the critical issue for the select committee—this is his sworn testimony. I am further advised that there is correspondence from the Attorney-General which refers to the issue of the Crown Solicitor's Trust Account, and there is also an FOI from me which may throw some light on some of those documents and dockets—although I suspect that the select committee will get access to that information more quickly than an FOI will.

I said at the outset that, if evidence can be presented to the select committee that clearly indicates that the Attorney-General did know about the existence of the Crown Solicitor's Trust Account, it is clear that his sworn testimony to the Auditor-General is wrong. He is then open to the charge of having sworn a false oath to the Auditor-General—and that, I am advised, is a criminal offence. The Attorney-General's position as a minister in this government would then be untenable—he would either have to resign or be sacked by the Premier for being found guilty of having sworn a false oath.

I have referred to some of the areas where we already have documentation, but I also indicate that the Attorney-General would have been briefed on movements in trust accounts in the annual estimates committee briefings, that in the bilateral meetings he had every year with the Treasurer the Attorney-General would have been briefed on movements in trust accounts and financial accounts, and that the regular monitoring of his department's finances by public servants would—one would hope—have thrown light on movements in trust accounts. I have asked this question on many occasions, and it remains: how could the Crown Solicitor's Trust Account have grown from $2 million under the former government to $12 million under this government in the space of two to three years without the Attorney-General either knowing about it or at least seeking information on the issue?

On ABC Radio today, the Attorney indicated that there are significant movements in the Crown Solicitor's Trust Account at various stages throughout the year—depending on litigation. That is interesting but it is, nevertheless, a red herring. We are talking about the cash balances in the Crown Solicitor's Trust Account at the end of the financial year, and we know what they have been for the past three to four years: some three years ago it was $2 million; in the past few years it has been $5 million to $6 million; and in the most recent year the cash balance has exploded to $12.4 million.

That is one of the issues—whether the Attorney-General has committed a criminal offence in terms of his sworn testimony. In addition—and, again, as one member of this chamber my judgment is clear but I do not seek to impose it on others at this stage—the Attorney-General must have been incompetent, negligent or both not to have noticed or to have asked any questions about a trust account which has moved from $2 million to $12 million in such a short space of time. The Attorney-General stands condemned for incompetence, negligence or both for not having had appropriate and proper oversight of such a significant trust account within his agency.

In his evidence to the Economic and Finance Committee the Auditor-General raised some other issues. In response to the question he put himself about whether the Attorney should have known, the Auditor-General's short answer was, 'Probably not.' Further on, the Auditor-General said, 'It is not fair to say that he should have known. . . ' Indeed the Treasurer, the Attorney and the government are using those statements from the Auditor-General, in part, as a defence to opposition criticism that the Attorney-General has been incompetent or negligent. Further on in his evidence, the Auditor-General said:

> . . . but it would be a very unusual and rare minister who would get down the detail of the accounts. In fact, I do not know of any.

With the greatest of respect to the Auditor-General (and I have indicated previously that I agree with him on the majority of occasions) there are some occasions where I disagree with him, and I must say that I vehemently and trenchantly disagree with his contention that it would be an unusual or rare minister who would get down the details of the accounts. In fact, the Auditor-General says that he does not know of any minister who got down the details of the accounts

The Hon. R.D. Lawson interjecting:

The Hon. R.I. LUCAS: Well, it is obviously in this government because, speaking personally as a former minister for education, minister for industry and treasurer, I certainly got involved in the detail of the accounts, and I understand from that interjection that my colleague, the former attorney-general, also got involved in the detail of those accounts. I know for a fact that the former attorney-general (Hon. Trevor Griffin)—and this will not surprise anyone in this chamber—certainly got himself involved in the oversight of the financial accounts. Another former colleague in this chamber, the Hon. Diana Laidlaw, certainly got herself involved in the detail of the financial accounts, to the extent where some members of the then opposition were critical of the degree of involvement and knowledge of the minister.

It may well be that the Auditor-General was talking about this Rann government, but it is certainly not correct to indicate that that was the case under the former government

or that it ought to pertain for ministers under the Westminster system. I do not accept the contention of the Auditor-General that the minister should not know and could not have been expected to know anything about critical issues such as this. Of course, ministers do not know everything down to the fine detail about individual vouchers or transactions involving a few thousand dollars here or there, but, if there is a trust account that has gone from $2 million to $12 million in a short space of time, the minister should have known and, if he did not, he was incompetent or negligent or, as I said, both.

It is my view on behalf of the Liberal Party—I am sure I speak on behalf of my colleagues—that, whilst we respect the Auditor-General's views on many occasions, on this occasion we take a strongly different view. It is the responsibility of ministers, and it is not correct to say that ministers do not get themselves involved in the detail of the accounts. It is a proper procedure in practice. Indeed, the Leader of the Government in this chamber, under pressure—I have already indicated that I doubt the accuracy of what he says; nevertheless, he said it—said that on a weekly basis he gets a financial update of his accounts. The Auditor-General clearly does not know that the Leader of the Government—or the Leader of the Government has not told him—has an intense knowledge of the accounts of his department. This is an important issue because it hinges on the accountability of ministers to the parliament. The question is: should the minister have got off his backside and made sure that he did know something about these critical issues?

The second and what has been a stunning revelation in the past 24 hours is the embroiling of police minister Kevin Foley in the scandal as it relates to the Crown Solicitor's Trust Account. Mr President, you will be aware that yesterday the Treasurer was asked a question by the Leader of the Opposition. I congratulate the Leader of the Opposition Rob Kerin who has been terrier-like in his pursuit of truth, accuracy and accountability in the House of Assembly on this issue. He asked the minister whether or not—I will summarise it—he was aware of a million dollars of the police budget being hidden away in the Crown Solicitor's Trust Account.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: The Leader of the Government says, 'What do you mean "hidden away"?' In essence, that is what the government has been accusing Kate Lennon and others of doing: hiding away in the Crown Solicitor's Trust Account moneys at the end of the financial year. We understand that the Adelaide Police Station redevelopment, which was to cost $20 million to $25 million, came in a bit over a million dollars under budget. Bear in mind that we have had two police ministers: Patrick Conlon was the first and Kevin Foley took over in unusual circumstances, and the reasons for that still have not seen the light of day. However, a million dollars was saved on that huge capital project. What we are being asked to believe by police minister Foley is that he was not aware that this saving of a million dollars in his police budget had been hidden away in the Crown Solicitor's Trust Account. That is what we are being asked to believe.

The police minister has been pointing the finger at DAIS and the Department of Justice, etc., but let me be clear how capital works projects are conducted in this state. A client agency (such as the police) are given a lump sum of money ($20 million to $25 million) and an authorisation to provide a building for the Adelaide Police Station. That agency would then work with DAIS which, in essence, is the contract manager for the project. A lot of the account work would be done through DAIS, but the police minister is the client minister and the police department is the client department, and all the critical decisions have to be approved and signed off by Kevin Foley as police minister and the police department.

This is not a side issue unrelated to police minister Foley; this is something in which he had direct involvement. He is asking us to believe that, having saved $1 million on this capital works program, the money was not returned to Treasury but was hidden away in the Crown Solicitor's Trust Account. The detail of this in terms of the amount of money was revealed only yesterday. In answer to a question yesterday from the Leader of the Opposition, police minister Foley said:

> I have no recollection of that matter.

Those who were listening to ABC Radio this morning would have heard the questioning of police minister Foley by Matthew Abraham and David Bevan. I want to place on the record a section of the transcript of that interview, bearing in mind that the police minister was asked yesterday about this transaction and he said, 'I have no recollection of that matter.' This morning's transcript is as follows:

> Bevan: When did you find out about this? You were taking phone calls last night. When did you find out about this $1 million?
> Foley: It's part of the 30 transactions that was in the Auditor-General's Report.
> Bevan: Yeah, but when did you find out about it?
> Foley: When I was told about the 30 transactions and shown the 30 transactions.
> Bevan: When were you told that?
> Foley: Well, I've already given those details to the parliament.
> Bevan: Well, I'm sorry we weren't all sitting in parliament.
> Foley: Well, I've already told you on your program.
> Bevan: When did you find out about the $1 million?
> Foley: Tell you what, you give old Rob Lucas a free run but you—
> Abraham: Well, you're the Treasurer. If you want to go back to opposition, if you want to go back to opposition, Kevin Foley—
> Bevan: I just want to know roughly when did you find out about the $1 million?
> Foley: Guys, please relax, can I just answer the question before?
> Bevan: Yeah, well, I'd like you to.
> Foley: I was advised about that matter at the same time as I was advised about the entire issue when Mark Johns, the head of the Department of Justice, advised me of the 30 transactions. It is on a schedule of transactions that were [then the word is unclear] to the Crown Solicitor's Trust Account.
> Bevan: Yes, but I still don't know, and I think our listeners still don't know, when that was. Was it last night, was it a week ago, was it a month ago? When did you find out about the $1 million?
> Foley: When I found out about the other matter, David, which I'm on the public record—
> Bevan: What, you can't remember when you found out about the other matter?
> Foley: Well, David, can I answer the question please?
> Bevan: I'd like you to.
> Foley: Well, thank you. When I was advised by Mark Johns, which I've already told the parliament, I think it was some time in August.
> Abraham: Okay.

I think it took seven attempts to get police minister Foley to 'fess up to when he was first told. Why was Kevin Foley so uncomfortable and embarrassed this morning on morning radio? The clear answer is that yesterday in the house Kevin Foley had indicated he had no recollection of the matter at all. Yesterday he said he had no recollection of the matter. Today, after seven questions from Bevan and Abraham, he 'fessed up that he knew about this in August, contrary to what he had indicated in the house yesterday. That is an issue which, I believe, will be pursued, using the appropriate processes in the House of Assembly.

We have two ministers here: we have police minister Conlon, who will have to accept responsibility, as well, but,

in relation to this issue, we are being asked to believe, in addition to that, that, as the client minister, minister Foley did not at any stage say to his department, 'How is that $20 million to $25 million budget for the Adelaide Police Station going? Is it on budget, under budget or over budget?' There are ministers in this chamber, and in another chamber, who have had the gospel preached to them by the Premier and the Treasurer about managing their capital works; that is, 'Minister Terry Roberts, if you are going to spend $10 million on a prison, then you manage the budget. You need to know whether you are on budget, under budget or over budget. You as the minister are responsible for managing the budget and managing the capital works.'

Minister Foley is asking us to believe that at no stage did he actually say to the police department, 'By the way, we have this little business of a $20 million to $25 million Adelaide Police Station, which has just been finalised; were we over budget or under budget; were there any savings; or were we on budget?' Indeed, if the police minister had asked the question he would have found out, 'Minister Foley, we have actually saved $1 million. There is actually a saving of $1 million here. What would you like us to do with it?'

What we are being asked to believe is that minister Foley, as the client minister in relation to this big project, did not provide the appropriate oversight of the capital works budget. I advise cabinet ministers that, next time the Treasurer preaches financial accountability and responsibility in relation to capital works spending, some ministers might refer the Adelaide Police Station project to police minister Foley and ask him to respond as to what financial oversight and accountability he and former minister Conlon provided in relation to the Adelaide Police Station development.

The issue of Treasurer Foley is also wide-ranging, and I will not spend a great deal of time in this debate today, other than to repeat what I said last time when I was speaking about the Auditor-General's Report. There is a responsibility of the Treasurer in relation to some of these issues, for example, the $5 million loan and the Crown Solicitor's Trust Account. There are account managers in Treasury, and certainly I will be supporting motions to have those account managers present evidence to the select committee. What were they doing? I am advised that people within Treasury were aware of the operations of the Crown Solicitor's Trust Account, contrary to what we are being told, and that we should be calling some of the middle level managers within Treasury to get from them first-hand exactly what they knew about the operations of the Crown Solicitor's Trust Account.

Minister Foley also had the opportunity of the budget bilaterals with the Attorney-General and other ministers to put questions about some of these transactions, which the Auditor-General has referred to as unlawful acts. He has that opportunity through the bilaterals, which no other minister has, to provide financial accountability in terms of public expenditure and, clearly, he has failed in his responsibility to provide proper accountability and oversight.

Today we have seen a further development in relation to the issue of the school retention funds. Questions were asked yesterday about the role of Mr Warren McCann, Chief Executive of the Department of the Premier and Cabinet. He, too, has become embroiled in this financial scandal of the Rann government. Questions were asked yesterday and, to be fair to Mr McCann, the Premier on his behalf has tabled a statement which indicates something along the lines that he did not direct Kate Lennon to put the money into the Crown Solicitor's Trust Account.

The question that needs to be asked is: why did Warren McCann, just before the end of the financial year, hurriedly transfer a large lump of money to Kate Lennon, and what did he expect her to do with it before the end of the financial year? As I said, to be fair to Mr McCann, he denies having directed Kate Lennon to do anything. Information provided to the opposition (and this will need to be tested in the select committee; I am the first to concede that) casts some doubt on the role of Mr McCann in relation to these school retention funds and, in particular, it will hinge on a conversation that Mr McCann is alleged to have had with Kate Lennon.

We will need to hear from Kate Lennon as to what she believes Mr McCann told her; and we will need to hear Mr McCann's evidence, of course, and whether or not there was a third party witness to that telephone conversation. The denial in the parliament is an issue in relation to direction. That, of course, leaves open the capacity for a general discussion with Mr McCann and Kate Lennon in relation to the reasons why Mr McCann was transferring large lumps of money to Ms Lennon just prior to the end of the financial year.

I remind members that the environment in South Australia at the time was such that the Premier and the head of the social inclusion group, Monsignor Cappo, had been publicly attacking senior public servants for not getting on with the task of spending large lumps of money on social inclusion. I am sure that Mr McCann certainly would not want to have been in a position, as the Premier's own CEO, to have a large lump of social inclusion money sitting unspent in his accounts at the end of the financial year 2003-04. This will need to be tested, of course, and I accept that there is at least circumstantial evidence as to why Mr McCann would want to move that money out of Premier and Cabinet quickly and dump it on some other agency, so that it would not be left on the books of Premier and Cabinet as of 30 June 2004.

I will not have time to expand in detail on the $5 million inter-agency loan. I have previously expressed some views on that matter. Clearly, there are significant questions that have to be asked in relation to that. One that I did not put on the record before is the simple issue that we are being asked to believe that not only did both ministers supposedly not know about it but also that, evidently, the money was transferred from DAIS to minister Hill's department on 1 July and that no-one noticed for almost three months that $5 million had been deposited in the department's accounts and was only discovered in September and then returned to DAIS.

I do not know how these ministers or the chief executives run their departments, but I find it almost incomprehensible that $5 million can be deposited in a department's accounts and no-one know anything about it for almost three months, and then that money is discovered and transferred back.

I earlier alluded to the other issue that will need to be explored. The Auditor-General in his report, and in further evidence, as I understand it (and I stand to be corrected on this), has indicated that he certainly did not take sworn evidence from the two ministers. I also understand that he did not speak to at least minister Hill—and, I understand, both ministers. The Auditor-General made some very sweeping conclusions in relation to the ministers, that is, that the ministers did not know about this transaction. Certainly, we will need to explore with the Auditor-General how he made those judgments if he has not spoken to the ministers or, indeed, taken sworn testimony from them. That will be an issue that we will need to explore, obviously, with the Auditor-General.

There are two final issues. As I indicated earlier, with respect to the Crown Solicitor's Trust Account, we have seen up to, we now understand, 20 to 30 transactions that have been moved into and out of it. We have heard of claims from Kate Lennon, in a letter to Dr Grimes from the Department of Treasury and Finance, where she indicated that, having talked to colleagues, she was astonished to discover 'that there are many creative and ingenious methods for avoiding the dreaded end of year Treasury sweep'.

There is a range of issues that this committee will have to look at. I have been advised in recent days (and a lot of information has been provided to members over the past few days) that there are claims of uncashed cheques sitting in departmental drawers just prior to the end of the financial year. In some cases, in relation to one department (DAIS, I am told, according to information passed to us; but we will need to test this, of course), there are claims that uncashed cheques for periods of up to one to two months are sitting in drawers waiting for the end of the financial year until they are cashed.

There have been claims in relation to putting in payment for a service that is not delivered until the next financial year but is prepaid at the end of the previous financial year. There have been claims about movements in billing cycles—either delaying or moving forward billing cycles, depending on the needs of particular agencies. I think these are probably the sorts of things that Kate Lennon has referred to in her letter to Dr Paul Grimes—I remind members, 'creative and ingenious methods'—and this select committee will need to look at some of those creative and ingenious methods.

The other issue that this committee will need to look at is the overall policy, that is, the claimed policy change that the new government has instituted. As I have indicated before, it is not as black and white as the government has sought to make out for itself—and it has created a rod for its own back, I suspect. I think the picture as the government seeks to portray it is that, under the former government, agencies just kept their moneys, carried everything over and spent willy-nilly. Under the bold new world under the Rann government, we are told there was a much tougher policy; that is, carry-overs were going to be frowned upon and restricted to a significant degree and they would have to be argued.

As I said previously, that is not correct in terms of a characterisation of the former government. The former government did have a rigorous process, with Treasury involvement, of seeking approval for carryovers and, indeed, there are cabinet documents and others (leaked copies of which are available) which certainly indicate that carryover policy and discussions were a part of the former government's administration prior to the last election. We need to look at the differences, but certainly the perception (and possibly also the practice) is that it is now more restrictive in the way in which that policy has operated.

Certainly, as the former chief executive of the Department of Justice indicates, if it is true that commonwealth moneys which were given to the Department of Justice for the national CARS project and which were unexpended got swept out of the agency and into Treasury, then that certainly is inexplicable. If it was given as commonwealth money for a specific project and the agency was still delivering that project, and if that agency was then told, as is claimed, 'Well, you will have to find the $300 000 or $400 000 out of further budget savings' and Treasury has taken back the commonwealth moneys for the national CARS project for something else, then that not only impinges on federal-state financial relations but also casts doubt on the sense of some aspects of the supposed new policy.

I know that public servants will want to give evidence on the policy issues. As to the negative aspects of perhaps encouraging a spend-up prior to the end of the financial year, the former government had a close look at this notion of a spend-up in the early days and therefore the notion of making savings and being able to carry over and/or reprioritise some of those savings. If you had made savings out of low priority areas, putting them into a high priority area for the department was certainly an initiative the former government encouraged as good financial management. Certainly, if a department makes savings in its administration and if all that money is ripped out of the department or agency and put into the central Treasury, then it is not surprising that there might not be much incentive for financial managers within departments to provide close oversight of their finances and to try to make savings.

I urge members of the chamber to support the motion for the select committee. I understand that the Hon. Sandra Kanck will speak and highlight some potential changes in the terms of reference. We will be happy to have discussions with the Hon. Sandra Kanck and, indeed, other members of the chamber to see whether we can come to a satisfactory resolution concerning the terms of reference. Certainly from the opposition's viewpoint, we have tried to restrict (as much as we can) the terms of reference to the issue of unlawful acts identified by the Auditor-General, and we have highlighted a couple of areas but, if the intent of the amendments is to broaden, in some way, the terms of reference of the select committee, we are certainly happy to have those discussions. Obviously, we want it still to be manageable. I am sure the Hon. Sandra Kanck will wish it to be manageable in terms of being able to finalise the work of this select committee before the end of this parliamentary term, anyway, and hopefully even before that, because that is 17 months away.

The Hon. SANDRA KANCK: The Australian Democrats will be supporting in an amended form the opposition's motion for a select committee into matters concerning the operation of the Crown Solicitor's Trust Account, as raised in the Auditor-General's annual report. I move:

Paragraph 1:
Insert 'allegedly' before 'unlawful practices'.
After 'in particular,' insert '(a)'.
After 'Land Biodiversity Conservation' insert:
(b) whether the practices were in fact unlawful.
(c) the extent to which these practices have been used in other departments;
(d) issues of natural justice surrounding the treatment of Ms Kate Lennon;
(e) why agencies were unable to meet statutory reporting deadlines;
(f) suggestions as to how the management of unspent funds should be approached in the future;
(g)

The catalyst for this reference was the $5 million interagency loan between the Department for Administrative and Information Services and the Department of Water, Land and Biodiversity Conservation. The Auditor-General has categorised that loan as unlawful. The Auditor-General's investigation of the loan resulted in the Chief Executive of the Department for Families and Communities, Kate Lennon, being forced from office. The government claims she resigned. My understanding is that she resigned in response to moves to sack her. Whether it was a resignation or a dismissal is a moot point. What is certain is that, prior to Kate Lennon's being able to explain her actions, the Treasurer had

already decided she was going to be hung out to dry on this matter.

The Hon. R.K. Sneath interjecting:

The Hon. SANDRA KANCK: And he has been on record as wanting to whack public servants over the head, particularly senior ones, for no other reason, it would appear, than that they are senior public servants. In the process of investigating these terms of reference, the committee might be able to shine some light on why the Rann government has taken to public servant bashing. As Lindsay Oxlad said in his column in the June/July edition of the *Public Sector Review*, this government:

> seems to believe that public sector workers. . . should be expected to work in an environment where they are under constant threat of dismissal and where their contribution to the South Australian community is neither acknowledged nor valued by government.

I am sure that Kate Lennon would agree with that observation. No doubt the opposition seized the opportunity to hunt ministerial scalps in this committee. While discovering who knew what and when is a valid exercise, it is not the primary motivation of the Democrats in supporting the establishment of this committee. Affording Kate Lennon natural justice is part of the reason we will vote in favour of its establishment, and my amendments spell that out.

Parliament needs to afford Ms Lennon a right to explain what happened and why. This committee will provide an appropriate vehicle to ensure that will happen. In line with the fundamental principle of our criminal justice system, that we are innocent until proven guilty, I propose that the terms of reference for the committee be altered to include the word 'allegedly' before 'unlawful' in the second line of the first paragraph. Whilst I have great respect for the Auditor-General, the fact is that Kate Lennon has not been found guilty of an illegal act by a court and is entitled to the presumption of innocence. Therefore, the terms of reference should read, 'That a select committee be appointed to investigate and report upon issues relating to allegedly unlawful practices raised by the Auditor-General.'

The Hon. P. Holloway interjecting:

The Hon. SANDRA KANCK: Obviously, the Leader of the Government did not listen to what I said earlier, because I said that it is a moot point as to whether she resigned or whether she was pushed. While the Auditor-General said the actions were unlawful, others have used the term 'inappropriate'.

Members interjecting:

The Hon. SANDRA KANCK: I think that the government is just a little too sensitive at the moment, and one wonders why.

Members interjecting:

The ACTING PRESIDENT (Hon. R.K. Sneath): Order! There is too much interjection coming from my left.

The Hon. SANDRA KANCK: The committee that is set up should examine these practices and let the parliament know their appropriateness or legality. Rather than merely looking at who is right or wrong, surely we need to look at the workability. The Democrats believe that the committee must take a broader view of the matter and investigate the wisdom of the Treasurer's directive that unspent moneys be returned to Treasury at the end of the financial year. It raises the question of just how well this policy works in practice. Circumstantial evidence suggests: not very well.

Today's *Australian* reports that the chief executive officer of the Premier's own department may be implicated in the practice, that six public servants are under investigation, and the chief financial officer of the Attorney-General's Department has already been demoted for his part in the transfer of funds. The transfer of $1 million from the Police Department, which is the Treasurer's responsibility, to the Crown Solicitor's Trust Account has also been identified. Other examples of this or similar practices may yet emerge and, of course, I raise the question of whether something similar occurred under a Liberal government.

I caution the opposition that it might be opening a can of worms with this inquiry, because I am told the retention of funds, one way or another, is an age-old practice in the Public Service. Many senior public servants believe that it could just as likely have been them rather than Kate Lennon in the firing line.

Why is this happening if it is good policy? Public servants are not particularly noted for committing career suicide, and that suggests that the policy is flawed. The practice may also reflect a lack of resources. The Auditor-General's comments in part A of the audit overview on page 2 entitled 'Observations regarding accounting and control matters' states:

> This inability to meet the statutory deadline is, in part, attributable to the fact that the system and skill resource in some agencies is inadequate to discharge the accounting requirements involved.

I believe that the committee needs to examine whether this is part of the problem. Hence, I propose additions to the terms of reference, and that includes investigating why agencies are unable to meet statutory reporting deadlines. As a workable solution needs to be found, for both this and future governments, the Democrats are keen to see recommendations come from the committee about the way forward.

We need to ensure that public servants are able to fulfil the tasks that the government sets them, and not to see them tripped up. The Public Service is, by definition, there to provide services to the public, and in doing so it must be able to offer advice to governments without fear or favour. However, at the moment there is a climate of fear that could lead to that advice being watered down or distorted to suit what ministers want to hear. When that happens we are all losers. This parliament owes it to the people of South Australia to ensure that this matter is properly investigated.

The Hon. P. HOLLOWAY secured the adjournment of the debate.

JOINT COMMITTEE ON A CODE OF CONDUCT FOR MEMBERS OF PARLIAMENT

The Hon. J. GAZZOLA: I move:

> That the report of the joint committee be noted.

In July 2003, the Legislative Council concurred with a resolution of the House of Assembly and appointed members to a joint committee to consider a code of conduct for members of parliament. The committee comprised the Hon. Robert Lawson, the Hon. Nick Xenophon, Ms Vicki Chapman MP, Mr John Rau MP and the Hon. Bob Such MP. The committee placed an advertisement in *The Advertiser* inviting written submissions to the committee to be forwarded to it no later than 5 September 2003. Apart from inviting written submissions, the committee requested copies of codes of conduct from various organisations. The committee wishes to thank the Australian Journalists' Association, the Australian Medical Association, the Certified Practicing Accountants of Australia, the Institute of Chartered Accountants of Australia and the Law Society of South Australia for providing relevant information and/or codes and for their assistance in our inquiry.

The committee also familiarised itself with codes of conduct from various state legislatures. Since 1996, when the Legislative Review Committee last inquired into a code of conduct for members of parliament, the Victorian parliament has implemented a statutory prescribed code which is contained in the Members of Parliament (Register of Interests) Act 1978. The Tasmanian House of Assembly amended its standing orders in 1996 to include a code of ethical conduct. In 1998 both houses of the New South Wales parliament adopted a code of conduct in the form of a sessional order. The Legislative Assembly of Western Australia resolved to adopt a code of conduct in 2003. Queensland implemented a code of ethical standards in 2001 which is a consolidation of relevant legislation, standing orders and the resolutions of the Legislative Assembly. The standing orders committee of the Northern Territory Legislative Assembly reported on a draft code of conduct and ethical standards, the report of which was adopted in March 2004.

This report recommends that the statement of principles contained in this report be adopted by way of a resolution of both houses of the parliament of South Australia. The report also explores the role of a member of parliament. The committee examined the role and duties of members of parliament in four groupings: parliamentary responsibilities and duties, electorate responsibilities, party responsibilities and duties, and specific responsibilities and duties associated with office. The committee recommends that a code of conduct in the form of a statement of principles be adopted for members of parliament. The committee believes that the statement of principles will provide a valuable statement of the principles applying to public life for the benefit of members and a reference point for both members and the public of South Australia to assist them to understand a member's duties in complying with the obligations of public life and an educational tool to better inform the public of the duties and obligations of members of parliament.

After due consideration, the committee recommends that the most appropriate method for the adoption of the statement of principles is by way of a resolution of each house of parliament. As outlined, members are subject to comprehensive and specific laws and rules. Parliamentarians are also subject to the scrutiny of the media, their peers and the electorate and, therefore, the committee concluded that it was unnecessary to incorporate additional means of enforcement of the statement of principles. The committee recommends that members should familiarise themselves with the statement of principles and, upon election or re-election, they should sign a declaration within 14 days of taking and subscribing the oath or making and subscribing an affirmation as a member of parliament acknowledging that the member has read the statement of principles. The committee also recommends that the statement of principles be incorporated in the education program for newly elected members and be widely distributed to the public.

Members and officers have different status in the parliament and, given the difference in status and role, the committee considered that it would be inappropriate for officers to be subject to a code of conduct primarily for members of parliament. The conduct of officers is subject to the provisions of their terms of employment, their relevant enterprise agreements and/or the provisions of the Parliament (Joint Services) Act 1985.

I commend the report to the parliament and trust that it will be supported unanimously. In closing, I thank the following for their excellent work and cooperation: the committee members, the committee secretaries Mrs Jan Davis, Clerk of the Legislative Council, and Mr Malcolm Lehmann, Deputy Clerk of the House of Assembly, and Ms Jeanette Barnes, research officer.

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

ABORIGINAL LANDS PARLIAMENTARY STANDING COMMITTEE

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

That the report of the committee for 2003-04 be noted.

The first report of the Aboriginal Lands Parliamentary Standing Committee contains a summary of the committee's activities for 2003-04. The committee, which held its inaugural meeting on 27 November 2003, has held regular meetings in Adelaide and has travelled widely. When the committee was set up, it filled a vacuum for members of parliament broadly to come to terms with a lot of the issues that Aboriginal people face in this state. Given that the committee had not met for some considerable time under the previous government, a conscious decision was made by the government not to continue the Parliamentary Lands Standing Committee which had been set up and was running under previous governments. I think that members of the opposition, Democrat members and the Independents are appreciative of the information flow that comes from calling witnesses and familiarising themselves with the number of issues that our Aboriginal communities face in the regional, remote and metropolitan areas of Adelaide.

The first task we set ourselves was to have a catch-up, if you like, to get each member familiar with the issues as they are out in the community and to meet as many Aboriginal people in situ as we could to see their daily lives and see what the impact of government policies were, both commonwealth and state. Certainly the relationship to land was going to be important, so the relationship with the landholding bodies, commonwealth and state, were of particular interest to this committee as we took evidence. In the first half of 2004, we visited Aboriginal communities at Davenport and Dunjiba at Oodnadatta and completed a five-day road trip that took in six communities on the eastern side of the APY lands. The committee also met with a number of Aboriginal organisations in Port Augusta, Alice Springs and Umuwa. In Adelaide it heard evidence from 30 witnesses.

Under the Aboriginal Lands Parliamentary Standing Committee Act 2003, the first of the committee's six functions is to review the operations of the Aboriginal Lands Trust 1966, the Maralinga Tjarutja Land Rights Act 1984 and the Pitjantjatjara Land Rights Act 1981. Consequently, and as a matter of priority, the committee has met with the chairpersons and representatives of the Aboriginal Lands Trust, the APY Lands Council, and the Maralinga Tjarutja Land Council. The committee intends to meet with representatives of those bodies each year as well as undertaking regular visits to communities located on the lands that they administer.

For far too long many Aboriginal communities have been cut off from this parliament, and the Aboriginal Lands Parliamentary Standing Committee is working hard to change that. Most governments have tried to work their bureaucracies from Adelaide out into the remote and regional areas of the state in a way that, I think, most of the members of the committee are starting to find needs to change. We need to change the way that we engage with community leadership

in the remote and regional areas—certainly, many of our cross-agencies need to personally familiarise themselves with issues that emanate from the community so that it is not just a matter of formularising policy development for discussion but also for implementation.

The committee's goal is to establish and sustain strong and direct relationships with Aboriginal communities regardless of how close or how far they are from Adelaide. As those relationships deepen, trust is built up on all sides so that parliament as a whole will be able to address matters of priority for Aboriginal people in an appropriate, effective and timely manner—and we hope that, when governments, from time to time, bring in legislation or discuss issues in committees that affect Aboriginal people in this state, the standing committee can play a role in providing information to bring people up-to-date regarding the best way to deal with those issues.

The committee also wants Parliament House to become a more welcoming and familiar environment for Aboriginal people and their families, regardless of their age, life experience or mother tongue. To that end, in the first half of 2004 we hosted a breakfast for the full board of the Aboriginal Lands Trust and met with student representatives from the Wiltja High School program.

Every Aboriginal community is unique and has its own history, goals and challenges. Unfortunately, many of the problems we are dealing with now emanate from the way in which governments in the past have handled issues associated with Aboriginal people, and from policies that have failed miserably in dealing with the remoteness, the different culture, and the way in which Aboriginal people interact not only with non-Aboriginal people but also with themselves and other language groups. Therefore, an information base needs to be built up by members of parliament in dealing with those issues.

In all the committee's travels it has repeatedly heard of the pressing need for Aboriginal communities to have access to more and better housing and to genuine training and employment opportunities to enable the choices that are natural in non-Aboriginal society to become part of the options and choices to break poverty traps and get young people, in particular, into positions where they are able to be part of the economic communities we all take for granted. Most Aboriginal people are locked out of the mainstream economy not only on the basis of race and situation but also because their permanent poverty prevents them from being able to resource themselves to be part of mainstream education, training and employment.

That is starting to change, and there are degrees of isolation within those circumstances. Metropolitan-based Aboriginal people are wrestling with many of the issues that poor non-Aboriginal people face within their communities in terms of access to break the poverty traps. In regional communities there are similar difficulties that are faced by metropolitan-based Aboriginal people, particularly younger people, and the abuse of alcohol and drugs within communities are major problems that need to be dealt with. Certainly the health and average life expectancy of Aboriginal people in our society is a blot on previous governments' policies, but if we do not change the way we deal with those issues then Aboriginal people will continue to die at least 20 years earlier than most non-Aboriginal people in this community—and that is the challenge for us to turn around.

On behalf of the entire committee I thank all the communities and individuals who welcomed us this year and who took the time to explain their hopes, fears, struggles and frustrations. Certainly, those of us who have been welcomed into the community to look at how their culture actually works are coming off a slow learning curve in relation to meeting the needs and requirements of Aboriginal people through an understanding of the cultural differences that we have. The committee looks forward to continuing and deepening those discussions in the year ahead.

This has been, and still is, a hard-working committee. In order to grapple with the complex social, cultural and economic issues, members are having to acquire a broad understanding of Aboriginal perspectives and priorities. As presiding member I acknowledge the time and effort of the other six members of the standing committee: Ms Lyn Breuer, Mr Kris Hanna, Mr Duncan McFetridge, the Hon. John Gazzola, the Hon. Robert Lawson, and the Hon. Kate Reynolds. I also thank Jonathan Nicholls for the work he has done in getting the meetings off to a running start, for the preparation of the material that he presents to the committee at each meeting and for the way in which he organises the witnesses.

As many of those people who service the committees would know, it is not easy to create a warm atmosphere for witnesses. We have been able to do this through a slow process of introduction. Many of our witnesses are Aboriginal and have not been before a committee before, they do not understand our parliamentary process, and sometimes they are intimidated by electronic gadgetry. So, you would think that we would be off to a slow start in some of our information exchanges and evidence gathering meetings, but Jonathan Nicholls has prepared the witnesses on the phone, talking to them on a personal level, and he warmly welcomes them before the committee starts in order to maximise the returns that we get from our meetings. So, I thank Jonathan for his research and for the diligent way in which he conducts himself when dealing with, in the main, people from a different cultural background. I also thank him for the sensitivity that he has shown, and I am sure other members of the committee would like to do so also.

The Hon. R.D. LAWSON: I wish to speak in support of the motion that the annual report of the Aboriginal Lands Parliamentary Standing Committee be noted. I am honoured to be a member of the standing committee and to be able to speak to the presentation of its first annual report. Although this report is but 15 pages in length, it describes a great deal of work and research that has been undertaken by this committee, which in my experience is one of the hardest working committees within the parliament. That is no doubt to a large extent a reflection of the energy and enthusiasm of Jonathan Nicholls, the executive officer of the committee.

The functions of this committee are set out in the legislation which establishes it. Three of those functions I think are of particular importance, and they are: to inquire into matters concerning the health, housing, education, economic development, employment or training of Aboriginal people or any other matter concerning the welfare of Aboriginal people; to inquire into the manner in which the Aboriginal lands are being managed, used and controlled; and to inquire into matters affecting the interests of the traditional owners of the lands. These are certainly important and challenging topics. For too long this parliament has had an insufficient awareness of these important issues, and I believe this committee will provide an important link between Aboriginal people and Aboriginal organisations and this state parliament.

There are about 25 000 South Australians who claim an Aboriginal heritage. That is not a significant proportion of

our total population, but it is an important segment of our community. If one were solely to look at newspaper or media headlines one would have thought that all Aboriginal issues in South Australia in the last year have involved the Anangu Pitjantjatjara lands in the far north-west of our state. That is a very important and significant part of our state, but it is occupied by only 3 000 of those 25 000 people who claim an Aboriginal heritage.

In a sense, too much emphasis can be placed upon those difficult problems which have arisen in the Anangu Pitjantjatjara lands. This particular motion is not the occasion for us to debate the policy of this government and the way in which it has addressed those issues. On other occasions, we on this side of the house have been critical of what has occurred. There is goodwill, no doubt, on all sides of every debate concerning Aboriginal people, but we regret the slow progress and the political interference that has occurred within government in relation to what has happened on the lands.

The Hon. Kate Reynolds interjecting:

The Hon. R.D. LAWSON: The Hon. Kate Reynolds says, 'What about political interference from the opposition?' Well, there is a certain degree of political tension in relation to these issues, and so there ought be. We can't have too much 'me too-ism' in relation to Aboriginal affairs with people saying, ' Well, we all agree we are doing the right thing' and patting each other on the back. There are strong tensions and very strongly held beliefs, with people coming from different positions, and I think it is only appropriate that we in this parliament reflect those tensions. By saying that there are tensions and differing points of view, I am not saying that we are not all seeking to achieve the same result, which will ultimately be to benefit Aboriginal communities.

This report is significant in that it describes in a very brief way the activities of the committee. Those activities have been wide-ranging, thorough and consultative, and I believe the committee has set out upon its journey—and it will be a long journey—in a diligent fashion and in a way that should lead to this parliament being better educated on these important issues.

I commend the members of the committee for the way in which they addressed the issues and the attention which they have paid. I, too, endorse the minister's remarks about the significant contribution that the Executive Officer Jonathan Nicholls played in ensuring that information flows are maintained, that contacts are built up and that a database of important information is recorded and preserved here in this parliament—not simply collected and recorded for the sake of recording but, rather, for the purpose of better educating the parliament so that better outcomes can be achieved on those important matters of health, education, economic development, employment, and the like, concerning the welfare of the diverse Aboriginal communities that exist across this state. I commend the report.

The Hon. KATE REYNOLDS secured the adjournment of the debate.

VISITOR TO PARLIAMENT

The PRESIDENT: Before we move on, I draw the attention of the Legislative Council to the fact that senator elect Anne McEwen is present in the council today.

WORKERS REHABILITATION AND COMPENSATION (THIRD PARTY LIABILITY) AMENDMENT BILL

The Hon. A.J. REDFORD obtained leave and introduced a bill for an act to amend the Workers Rehabilitation and Compensation Act 1986. Read a first time.

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

That this bill be now read a second time.

This bill is introduced by the opposition out of a sense of frustration at the complete lack of action on the part of the government, and in particular the minister responsible for WorkCover, to protect the jobs of our young people in the hotel, motor trade and building industries. Section 54(5) of the Workers Rehabilitation and Compensation Act provides:

Where—
(a) compensation is paid or payable under this act in respect of a compensable disability;
(b) a right of action exists against a person other than the employer for damages in respect of the disability,

the person by whom the compensation is paid or payable is entitled to recover from that other person the amount of compensation in accordance with subsection (7).

In other words, if WorkCover pays money to a worker under the act, WorkCover can sue to recover the whole amount paid from a third party who might have been negligent and caused the damage. The whole amount is payable to WorkCover even if the third party was only 1 per cent responsible for the injuries arising from the incident. This is particularly relevant in the case of two scenarios; first, in group training schemes and, secondly, in the case of labour hire arrangements.

I will illustrate some examples where this has occurred. These are factual incidents which have occurred and which either have been or are before the courts. In relation to incident No. 1, the employee of a waterproof membrane tanking subcontractor was inducted as to the site requirements for safety on the project. The employee of the subcontractor attended the site early in the morning to complete works that were incomplete from the day before. The employee fell backwards off an untied ladder into an excavation, alongside a lift overrun pit, and sustained a broken heel. The employee elected to use a ladder found adjacent to his work area on site, not his own. The employee did not check whether the ladder was properly secured, as required by the company's occupational health, safety and welfare policy manual. Since the incident the employee has not worked for the employer in any capacity. The employee has now developed some psychological problems. The employee is still employed by the employer and continues to obtain WorkCover payments. WorkCover is now seeking to recover payments made and, on future recovery, an amount in the order of $500 000.

In relation to incident No. 2, an employee of a metal work subcontractor was inducted to the site safety requirements of the project. The employee was inducted in the employer's safety procedures. The employee of the subcontractor attended the site to undertake works to install handrails to a work platform above 2.7 metres and subsequently fell from the platform. The fall resulted from the employee, in testing one of the rails he was installing, pushing it. The tack weld broke and he fell and sustained injuries. The employee and/or subcontractor did not utilise a safety harness, as stressed at the site induction, or provide a secondary barrier over the work area as a scaffolding platform in the surrounding work area to prevent the employee falling greater than 1.2 metres.

The head contractor maintains that the works were carried out with no regard to a safe system of work by the subcon-

tractor with respect to his employee. At the time that this variation work was undertaken, the client had occupation of the site; in other words, it was after practical completion, and the head contractor did not have a full-time presence on the site. The employee has returned to work in a restricted capacity and is still employed by the contractor. In those circumstances, WorkCover is seeking to recover, pursuant to this section, an amount in the order of $500 000 as a consequence of what could only be described as a marginal responsibility, particularly when one has regard to the failures of the subcontractor.

A third example is as follows. The employee of a demolition subcontractor was inducted to the site safety requirements of the project on the day of the incident. The incident occurred late that afternoon. The employee removed existing barriers surrounding a concrete floor penetration to dispose of demolition materials through the penetration. While throwing the materials through the penetration his clothing was caught on the materials and he was dragged through the penetration. He fell four floors and sustained very serious injury.

During the induction, the employee had been specifically informed of the employer's safe work methods and procedures regarding working at heights, floor penetrations and edges, protection of floors by barriers or handrails and the provision of safety signs. He was given verbal instructions by his employer for working around penetrations, but he failed to adhere to the instructions. He had undertaken an unauthorised procedure. He was, in fact, terminated from his employment as a consequence. The head contractor had no full-time on-site personnel during the demolition works because they had not formally taken possession of the site. WorkCover is seeking a recovery action of payments made and future recovery in the order of $100 000.

A fourth example is as follows. An employee of a subcontractor who was inducted into safe work systems and practices, and who was the subcontractor's nominated safety officer and a member of the safety committee for the site, sustained an injury whilst on the construction site. The employee of the subcontractor, together with another employee, had been assisting the crane in the removal of a hopper. On completion, he climbed down the vertical face of the regenerator using the angle iron as a ladder rather than using one of the ladders the site. On reaching the concrete floor, he was struck on the head by a section of angle iron and sustained neck and back injuries. He had undertaken an unauthorised procedure. WorkCover is now seeking recovery from the head contractor.

A fifth example relates to an employee of a subcontractor who was engaged by a head contractor on a construction site. He was assigned to the task of putting up steel stud framework on walls. The employee, on instruction from his supervisor, commenced ceiling work. The employee set up a trestle area on which to work and chose an inappropriate plank to use on the trestles. The plank snapped in the middle, which caused the employee to fall to the ground and thereby sustain personal injury. After a 20-minute rest, the employee was able to resume work for the balance of the day and returned to work the next day. WorkCover is seeking recovery from the head contractor of payments made to the worker on behalf of the subcontractor and also in relation to future recovery.

In all cases, the employees were appropriately inducted and given instructions on work methods, and they failed to observe safety procedures. They were all licensed or held competency certificates, which imposed on them an obligation to observe safe work procedures. In each case, they were culpable. However, no blame was apportioned to them and the head contractor, who in each case did a fair bit to prevent the accident, if found liable even to the extent of 1 per cent, would have to contribute 100 per cent of the cost of damages under section 54 as it currently stands.

These are all examples that are now having a real effect out there in our community. In the case of group training schemes, the employer who pays the salary and the WorkCover levy is the administrator of the group training schemes, and I will give some examples.

The Hon. T.G. Roberts: How many were working alone, though?

The Hon. A.J. REDFORD: I do not know. But the fact of the matter is that (and this is the issue), whether it is 1 per cent, 5 per cent, 10 per cent, 50 per cent or even 70 per cent, that does not matter: the head contractor is liable to pay 100 per cent, irrespective of the conduct. The employer may well have been 100 per cent liable or 99 per cent liable but is not responsible for paying, other than the levy through the WorkCover levy. This is not a matter of apportioning blame but of finding some reason to blame a head contractor, and then the head contractor is liable to pay 100 per cent of the cost of the claim.

The Motor Traders Association runs an extensive group training scheme, as does the Master Builders Association and, of course, in hospitality, the Australian Hotels Association also runs them. In those cases, the business contracts with these administrators to undertake the work. If the host or the business contracting the apprentice or trainee is negligent, or if one of its employees is negligent, causing injury to a trainee, they are 100 per cent liable to WorkCover even if their negligence was 1 per cent of the cause of the injury. These businesses are called host employers, although technically they are not employers. As such, they can be liable. They usually obtain for themselves insurance where they can. However, with the recent insurance crisis, there have been drastic cost increases in the provision of insurance and, in some cases, a withdrawal from insurance altogether.

Let me illustrate by referring to some evidence given by the Master Builders Association to the Occupational Health and Safety Standing Committee. In evidence given to that committee by Mr Robert Stewart, the Chief Executive Officer of the Master Builders Association, he said the following:

> In relation to the group apprenticeship schemes, the problems with insurance premiums increasing and the cost of excesses increasing will virtually mean that those schemes will cease to operate.

He then referred to a situation, as follows:

> We have some current information in relation to a host employer with a bricklayer who, basically, sent three apprentices back to us because, first, he cannot afford the premium but, probably more importantly, he cannot afford the excess if there was an accident, and section 54 applied to his business.

Indeed, in his evidence he said:

> We have a group scheme. I should have mentioned we have 214 apprentices over seven trades, but there are something like 1 300 apprentices through group schemes in the building industry in South Australia.

I digress by saying that everywhere I go in South Australia people are crying out for qualified tradesmen. These schemes are successful and a vital and integral part of our future and our capacity to provide skilled workers in our community. He further says:

> When renewal of public liability comes up, that is when the issue is addressed. . . For example, one of our hirers has bricklaying apprentices. He went to renew his public liability insurance, and it

went from $645 with an excess of $750 for each and every claim to a $3 400 premium in round figures with an excess of $25 000 for each and every claim. He approached three other insurance companies. SGIC just did not want to entertain it at all; Appliance put an excess of $100 000 on the policy; and Liberty Insurance put an excess of $250 000 on the policy. His reaction was such that he said, 'Have the apprentices back.' Given that we have 214 apprentices, it is a cyclical thing.

In the evidence that was given to our committee, we have a very serious and important issue. Another example is John Murphy Tyres on Unley Road. John Murphy was a tough footballer for Sturt and he runs a good business. He no longer has trainees or apprentices, because of a massive increase in insurance premiums. Another example is a carpenter who talked to me and who said that he was told that, if he self-insured just for his own labour, his insurance premium would be $700 but, if he took on a trainee or an apprentice through a group training scheme, his insurance would go up to $7 000. You can imagine what he did. He decided he would not have a trainee or an apprentice, and this is at a time of unprecedented demand for skills in the building industry.

Business SA, the Insurance Council of South Australia, the Master Builders Association, the Housing Industry Association, the Motor Traders Association and the Australian Hotels Association have been crying out for reform in this area since as far back as early 2001. My bill seeks to limit payments proportional to liability. So, if the host employer, in the examples I gave earlier, is 10 per cent responsible, then they only pay 10 per cent to WorkCover, and I believe that that is a more equitable and fair outcome. This is an old issue, and it extends back to the former government. In 2001, the former government established a working group to consider section 54. Members might recall that was the beginning of a massive insurance crisis that swept across this country. That was established in July that year.

In November 2001, the Crown Solicitor prepared a paper outlining three options. The Crown Solicitor also advised in that paper (which was circulated widely amongst industry groups) that they expected a response in the middle of January so that the government could respond. It was distributed to stakeholders in December 2001, and I understand a paper was prepared which might or might not have gone to cabinet immediately prior to the election. I do not know whether it did get to cabinet, but I certainly know that a cabinet paper was prepared. That paper referred to a number of issues. First, it talked about how section 54 operated, and it gave the following example.

A worker is employed by an employer. A worker is sent to perform work at the premises of P. The employer and P neglect to advise the worker of hazards at the premises. The worker suffers an injury as a result of exposure to the hazard. WorkCover pays $400 000 to the worker. He then takes common law action and sues the negligent third party owner of the property. As WorkCover has a first charge, it directly recovers $400 000 from the damages awarded. In fact, WorkCover gets the full amount, despite the fact that the third party might have been only 1 per cent or 2 per cent responsible or even, indeed, 20 per cent responsible. The single biggest reason why governments have not embraced reform quickly in this area is the impact on WorkCover's bottom line.

In the paper that was circulated, I have a copy of some figures in that respect. However, I should point out that the parties consulted included the Insurance Council, Self-Insurers of South Australia, the Master Builders Association, Recruitment and Consulting Services, National Insurance Brokers, Business SA and the Motor Traders Association. In January 2002, the government received the final views and then the election intervened. Since then, these groups have been met with continuous and systemic stonewalling. Substantial meetings have been held and substantial submissions have been made and the paper prepared. As I said, the biggest stumbling block is what this will cost WorkCover. A paper was prepared by the Crown Solicitor's office. I am sure everyone would agree with me that the Crown Solicitor is always very conservative when it comes to these matters, so I suspect in indicating the costs that that would be an estimate at the upper end.

First, three options were presented in the paper. I will not go through each of the estimates, but the estimate of the cost of adopting the option which is contained in this bill is of the order of $1.25 million to $1.75 million per annum. Yes; that will have an impact on WorkCover. However, the risk of the many hundreds or even thousands of jobs and trainee positions in this state is well worth the imposition of that cost. Indeed, in discussions with some people I know at WorkCover, I have been informed that the estimate is on the high side and that it is more likely to be in the order of $500 000 per annum. I appreciate that that is not an insignificant cost. However, one has to weigh up the impact on trainees and, ultimately, our future and our skilled suppliers.

The Stanley report commissioned by this government also looked at this issue and recommended significant reform. Indeed, two bills have been submitted in another place as a consequence of recommendations made in the Stanley report. The most significant thing about those two bills is that there is nothing in either of them that addresses these serious issues raised by these groups and, indeed, addressed in the Stanley report. It is very clear that this government seems to be in a crisis in terms of making a decision as to what it should or should not do.

This section does not affect just contractors; it also affects contract labour businesses. I will give some examples of how it might work in that respect. A long term client with an annual requirement for a clerical temp to cope with peak periods for, say, two or three weeks annually, was advised by the insurance company that, if they utilised the service of a recruitment or labour contractor and the temp, say, tripped over in the office, they would be sued for recovery by WorkCover, thus the insurance company would no longer cover this under its normal public liability policy. They could have purchased the cover, but the premium was horrendous. The upshot is that they no longer use a temp. The impact of that is that other workers have to work that little bit harder and, quite frankly, the occupational health and safety in that office at that time is diminished.

Another example given to me relates to a long-term small to medium industrial business with an excellent safety record in a low-risk industry. It utilised services of up to six temps at any one time to cover peak periods. It sent its supervisors to occupational health and safety seminar organised by a self-insurer. The self-insurer pointed out the risk of using labour hire agencies due to recovery actions under section 54 and the ramifications for their insurance indemnity policies. The supervisors reported back to the manager, who checked the matter with the insurance company and found that their insurance would not cover them. Again, they were offered insurance but at prohibitive rates. As a consequence, they no longer use labour hire, again creating certain occupational health and safety issues, as those workers have to work that much harder in terms of overtime and other things to cover that loss.

Following the election, strong submissions were put to this government about changes to section 54. Indeed, the Self Insurers Association of South Australia provided me with a copy of a submission given to the government more than 18 months ago. The first section states:

> We are a group of concerned CEOs who have noted a number of significant differences between the SA Act and other WorkCover Acts interstate.

It then goes through various comparisons; it did not cover just section 54, so I will not cover any of the issues there. However, a group of concerned chief executive officers of some pretty significant companies in this state have stated:

> We acknowledge that a working party raised concerns in relation to Section 54 when it met in December 2003, February 2004 and April 2004. It was agreed by the working party that the protection of Section 54 should be extended to host employers/clients of labour hire firms and would address the current problems regarding availability of public liability insurance and other inequities. Obviously, if this recommendation of the working party was carried through, workers would not be able to sue their host employers at common law for work related injuries. We would simply ask that this part of the working party's recommendations be enacted as soon as possible.
>
> It is grossly unfair that two individuals working side by side at the same address may have separate rights at common law. A direct employee would not be able to seek common law damages, whilst an 'employee' next to him who is placed with a host employer does have that right.

They then request that that inconsistency be corrected.

I think that the signatories to this letter are illustrative and of assistance. They are: Mr Max Tomlinson, Advertiser Newspapers; Mr Andrew Gwinnett, Arrowcrest Pty Ltd; Mr Don Taig, Balfours Pty Ltd; Mr Rob Chapman, Bank SA; Mr Barry Lee, Cooper-Standard Automotive; Mr Rodney Detmold, Detmold Packaging; Mr Basil Scarsella, ETSA Utilities; Mr Des Hindson, Inghams Enterprises; Mr Tom Phillips, Mitsubishi Motors; Mr John Fotheringham, RAA; Mr Robert Hill Smith, S Smith & Son Pty Ltd; Mr Brian Freeborn, Schefenacker Vision Systems Australia; Mr Tony Milligan, Select Australasia Pty Ltd; Mr Michael Bendyk, Southern Cross Care (SA) Inc; Mr Alex Drysdale, Tenneco Automotive; Mr Andrew Michelmore, Western Mining Corporation (Olympic Dam Corp) Pty Ltd; and Mr John Samartzis, David Jones. All are serious, well respected chief executive officers in this state who, more than six months ago, sought urgent reform. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

[Sitting suspended from 6 to 7.30 p.m. p.m.]

The Hon. A.J. REDFORD: Following the submission put to the government earlier this year (which was signed by 13 chief executive officers of significant companies in this state), it has become increasingly apparent that quite a large sense of frustration is now coming to bear in relation to this issue. On 17 October last year, the Insurance Council of Australia wrote to the Hon. Kevin Foley (Deputy Premier) in relation to this specific issue. Members might recall that we were dealing at that time last year with a raft of legislation in relation to the insurance industry crisis. This particular issue was put fairly and squarely in front of the Deputy Premier by the Insurance Council of Australia in its letter, which states:

> ICA strongly supports the Government's proposal to apply proportionate liability to economic loss, property damage and misleading and deceptive conduct, with the exception of intentional torts and claims involving fraud. . .

It went on to state:

> ICA is particularly supportive of proportionate liability applying to recoveries made under section 57 of the Workers' Rehabilitation and Compensation Act 1986.

It then goes on to describe what section 54 says so that the Deputy Premier did not have to look it up. The letter states further:

> . . . we respectfully suggest that when WorkCover seeks to recover damages from third parties, it must do so under the proportionate liability model the Government has proposed.

I have not seen all the correspondence, but we see from this that there actually was a proposal from the government to pay some attention to this issue. The letter goes on to state that, where an employer has contributed to a person's injury, beyond that WorkCover should not be entitled to recover from third parties.

This issue was put to the Deputy Premier as long ago as 17 October last year, and we have not had any response from the Deputy Premier, much to the surprise of the Insurance Council of Australia. I must say that I am not surprised, but it seems to be surprised that the Deputy Premier did not act upon this. On 1 August last year the ICA wrote to the Occupational Health and Safety Committee with the following information:

> The impact of Section 54 has caused underwriters to adopt severe conditions where 'Host' employers of Labour-hire and Group Traineeship participants are involved.
>
> a. Declining to provide cover in respect of liability arising from the use of labour-hire workers or participants in group traineeship programs.
>
> b. Charging premiums up to 3 times the WorkCover levy rate in respect of those workers.
>
> c. Imposing significant excesses of up to $25 000 in respect of such claims by labour-hire or traineeship participants.
>
> Subcontractors are singularly vulnerable to the same recovery actions. It is our belief that recoveries should only be to the extent of negligence contributed by a party.

That is a fairly clear statement. I know it was a statement that was put to the government over and over. It was not just the insurance industry that was putting those submissions to the government. Indeed, the Master Builders Association was putting these sorts of submissions to the government in the committees in which he was involved. I refer in that respect to a letter of 14 October 2003 to the Occupational Safety, Rehabilitation and Compensation Standing Committee. In the letter to which I am referring, the Master Builders Association is trying to be constructive. The letter states:

> The 'blowout' in WorkCover's unfunded liability is a serious issue and needs to be urgently addressed, however the practice of targeting head contractors, because they have public liability insurance, to recoup funds from WorkCover is inequitable and detrimental to the long-term health and cost structure of the industry in South Australia and subsequently the state economy. It does nothing to ensure responsible people are made accountable, but again uses insurance as a 'bandaid' measure to solve a problem. We would suggest the following process will contribute positively to resolving the crisis.

I point out that it is described as a crisis 12 months ago. The letter continues:

> 1. Institute proportionate liability for accidents.
> 2. Ensure licensed persons or those who hold tickets are made responsible for their actions on site.
> 3. Cap the value of third party claims. . .
> 4. Ensure the OHS&W amendment bill reflects the appropriate procedures for the building and construction industry sites.
> 5. With third party claims, allow the head contractor to have input into the rehabilitation process.
> 6. Revisit procedures re rehabilitation to accelerate the injured party's return to work or eventual payout.
> 7. Conduct a thorough investigation into levy rates and, if a commercially viable case can be put, look at increasing the rate, provided it is linked with capped payouts to maintain an equilibrium within the scheme.

8. Reflect in recoveries the contractor's past performance, e.g. attainment of bonus achiever scheme; recognition of safety awards.

I do not agree with every single one of those suggestions, particularly the one about capping, but the rest of them are commonsense suggestions. These suggestions were being put to this government and were being ignored.

In its evidence to the committee, the Master Builders Association raised a number of problems as a consequence of the continued inaction of this government. A letter to the committee states:

> Host employers of Master Builders Group Training Scheme apprentices will review their hiring of apprentices when any of the following triggers indicate it will not be commercially viable to continue hiring apprentices:
> - Notice of renewal from their insurer. . .
> - Notice of change of conditions from their broker or insurer. . .
> - Request from the host hirer to change of conditions in their public liability policy. . .
> - Notification of significant increases in premium and excess to the host hirer. . .
> - Refusal of the insurer to provide public liability insurance for hirers of group training schemes apprentices. . .
> - Notification to host hirers from their professional association.
> - Host hirers being informed of exclusions within their public liability insurance. . .
> - Initiation of recoveries by WorkCover against host hirer who then refers [it] to their insurer.

All these triggers have been happening over the past 12 months.

We are seeing increasing pressure on a very important scheme which has bipartisan support and which was established by Dean Brown in the Tonkin government; that is, this very significant and important group training scheme. I know the Hon. John Gazzola and I were equally concerned when we heard that same body give evidence to the Occupational Safety, Rehabilitation and Compensation Committee that the group training schemes are unlikely to continue if something is not done to address the problem with section 54. The minister has sat on it. We have not had anything from these bodies to say that the minister is doing something to address the issue.

Indeed, the Master Builders Association has indicated to me that some host employers have notified their brokers that they employ group training scheme apprentices, and, having done that, they have had their premiums increased by over 300 per cent and their excesses increased from $750 per claim to $25 000 per claim. This is all done when they renew their public liability policies or change their conditions. The Master Builders Group Training Scheme has over 350 host employers to accommodate the 210 apprentices, and over the last six months a fair number of those host employers have not stayed in the system. This is at a time, Mr President, when, as you know—and you go to the country more than any of your colleagues—there are tremendous shortages of skilled people in the building industry.

I do not normally go out of my way to criticise the government, but this is out of sheer negligence on the part of the government. I have not heard anything other than the cost to WorkCover that would hinder this. Given the government's tremendous budget position, caused by some pretty tough decisions made by the former state government and some extraordinary generosity from the federal government, it is in a position to make a significant impact in this area. Indeed, given the subsidies that are going into the training of young apprentices, the state government has not kept up with the sort of money that the commonwealth has been putting in; to say the least, that is disappointing.

The next point I wish to make is that, whilst I have not received anything in writing from the Australian Hotels Association, I have been told by the association that it fully supports this bill and, indeed, its 340 trainees, in a very significant industry—the hospitality industry—whose future is being put at risk by a failure on the part of this government to deal with this issue.

The committee also received evidence from Mr Stewart from the Master Builders Association in relation to the impact and the way in which group schemes are affected. He said in his evidence that their wage bill was nearly $100 000 a week and that the scheme worked only because the appropriate hirers and the appropriate apprentices matched, and there were good opportunities for work. It has been tremendous in the past few years, because it has been an unprecedented time for opportunities for work for our young people over the past 20 years, and that is terrific. Mr Stewart said in his evidence:

> If we found ourselves in a position where we received a significant number of apprentices back because of this insurance issue, and we used up all our reserves (which we have), we would close the scheme if we could not seek a change in the act or whatever. I guess that is why we are here.

I know that the Hon. John Gazzola, who listened to this with great intent and interest, was as concerned as I was when we heard this evidence. He went on and said:

> One of the crucial times will come at a downturn in the industry. Having gone through at least one downturn in my time at the Master Builders, it has a dramatic impact not only on the employment of adults in the industry but also significantly on apprentices in the industry. The moment the downturn comes, single employers do not have the capacity to carry an apprentice for four years. Generally, they have only small jobs and not ongoing jobs and, therefore, it is very difficult to employ apprentices on a long-term basis.

We are now seeing a slowing of the economy, particularly in the building industry. So, we are reaching a critical time, and it is significant now. The reason why I am raising this matter now is that the opposition is concerned about the delays. There has been sufficient consultation. It is now time for the government and the parliament to make a decision about how they will address this issue. I will be seeking the cooperation of all members in this chamber to have this bill processed and out of the Legislative Council within the next two sitting Wednesdays, which should give the government a couple of weeks to go through its papers, come to a landing, in terms of cabinet, and also to then present something to caucus. I hope it does present something to caucus because I am pretty confident that, once members of caucus see this bill, they will be pretty much in agreement with what I have said. Indeed, I know that the importance of training is at the forefront of a lot of members' minds on both sides of the chamber and, in that respect, I can only urge support.

I ask all members to give this important piece of legislation some serious consideration. If the government has constructive suggestions, of course, we will be prepared to listen to them. But the time has come for a bill such as this to be processed in and out of this parliament before we rise for the Christmas break so that we can go to our break knowing that our group training schemes are not in jeopardy because of any indolence on the part of any minister or, indeed, on the part of this parliament.

The Hon. J. GAZZOLA secured the adjournment of the debate.

TOBACCO PRODUCTS REGULATION (FURTHER RESTRICTIONS) AMENDMENT BILL

In committee.

(Continued from 26 October. Page 342.)

Clause 16.

The Hon. SANDRA KANCK: I move:

Page 8, after line 14—
Insert:
44—Storage and display of products etc in tobacco retail premises
(1) Subject to this section, if any tobacco product, packaging material for tobacco products or information relating to tobacco products is stored or displayed in premises where tobacco products are sold by retail so as to be visible to persons outside the premises or potential customers inside the premises, the proprietor of the business and any manger in charge of the premises are each guilty of an offence.
Maximum penalty: $5 000.
Expiation fee: $315.
(2) Subsection (1) does not prevent—
(a) the exposure of products or packaging materials to view for so long as is necessary for the movement of stock into, within or from the premises or the delivery of products to purchasers; or
(b) the display of a price list for products in accordance with the regulations.

I think that this amendment is one of the crucial aspects of the bill. What I am doing is returning to the bill what was there originally. When it announced this legislation, the government claimed that it was ahead of Australia, but by removing this clause of its own volition from the original bill it has really put us behind the eight ball. It is really unnecessary for stores to have the advertising that we see so often in assorted supermarkets and delis. If members consider that, in our so-called Blue Room in Parliament House where we buy our refreshments, tobacco products are available and they are sitting quietly on a shelf and there is no advertising; yet without that advertising members of parliament and their staff are able to buy their cigarettes from the Blue Room without any advertising to assist them.

The experts tell me that most people are brand loyal, and although I have not ever been a cigarette smoker I have tested that with a number of cigarette smokers, and they all assure me that they have a favourite brand and that is what they buy. That being the case, there is no need for the advertising. The only reason for the advertising is for the recruitment of new and young smokers. That is the bottom line. If the government does not agree to this being restored, then it is party to drug pushing. Let us be quite clear about it: this is a drug of addiction. This government has it in its power to do something about stopping the inducements for young people to take up smoking, because that is what this point of sale advertising is, and anything less than having this provision means support for the drug pushers.

The government has talked about the figures in relation to the health impacts of smoking. If it is serious about it, we have to stop the purchase at point of sale. We have to stop the inducements, and this is an absolutely vital amendment in stopping that from happening.

The Hon. P. HOLLOWAY: The government does not support this amendment. The government announced its intention on Tuesday 12 October not to proceed with the issue of point of sale display provisions at this time and instead to seek a consistent national approach about this complex issue. There have been extensive consultations with the retail industry and stakeholders, resulting in the clear conclusion that the government could not move to a complete ban in one step. Other states have a range of current or planned partial bans and restrictions and a national approach would remove this inconsistency. I am aware that the Minister for Health (Hon. Lea Stevens) has already had discussions with the New South Wales and Victorian health ministers who are supporting further discussions. The time is right for such an approach as a number of states are considering how to deal effectively with point of sale requirements.

The minister has written to state and territory health ministers seeking their agreement to put national consistency of tobacco product display laws on the agenda for discussion ahead of their next national meeting. She has already discussed the matter with Victorian health minister Bronwyn Pike and New South Wales health minister Morris Iemma who have agreed to further discussions. It is also the state government's intention to push for further changes to the national regulations regarding the look of and messages on cigarette packs. Tightening these rules will overcome many of the complexities involved with display restrictions. Most states are currently grappling with what restrictions they want to put in place and how to achieve them. At the moment, there is no consistency at all between states in the laws surrounding the display of tobacco products.

National retailers expressed a strong wish to achieve national consistency on tobacco product display, and so the government will not be supporting the amendment moved by the Hon. Sandra Kanck. I conclude by saying that it would certainly be a better outcome nationally if the states could agree and, as the states are considering this issues at the moment, there is a little window of opportunity to do that. The government believes that we should take it and try to get some uniformity before we proceed on this matter.

The Hon. SANDRA KANCK: It is a cop-out to go for a national approach. In 1996 I introduced a bill in this place for the labelling of genetically modified foods. The then minister for consumer affairs said that the government could not support it because we needed to have a national approach. Eight years on, we are still looking for a national approach and we still do not have labelling on genetically modified food. This is a cop-out.

The Hon. NICK XENOPHON: I indicate my strong support for the amendment. Let us not forget that this was part of the government's initial plan but, as a result of lobbying by the stakeholders (as the minister puts it), the government rolled over on this particular amendment. I have had discussions with Anne Jones, the CEO of Action on Smoking and Health Australia (ASH), and she has made a number of points in relation to point of sale legislation. The reason why it is so important to ban point of sale is that it acts to reduce young children taking up smoking; it is not in their faces. If members were to go into many delicatessens, supermarkets or service stations they would see that the tobacco display is often one of the most prominent displays. My understanding from people who know something about these displays is that sometimes the tobacco companies pay for that prime space so that the product is at the forefront of people's minds and their vision.

For those who want to give up smoking or who have given up spoking, getting rid of point of sale displays is just another fact that assists them. We are not banning the product; we are simply saying, 'Let us not have it in people's faces. If people want to buy cigarettes, they can do so.' It would seem to me to be a very good step forward in terms of reducing smoking rates in Australia, along with all the associated health costs.

The government makes a point about a national approach; I think it is worth pointing out that the Premier, the Hon. Mr Rann, says that the late Hon. Don Dunstan was his mentor. The Hon. Don Dunstan did not wait for a national approach on a whole range of issues in terms of consumer protection legislation. He went ahead and did it because he

thought it was the right thing to do. His government did lead the nation on a number of consumer protection reforms which have now been accepted as the norm and which are now taken for granted.

Not having this national approach is a cop-out, as the Hon. Sandra Kanck said. I would like to hear from the minister—if he is able to tell me, because I realise that it is not his portfolio—at what stage the government changed its mind about the point of sale ban. What were the key factors with respect to that? What evidence was there that it would lead to a significant reduction in relation to the sale of cigarettes? Finally, given the minister's own very helpful information from the department yesterday that the level of compliance is not as high as it perhaps should be—I think it is up to 50 per cent in some areas with respect to minors buying cigarettes, while the average is of the order of 20 per cent, though I stand corrected if that is not the case—I would have thought that the point of sale ban would make a difference in terms of reducing the uptake of smoking in young children.

The Hon. P. HOLLOWAY: I wish to make a couple of points. The most important is that, in the quite significant raft of measures that are contained in this bill, I would have thought that this is certainly not the most important one in deterring smoking. There is a series of very important measures in relation to this bill that seek to reduce the level of smoking in our community. Although it is true that this particular measure is in the original bill, I think it would be difficult to maintain the argument that this is the most significant or important of them. I would argue that there are many more significant measures, which we will debate in clause 16. That is the first point that needs to be made.

When the honourable member talks about rolling over, I think he should take into account that more significant measures are contained in this bill. As the minister said at the time—and this was her decision—on Tuesday 12 October the government announced its intention not to proceed with this issue because a significant number of concerns had been raised in relation to industry. Yes; there is a series of them. Those of us at the Motor Trade Association lunch would have all heard from that sector of the industry, and I am sure there were many others. It became clear, as I understand it, that there was some confusion about what other states were doing, because a number of them have been discussing and looking at this area. The minister has conceded that there is some need to introduce laws in relation to this area, but she quite properly and rightly said, 'Look; we will delay those at this stage. Let's get this bill through, and get the important measures that are in it passed now, and let's look at this issue later.'

There is no doubt that, if we were to have this measure in here, given the considerable concern from industry, it would almost certainly have delayed the progress of the bill. One only has to look about 50 metres west of us at the moment to see what is happening in relation to those particular issues and to understand what happens when there is not uniform agreement in relation to particular matters. I put to this committee that, if we are to get this bill through this week—I hope we will—there will be very significant changes made in relation to this area. If we were to pass this particular amendment, I suggest that it would simply grind to a halt the whole passage of all those other important measures in the bill. Again, I make the point that this issue is not the most important measure in the whole raft of measures that the government originally proposed in order to reduce the level of smoking in the community.

The Hon. J.M.A. LENSINK: In my contribution to this amendment, I would like to reiterate the comments I made in my second reading speech. I believe the outcome that has been reached in the bill as it stands is a lose-lose in that it means that there will be no restrictions whatsoever on advertising until the—

The Hon. P. Holloway: That is just not the case; there are restrictions on advertising.

The Hon. J.M.A. LENSINK: Well, I mean in terms of point of display.

The Hon. P. Holloway interjecting:

The Hon. J.M.A. LENSINK: Notwithstanding the minister's comments, I think some limitations could be placed on point of display. These are things that the retailers would have been happy with. They would have been able to live with something along the lines of being given sufficient time and perhaps one packet per brand, and so forth, whereas those sorts of limitations will not be addressed.

The Hon. P. Holloway: That is the association that is needed; that is the point that I am making. We need to talk to the retailers about those sorts of issues.

The Hon. J.M.A. LENSINK: I understand that, but I would like to make these comments. At this stage, the retailers will be looking at some sort of outcome which is unknown, rather than something which is known. The minister gave an undertaking that amendments to the clause which would address this would be brought back in the break, and that did not happen, so I think we have had a missed opportunity in South Australia. Other states have worked out some of their restrictions on advertising. My understanding—and I stand to be corrected on this—is that, when the government initially included this clause in the original bill, it was dropped in and caused some hue and cry among retailers, and that has led to its being withdrawn. In that sense, I point out that more notice could have been given and, again, it is a missed opportunity.

I share the Hon. Sandra Kanck's sentiments in that the referral to the ministerial council meeting is a cop-out. It is probably a bit of a convenience, and the fact that it was announced on 12 October when this council was being bullied and told that it needed to pass this bill and, if it was not passed, we were the ones who were holding up the legislation, is outrageous.

Also, in the sense that some limitations would assist in preventing the recruitment of new smokers, I think that that is also a valid point. However, I would like to state that, unfortunately, I am unable to support this amendment. I suspect that many on this side of the committee would be unable to do that, and I have a formal indication of that from the Hon. David Ridgway. I think it is not realistic to rush these things to judgment without having looked at them in some detail, but I think it is disappointing that we stand here and are unable to proceed with anything along these lines.

The Hon. A.J. REDFORD: The Hon. Sandra Kanck might well have understated her argument in the way she put it, but I cannot agree with her. I must say that I continue to be touched by the Hon. Nick Xenophon's concern for my wellbeing and health, and I know I speak on behalf of the Hon. John Gazzola, who was almost moved to tears by his concern so that he left the chamber with his bottom lip quivering. We are deeply touched by the Hon. Nick Xenophon's concerns. But it is not us smokers that this clause is about: it is basically so that people know where you can buy a packet of cigarettes. I suppose I should explain a little bit about a smoker's psychology.

An honourable member interjecting:

The Hon. A.J. REDFORD: No, it is pretty simple. Even the Hon. Gail Gago will understand it and I will not have to dumb it down. Every now and again you get it into your head that you might give up this habit. What you do when you think you might give up this habit is buy one packet at a time. The sort of amendments that the Hon. Sandra Kanck is talking about will basically push the sale of cigarette products into specialist businesses which will have discounted prices. The Hon. Sandra Kanck is correct when she says that once you have settled on a brand it is pretty hard to shift away from it—you stick with the one brand. But what will happen is that the only places you will buy these things are at supermarkets or smoke marts where there is a discount, and you will buy them in bulk.

If you want people to give up smoking, you are better off having them pay for one packet at a time, and that is at the delis and the little shops around the corner—the little Greek guys who so often used to be seen in Thebarton in the corner shops. I know the Hon. Nick Xenophon is very disappointed that some of those little corner shops in my suburb of Thebarton have now closed, and it is a great loss. All I can say is that this has nothing to do with whether or not smokers smoke. I sit here as a smoker and I have to say, with great respect, that a lot of it is drivel. I think you really need to talk to us smokers and get an idea of our psyche, because some of what you have been saying does not work.

I have been given a product display matrix in Australia, and this is where I pick up the point and support the government in relation to its position. I congratulate the government, because it listened to what small business and others were saying and did not simply take a prejudiced line. I will give an example.

The Hon. NICK XENOPHON: What is the source of the document?

The Hon. A.J. REDFORD: It came to me in the mail and did not have a covering note on it, so I do not know where it came from. It is entitled 'Product display matrix'. It might have come from a cigarette company. Apparently, they speak English and bleed if you cut them—they are normal human beings. (One of my former employees has a job with a cigarette company.) But, if you take the definition of 'product line' for cigarettes, in South Australia we do not have any provisions. In Western Australia there is no provision. In New South Wales a product line is differentiated by brand name, flavour, tar content and quantity sold in pack. In Queensland the product line is differentiated in the same way. In the Northern Territory the product line is differentiated by ingredients, length, shape and weight, which is totally different to the other two. In Victoria the product line is differentiated just by the brand name, the tar, nicotine content and the flavour. In Tasmania the product line is differentiated by the length, mass, volume, content, etc. Each state, apart from us and Western Australia, has a different display provision.

I will give another example, and that is the number of carton facings per product. A carton is when you buy a few packets of cigarettes, and you actually get a good price when you pay for them by the carton. It might surprise the Hon. Nick Xenophon, but us smokers are aware of those things. We do not have any provisions in South Australia, and Western Australia does not have any provisions. In New South Wales you can display one carton per product line. It is the same in Queensland and the Northern Territory, but you cannot display any in the ACT, and different rules apply in Victoria and Tasmania.

I agree with the government that there ought to be some consistency, and I would be very surprised, if there was research done, if we did not discover that it does not make any difference what brand you smoke, and nor does it make any difference about introducing smokers; but it certainly makes a difference as to whether I go down to Woolworths and buy them by the carton or whether I go to my local deli. I think that is an important issue. Small business people, even if they sell cigarettes, are not drug pushers. I know the Hon. Sandra Kanck might want to call them that, but I do not think they are. They are just small business people trying to make a living and survive in difficult circumstances from time to time. I think it is hats off to the government for listening to those small business people.

The Hon. NICK XENOPHON: I do not think the Hon. Angus Redford needs to formally table that document, but I would be interested to see a copy—I think he has indicated that I will get a copy. I will quote from another document, which is a summary of the Smoke Free SA health alliance position prepared on behalf of the AMA of South Australia, Asthma SA, the Cancer Council of South Australia and the Heart Foundation. In terms of point of sale displays of tobacco, these points are made:

> Every day in South Australia ten 12-17 year olds take up smoking; smokers are brand loyal with 10 per cent or less switching brands—therefore point of sale displays are designed for new recruits who are mostly adolescents attempting to quit; 240 people try to quit every day in South Australia; in South Australia 15 per cent of all smokers are occasional smokers, social smokers, people trying to quit, etc. Point of sale displays undermine their ability to quit; and advertising promotion of tobacco increases smoking rates—and may be a stronger influence on young people than peer pressure.

The source of that quote is the journal of the National Cancer Institute in 1995, Volume 87, pages 1538 to 1545, an article headed 'Influence of tobacco marketing and exposure to smokers on adolescent susceptibility to smoking'. It goes on to say that point of sale displays and packaging are a form of advertising and that over 60 per cent of tobacco purchases are impulse buys.

The Hon. A.J. Redford: What do they mean by that? That is an absurd comment. Suddenly on impulse someone goes out and buys a packet of smokes. Usually, I buy cigarettes because I have run out.

The Hon. NICK XENOPHON: The Hon. Mr Redford has made a good point. The source of that article is the Point of Purchase Advertising Institute, Consumer Buying Habits Study 1995, cited in an article entitled 'Consumer Behaviour: Building Marketing Structures. In fact, I will ask the parliamentary library research service—the excellent service that it is—to try to hunt down a copy of that article. I would like to obtain a copy for the Hon. Mr Redford.

The Hon. A.J. Redford interjecting:

The Hon. NICK XENOPHON: As long as the honourable member is not talking about Osmocote.

The Hon. A.J. Redford: No; osmosis. You know, where I sit in your chair and you catch the toxins.

The Hon. NICK XENOPHON: I won't go there. The final point made in relation to point of sale displays of tobacco is that tobacco products are more readily available than any other consumer goods in Australia—even more readily available than milk. I think these are points that need to be put on the record in support of the Hon. Sandra Kanck's amendment.

The Hon. P. HOLLOWAY: I want to emphasis that, under clause 15 of this bill, which we have already passed, there are restrictions on advertising. In effect, all the bright lights outside shops that might attract buyers into that shop

will be outlawed under the provision we have already passed. All we are really talking about here, if this amendment is carried, relates solely to the display of cigarettes within a shop. I do not smoke, but the packets I have seen nowadays, and I do not know whether we have a packet in here—

The Hon. A.J. Redford: I just happen to have a packet here.

The Hon. P. HOLLOWAY: Is seeing that displayed really going to do a lot more than all the bright signs and so on outside a shop? Surely, we have already done the important part. The bill will give us the capacity to get rid of the sort of advertising that might attract people. I am not saying—and the government is not saying—that we should not go a little further in relation to the display of tobacco products. All we are saying is, 'Let's try to get a national approach first and try to get something that is reasonable and workable as far as the retailers are concerned,' and the government will do that. I think the minister has indicated that she will be looking at that option. If we cannot get national agreement, we will look at getting some progress in this area in the new year. However, I hardly think that dropping this out of the original bill to have some further discussion with industry is a roll over. The important stuff is already there.

The Hon. A.L. EVANS: I rise to support the Hon. Sandra Kanck's amendment. I come to this from the approach of the addictive nature of smoking. Anything that will help to reduce the number of people taking up smoking—because of the powerful addiction of tobacco—is to be applauded. I was reading an article in the *Readers Digest* about a lung surgeon who—

The Hon. T.G. Roberts interjecting:

The Hon. A.L. EVANS: No, not a lung fish; a lung surgeon. He said that he had operated on many smokers who had lung cancer. He would counsel them on what to do about their problem—he told them how to stop smoking and how vital it was for their health to do so. He was a smoker, and the day came when he discovered he had lung cancer. He knew all the rules. He had operated on dozens of people, and he knew all the advice that he had given them. He went through his operation; he did not need to be counselled because he knew it all. However, one day one of his colleagues moved into his office and there he was addicted to that little bit of weed. It is a very powerful drug, friends.

Anything that prohibits the display of tobacco products and can stop people from buying cigarettes and developing the habit needs our support. Displaying the product is not necessary for those who are already addicted—they seem to have a way of searching them out. As the Hon. Angus Redford said, 'Us smokers are aware of these things.' So, because signs are not on display does not mean that smokers are unable to find out where to buy tobacco products. However, signs displaying tobacco products will introduce young people to smoking, which in turn will shorten their life because of the addictive nature of tobacco. I would go along with this national concept if it worked. However, we have been trying for 100 years to get national agreement on the River Murray. The Attorney-General tried to get national agreement on R rated and X rated movies, but it did not happen. I do not think it will hurt sales too much, but it might save some lives if we proceed with this amendment.

The Hon. SANDRA KANCK: I was a little disappointed to hear the minister downplay the importance of this amendment. Given that the point of sale has now become the main methodology for tobacco companies to recruit new smokers, it becomes a crucial issue to bring this under control. There are somewhere between 12 and 17 new smokers per day in South Australia. Anything that we can do to stop this trend should be embraced by this parliament.

The committee divided on the amendment:

AYES (5)

Evans, A. L.	Gilfillan, I.
Kanck, S. M. (teller)	Stefani, J. F.
Xenophon, N.	

NOES (13)

Dawkins, J. S. L.	Gago, G. E.
Gazzola, J.	Holloway, P. (teller)
Lawson, R. D.	Lensink, J. M. A.
Lucas, R. I.	Redford, A. J.
Roberts, T. G.	Schaefer, C. V.
Sneath, R. K.	Stephens, T. J.
Zollo, C.	

PAIR(S)

Reynolds, K.	Ridgway, D. W.

Majority of 8 for the noes.

Amendment thus negatived.

The Hon. NICK XENOPHON: I move:

Page 8, line 24—After 'or shared area' insert 'and in the smoke-free zone of an outdoor cafe area'.

This is a test clause, in a sense, in that amendment No. 10 allows for a 50 per cent smoke-free area for an outdoor dining area. This amendment is part of that because it needs to insert after the words 'or shed area and the smoke-free zone of an outdoor cafe area'. The principle is that there ought to be space for those who want to dine outside or alfresco; that there be a space for a non-smoking area, as well as an area for those who smoke, so that it is divvyed up on a 50/50 basis. That is the principle; that is, with respect to outdoor dining, there ought to be an area set aside for non-smokers.

Members interjecting:

The Hon. NICK XENOPHON: The point made by the Hon. Mr Lucas and the Hon. Caroline Schaefer is: what happens when the wind changes? My understanding, as a result of discussing this with tobacco control experts and those concerned about this in the health field, is that, because you are outside, the smoke disperses more easily. If the wind is blowing, presumably it blows right past them, but at least there is an area designated for non-smokers so they have a reasonable chance of not sitting right next to a group of smokers. You respect the right of the smokers to smoke outside, but you also have an area designated for people who do not wish to smoke; so there is a demarcation.

The Hon. SANDRA KANCK: I indicate Democrats support for the amendment. I am one of those people who often finds that I would like to be able to dine outside, particularly when the weather is lovely, but I find myself confined inside, sometimes with freezing cold air-conditioning. I feel very marginalised in that process. I also know people who, because of asthmatic conditions, cannot go into certain parts of the city as a consequence of people sitting on kerbsides smoking while alfresco dining. I do see this as probably the first step in reducing that and, ultimately, banning it, which I think is only for the good of the community.

The Hon. P. HOLLOWAY: Evidence about the public health of exit tobacco smoke in outdoor areas is mixed. James Repace, the world expert on tobacco, has said that, on the basis of theoretical considerations, exposures outdoors can be as high as indoors for servers or a major nuisance for patrons. Professor Simon Chapman said several years ago that banning smoking is not something which should be done for health reasons. The Hospitality Smoke-Free Task Force

recommended that smoking also be banned in alfresco areas from 1 March 2005, with the provision that smoking may be permitted in up to 50 per cent of the area. Consultations on the task force report indicate that 84.9 per cent supported this recommendation and stated that they would prefer 100 per cent smoke-free alfresco areas.

Queensland and Tasmania have legislation to move to smoke-free outdoor eating and drinking areas. Queensland also plans to ban smoking at beaches, playgrounds, patrolled sports arenas and building entrances. There is increasing publicity about the issue in the media, and some local governments here and interstate are introducing bans in outdoor eating areas and playgrounds. Local government has the power to restrict smoking in playgrounds and at beaches, but that has not yet occurred because, obviously, enforcement is an issue. There are difficulties in enforcing these provisions, for example, at bus stops. The frequency of smoking in outdoor drinking areas is likely to increase as smokers are restricted from smoking inside. This is likely to increase the risk to hospitality workers.

The government is sympathetic to this and is willing to look at the issue. However, it first wants the set of reforms in place that have been the basis of these lengthy negotiations. It does not wish to delay the passage of the bill at this time. The government would consider introducing an amendment when the point of sale display provisions come back to parliament. At this stage, notwithstanding the mixed evidence, we do not think it would be profitable or sensible to further delay the bill at this time.

The Hon. J.M.A. LENSINK: I support the provision for 50 per cent of alfresco dining. While the government may have been given some evidence that outdoor dining may not be so affected, as some other evidence might say—and, in some ways, in relation to some evidence, you are never quite sure who to believe—on aesthetic grounds, when one is sitting outdoors at a cafe, the presumption these days, since the provisions for smoke-free dining indoors, is that the smokers will go outdoors; and perhaps people like the Hon. Sandra Kanck and I, who would like to eat outdoors, are prevented from so doing because the smokers have taken over the area. I think it is a reasonable provision that perhaps would assist the 75 per cent or 80 per cent of the population who would rather not be bothered with cigarette smoke. I do not support complete bans in public places.

Amendment negatived.

The Hon. NICK XENOPHON: I move:

Page 8, after line 38—
Insert:
(4a) An employer with responsibility under the Occupational Health, Safety and Welfare Act 1986 for a workplace, or a portion of a workplace, that is partially enclosed, although not to the extent required to be an enclosed place as defined by this act, is guilty of an offence if the employer requires an employee to perform work in the workplace or portion while a person (other than the employee) is smoking there.
Maximum penalty: $1 250.
Expiation fee: $615.

This amendment seeks to insert a subclause (4a). Essentially, it is about ensuring that employees are not required to work in a smoky environment. We had the debate last night about the 50:50 rule or the 70:30 approach with respect to enclosed spaces. In a sense, this is an alternative approach. Whilst I did not succeed in relation to that, this provision would make it an offence under occupational health, safety and welfare legislation to require a person to perform work in a space where there is smoking, and if it is an enclosed space as defined by the act. So, it is an alternative approach, given that the 70:30 rule still applies.

The Hon. P. HOLLOWAY: The definition of 'partially enclosed' has not been provided, so it will be difficult for proprietors to know whether their beer garden or alfresco area is classified as partially enclosed and, therefore, whether they need to take heed of this provision. To all intents and purposes, this term could cover almost every type of area. This amendment would put some employees in a difficult situation when asked whether they are prepared to work in a partially enclosed area such as a beer garden or an alfresco area. Some employees may make a decision based on financial considerations. The government wants a consistent approach to work conditions in these areas. With this bill, the government is seeking to protect all workers by October 2007. The result of this proposal could be unequal treatment of employees and confusion about what constitutes 'partially enclosed'. Therefore, the amendment is not supported by the government.

The Hon. SANDRA KANCK: I remind members that each year 220 people die in Australia because of second-hand tobacco smoke. The Smoke-free Health Alliance, in a letter that it sent in October last year, made the comparison with asbestos. It stated that, if workers and patrons were exposed to asbestos particles in their workplace or in public venues, there would be an outcry. Tobacco smoke should be seen in the same light. Given what we know about the health effects and the early deaths, there is no doubt that the comparison is a legitimate one, and we should not be deliberately exposing employees who have no say in it to second-hand tobacco smoke.

The committee divided on the amendment:

AYES (6)

Evans, A. L.	Gilfillan, I.
Kanck, S. M.	Lensink, J. M. A.
Stefani, J. F.	Xenophon, N. (teller)

NOES (12)

Dawkins, J. S. L.	Gago, G. E.
Gazzola, J.	Holloway, P. (teller)
Lawson, R. D.	Lucas, R. I.
Redford, A. J.	Roberts, T. G.
Schaefer, C. V.	Sneath, R. K.
Stephens, T. J.	Zollo, C.

PAIR(S)

Reynolds, K.	Ridgway, D. W.

Majority of 6 for the noes.

Amendment thus negatived.

The Hon. NICK XENOPHON: I will not be proceeding with my next amendment, which relates to the temporary exemptions to the smoking ban. However, for benefit of the committee, we dealt with this last night, although it seems much longer ago than that. An initial test clause about bringing all the legislation into place by 31 December 2004 was lost last night. I will have more to say about the timetable of these smoking bans when amendments are moved (I think it could be my colleague the Hon. Sandra Kanck) in relation to the timing of these bans. I accept that 31 October 2004 is not viable given the numbers, but I will have more to say about this issue of bringing forward these smoking bans generally in the context of other amendments. I move:

Page 9, line 14—Delete '2007' and substitute
2006

This will bring the smoking bans forward by a year. I thought that the first position ought to have been to bring it forward by two years and then to have a fall back position of 2006—

The Hon. Caroline Schaefer interjecting:

The Hon. NICK XENOPHON: The Hon. Caroline Schaefer says 'It is a Dutch auction,' but some would say that it is an auction with people's lives when you look at the risk of passive smoking and the death rate arising from that. Mr Chairman, I would be grateful if I could be indulged and speak briefly to parliamentary counsel to sort that out. I sincerely apologise to the committee. The amendment is the second set of amendments and it relates to 2005, so I have got ahead of myself in relation to 2006, I apologise for that. We have heard the arguments. We have heard what the health groups have said about any delays in smoking bans. The Hon. Sandra Kanck and other members have alluded to it. If you delay these smoking bans, you are putting people at risk.

We know that passive smoking is dangerous and we know that second-hand smoke does harm people and causes all sorts of problems in terms of heart disease, cancer and associated health problems. I know that Anne Jones from ASH was talking in the media about 125 lives being lost as a result of a delay in these bans for three years. Every year is costing lives. It is important that we bring this forward. Bringing it forward at least to a year from now gives more than enough time in terms of transitional arrangements. I would have thought it could have been done virtually straightaway. The Bracks government announced these bans in I think February or March 2002 and the bans were in place by 1 September 2002. There was a very significant advance in terms of health factors.

Of course, there is a link between heavy smoking and problem gambling. I have referred to this previously in this place in relation to the secret Tattersall's report prepared by the Barrington group of psychologists who talked about the trancelike effects of smoking in poker machine venues and who indicated a great degree of cynicism to the report on the part of the gambling industry. This is about the health of South Australian hospitality workers and their patrons. We know that this is dangerous. A three-year delay is unconscionable. It is a case of vested interests winning out over the public interest. It is also a case of Treasury having won the day in terms of its grab for tax dollars from gambling. I urge members that this be brought forward by at least two years so that the health benefits can be felt by South Australians.

The Hon. P. HOLLOWAY: The government opposes this amendment. We have essentially had this debate in a number of different clauses before. The honourable member said that Treasury and vested interests had won the debate. I guess that, if they had won the debate, there would be no phase-out at all. There would simply be a continuation of smoking, so I think that is not a particularly effective argument. There is no doubt that the measures we have are a compromise. As I said earlier, there has been substantial negotiation over a long period of time. At least things are now happening.

There is general agreement with the industry on this, and the government is determined that this agreement will be honoured, because that is how you get progress. You get progress because you go out and talk to the stakeholders, you consider their cases, you make hard decisions and you come to a conclusion. That is what has been done. The time line was very carefully worked out after that broad consultation, and that is why the government will stick to the original agreement and will oppose the amendment.

The Hon. SANDRA KANCK: I have an identical amendment on file, so I will enthusiastically support the Hon. Nick Xenophon's amendment. Twelve months ago, when our health minister announced these wonderful reforms that we were going to have, it meant that, in relation to this bill, there was a three year time frame for, I suppose you would call them, entertainment venues, to get their act together on this. This amendment brings that time scale back to two years, which I do not think is unreasonable, given that it has not come out of left field; it has been something that those who promote cigarette smoking have now known about for three or four decades. To take this back and have the exemptions removed one year earlier, I think, is a sensible move.

In fact, this is validated by Sally Neville, the Chief Executive Officer of Restaurants and Catering SA, who wrote to me 12 months ago, and I think she wrote to all MPs because the letter begins, 'Dear Member'. She comments on the arguments that were beginning to rise about needing to delay the implementation of the legislation as 'attempting to change nothing in order to delay the inevitable'. She also states that the delaying of this important occupational health and safety initiative would be leaving the industry open to future litigation as well as unnecessarily exposing the public to an avoidable health risk. We have the opportunity in this chamber now to remove at least one year of that risk.

The Hon. Nick Xenophon: What year is written on it?

The Hon. SANDRA KANCK: From 2007 to 2006.

An honourable member interjecting:

The Hon. SANDRA KANCK: Is it supposed to read 2005?

The ACTING CHAIRMAN (Hon. J.S.L. Dawkins): The table has 2006.

The Hon. SANDRA KANCK: Mr Acting Chair, can I seek some explanation about this from the mover?

The ACTING CHAIRMAN: Order! I think we need to clarify this. The amendment that the Hon. Sandra Kanck talked about which she described as identical provides 2006, and the one I have here in front of me provides 2006. I am not sure whether the Hon. Mr Xenophon has something different.

Members interjecting:

The ACTING CHAIRMAN: Order! The Hon. Mr Xenophon has the call. People on my left are out of order.

The Hon. NICK XENOPHON: There is a bit of a mess here, Mr Acting Chairman.

The Hon. A.J. Redford: We didn't do it!

The Hon. NICK XENOPHON: I am not blaming you.

The ACTING CHAIRMAN: We do have a second Xenophon amendment that provides 2005.

The Hon. NICK XENOPHON: That is what I thought I was speaking to.

The ACTING CHAIRMAN: It has not been circulated, because we thought it had been superseded.

The Hon. NICK XENOPHON: My understanding is that it included the 2005 and 2006 provision.

Members interjecting:

The ACTING CHAIRMAN: Order! The second Xenophon amendment has not been circulated, because the Hon. Mr Xenophon indicated to the committee that he was not going to proceed with that.

The Hon. NICK XENOPHON: That is because my understanding was that it included 2005 and 2006.

The ACTING CHAIRMAN: I think you need to have the one option, Mr Xenophon. The one in front of us has that one.

Members interjecting:

The ACTING CHAIRMAN: Order! The Hon. Mr Xenophon has the call.

The Hon. NICK XENOPHON: I am glad there is still good humour in the chamber at this hour.

Members interjecting:

The ACTING CHAIRMAN: Order! The minister is out of order!

The Hon. NICK XENOPHON: I sincerely apologise to the committee for the mix-up. It is obviously my fault. I am glad I have brought Labor and Liberal together on that one, Mr Acting Chairman.

The Hon. T.G. Roberts interjecting:

The Hon. NICK XENOPHON: The Hon. Terry Roberts wants me to tell the chamber what it does not want. Mr Acting Chairman, with your indulgence and the indulgence of the chamber, I propose to move an amended amendment to delete 2007 and substitute 2005. I understand that the Hon. Sandra Kanck has an amendment for 2006 and, once I have been defeated, as I expect, I can sit down and the Hon. Sandra Kanck can move her amendment.

The ACTING CHAIRMAN: My advice as to the way we should proceed is that the Hon. Sandra Kanck should move her amendment.

The Hon. SANDRA KANCK: Given that I now know that the Hon. Nick Xenophon's amendment is not identical to mine and in fact has the date 2005, I have great pleasure in moving my amendment. I move:

Page 9, line 14—Delete '2007' and substitute:
2006

The ACTING CHAIRMAN: We will have a test on whether we delete 2007. If that fails, the rest of it lapses.

The Hon. J.M.A. LENSINK: Mr Acting Chairman, I would like to make a contribution on the dates, because I was not too sure which year we had. I express my support for 2006, for all the health reasons I have outlined. I do not intend moralising about this, because I do not even think it is a moral issue—I think it is a public health issue. For that reason, I support its coming in 12 months earlier. I would have thought that two years is an appropriate period for everyone to adjust to the changes. I do not support 2005.

The Hon. A.L. EVANS: I support 2006.

The ACTING CHAIRMAN: The question is: that '2007' stand as part of the bill.

The committee divided on the question:

AYES (12)

Dawkins, J. S. L.	Gago, G. E.
Gazzola, J.	Holloway, P. (teller)
Lawson, R. D.	Lucas, R. I.
Redford, A. J.	Roberts, T. G.
Schaefer, C. V.	Sneath, R. K.
Stephens, T. J.	Zollo, C.

NOES (6)

Evans, A. L.	Gilfillan, I.
Kanck, S. M.	Reynolds, K.
Stefani, J. F.	Xenophon, N. (teller)

PAIR(S)

Ridgway, D. W.	Lensink, J. M. A.

Majority of 6 for the ayes.

Question thus carried.

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

Page 10, after line 10—insert:
(b) In the casino, the ban also does not apply to the room known as the 'VIP Room'.

In my usual style, I will be very brief. I am told that in New South Wales, Queensland and Victoria, which is essentially for mainland Australia the casino industry, their high roller rooms are exempt until October 2007. The bans that will apply to the casino in South Australia, if this legislation goes through unamended, will come in much earlier. As a consequence, the casino, which employs South Australians, including union members (if I can appeal to the Hon. Terry Roberts), will lose business to these other states. At the end of the day, it is important, when we are dealing with this high roller market, that it be a level playing field. I would not be moving this amendment if the other states had not sought the same exemption.

The Hon. P. HOLLOWAY: The government does not support the amendment. On 18 October, the General Manager of Australian operations of the Adelaide SkyCity Casino submitted a letter to the government requesting an exemption for the VIP room at SkyCity Adelaide from 'the immediate effects of the smoking bans'. In his letter, he cites that Queensland, New South Wales and Victoria all provide exemptions for their casinos' high roller or VIP rooms, and he believes that a ban in the VIP room in South Australia would put SkyCity in a position of 'competitive disadvantage'. However, he does support a complete ban applying to the VIP room on 31 October 2007.

The government believes that the restrictions in the VIP room until 31 October 2007 are already lenient, so the government does not support this request. Until 31 October 2007, this bill effectively only requires patrons in the VIP room to move one metre away from the gambling tables if they wish to smoke. The casino also needs to make 25 per cent of its entire gaming area non-smoking in the first stage, but it can do this by making other non-VIP areas non-smoking. We believe that all hospitality employees should be afforded the temporary protection provided by the one metre non-smoking rule near service counters. Complete smoking restrictions in the VIP rooms at casinos should be familiar to the SkyCity company, with their three New Zealand casinos, including their VIP rooms, required to be completely non-smoking as of 1 December 2004, I am advised. I am advised that Tasmania also recently proposed complete bans in—

The Hon. A.J. Redford: Are they in the same rack? Does a high roller room in New Zealand compete with high roller rooms in Australia?

The Hon. P. HOLLOWAY: I do not know. The honourable member would probably need to ask the casino. One would assume that that would be the case, particularly if their clients are from overseas. I do not think we would have that information; that is obviously something for the casino. I am advised that Tasmania has also proposed complete bans in its hospitality venues as of 1 January 2005, including private VIP rooms at the Wrest Point Casino in Hobart and the Launceston casino.

Since 2000, smoking has not been allowed at bar or counter areas nor within one metre of gaming tables in New South Wales. In July 2007, New South Wales will have exemptions from total smoking bans for its premium private high roller rooms but not the VIP room, which is also a high roller room. In all these rooms, smoking will not be allowed at the tables and bars. I am advised that in Victoria the Premier and the Minister for Health have indicated that exemptions in high rollers rooms will be addressed during national discussions on the issue. The Victorian Minister for Health has put an agenda item on the next Ministerial Council on Drugs meeting.

I am advised that in December 2006 all enclosed public places in the Australian Capital Territory will be non-smoking. There is no provision for exemptions for casino high roller rooms in its new legislation. The South Australian government recognises that the issue of smoking in VIP rooms is being considered across the nation and in New Zealand. This reflects the need to protect employees in these areas in the same way they are protected in all hospitality

areas. Therefore, the government will not support the amendment.

The Hon. SANDRA KANCK: I indicate that the Democrats do not support the amendment. The philosophy behind it is an interesting one, namely, if it is going to provide money, we should do it. It is certainly not the sort of philosophy I operate on. I cannot justify such a philosophy if what you are going to do is put at risk the health of the many people who work in these areas.

The Hon. NICK XENOPHON: I do not support the amendment essentially for the reasons put forward by the Hon. Sandra Kanck and the Hon. Mr Holloway.

The Hon. A.L. EVANS: I do not support the amendment.

Amendment negatived.

The Hon. R.I. LUCAS: I move:

Page 10, after the last line—Insert:

(3a) From the end of October 2007, the smoking ban does not apply in licensed premises in a single separate lounge area designated in the prescribed manner as the smoking area by the licensee if—

(a) the area is not used for the consumption of meals; and

(b) no employee of the licensee is required to perform any work in the area while it is available for use by the public; and

(c) any requirements prescribed by the regulations are complied with.

As I indicated during the second reading debate, this is a modest amendment, in my view, although I suspect the subscribers to the creeping toxin theory may well not support this smoking room amendment. We discussed this in relation to Parliament House earlier when the Leader of the Government indicated that the smoking room arrangement in Parliament House will be allowed to continue as long as the slats are vertical. I think that was the consensus answer provided by the Leader of the Government last night.

This amendment seeks to protect the position of staff. Staff will not be allowed to work in a smoking area. Those who smoke may purchase alcohol from the front bar or wherever it might happen to be—and that room will ultimately be designated non-smoking—and they will be able to take their schooner of beer to a separate enclosed room where no staff will be put at risk because staff will not work in that room. It will be a voluntary decision by individual smokers to go to the smoking room in order to drink and smoke.

Clearly, the legislation stipulates that no employee of the licensee will be required to perform any work in the area, but the regulations will make allowance for the proprietor to close down the room, if required, in order to allow cleaning up of the room, or in some establishments, particularly in country areas, they would do it at the end of the night; that is, after the hotel has closed down and the smoking room is closed down, then the glasses, and so on, can be taken away so the room can be cleaned.

I accept the argument in relation to health issues, as it relates to smokers, and I accept the argument in relation to the health issues for staff who have to work in establishments where there are smokers, but I think, in relation to these changes we are instituting, it is only reasonable where consenting smoking adults want to have a drink and a smoke in a room. It may be that the regulations require ventilation of a sufficient standard. I think that, when we went through some of the earlier stages of smoking in restaurants, there were various requirements in relation to fans and ventilation. Similar or improved regulations might relate to the smoking room option for hotels. I have spoken to a number of proprietors, in particular in country areas. It is fair to say that some establishments will not take up the option. The design of their premises might not be suitable.

The Hon. Nick Xenophon: It can be very expensive.

The Hon. R.I. LUCAS: It could be, yes; it depends what the regulations stipulate, I guess. Certainly, the majority of proprietors to whom I have spoken are enthusiastic about the option. I do not profess to have spoken to all proprietors in South Australia, I must say, but I have managed to speak to a small number. At some big establishments, for example the casino (and places such as that), under the arrangements people will have to go out onto North Terrace or Station Road to smoke outside the casino, which, from a tourism point of view, probably is not the sort of statement we want to make in relation to our casino—to have lines of people outside Station Road or North Terrace waiting to go back into the casino. In relation to the casino, given the number of levels it has, it would probably take up the option of having a smoking room and make the provision available for those who want to smoke in a separate room within the building.

I urge members to give some consideration to what, I would argue, is a sensible option for those people who are being asked to change the habit of a lifetime, in many cases, and particularly in country areas. Both in the city and country, people have drunk and smoked in their local hotel for decades. At least this will be a compromise option which will not impact on the health of staff, other than those who, I concede, subscribe to the creeping or seeping toxin theory. I indicated my views about that particular theory when we last debated the bill. I ask members to at least consider support for the smoking room option.

The Hon. P. HOLLOWAY: The leader's amendment allows a smoking room—if we consider this amendment and the subsequent amendment—after 31 October 2007 in licensed premises. Employees will not be required to enter the room during business hours and meals cannot be consumed in the room. Other requirements for the room can be prescribed in regulations. In February 2003 the industry-represented Hospitality Smoke-Free Task Force released its report and recommendations. This document states that, although industry groups saw the value in considering separate smoking rooms, they conceded that this provision would impose significant costs and potentially disadvantage some venues. On page 9, the document states:

The task force acknowledges that such an exclusion for a single smoking area would incur costs to proprietors and disadvantage those who cannot afford these costs, or do not have the size to create a separate room. Some leakage of tobacco smoke is likely to occur and any employee or emergency services worker required to enter the room for medical, security or emergency purposes would be exposed to high concentrations of ETS [environmental tobacco smoke].

The Hon. R.I. Lucas: That is the same in a private home.

The Hon. P. HOLLOWAY: Maybe so. We will deal with that in a moment. The document continues:

Leaving an area unsupervised may expose the business to risks of bad behaviour or even illegal activity occurring in those areas. A complete ban in enclosed areas is more effective, equitable between businesses, less costly and has a public health advantage over partial bans with ventilation.

The government endorses these comments. The government believes that if you create this exception the consequences could be very damaging to many hospitality businesses and undermine the intent of the legislation. The negative impact of this exception would snowball. Certain businesses will be able to establish a smoking room because they are large enough to do so. They will spend very large amounts of money to build a smoking room and the specialised ventila-

tion systems for the room. Other businesses will be compelled to do the same to remain competitive.

It is likely that many smaller businesses will not have the physical space to establish the smoking room. It is likely that smokers will make the move to larger venues that have been able to create a smoking room, and this will result in very significant inequities. Furthermore, it will be very difficult to contain the tobacco smoke within this smoking room. People will move in and out of the room and drag the smoke out into the rest of the venue, which is supposed to be smoke-free. From a practical viewpoint, it is unlikely that a smoking room could function without some service during business hours. Empty drink glasses and overflowing ashtrays will build up in the room during the day. If left unattended, the room would be very unpleasant.

The Hon. Sandra Kanck: To say the least!

The Hon. P. HOLLOWAY: It would be extremely unpleasant. After all these problems have occurred, it will be very difficult to reverse this process. Many businesses would have spent thousands of dollars establishing these rooms, and to then turn around and withdraw the smoking room exception would be extremely unfair to those who had already made this investment. It is for those reasons that the government believes that this proposal, if implemented, could completely derail the legislation and, therefore, we strongly oppose the proposal.

The Hon. R.I. LUCAS: I wish to respond quickly to some of the issues. The Leader of the Government has referred to the issue of emergency services workers having to go into a smoke-filled room. Emergency services workers already do so and, in the future, even under the government's legislation, they will have to encounter those sorts of circumstances. In private residences and a number of other locations where people can continue to smoke, if there is an emergency, emergency service workers potentially will be exposed to ETS (to use the minister's trendy acronym) in those particular circumstances.

The Hon. Sandra Kanck: Second-hand smoke is what the rest of us call it.

The Hon. R.I. LUCAS: The minister is more trendy than the Hon. Sandra Kanck: ETS. Whilst I understand the point that the Leader of the Government made, I do not believe it to be a substantive point. The second issue is that of cost. I acknowledge that it may well be, depending on what the regulations are, a costly exercise. It is an option. If a proprietor does not want to go down the path of cost, that is an issue for the individual proprietor.

The Hon. Nick Xenophon: Some will be better off than others, though, won't they? Some will be able to afford it but others won't.

The Hon. R.I. LUCAS: That is a business decision. Some can afford better premises than others at the moment. We do not believe in a sort of a socialist levelling down—the 'everyone has to be exactly the same in hospitality venues' theory. We have very high-class, high calibre hospitality establishments, and we have others that cater for a different clientele and spend different lumps of money in terms of the quality of the provisions within that hotel. It is a business decision that the proprietor makes.

Another point I wish to make is that I have visited a number of establishments, and a number of restaurants or hotels are designed in a way where they do not have to create a room. I recently visited one establishment in Port Augusta where there is a room that is currently being used as a second dining room. The proprietor said that, if the option was there, that area would probably be maintained in their redevelopment as a separate, small area for a smoking room. A number of restaurants are constructed out of large, old homes that have several separate rooms. I am sure members will know of a number of such restaurants in and around Adelaide that are comprised of a number of separate rooms, not just the one space, where parties of different sizes can go and have a meal. In a number of those, one of those separate rooms out the back may well be able to be utilised as a smoking room.

Obviously, I am not going to convince the government to change its position on this, but I want to place on the record my rebuttal of a number of the arguments that the government has made. I did not notice—perhaps I missed it—the seeping or creeping toxin theory argument. I thought that would be one of the arguments that the Leader of the Government used. I do not know whether he ignored the advice of his advisers on this issue, but I would have thought that, if the argument of the seeping or creeping toxin theory was to be used in relation to cars, the government may well have used the same argument in relation to the smoking room.

The Hon. Nick Xenophon: I will.

The Hon. R.I. LUCAS: The Hon. Mr Xenophon is going to use the argument. So, the leader of the government can—

The Hon. P. Holloway: I don't know why a non-smoker would want to go anywhere near a room like that.

The Hon. R.I. LUCAS: We are not expecting a non-smoker to want to go near a smoking room.

The Hon. R.K. Sneath: They tend to follow us around, though.

The Hon. R.I. LUCAS: Well, there is a significant number of smokers. In Parliament House we have a room where the smokers of Parliament House happily go.

The Hon. R.K. Sneath: And some of the non-smokers.

The Hon. R.I. LUCAS: And some non-smokers; but that is their choice. The smokers can happily have a glass of beer, or whatever, and have their smoke at the same time. It is an option that is available because of the particular circumstances of Parliament House. This amendment seeks to provide the option for others if the proprietor chooses to take up the option.

The Hon. SANDRA KANCK: It is interesting to hear the arguments that the Hon. Mr Lucas is advancing. One of the trends that have emerged in the past decade, I suppose, is that the tobacco industry does not really need to go out and fight any more—I do not mean fight internally, but do the fighting by itself—because other people do that for it, and they do it in the name of arguments such as freedom and lifestyle and choice. I am sure that the Hon. Mr Lucas has not been given his arguments by the tobacco industry, and I am not in any way suggesting that he is being manipulated by it. But what he does is serve its interests. We are being told that people can have a room where they could freely choose to go and they will not harm anyone else because they will be enclosed in this room. I do not think it is as simple as that. I do not think that we should be fooled by arguments about choice and freedom.

We must always see this in the context of a health issue, and the moment we stop seeing it in the context of a health issue we have been fooled. I have to also say that I have great sympathy for the person who has to come in at the end of day to clean up one of these rooms which has had people in it all day with the smell of stale tobacco and stale, stinking beer. I cannot believe that we would subject anyone to that, but some poor person—and I bet you it is a woman—will have the job of cleaning it afterwards. If I have not made it clear, the Democrats will not be supporting this amendment.

The Hon. CAROLINE SCHAEFER: I support the amendment. As I said in my second reading contribution, we seem to have forgotten in this debate that cigarette smoking in Australia is still legal. Tobacco is a legal drug, yet nowhere in this debate has anyone talked about any facilities for cigarette smokers. In New South Wales and in many parts of Australia, we now have shooting-up rooms for people who are addicted to illegal drugs, yet the Hon. Mr Lucas has merely suggested—

The Hon. Sandra Kanck: Do you support those drugs?

The Hon. CAROLINE SCHAEFER: No, I do not; that is illegal. This is legal and this is the first attempt throughout this entire legislation for anyone to provide a facility for those people who choose to continue to smoke. The Hon. Sandra Kanck has talked about how filthy it would be to clean, yet, as I have previously mentioned and as most of us know, in many of the hotels and front bars now there are extractor fans which make it possible for people like me who do not like smoking to stand very close to smokers without smelling any of the smoke. I cannot see why, if a hotel or, indeed, a workplace chooses to provide such a facility for its workers, that option should not be availed to them.

The Hon. NICK XENOPHON: I indicate that I do not support the amendment. I do not believe that this is the way to go. If this package of legislation is about having a series of measures to discourage people from taking up smoking and to encourage people to quit, then one of the matters that has not been raised in respect of this amendment is that sometimes—and I am relying on a discussion I had yesterday with Anne Jones, the CEO of ASH, about this issue—particularly with young people, a group may consist of both smokers and non-smokers and, if there is a smoking room, the non-smokers in that group, as a result of peer pressure, if you like, will stick with their mates, and I think that goes against the grain of the legislation. If you want to go to an outdoor area such as a beer garden or whatever, that is a bit different.

If we are talking about hospitality venues, they have outdoor areas where the risk of breathing second-hand smoke is much less. I agree with the government in relation to the level playing field. I do not know whether the argument about emergency service workers is the best argument. The technical term, as I understand it, in respect of the toxins, or the creeping toxins as the Hon. Mr Lucas says—

The Hon. R.I. Lucas: The creeping and seeping.

The Hon. NICK XENOPHON: The creeping and seeping toxins. The technical term is—and I know he was impressed with the trendy term used by the Hon. Mr Holloway—

The Hon. R.I. Lucas interjecting:

The Hon. NICK XENOPHON: It is coming. The technical term for these toxins is off-gassing—and some would say that a lot of that happens in this place. I accept the government's argument in relation to motor vehicles and toxins being absorbed by fabrics, plastic and leather, and therefore I also accept it in the context of these rooms. It is a question of consistency, and I think that the level playing field argument is also compelling. If this is about the cultural shift to try to reduce the levels of smoking in the community, I regard this amendment as going in the wrong direction.

The Hon. J.M.A. LENSINK: I rise to support this amendment, and I do so because my objection to smoking in a number of public places is that I do not believe that non-smokers should be subject to smokers' smoke, but if smokers choose to smoke then that is their business. I think this is quite a neat solution and I do have some sympathy for people who might want to go to the pub to have a drink and a smoke when that is their regular habit. Yes, they can be isolated in a place where their smoke is quarantined from the rest of the world, but I do not think that we should completely deny them that opportunity when it is their pleasure.

I found the government's defence of its position quite astonishing in that the understanding of most people in the Western and even the Eastern World now that the Berlin Wall has fallen down is that we have a free economy, and hoteliers and the like can make decisions based on their own risk assessment and not the risk assessment of the government that they need to be on some kind of level playing field. I think that is probably one of the most extraordinary things I have heard in this entire debate. I indicate my support for the amendment.

The Hon. SANDRA KANCK: The Hon. Caroline Schaefer's suggestion that this is an okay amendment because tobacco is a legal product is interesting. I think that, because it is a legal product, it is something that can be done in the privacy of your own home amongst consenting adults. However, if you look at tobacco in another form, that is, as an agricultural spray, it is a schedule 8 product, and be assured that you and I would not be able to buy that particular product for spraying because it is very carefully meted out.

We went through the argument that the Hon. Caroline Schaeffer made about choice and how it can all be sorted with airconditioning in 1996 with the legislation that the Hon. Dr Michael Armitage introduced to parliament. Given that it was the first major step in this direction, back then I agreed that cigarette smokers, restaurants and hotels, and so on, should be given leeway, and that they should be given time to adjust. That was eight years ago. Again, I stress what I have said before: this has not come as a surprise to anyone. It is time that people gave up on this. This is really just a last gasp effort for smokers.

The committee divided on the amendment:

AYES (6)

Dawkins, J. S. L.	Lawson, R. D.
Lucas, R. I. (teller)	Redford, A. J.
Schaefer, C. V.	Stephens, T. J.

NOES (11)

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

PAIRS

Ridgway, D. W.	Lensink, J. M. A.

Majority of 5 for the noes.

Amendment thus negatived.

The Hon. SANDRA KANCK: I move:

Page 12, after line 13—

Insert:

48—Smoking in certain open public places

(1) A person must not smoke—

(a) in any road or road related area in the City of Adelaide comprising the route of the annual Credit Union Christmas Pageant for the duration of the Pageant and the 2 hours before its commencement; or

(b) in the Royal Adelaide Showgrounds at Wayville for the duration of the Royal Adelaide show; or

(c) within 3 metres of a bus stop; or

(d) in contravention of a prohibition imposed by regulation against smoking in an open public place at which children are likely to comprise a significant proportion of persons present.

Maximum penalty: $1 250

Expiation fee: $160

(2) A prohibition imposed by regulation under subsection (1)(d)—
(a) May relate to a specified open public place or to open public places of a specified kind and may, for example, relate to—
(i) places at which sporting or cultural events or functions are held; or
(ii) places used for recreational purposes such as playgrounds, parks, reserves or beaches; and
(b) may be absolute or conditional; and
(c) may operate continuously or at specified times.
(3) In this section—
open public place means a public place that is not enclosed;
road related area means—
(a) an area that divides a road; or
(b) a footpath or nature strip adjacent to a road.

This is based on the private member's bill that I introduced around this time last year. It is particularly aimed at children, and it prevents smoking in particular areas where children are likely to be present. It specifically names the Credit Union Christmas Pageant, the Royal Adelaide Showgrounds, within three metres of a bus stop, which is often where you will find children catching a bus to school, or other areas that might be imposed by regulation.

The Hon. A.J. Redford interjecting:

The Hon. SANDRA KANCK: Hang on! It deals with places where children are likely to comprise a significant proportion of those present. It is a known fact that one of the indicators for children taking up smoking is the example given to them by adults. By putting these provisions in place so that children are not being exposed—first, to the smoke and, secondly, to the example—we are making positive public health moves.

The Hon. P. HOLLOWAY: The Hon. Sandra Kanck has moved an amendment in relation to smoke-free areas—that is, the pageant showgrounds; within three metres of a bus stop; and in public places where children are likely to comprise a significant proportion of persons present—but it does not cover smoke-free dining. I have already read the evidence, as the government is aware of it, in relation to outdoor areas. There is mixed evidence, and I have already put that on the record.

Perhaps the point of most relevance here is that there is increasing publicity about the issue in the media, and local government here and interstate is introducing bans in outdoor eating areas and playgrounds. I point out to the committee that local government has the power to restrict smoking in playgrounds and beaches, although no council has passed this yet. As I pointed out earlier, enforcement is an issue in relation to such matters. There are obviously difficulties in enforcing these provisions, and one could quote the example of the bus stop and how difficult that might be.

The government has some sympathy for these issues and is willing to look at them. However, again, our view is that we should get through the raft of reforms that have been agreed to. We do not wish to jeopardise the passage of the bill at this time. We would consider introducing an amendment along these lines after consultation when the point of sale display provisions come back to parliament but, at this stage, we do not support the amendment.

The Hon. SANDRA KANCK: The minister says that local councils will have the power to ban smoking around children's playgrounds and on beaches. Are there any other areas? For instance, could the Adelaide City Council impose a ban around the streets of Adelaide when it comes to the Christmas pageant?

The Hon. P. HOLLOWAY: We would probably need some legal advice in relation to that, but I can tell the committee that in New South Wales the Manly and Waverley councils banned smoking on beaches such as Manly and Bondi; and four New South Wales councils have made sporting fields smoke-free zones (that is, the Hawkesbury City Council, Liverpool City Council, the Baulkham Hills Shire Council and the Pittwater Council). Mosman council recently banned smoking from outdoor dining areas.

I am advised that there has been a proposal by Charles Sturt Council to ban smoking on beaches such as West Beach, Henley Beach, Grange, Tennyson and Semaphore. That proposal was put up but was defeated. A report on the issue was put to the Port Adelaide council about banning smoking in playgrounds. However, the initiative was abandoned because it was deemed too difficult to enforce.

Also, in Tasmania, the Launceston City Council has banned smoking within the immediate area of category one playgrounds, whatever a category one playground is. It also prohibits smoking in council owned and controlled buildings and discourages smoking at all outside venues owned and controlled by council by establishing designated smoking areas. I think the question was specifically in relation to the pageant. I do not know whether the Adelaide City Council would do that, but parliamentary counsel has nodded his head so I presume that it would have some scope to do it.

The Hon. SANDRA KANCK: I am disappointed that the government is not willing to support this amendment, but I am also somewhat encouraged by the answer to the question. I think most local councils can now expect to get a letter from me in the next few weeks encouraging them to take such action. For instance, I will be writing to the Adelaide City Council. It is possibly a little bit late for this year's Christmas pageant, but I will be writing to it to encourage it to put such a ban in place for next year's Christmas pageant. I will be writing to Unley council to see whether it can impose a ban during the Royal Adelaide Show; and I will write to assorted other councils about playground areas, to ensure that one way or another we can get these bans. If they are able to be achieved in other states, why should South Australia be the poor relation?

The committee divided on the amendment:

AYES (5)

Evans, A. L.	Gilfillan, I.
Kanck, S. M. (teller)	Stefani, J. F.
Xenophon, N.	

NOES (13)

Dawkins, J. S. L.	Gago, G. E.
Gazzola, J.	Holloway, P. (teller)
Lawson, R. D.	Lensink, J. M. A.
Lucas, R. I.	Redford, A. J.
Roberts, T. G.	Schaefer, C. V.
Sneath, R. K.	Stephens, T. J.
Zollo, C.	

PAIR

Reynolds, K. J.	Ridgway, D. W.

Majority of 8 for the noes.

Amendment thus negatived; clause passed.

New Clause 16A.

The Hon. NICK XENOPHON: I move:

Page 12, before line 14—Insert:
16A—Insertion of Part 6
After section 69 insert:
Part 6—Trial of nicotine replacement therapy to aid in quitting smoking
70—Trial of nicotine replacement therapy to aid in quitting smoking

(1) The minister must establish a scheme to trial the effectiveness of using nicotine replacement therapy to overcome the physical addiction to tobacco products.

(2) The minister must establish the scheme in accordance with the following principles:

(a) at least 1 000 users of tobacco products who wish to quit using tobacco products must participate in the trial;

(b) the trial must be conducted in accordance with established scientific methods using control groups;

(c) participants in the trial must receive a subsidy determined by the minister of up to 75 per cent of any cost incurred by the participant for nicotine replacement therapy;

(d) an evaluation of the trial must be carried out to determine—

(i) whether the nicotine replacement therapy contributed significantly to the success rate of participants quitting the use of tobacco products; and

(ii) whether making nicotine replacement therapy generally affordable would be a cost-effective method of dealing with a serious public health issue.

(3) The minister must take into account any recommendations of Quit SA when establishing the scheme.

Note: Quit SA is an initiative of the Cancer Council of Australia and the National Heart Foundation (SA Division). Most of its funding is provided by the state government.

I consider this to be an important amendment, given that the commonwealth government raises over $5 billion a year in tobacco taxes and, via the GST, the states receive a benefit. So, we ought to do something positive to reduce the enormous costs and other costs in the community with respect to smoking-related disease. We know that nicotine replacement therapy (the nicotine patches, which is the most common form of therapy) is something that does work, and I refer to some research on that. From my discussions with Ann Jones from ASH, I am advised that for every $1 that is spent on tobacco control measures there is a longer term saving of $2 in terms of the public health dollar.

We know that the government has said that there is an enormous cost to the community in relation to smoking-related disease. In this way we are not penalising and marginalising smokers but seeking to assist them in a positive way by providing a subsidy for nicotine patches. Having checked with pharmacists as to the cost of nicotine replacement therapy, I understand that a 10-week course could cost in the region of $400. For some people, particularly the battlers out there, that is too much money for people to consider starting a course of nicotine replacement therapy. Providing a subsidy of up to 75 per cent would act as an inducement for people to consider taking the path of quitting. The amendment provides for a trial. I initially had on file an amendment that would have been open slather, a bit like Medicare Gold—

An honourable member interjecting:

The Hon. NICK XENOPHON: Yes, but there was no age limit. However, I listened to a number of my colleagues, including the Hon. Mr Stefani, who preferred to have this as a trial of 1 000 people to see how effective it was in reducing smoking rates and its cost effectiveness in terms of health and associated costs. The amendment provides that the minister must take into account any recommendations of Quit SA when establishing the scheme. It does not mean that the minister will have to comply with everything Quit SA wants to be done, but at least the minister must take into account those recommendations. It is not entirely prescriptive, but at least the minister would have to explain to the public and this place if she decides to wantonly ignore the recommendations of the experts who assist people to quit on a day in day out basis.

I have had a discussion with Dr Andrew Ellerman from Quit SA in relation to this amendment, because it refers to Quit and it is about quitting. The information that Dr Ellerman has given to me indicates that at least one-third to one-half of people try to quit smoking each year. For some people that might last for only a couple of days, but at least—

The Hon. A.J. Redford: Less than that.

The Hon. NICK XENOPHON: Less than that, says the Hon. Mr Redford. I am grateful for his first-hand experience in that respect. Regarding other matters raised with me by Dr Ellerman, he says that without any support the success rate is less than 5 per cent after 12 months and that 12 months is a benchmark for quitting. He also says that, if people use the support of the Quit Line and follow through with that support, there is a success rate of 38 per cent after 12 months and that, if people use nicotine replacement therapy (NRT) and no other support mechanisms, the quit rate is about 10 to 12 per cent. A combination of counselling and nicotine replacement therapy makes a big difference in terms of helping people to give up smoking.

I refer to a study published in the *British Medical Journal* of 5 August 2000 headed 'Effectiveness of interventions to help people stop smoking: findings from the Cochrane Library'. The Cochrane Library is a research body that reports regularly on tobacco issues. It makes specific reference to nicotine replacement therapy, as follows:

> This treatment aims to replace the nicotine obtained from cigarettes, thus reducing withdrawal symptoms when stopping smoking. Nicotine replacement is available as chewing gum, transdermal patch, nasal spray, inhaler, sublingual tablet, and lozenge. The Cochrane review of over 90 trials found that nicotine replacement helps people to stop smoking. Overall, it increased the chances of quitting about one-and-a-half to two times (1.71, 1.60 to 1.85), whatever the level of additional support and encouragement. The quit rate was higher in both placebo and treatment arms of trials that included intensive support, so nicotine replacement seems to increase the rate from whatever baseline is set by other interventions.

I am more than happy to provide a copy of this review to any members who may be interested.

I urge the government to support this amendment, because I have been told that it supports the battlers in the northern and southern suburbs. In respect of people who want to quit smoking but cannot because of that hump—perhaps that is the wrong word, because it reminds me of Joe Camel—that impediment of the initial cost (particularly those on Centrelink or other benefits for whom it would be a very substantial outlay), having a subsidy of up to 75 per cent I believe would act as a very significant inducement.

The Hon. T.G. Roberts: Would it be means tested?

The Hon. NICK XENOPHON: The Hon. Terry Roberts suggests means testing. That is why I think we should allow Quit SA to make some recommendations—presumably it will—with respect to what is fair in terms of means testing or having some criteria as to who should be eligible to partake in a trial. The point made to me by Quit SA is that there are substantial benefits from this therapy for people who have a life-threatening illness, for whom, basically, it is a case of quit or die—it is as blunt as that. For those very hard to help groups, people who need to give up smoking before surgery (whether it be a heart bypass or other serious surgery), this would make a difference.

The matter of cost is a legitimate and significant question. It would be no more than about $400 000 for nicotine replacement therapy for a 10-week course. If there is a subsidy of up to 75 per cent, the most this trial would cost in

terms of providing subsidised patches would be up to $300 000 plus administration costs. I presume that $300 000 would be more likely to be the ceiling if there is any means testing based on any recommendations from Quit SA which the minister may want to take up.

I urge members to support this amendment. This is not about penalising smokers but about assisting people to quit smoking if they want to. Having subsidised patches would particularly help those on fixed or low incomes who have a psychological and financial impediment to taking up this form of therapy. Given that we know that for every dollar spent on tobacco control $2 is saved in the long term, I think this would be a good investment. If this trial goes ahead and acts as an inducement or provides a way forward for the federal government to consider a wider trial or to put NRT on the PBS, I believe that would be an unambiguously good thing in terms of public health.

The Hon. P. HOLLOWAY: The government has evaluated nicotine replacement therapy type programs with small groups such as Centrelink clients and staff, prisoners and correctional services staff, hospital patients and staff, and migrant health services. This strategy is found to be useful when used by people who are ready to quit and in conjunction with counselling. I understand those programs have been funded by government, I think through Quit SA, so some of this work has been done. Any large-scale NRT program in Australia should be conducted at a national level in accordance with the recommendations in the draft national tobacco strategy. It is the government's view that a program such as this should not be legislated; it would be inappropriate to do so.

The Hon. Nick Xenophon's amendment seems to be more like a funding application than an amendment. The government is always happy to consider grant applications such as this one. However, the government is prepared to have discussions at a national level to determine whether a South Australian trial is a useful first step in initiating a national scheme. If the state government did decide to conduct a pilot program, it would be prepared to discuss this with Quit SA as well as other interested parties. I also put on the record that a trial of this nature has not been raised with the minister by Quit SA. I notice that in his comments the Hon. Nick Xenophon did mention Dr Ellerman and Quit SA. My advice is that, essentially, this is his initiative, not that of Quit SA.

The Hon. A.J. Redford: So?

The Hon. P. HOLLOWAY: Quit SA has already done it. What I am saying is that they are already doing it. Quit SA has a budget of about $1.256 million a year. The Hon. Nick Xenophon suggested a trial might cost $200 000 to $300 000. Is it not better that within the budget Quit SA determines its own priorities, as they are now doing? They are already trialing this sort of thing.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: Well, that is not for me to determine. This is an incredibly prescriptive amendment, in the sense that it has the number of users, percentage of costs and so on. We have these trials anyway. Quit SA does this work. Is it not better that they determine the scope and scale of this work, rather than have this rather unnecessary prescriptive amendment telling us how to do it? Surely, the experts are the best people to determine where those scarce dollars that go into anti-smoking activities are spent.

The Hon. J.F. STEFANI: I support the amendment moved by the Hon. Nick Xenophon. When I had the opportunity to meet with representatives from Quit SA and the Cancer Council, it was evident to me that some positive measure needed to be taken to initiate a trial, which would give strength to national action by the federal government in relation to people who would like to quit smoking but who are not able to do so. I know that the federal government collects substantial taxes in relation to cigarettes that are sold. The state government should take the initiative on board, because we are lagging behind other states in relation to the reform of tobacco products restrictions. While this is not a measure that addresses the restrictive nature of the legislation, it is a measure that would assist people who are endeavouring to quit smoking but who, because of their own personal, financial, family and health circumstances, may not be in a position to do so.

In my view this would be a very good way of the state Labor government showing some leadership in this area of initiative; and that leadership would then provide valuable information, created by an initiative that would certainly have the support of people who are telling us that for every dollar spent in assisting people who want to give up smoking we save $2 in the health budget. I think that is a good investment. If I had the opportunity to invest $1 and get $2 back, I would do it tomorrow.

The Hon. T.G. Roberts: The Melbourne Cup on Tuesday!

The Hon. J.F. STEFANI: I would mortgage everything I had to do it. This initiative needs the will of the government to provide funding to an organisation that obviously believes that such a trial would bring great benefits and great results to future governments to support and follow.

The Hon. NICK XENOPHON: I want to make it clear that I approached Dr Ellerman from Quit SA. I came up with the idea: it was not an idea from Quit SA. I wanted to make that clear, in fairness to Dr Ellerman. In reviewing the material, the $400 figure I gave for a 10 week course may have been on the high side. It might have been the most expensive of the products. A person can undertake a 10 week course, which costs about $250. In terms of the costs of such a program it could be well under $300 000. The government takes the view that it ought to be a national approach. I believe that is a cop-out in the sense that, if the state government can show initiative and leadership to expand the use of nicotine replacement therapy, in order to reduce the rate of smoking in the community and reduce the associated human and health costs involved, then that would have to be a good thing.

I accept that the minister may not be able to tell me now—and I would be happy to get a response by letter—but how many people are currently on such programs? To what extent is there a subsidy for these nicotine patches? I know that in New South Wales they have extended the program, but my understanding of the New South Wales program is that if you have already gone to hospital with a serious illness and smoking is a cause—in other words, if you are diagnosed with emphysema, smoking-related heart disease or cancer—you will then get a subsidy.

Let us try to bring it forward a bit in terms of giving people an incentive to give up smoking earlier. This is an opportunity to do the right thing; to not take the narrow approach of the government and to expand this program. Nicotine replacement therapy works: the literature says it works. Smokers who have been assisted to give up smoking, or former smokers who have quit because of the use of patches, can attest to that. When the state government is clearly receiving a benefit through the GST and, indirectly, through the $5 billion a year that the federal government receives in tobacco excise, I think this is an opportunity for

us to do something which is innovative and which assists those in lower income groups, in particular, to have a chance to quit.

The Hon. P. HOLLOWAY: Again, let me make the point that these sorts of evaluations of nicotine replacement therapy have taken place. The government has funded it. As I said, the government funds Quit SA to the tune of, I think, $1.265 million to undertake programs. I suggest that experts are the best people to determine where the dollars should go in relation to people quitting. If the groups that have the expertise determine that maybe the exact replica of the scheme we are attempting to put in legislation is the best way to go, so be it. But should they not determine it? Is it really up to the parliament to be so prescriptive in relation to a trial—setting the number of users, the recovery, and so on? Surely it is better for the experts to determine that.

It is not at all a question of the government's not being innovative. The government has been innovative—perhaps not so much the government, but those organisations funded by government, such as Quit SA. The government does not take all the credit; clearly, those people who are experts in the field are the ones who are being innovative. Government gives them the capacity to do that through funding, and that is proper. Surely that is the way it should be done—not by putting it in legislation that is completely unnecessary.

The Hon. Nick Xenophon asked some questions in relation to this therapy. There is a lot of information about that, and I will share some of it with the committee. In New Zealand, a nationwide program was implemented in 2000 through the New Zealand Quit Line. A subsidy reduces the cost to the smoker from $NZ199 to $NZ9.40 for eight weeks' supply. It has been found that this has helped 210 smokers a month to quit long term—an increase of 141 a month on the pre NRT Quit Line service. What would it cost? It has been estimated that to establish a scheme similar to the New Zealand program in Australia it would cost about $24 million in the first year.

Detailed costings on a state basis have not been done but a rough estimate, based purely on 8 per cent of this amount for South Australia, would be $1.920 million per year. This figure does not take into account the increasing costs that would be likely to occur, as there would be economy of scale savings if the scheme was run as a national program. They are some of the figures that the honourable member requested.

Again, I make the point that it is not a question of the government's not being prepared to be adventurous, because a lot of this work is being done. It is being done around the world. We are looking at it. Let the experts decide where they spend the money that we make available, rather than parliament prescribing it for them.

The Hon. A.J. REDFORD: I have mixed views about this matter. I refer the Hon. Nick Xenophon to proposed section 70(2)(a), which provides:

(a) at least 1 000 users of tobacco products who wish to quit using tobacco products must participate in the trial.

'The lucky 1 000' I will call them. How do we select 'the lucky 1 000'? What is the process? What if there are 5 000 people who want to do it?

The Hon. NICK XENOPHON: It would be very dangerous if I said that there would have to be a lottery system—

The Hon. A.J. Redford: That is the answer that I was expecting. That's why I called them 'the lucky 1 000'.

The Hon. NICK XENOPHON: As long as the member does not call them 'lucky strikes'. The Hon. Angus Redford made a very valid point. The situation is that, in discussions with some honourable members who did want this to be open slather, who at least wanted to expand significantly what is already happening in this state, as I understand it, with respect to nicotine replacement therapy, it would at least be limited; we would have a pretty good idea of what the upper end of the costs would be. Therefore, I expect that there will be more than 1 000 people seeking it. That is why I would imagine that Quit SA, as the experts in assisting people to quit smoking, could at least determine the criteria—whether there is an element of means testing in terms of the level of subsidy; or whether you use various groups, a combination of the general population in terms of those who have been smoking who do not have any apparent, or serious, heart disease or other associated problems. It really would be a matter for Quit SA.

I know the minister has said that it is being very prescriptive, but what I have tried to do is leave as much of it as possible to the experts. The minister has made reference to what has happened in New Zealand. It seems to me that in New Zealand they have been innovative; they have had a bit more courage to go forward with this, and it has made a real difference in the number of people who have—

The Hon. P. Holloway: They didn't do it by legislation.

The Hon. NICK XENOPHON: The minister said that they did not do it by legislation. This amendment would not have been moved if the government was not so slow in dealing with nicotine replacement therapy. If the government is serious about assisting people to give up smoking, if it is serious about the cost of smoking to the community and the 1 500 South Australians who die each year because of tobacco-related disease, let us try to do something constructive to reduce the level of smoking in the community. If it has worked in New Zealand, why is the government not adopting it? I would have thought that it would be a no-brainer in terms of the public health benefit.

Going back to the Hon. Mr Redford's question, it is a compromise on the basis that there be a trial of at least 1 000 people. My understanding is that it would be the biggest trial of its type in this state in terms of assisting a reasonably large number of people, and if we can see that people who would not have quit or who would not have attempted to quit have given up because of this scheme, then I would have thought that could be a pilot for a much broader application—and perhaps the Federal government may be encouraged to assist with this as well.

The Hon. A.J. REDFORD: I note that the lucky 1 000 are going to be lucky because they win a lottery. I assume that it is just a single trial and not a trial on an ongoing basis—and I am sure I will be corrected if I misunderstand that. I accept that the member has consulted with Quit, and I certainly have not received any letter saying that it is opposed to this. I have to say, in my experience, if the anti-smoking lobby does not like something, it is probably the quickest little lobby group I have ever experienced in letting me know what its views are, so I can only assume that it would support this. I would be interested to know the length of time and when we could expect some results. I know giving up smoking is a long-term thing. I gave up for a year once—it was an interesting experience, but I will not go into that.

The Hon. NICK XENOPHON: I know the minister has criticised me for being too prescriptive, but what I envisage is to leave it to the experts, leave it to Quit to determine this. I envisage that this would be over a 12-month period. In other words, you get 1 000 people to do this but not necessarily all

starting at once. If you accept that nicotine replacement therapy is a key part of giving up smoking and that the course takes about 10 weeks, then 1 000 people would have gone through this program easily within a year—but it is a one-off. What I am hoping is that the state government and perhaps even the federal government will see the benefit of such a scheme and reducing smoking rates in the community and be encouraged. Perhaps the Hon. Mr Abbott at a federal level will see the benefit so that NRT therapy may get a PBS subsidy, or there may be some other subsidy to encourage its uptake.

The Hon. R.K. SNEATH: I certainly do not support the amendment, but I think some of the members moving these amendments such as the Hon. Mr Nick Xenophon do not understand smokers. He has probably never been a smoker, and the same probably applies to the Hon. Sandra Kanck. There is an incentive out there now for smokers—

The Hon. Nick Xenophon interjecting:

The Hon. R.K. SNEATH: Perhaps you ought to listen to this and you might understand smokers much better. There is an incentive for smokers to give it away. I think a packet of patches which last seven days costs about $30. You can get them for $28 at some chemists and $35 at others—

The Hon. A.J. Redford interjecting:

The Hon. R.K. SNEATH: There are seven patches in a packet because I bought a packet not very long ago and it is still sitting in the briefcase at home. There are seven patches for about $30. A person who smokes a packet of cigarettes a day—and a packet ranges between $11 and $14, I would imagine—spends approximately $80 a week, so you are saving $50 a week if you give away cigarettes and go on the patches. That is one incentive, and the other incentive is your health. Both are big incentives. This government and past governments have put money into it—as the minister said, over $1.2 million a year. I do not think money and the government's putting subsidies on patches will cause smokers to start buying patches even on a trial basis, because, if a low income earner who is a smoker has $13 left in their pocket on a Friday and they are out of cigarettes and milk, I can tell members that nine out of 10 of them will buy a packet of cigarettes and go without the milk. If they go onto the patches, they will have money to buy the patches and the milk. That is how smokers are.

A few people I know who have given up smoking recently have done so because of their health, but most of them give up because of the price of cigarettes. That is the main reason why they give up smoking. If you put cigarettes up to $50 a packet, you will probably have more people give up than if you have a $5 subsidy on patches.

The Hon. R.I. LUCAS: I will address some comments to the amendment moved by the Hon. Mr Xenophon and following on from some of the comments of the Hon. Mr Sneath. One of the issues in relation to this is new subsection (2)(c), in that the participants must receive a subsidy determined by the minister of up to 75 per cent of any cost incurred by the participant for nicotine replace therapy. The member talked about a 10-week replacement program costing roughly $400. Again, I would follow up with the member and indicate that there are a number of people using patches who go far beyond 10-week programs. The theory with some of the patches is that, if you smoke with a patch on, you are meant to feel nauseous.

The Hon. A.J. Redford: You don't; I have tried them.

Members interjecting:

The Hon. R.I. LUCAS: Before a number of people made the same point, I was about to indicate that for many people that is not the case. There are some who, for example, will use nicotine patches to regulate their consumption during a period of the week and who then will take the patches off for their Thursday to Saturday smokos, and then put them back on again on the Sunday, or whatever it might happen to be. There are some who successfully regulate their consumption but who, because they can smoke at the same time as they wear patches without being nauseous, do so. I think that, if the member and the government (or anyone in this parliament) is to head down this particular path, the member is going to have to look at capping the program in some way.

An honourable member interjecting:

The Hon. R.I. LUCAS: It might be a one-off program, but it does not say how long the program will go for.

An honourable member interjecting:

The Hon. R.I. LUCAS: He says that, but the actual legislation we are following here—I think that is the point that the Leader of the Government is making—is legislated for. Any cost incurred by the participant for nicotine replacement therapy is met. If a thousand people are going to be chosen, any cost that is incurred by them for the nicotine replacement therapy is to be met. To me, this is an uncapped program. I think that, if the member wants to maximise the chances of this being accepted by a majority of members in both houses, capping the program in some way to a maximum of $300 (if that is what he is talking about), that is, 75 per cent of the $400 program, will minimise the chances of the users and/or abusers of the nicotine patches using them to regulate their consumption, as opposed to genuine endeavours to give up.

I am aware of some people who have used nicotine patches off and on for two years. I am aware of people who have had up to a half a dozen separate attempts at nicotine replacement therapy. With the best intentions in the world, they give up for two, three or four weeks; they buy their program; they give up or moderate; they have a relapse and go back; and then they start again two or three months later. Again, I think if the member wants to head down the path of the guidelines, they ought to be amended to ensure that there is some sort of a cap.

I will make another point. The member has left this to the issue of the guidelines or advice from Quit SA, but I think that the notion that the Hon. Mr Sneath or the Hon. Mr Gazzola, for example, could win Mr Xenophon's lucky dip and get a $300 subsidy from the taxpayers of South Australia is offensive to me—with the greatest respect to the Hon. Mr Sneath and the Hon. Mr Gazzola. They are at an income level where, even for the reasons that the Hon. Mr Sneath indicates, there are savings—

An honourable member interjecting:

The Hon. R.I. LUCAS: It might be, but there is no reference to that in the legislative program. It might not be means tested. This government is out of touch with working-class South Australians, as we saw at the last federal election. It is more in touch with the caffe latte set rather than the working-class South Australians. It may well be that they are attracted to the notion of giving subsidies of $300 each to people such as the Hon. Mr Sneath and the Hon. Mr Gazzola with incomes of $100 000-plus. I think that if—

The Hon. R.K. Sneath: I wouldn't take it.

The Hon. R.I. LUCAS: The Hon. Mr Sneath says he would not take it, and I suspect that the Hon. Mr Gazzola might not take it either. It is a well made point that there are enough people out there who are the strugglers and battlers that the Hon. Mr Xenophon talked about, yet, in the legislative program that he put down, there is no reference to

ensuring it. There are already many provisions in terms of concessions, the unemployed, health card holders, and a variety of measures we use to provide concessions on electricity and council rates and a variety of other things like that which are measures of—if I can use the term—battlers or people worthy of support in the community.

I would have thought that, if the member wanted to maximise the chances of support for a program, capping the cost of program to an individual and, therefore, the top, is something worthy of consideration, as is ensuring that the Hon. Mr Gazzolas and the Hon. Mr Sneaths of this world are not entitled to $300 taxpayer subsidies.

An honourable member interjecting:

The Hon. R.I. LUCAS: That would be a good way of doing it; we could just specifically exclude them by legislation. I would have thought that that would help maximise the chances.

In relation to my position, I would be prepared to consider an amended provision, at least in the passage of the legislation through this council in the first instance, if it had a means test of some sort and if it was capped in some way. My preference is the same as that of the Leader of the Government, namely, that these things not be legislated for, but I would be prepared to support the passage of this measure through this council in the interests of keeping the debate open. I indicate to the government that, if it was to indicate, through the minister, that it would institute a program of the nature sought by the legislation and gave that commitment in both houses, my preference would be the same as the Leader of the Government: that these things not be legislated for but that the structure of them be given by way of a commitment in both houses.

I accept that a number of my colleagues who will support the amendment will not trust the government or the ministers in relation to that, at least on this particular issue. As an individual, I might be prepared to accept an undertaking, and if it was to come back to the Legislative Council I would reconsider my support for the amendment.

At this stage I am prepared to consider keeping alive the issue. It may well be that my vote is not important, anyway. The Hon. Mr Xenophon may or may not have the numbers for it but, if my vote is important, I am prepared to consider keeping it alive. If it is amended to in some way impose a cap and to clearly indicate that it be means tested and it is then kept alive, as I said, I indicate that I would be prepared to reconsider if there was a commitment from the government to what I think is a worthwhile issue to consider but not be necessarily locked into the view that it must be legislated for.

The Hon. CAROLINE SCHAEFER: In my second reading contribution I indicated that I would support the Hon. Nick Xenophon's amendment. I did so because I am rather tired of this government introducing more and more legislation which is all about punishment, big sticks and banning people doing all sorts of things.

The Hon. J.M.A. Lensink interjecting:

The Hon. CAROLINE SCHAEFER: Yes, banning eating cats and dogs and terribly important things such as that. I thought that, at least, this amendment offered some incentive for people to give up smoking and, as such, showed a glimmer of positivity rather than fining and banning, which seems to be so popular in most of this government's legislation.

The Hon. Nick Xenophon originally indicated that he would move an amendment for a subsidy in respect of nicotine patches. He tends to trap himself by trying to cover every aspect. I am much more inclined to agree with the Hon. Rob Lucas. If there could be an outline, and on this occasion the actual detail of the subsidy in the regulations, it would seem to me to be much more sensible, because it has now gone from a subsidy to up to 75 per cent for 1 000 people. We do not really know for how long.

The Hon. Nick Xenophon indicated to me that it would be means tested, but that is not part of the amendment, so now we have this detailed amendment which I will still support. But the principle on which I support this amendment is that it is the one positive note that has been brought into this legislation—or, indeed, any legislation for some time. Generally, and particularly from the Hon. Nick Xenophon, all the amendments have been about shortening times and doubling fines, and I thought that, for once, we had a glimmer of positivity in the legislation. For that reason, I am prepared to support the amendment but, certainly, I think the Hon. Nick Xenophon has to a large degree trapped himself by trying to be so prescriptive with what was originally a fairly broad amendment.

The Hon. P. HOLLOWAY: I will first make a couple of points and provide the committee with more information in relation to what is done now with nicotine replacement therapy. Perhaps we could then have a short break to consider some of these issues, because I will obviously need to consult with the minister.

First, I will put the information on the record. The South Australian Department of Health funds a number of programs that provide vouchers for people to obtain nicotine replacement therapy at a discounted price. These programs provide NRT vouchers to people who enrol for Quit smoking advice, usually through attendance at a cessation group. A number of pilot programs for high prevalence groups have been trialled with clients and staff of Centrelink, prisoners and Correctional Services staff, hospital patients and staff (particularly the Noarlunga Health Service and the Repatriation General Hospital), Gay Men's Health, and new arrivals who are clients at the Migrant Health Service at the Adelaide Central Community Health Service. The NRT component for these programs would amount to little more than $10 000. Workplaces are also—

Members interjecting:

The Hon. P. HOLLOWAY: I imagine the reason you would do it is that it is obviously a community group that is identified as having high levels of smoking. I think that is the total NRT component. In addition, workplaces are also encouraged to provide subsidised NRT for their staff, and the Department of Health and the Department of Families and Communities are two departments that provide cessation workshops and subsidised NRT for their staff. The Smoke Free Hospitals Committee based at Quit SA is currently reviewing tobacco control measures in all metropolitan hospitals in order to develop a uniform policy for the routine provision of NRT and quit smoking support to patients. A hospital stay is quite obviously an opportune time for people to be asked about their smoking and interest in quitting. In other words, there are programs that have been carefully thought about by people who understand these things.

The Hon. G.E. Gago: Strategically targeted.

The Hon. P. HOLLOWAY: Yes, that's right, strategically targeted so that the money available to government goes in the best possible way to have the best possible result, and that comes back to my argument throughout this debate about trying to prescribe a trial. Remember that this is talking about the numbers of the trial. If you are going to have a genuine trial that has any scientific value at all, the trial has to follow the sorts of scientific principles that are set out for these

things. You do not just make up a number in parliament late on a Wednesday night about what the—

The Hon. Caroline Schaefer: It won't be the first time.

The Hon. P. HOLLOWAY: And it probably will not be the last, either. But, seriously, if we are to have trials, surely it is the experts who should set the parameters for those trials—how many people, where you do it, who you target and how you set the trials. As I said, the government provides a significant amount of money for anti-smoking activities, and there are bodies funded by the government to do that. Surely, they should be determining the priorities in how that money is spent. NRT is part of it and, as I have just indicated, money is spent in those areas.

[Sitting suspended from 11.08 to 11.53 p.m.]

The Hon. P. HOLLOWAY: Mr Chairman, I am going to make a proposition to the committee. It appears that the majority of members would prefer legislation which mandates a trial, although there are some doubts as to what the provisions of that would be. I propose that we allow the amendment to go through at this stage. We will then go through the remainder of the bill, and I will move to adjourn at the end of the committee stage, and we will then have the option of recommitting the bill tomorrow after further discussions regarding the details of this clause. If that is acceptable to members, that might be one way in which to proceed. There are a couple of amendments still to be dealt with. We could proceed with those, and we could revisit this issue tomorrow after we have had an opportunity to look at some of the details of what might be included in the trial clause. If members are happy with that, we can move on and revisit this issue tomorrow.

The Hon. NICK XENOPHON: I am grateful for the break that we had to try to resolve this issue. I do not think it has been resolved, but I think the Leader of the Government's suggestion is sensible. It would be fair to say that, following discussions that I had with the Hon. Mr Lucas, consideration was given to further amend the clause to ensure that the subsidy was capped to a maximum of $300 and that there be some sort of a reasonable means test on the application for that subsidy. I know this bill requires a conscience vote for Liberal Party members, but this clause is to go through on the voices on the understanding that it will be recommitted tomorrow. The health minister wants to discuss this further, she has taken a keen interest in this amendment, and I think the shadow health spokesperson for the Liberal Party also has some interest in it, and I would like to get some feedback from my fellow crossbenchers. So, rather than moving an amendment to this amendment, I think the Leader of the Government's approach is sensible on the understanding that it will give time to the parties to discuss this further.

The CHAIRMAN: Basically, there is in principle support.

New clause inserted.

The Hon. J.M.A. LENSINK: I move:

Page 12, before line 14—Insert:
16A—Insertion of section 70
Before section 71 insert:
70—Confiscation of tobacco products from children
(1) A prescribed person who becomes aware that tobacco products are in the possession of a child apparently for the purpose of consumption by the child may require the child to deliver the products to the prescribed person.
(2) The child must comply with a requirement under subsection (1).
Maximum penalty: $75.
Expiation fee: $30.
(3) If tobacco products are delivered to a prescribed person in response to a requirement under subsection (1), the products are forfeited by the child and must be destroyed as soon as reasonably practicable by the prescribed person.
(4) In this section—
'prescribed person' in relation to a child means—
(a) a member of the police force; or
(b) any other authorised officer under part 5; or
(c) an authorised person under chapter 12 part 3 of the Local Government Act 1999; or
(d) a teacher at a school attended by the child.

As was the case with the other amendment that I moved, the origin of this amendment was in the House of Assembly, but it was not supported by the government. This amendment is designed to address an anomaly. We clearly recognise that minors should not be able to purchase tobacco products, but in the event that they are found in their possession certain people in positions of authority are not necessarily entitled to confiscate them.

During the briefing, I was advised that some schools have policies to address this. I sought advice from a document entitled 'Intervention matters: a policy statement and procedural framework for the management of suspected drug-related incidents in schools'. This booklet is supported by the government of South Australia and, in particular, the Department of Education and Children's Services. It covers not only illicit drugs but also what are called legal drugs: those drugs which are sanctioned by law which may be readily available (such as caffeine and petrol); restricted by age (such as tobacco and alcohol); or prescribed for some by medical practitioners (such as many pharmaceuticals).

I struggled to find in this booklet anything which outlined a policy that would give authority to teachers, one of the prescribed authorities for confiscating tobacco products from children. I think we would all be familiar with the situation where kids at school may have cigarettes and someone wants to confiscate them. We would like to be able to provide the appropriate authority in that situation or in other situations where teachers or other officers would be able to confiscate them.

I think it has been pointed out recently by adolescent psychologist Dr Michael Carr-Gregg that the current generation of students is the most underparented generation of students for the past two decades. I think it is recognised within our community that perhaps other people who are in contact with students and minors ought to be in a position to have some influence. I probably would be the last person in this place to be called reactionary, given my age and sympathy for younger people; and, also, in the case of the tattooing and piercing bill, which is before this place and on which I have not yet had the opportunity to speak, I have some objections in relation to the liberties it seeks to take away from people in some very strange manner. I welcome any questions or comments.

The Hon. P. HOLLOWAY: This amendment is the same as that which was moved by the Hon. Bob Such in the House of Assembly, where it was defeated. The honourable member mentioned 'Intervention matters: a policy statement and procedural framework for the management of suspected drug-related incidents in schools', which was released in March 2004 to all DECS schools. It includes tobacco within its parameters of what is considered a drug. It clearly states that there is no place for the use of illegal or unsanctioned drugs in schools, including tobacco within the latter category.

Schools are provided with a very clear set of guidelines for responding to drug-related incidents. It also makes very clear the legal position in relation to all categories of drugs, including tobacco. It makes clear that the supply of tobacco

to minors is an offence, and that the police should be contacted when tobacco products are involved in incidents to allow them to decide on whether there is a need for legal intervention. Schools are also required to respond in a meaningful way to indicate that the behaviour is inappropriate, and support for cessation should be provided or accessed. I am advised that currently Quit SA is implementing, in collaboration with all education sectors, training in the use of a new resource called 'Keep Left' to support the process of tobacco cessation for students. We want to ensure that this conforms with the Department of Education and Children's Services' policy, but we understand that each school currently operates differently.

I believe that this amendment is fairly draconian. I think it will be perceived that way. I think there is the risk that it will drive the problem underground. It is a measure apparently supported by the tobacco industry, which in itself raises issues. The tobacco industry does have a history of advocating ineffective measures which contain hidden agendas or which are counterproductive. It would mean that there might be ethical implications for controlled purchase operations where the Department of Health uses volunteer adolescents to attempt to purchase tobacco from retailers. That is a complication of the amendment. This would remove our only effective method of testing retailers' sales to minors and enforcing sales to minors laws.

The Hon. R.I. Lucas: How does it do that?

The Hon. P. HOLLOWAY: Basically, it will prevent them occurring.

The Hon. R.I. Lucas: How?

The Hon. P. HOLLOWAY: If the prescribed person becomes aware that tobacco products are in the possession of a child apparently for the purpose of consumption by the child, they may require the child to deliver the products to the prescribed person.

The Hon. R.I. Lucas: How does that stop your doing this, whatever you call it, subterfuge or entrapment?

The Hon. P. HOLLOWAY: If a police officer becomes aware that tobacco products are in the possession of a child, apparently for the purpose of consumption by the child—I suppose one could argue about what it means by 'apparently for the consumption'—they may require the child to deliver the products to that police officer.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, exactly. As I said, it is the only effective method of testing sales to minors and enforcing the sale to minors laws.

The Hon. R.I. Lucas: You say this amendment will stop that. How will that stop it?

The Hon. P. HOLLOWAY: Obviously, as a result of those exercises, if children successfully purchase tobacco, given that subsection (2) provides that a child must comply with a requirement under subsection (1), I think that could create difficulties.

The Hon. R.I. Lucas: What is it again?

The Hon. P. HOLLOWAY: It would make those sorts of operations very difficult. It could complicate the law. Presumably, you have to provide some sort of exemption.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, I guess in theory that is what could happen.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, presumably, if they happen to be doing that, and if a police officer happened to walk in and catch them and was not aware they were part of an operation, they could take it. I do not think it is worth spending too much time on it, but, obviously, it is a complication of that operation. We would have to look at the legal issues in relation to that.

The Hon. R.I. Lucas: Do you have a better argument against the amendment?

The Hon. P. HOLLOWAY: There are a whole lot of them. As I said, it drives the problem underground. It targets the victim—

The Hon. R.I. Lucas: How does it drive it underground?

The Hon. P. HOLLOWAY: Obviously, if you confiscate them, they will take action to make sure that they are not confiscated. At this stage, if under-age people can successfully obtain cigarettes, once they have them, it no longer becomes an issue. If you can confiscate them, they are more likely to make that factor—

The Hon. R.I. Lucas: They've got them at the moment and no-one is doing anything about it. What's the difference?

The Hon. P. HOLLOWAY: We are doing something about trying to prevent them purchasing cigarettes. I guess it is one way you can measure it. I will complete the arguments, and then I am happy to answer questions. This measure also targets the victims of tobacco marketing and introduces children to the criminal justice system if they refuse to hand over their tobacco products. We know that children from low socioeconomic backgrounds smoke more and, therefore, would obviously be targeted more by this proposal. It would also, I would argue, divert resources away from retailer enforcement. Obviously, this is where your efforts would go.

Finally, there is a lack of evidence that it works. It encourages the association between smoking and rebellion, and that is probably, in some ways, the most serious issue. In other words, in a way, it glorifies the possession of cigarettes by the fact that they are now even more of a forbidden fruit. As we know, we are not particularly successful in getting the prescribed drugs of addiction off young people, either.

Also, we would argue that the amendment perhaps would result in inappropriate use of police resources. Obviously, if we were to pass this measure, it would have the capacity to divert police time. It also could set up a confrontation between police and young people and between teachers and young people. What we are really trying to do with smoking is more of an educative approach; a non-punitive approach. We are trying to encourage young people not to smoke, because it is not in their interest to do so. However, if you have a punitive regime, it is felt by those people who understand and who have looked at these things that it could be counterproductive in bringing that confrontation, and that might detract from the educative scheme.

They are the problems that the government sees with the amendment. One can understand the motivation behind it, and one can certainly put a case for it, but it is the judgment of those people who have experience in this matter that, notwithstanding the obvious attraction to it, there are problems with it, and those problems might well outweigh the benefits.

The Hon. SANDRA KANCK: On this occasion, the Democrats will not be supporting this amendment. I have held the health portfolio for the Democrats for 11 years and I have dealt with tobacco issues all that time. Back in the 1980s, as a researcher for a variety of MPs, I dealt with health issues, including tobacco, and this is one issue that has never been raised with me. There would appear to be no demand for it. It seems to me that these sorts of things happen, anyhow; teachers take cigarettes away from kids at school and no assault and battery charges emerge from it. I think that this is creating a problem where no problem exists.

The Hon. J.M.A. LENSINK: Can the minister provide the authority under which teachers, in particular, are able to confiscate cigarettes from students?

The Hon. R.I. Lucas: I think that is a very interesting question.

The Hon. P. HOLLOWAY: It is an interesting question.

The Hon. Sandra Kanck: Why don’t you take it on notice?

The Hon. P. HOLLOWAY: That might not be a bad idea. Perhaps it would be best if I did take it on notice. One other point while I am on my feet is that this amendment would also create an offence by a minor who has committed no illegal acts in obtaining the cigarettes and who may have the permission of their guardian to smoke. That is just another complication that could arise under this amendment if it were carried.

The Hon. NICK XENOPHON: I indicate that I am sympathetic to the amendment, and I understand the intent of the Hon. Michelle Lensink in moving it. I am just concerned about its scope. I would appreciate a response from the minister when we resume debate on this bill tomorrow. My understanding is that it is illegal for a retailer to sell cigarettes but not for a minor to buy them, and that the amendment of the Hon. Miss Lensink would make it an offence not for a minor to possess a cigarette but if the minor refused to hand the cigarette to the relevant authority when requested to do so.

My understanding, from the discussions I have had with Anne Jones from ASH (and I have a lot of regard for what she has to say about this field generally), is that it may be counter-productive to be seen to be penalising young smokers. I understand that in New South Wales the police have the power to confiscate alcohol, I think (and I am not sure whether that also includes cigarettes), from minors. If between now and tomorrow the minister can find out what is the position in New South Wales and what is the authority for teachers to confiscate cigarettes from students without them being subjected to an assault charge, I think that would be useful in the context of the debate. It may well be something that needs to be looked at down the track.

The Hon. P. HOLLOWAY: The point that the Hon. Nick Xenophon makes is essentially the point I was trying to make earlier; that is, it does put teachers and police officers for that matter in that confrontational position and, according to the people who should know about these things, that could well be counterproductive. From the advice we have to date in relation to New South Wales, we do not believe there is the power to confiscate cigarettes from children. We can check that but that is—

The Hon. Nick Xenophon: They can alcohol.

The Hon. P. HOLLOWAY: Possibly alcohol, but in relation to cigarettes that is our belief. We can check that. I do not know whether or not that is necessarily essential to our views on this clause. Again I make the point that the objective of this amendment is not a dishonourable one. The question is: will it work or will it be counterproductive? That is the issue which we have to consider.

New clause negatived.

Clauses 17 and 18 passed.

Clause 19.

The Hon. P. HOLLOWAY: I move:

Page 12, after line 31—
Insert:
(2a) Section 87(2)(f)—delete ‘in, or in conjunction with, advertisements of tobacco products’ and substitute:
at premises at which tobacco products are offered for sale by retail

This amends the act in relation to health warnings in tobacco retail outlets. The effect of the clause is that currently section 87(2)(f) allows regulations to be made prescribing warnings to accompany tobacco advertisements. This amendment has the effect of isolating health warnings to places where tobacco is sold. This bill will remove most forms of tobacco advertising. The only exceptions will be primarily confined to tobacco displays in retail outlets and the commonwealth government regulated tobacco advertisements such as those on television and radio. Consequently, this act only needs to prescribe tobacco health warnings in tobacco retail outlets. Any tobacco advertising outside these outlets will have health warnings prescribed under commonwealth law, including packet health warnings, or will be very insignificant such as a business name on a building or a letterhead. Essentially it is a technical amendment to take into account the other changes in the bill.

Amendment carried; clause as amended passed.

Title passed.

Bill reported with amendments; committee’s report adopted.

CRIMINAL LAW CONSOLIDATION (INTOXICATION) AMENDMENT BILL

The House of Assembly agreed to the amendment made by the Legislative Council without any amendment.

STATUTES AMENDMENT (MISUSE OF MOTOR VEHICLES) BILL

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

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

That this bill be now read a second time.

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

Leave granted.

There have long been calls for laws to prevent what is known as hoon driving: people using public roads to perform drag races, or to performing manoeuvres known as ‘wheelies', ‘burnouts', and ‘donuts', or making excessive amplified noise using car sound systems. Conduct like this can cause distress and alarm and can destroy the peace and quiet of a neighbourhood, particularly when repeated in a particular area. It can also place the safety of other road users at risk.

This Bill was introduced by the Honourable Member for Fisher in another place and is essentially modelled on provisions in operation in Queensland. The Bill creates some new offences and penalties and also a regime for the impounding and forfeiture of motor vehicles used to commit these offences. The impounding and forfeiture scheme is independent of, and additional to, the penalties for the offences themselves.

1 The offences

The Bill amends both the *Road Traffic Act 1961* and the *Summary Offences Act 1953* to create several new offences.

The offence of misuse of a motor vehicle

The Bill amends the *Road Traffic Act* to create an offence of misuse of a motor vehicle that may be committed in one of four ways.

A person who, in a public place, drives a motor vehicle in a race between vehicles, in a vehicle speed trial, in a vehicle pursuit or in any competitive trial to test drivers' skills or vehicles, commits the offence. The Bill is not concerned with races or manoeuvres that take place on private property with the owner's consent - for example at a public or club motocross or go-karting event on a farm property, held with the consent of the property owner. It is a defence to show that the conduct occurred at a place with the consent of the owner or occupier of that place, or of the person who has the care, control

and management of that place. Also, official motor sport events authorised under the *South Australian Motor Sports Act 1984* are not affected by this Bill, because the *Road Traffic Act* does not apply to such events.

The second way in which a person may commit the offence is by operating a motor vehicle in a public place so as to produce sustained wheel spin.

The third way in which a person may commit the offence is by driving a motor vehicle in a public place so as to cause engine or tyre noise that is likely to disturb persons residing or working in the vicinity.

The fourth way in which a person may commit the offence is by driving a motor vehicle onto an area of park or garden (whether public or private) or in a road-related area so as to break up the ground surface or cause other damage. A road-related area would include a median strip, roundabout or nature strip.

The offence of promoting or organising an event involving the misuse of a motor vehicle

The Bill also makes it an offence against the *Road Traffic Act* to promote or organise an event knowing that it will include the misuse of a motor vehicle. This offence is aimed primarily at people who promote or organise illegal drag races in public places.

The offence of emitting excessive noise from a vehicle by amplified sound equipment or other devices

The Bill also amends the *Summary Offences Act* to allow police to direct people who emit excessive noise from vehicles to abate the noise immediately, and if they do not obey the direction or emit excessive noise again within six months, to charge them with an offence. For the purposes of the direction and the offence, excessive noise is noise that is likely to disturb people in the vicinity. It is not hard to think of examples of excessive noise. Most people have had the experience of having their sleep disturbed by excessive noise from modified car stereo amplification systems or from other devices such as loud repetitive musical car horns.

It is also an offence for a person who has been requested by police under this section to stop the vehicle or to give his or her name and address to fail to do so, or to give a false name and address.

The direction may be given to anyone in the vehicle - the driver or a passenger, or both, if police think this necessary to stop the noise continuing.

2 The penalties

The penalties for these offences are as consistent as possible with the range of penalties for other driving offences and also with penalties for offences of good order of equivalent seriousness.

In terms of seriousness, these offences sit somewhere alongside the offence of driving without due care and between exceeding the speed limit by 30 kilometres per hour or more, and the offence of reckless or dangerous driving.

Of course, depending on the way they were driving, hoon drivers may also, or instead, be charged with other offences against the *Road Traffic Act*, including drink driving offences and offences against the Road Rules, and if the driving causes injury or death, with a serious offence against the *Criminal Law Consolidation Act*.

Penalty for misuse of a motor vehicle

No maximum penalty is prescribed for the offence of misuse of a motor vehicle. As for the offence of driving without due care, the maximum penalty for the offence of misuse of a motor vehicle is the *Road Traffic Act* default maximum penalty of $1250, and the court may, under s168 of the *Road Traffic Act,* disqualify the offender from driving for any period it sees fit and require the driver to pass a driving test before regaining a driver's licence.

The Bill also requires a defendant whose offending causes damage to, or destroys, property to compensate the owner of the property.

Penalty for promoting or organising an event

The same penalty considerations apply to this offence as to the offence of misuse of a motor vehicle.

Penalty for emitting excessive noise

The maximum penalty for each of the offences of failing to obey a police direction to abate the emission of excessive amplified sound from a vehicle and of emitting such noise within six months of being given a police direction is $1250.

The maximum penalty for the offences of failing to stop the vehicle when requested or failing to give one's name or address or giving a false name or address is $1250 or imprisonment for up to six months.

3 Impounding and forfeiture

The impounding and forfeiture regime established by the Bill is similar to, but simpler than, the one operating in Queensland under the *Police Powers and Responsibilities Act 2000*.

As in Queensland, this Bill allows impounding to be by police, on reasonable suspicion of offending, or by the court, on proof of offending, or both.

The powers of police and the court to impound vehicles are in addition to any penalty that might be imposed for the offence for which the vehicle is impounded.

Police impounding is for a much shorter time than impounding ordered by a court, and happens straight away. Police impounding is for 48 hours in most cases. Court-ordered impounding may be for periods of up to three or six months, depending on the offender's driving history.

Police impounding

Police may impound a vehicle suspected of being used to commit any of the offences described in the Bill as impounding offences, namely:

· the new offence of misuse of a motor vehicle;

· the new offence of promoting or organising an event involving the misuse of a motor vehicle;

· the new offence of emitting excessive noise from a vehicle by amplified sound equipment or other devices; and

· any of the existing offences of driving dangerously or recklessly, of driving dangerously or recklessly so as to cause death or injury or of driving under the influence of alcohol, if that offence has been committed in a way that involves any of the features of the new offence of misuse of a motor vehicle.

These existing offences are offences that are often associated with hoon driving. They are included because police should be able to impound a vehicle used for hoon driving (for example, drag racing on a highway) even if the incident turns out to merit a different or more serious charge (for example, dangerous or reckless driving causing death)).

Police may impound a vehicle only if the driver has been arrested for the impounding offence or if police intend to report the driver for the offence and have told him or her so. This is to ensure that a vehicle is impounded only when the investigating police officer thinks there is evidence to sustain a charge.

The impounding will usually, but not always, occur on the spot.

When police impound a vehicle, they must as soon as reasonably practicable and within the 48 hours of impoundment make reasonable attempts to contact all current registered owners (or if none, the last registered owners) to tell them what has happened to the vehicle and provide information about its release. A telephone call will usually suffice, but, if this doesn't work, the notification can be by post. If by post, it may not reach the owner until well after the 48 hours has elapsed, but this can't be helped. Of course, the owner will usually already know of the impounding because he or she is the driver or because he or she has been told by the driver.

Police must release an impounded vehicle that was stolen or otherwise unlawfully in the driver's possession at the time of the offence, or if it was being used in circumstances prescribed by regulation (for example under a holiday rental). The owner of such a vehicle does not have to wait until the 48 hour period has ended to get it back.

Police will also release an impounded vehicle before the 48 hours are up if it was impounded in error.

Otherwise, a vehicle impounded by police will generally be held for the full 48 hours, even if the driver did not own it. Parents who let their driving-age children use the family car should not expect police to release it early after it is impounded for being used for hoon driving, even if the they did not know the car would be used in this way. The experience of police impounding is intended to be salutary not just for the young driver who borrows a friend's or the family car but for the owner who lent it.

There is no fee payable when a vehicle is collected from police impoundment. If and when the driver is convicted of the offence for which the vehicle was impounded, the court will order the offender to pay the fee to the Commissioner for the impounding of the vehicle used in that offence. The fees will be prescribed by regulation.

Only a convicted driver is liable to pay those fees. This means that if charges are not laid or are discontinued, or if the driver is acquitted of the charges, no fees are payable.

Offence to sell or dispose of vehicle the subject of an application to impound or forfeit

I will describe in more detail later in this report how a court may impound or forfeit a vehicle used to commit a prescribed offence. But first I will explain that the Bill allows the Commissioner to serve a notice prohibiting sale of a vehicle and makes it an offence to sell or dispose of the vehicle until the court hears the charges against the driver (or until such charges are withdrawn or discontinued). This

is to prevent people evading court-ordered impounding or forfeiture by selling the vehicle in this time.

It is important that the owner of such a vehicle is given such a notice at the earliest possible time so that there is an embargo on sale or transfer or the vehicle. Notices may be given when police think they will charge the driver with the impounding offence and know that he or she has convictions for prescribed offences within five years preceding the date of the offence (the pre-requisites for court-ordered impoundment). In practice, police will usually give the notice when the vehicle is collected from police impoundment, or, if the vehicle was not impounded by police but is later the subject of an impounding offence, at the time the charge is laid.

The maximum penalty for this offence is $2000 or imprisonment for six months. In addition, the court may require the owner to pay into the Victims of Crime Fund an amount equivalent to the value of the motor vehicle so sold or disposed.

Court orders to impound or forfeit

In addition to the 48 hours of police impounding, a vehicle used to commit an impounding offence may be impounded or forfeited by court order. A court that records a conviction for an impounding offence must, if the prosecution so applies, order that the vehicle used to commit the offence is impounded or forfeited, if the offender has previous convictions for previous relevant offences (called ***prescribed offences*** in the Bill) in the five years preceding the date of this offence. I should note here that applications for impounding or forfeiture can't be made for vehicles that were stolen or otherwise unlawfully in the possession of the driver or being used in circumstances prescribed by regulation at the time of the offence.

A ***prescribed offence*** means—

- the new offence of misuse of a motor vehicle;
- the new offence of promoting or organising an event involving the misuse of a motor vehicle;
- the new offence of emitting excessive noise from a vehicle by amplified sound equipment or other devices;
- the existing offence of driving dangerously or recklessly;
- the existing offence of driving dangerously or recklessly so as to cause death or injury;
- the existing offence of driving under the influence of alcohol; and
- the existing offence of driving with more than the prescribed concentration of alcohol in the blood.

Prescribed offences are different from impounding offences in one respect. The existing offences included in the list of prescribed offences are not required to have been committed in circumstances involving an element of a new misuse of motor vehicle offence. That requirement is unnecessary, because the impounding offence that founds this application was itself committed in such circumstances, whether it was an existing offence or one of the new offences.

If there is only one previous prescribed offence, the vehicle may be impounded for a period of up to three months. For two previous prescribed offences, the vehicle may be impounded for a period of up to six months. For three or more previous prescribed offences, the vehicle is forfeited to the Crown.

I emphasise that impounding or forfeiture that is imposed by a court is in addition to any criminal penalty for the impounding offence itself. The Court can make the order even if the offender is not the owner of the vehicle used to commit the offence. This is to penalise an owner who lends a vehicle to someone who is likely to use it to commit an impounding offence - for example to someone with a known history of hoon driving. However, it is the offender who pays the fees for impounding or forfeiture. The court must order that the offender pays the prescribed fee when it makes the order to impound or forfeit.

Notice of the application to impound or forfeit

Notice of the application must be sent to each registered owner of the motor vehicle and to anyone else whom the prosecution is aware has claimed ownership of the vehicle or is likely to suffer financial or physical hardship as a result of the making of the order.

Court discretion as to impounding or forfeiture

A court may decide not to impound or forfeit a vehicle for any of three reasons—

- that the vehicle was used in the impounding offence without the knowledge and consent of the owner; or
- that since the offence, the vehicle has been sold to a genuine purchaser; or
- if impounding or forfeiture would cause severe financial or physical hardship to a person. If that person is the offender, and it is reasonably practical for him or her to perform community service instead of having the vehicle impounded or forfeited, the court must order the offender to perform up to 240 hours of community service instead. That order is to be dealt with and enforced as if it were a sentence of community service.

The Bill does not prevent a court, when considering hardship, taking into account the effect on the offender of the penalty it has imposed for the offence itself. If, for example, the driver, also the owner of the vehicle, has been disqualified from driving for six months, the court may then think impounding unnecessary, especially if this would cause hardship to people other than the offender.

Powers to seize and impound

The impounding authority is the Commissioner of Police or the Sheriff, depending whether the impounding is by police or by order of the court. Whether it be for the initial 48 hour police impounding or for court-ordered impounding or forfeiture, the impounding authority may seize and impound a vehicle from a public place without warrant. If the vehicle is anywhere else, for example, in the driveway of a private home, it may be seized and impounded only with the consent of the owner or occupier of the property or under the authority of a personal or telephone warrant issued by a magistrate. The impounding authority or people it engages to do so may drive, tow, push or otherwise move the vehicle to an authorised place of impoundment, or move impounded vehicles between such places.

The impounding authority may do anything reasonably necessary to seize or move a vehicle that is liable to impoundment, including requiring the vehicle to stop, removing, dismantling or neutralising the lock or any other part of the vehicle and starting it up by other means if the driver refuses to surrender the keys.

Disposal of impounded or forfeited vehicles

Two months after a vehicle is no longer liable to be impounded and has not been claimed, or immediately upon its forfeiture, the vehicle may be sold by public auction or public tender. If it has no monetary value or the proceeds of sale are unlikely to exceed the costs of sale, or if it doesn't sell when offered for sale, the vehicle may be disposed of otherwise than by sale.

Proceeds from the sale of unclaimed impounded vehicles are to be dealt with, after deduction of the costs of sale, in accordance with section 7A of the *Unclaimed Moneys Act 1891* as money the owner of which cannot be found. An owner may trace and claim the proceeds of the sale of an impounded vehicle through the provisions of that Act.

Proceeds of the sale of forfeited vehicles, after deduction of the costs of sale, are to go to the Victims of Crime Fund established under the *Victims of Crime Act 2001.*

Liability of the Crown for seizure and impounding

The Bill exempts the Crown or an impounding authority (a police officer or the Sheriff) of liability for compensation for the seizure or impounding of a vehicle. This exemption will not protect an impounding authority if the vehicle was seized or impounded other than in good faith, and will not protect the Crown if the vehicle is unnecessarily damaged during the seizure of the vehicle. Lawful damage would include, for example, the breaking or removal of a locking device when the driver refuses to surrender the keys.

4 Summary

In summary, this Bill introduces carefully-designed offences and procedures and innovative penalties. By depriving hoon drivers of their cars, the impounding and forfeiture provisions will help to deter anti-social or aggressive behaviour on our roads and make people more cautious about sharing their cars with people who have a poor driving history.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Road Traffic Act 1961*

4—Substitution of heading to Part 3 Division 4

This clause consequentially changes the heading to Part 3 Division 4 of the *Road Traffic Act 1961.*

5—Insertion of section 44B

This clause inserts a new provision into Part 3 Division 4 of the *Road Traffic Act 1961* dealing with misuse of a motor vehicle. The provision defines misuse of a motor vehicle as—

- driving a motor vehicle, in a public place, in a race between vehicles, a vehicle speed trial, a vehicle pursuit or any competitive trial to test drivers' skills or vehicles;
- operating a motor vehicle in a public place so as to produce sustained wheel spin;

- driving a motor vehicle in a public place so as to cause engine or tyre noise, or both, that is likely to disturb persons residing or working in the vicinity;
- driving a motor vehicle onto an area of park or garden (whether public or private) or a road related area so as to break up the ground surface or cause other damage.

However, such conduct does not constitute misuse of a motor vehicle if it occurs in a place with the consent of the owner, occupier or person who has the care, control and management of the place.

It is an offence to misuse a motor vehicle or to promote or organise an event knowing it will involve the misuse of a motor vehicle. The penalty for each of these offences is the penalty set out in section 164A(2) of the *Road Traffic Act 1961*. In addition, if the conduct causes damage the convicting court can order payment of compensation.

Part 3—Amendment of *Summary Offences Act 1953*

6—Insertion of section 54

This clause inserts a new provision dealing with emission of excessive noise from a motor vehicle by amplified sound equipment or other devices. Under the proposed provision, where excessive noise (which is defined as noise that is likely to unreasonably disturb persons in the vicinity of the vehicle) is being emitted the police may stop a vehicle, require the driver and other occupants to state their names and addresses and issue a written direction to abate the excessive noise.

It is an offence to fail to stop the vehicle or to provide a false name or address, of false evidence of name or address ($1 250 or imprisonment for 6 months), and is also an offence if the noise is not abated immediately, or if a person issued such a direction, during the following 6 months, causes or allows excessive noise to be emitted from a vehicle driven or otherwise occupied by the person by amplified sound equipment or other devices ($1 250).

An evidentiary provision provides that in proceedings for an offence an allegation that excessive noise was emitted from a vehicle is, in the absence of proof to the contrary, proved by evidence by a police officer that he or she formed the opinion based on his or her own senses that the noise emitted from a vehicle was such as was likely to unreasonably disturb persons in the vicinity of the vehicle.

7—Insertion of Part 14A

This clause proposes to insert a new Part in the *Summary Offences Act 1953* giving police powers to seize and impound motor vehicles in certain circumstances. The new Part contains provisions as follows:

- Proposed section 66 defines certain terms used in the proposed Part. In particular, an ***impounding offence*** is defined as an offence against proposed section 54 (inserted by clause 6 of the measure), an offence against proposed section 44B of the *Road Traffic Act 1961* (inserted by clause 5 of the measure) or any other prescribed offence involving the misuse of a motor vehicle. Prescribed offences include reckless and dangerous driving, drink driving offences and causing death by dangerous driving. The concept of misuse of a motor vehicle is defined in the same terms as those used in proposed section 44B of the *Road Traffic Act 1961*.
- Proposed section 66A provides that powers under the Part are in addition to any penalty that may be imposed in relation to an impounding offence.
- Proposed section 66B gives a police officer power to seize and impound a motor vehicle that the officer reasonably believes has been the subject of an impounding offence committed after the commencement of the measure if the driver is to be, or has been, reported for the offence or has been charged with, or arrested in relation to, the offence. The motor vehicle may remain impounded for 48 hours. The provision also requires the Commissioner to contact registered owners of the vehicle to advise them of the impounding and compels the Commissioner to release an impounded motor vehicle if satisfied that it was not the subject of an impounding offence or if the vehicle was stolen or otherwise unlawfully in the possession of the driver at the time of the offence, or was being used in prescribed circumstances.
- Proposed section 66C requires a court convicting a person of an impounding offence to order the payment of impounding fees (to be prescribed by regulation) where the vehicle the subject of the offence has been impounded under section 66B.
- Proposed section 66D requires a court convicting a person of an impounding offence to order, on the application of the prosecution, impounding or forfeiture of the motor vehicle the subject of the offence (in addition to any impounding that has occurred under section 66B) in certain circumstances. The provision only operates where the convicted person has previous convictions for prescribed offences occurring within 5 years of the current offence. Where the convicted person has 1 previous conviction, the motor vehicle will be impounded for a period not exceeding 3 months; where there are 2 previous convictions, it will be impounded for a period not exceeding 6 months; where the person has 3 or more previous convictions for prescribed offences the motor vehicle will be forfeited to the Crown. The registered owners of the vehicle (and other persons who the prosecution is aware claim ownership of the vehicle or are likely to suffer hardship as a result of the making of such an order) are required to be given notice of the application and may make representations to the court. The court can decline to make an order under the provision on grounds of hardship or if the offence occurred without the knowledge or consent of any owners or if the motor vehicle has, since the date of the offence been disposed of to a genuine purchaser or other person who did not know that the vehicle might be the subject of such an application. However, if the court declines to make an order on the ground that it would cause severe financial or physical hardship to the convicted person and the Court is satisfied that it would be reasonably practicable for the person to instead perform community service, the Court must order the performance of not more than 240 hours of community service.
- Proposed section 66E allows the Commissioner to serve a notice on any owner of a motor vehicle that might be the subject of an application under section 66D prohibiting the sale of the motor vehicle pending finalisation of the relevant proceedings (ie. until the criminal proceedings are discontinued or finally determined). If such a notice is served it is an offence to sell or dispose of the motor vehicle the subject of the application (punishable by a fine of $2 000 or imprisonment for 6 months). If a person is convicted of that offence, the court may also require payment of the value of the motor vehicle into the Victims of Crime Fund.
- Proposed section 66F deals with the manner in which the police or the Sheriff can exercise the power to seize and impound.
- Proposed section 66G provides for applications to a magistrate for a warrant to seize a motor vehicle from private property.
- Proposed section 66H deals with liability issues arising out of the measure.
- Proposed section 66I deals with the disposal of motor vehicles, allowing the Sheriff to sell forfeited vehicle and the Sheriff and the Commissioner to sell impounded motor vehicles that remain uncollected 2 months after the end of the impoundment period. The proceeds of sale of an uncollected impounded vehicle are dealt with as unclaimed money and the proceeds of sale of a forfeited vehicle are paid into the Victims of Crime Fund.
- Proposed section 66J is an evidentiary provision relating to proof of ownership of a motor vehicle.
- Proposed section 66K provides for the service of notices under the measure.

The Hon. R.I. LUCAS secured the adjournment of the debate.

ADJOURNMENT

At 12.21 a.m. the council adjourned until Thursday 28 October at 2.15 p.m.